

## **PROPOSED CODE CHANGES**

### **Title 16 ENVIRONMENT**

*NOTE: CHANGES MADE SINCE THE LAST PLANNING COMMISSION REVIEW ARE SHOWN IN **YELLOW** HIGHLIGHT.*

*NOTE: SUMNER MUNICIPAL CODE CONTAINS "CRITICAL AREAS" PROTECTIONS IN TITLE 16 ENVIRONMENT. TITLE 16 IS DIVIDED INTO CHAPTERS THAT COVER TOPICS SUCH AS STATE SEPA ENVIRONMENTAL REVIEW, SHORELINE (RIVERS) MANAGEMENT, FISH AND WILDLIFE HABITAT (E.G. STREAMS, WETLANDS, FLOODPLAINS) AND OTHER CRITICAL AREAS SUCH AS AQUIFER RECHARGE AND STEEP SLOPE AREAS. THE FOCUS OF PROPOSED CODE CHANGES IS ON CHAPTERS RELATED TO FISH AND WILDLIFE HABITAT.*

#### **Chapters:**

- 16.40** Resource, Wildlife and Hazard Area Regulation Framework
- 16.42** *Repealed*
- 16.43** Right to Farm
- 16.44** Mineral Resource Lands
- 16.46** Wetlands **Protection**
- 16.48** **Critical** Aquifer Recharge Area
- 16.50** Landslide and Erosion Hazard Area
- 16.52** Seismic Hazard Area
- 16.54** Volcanic Hazard Area
- 16.56** **Fish and** Wildlife Habitat **Conservation** Area
- 16.58** *Repealed*

## Chapter 16.40

### RESOURCE, WILDLIFE AND HAZARD AREA REGULATION FRAMEWORK

*NOTE: THIS CHAPTER PROVIDES A FRAMEWORK FOR PERMITS AND REVIEWS THAT APPLY TO ALL CRITICAL AREAS.*

#### 16.40.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the “Resource, Wildlife and Hazard Area Regulation Framework Ordinance.” (Ord. 1539 § 1 (part), 1992)

#### 16.40.030 Purpose.

The purpose of this chapter is to regulate the use of land in and around critical areas and; natural resource lands, wildlife habitat, and natural hazard areas lying within the corporate limits of the city, to bring the city into compliance with the Washington State Growth Management Act (chapter 36.70A RCW). RCW 36.70A requires cities to adopt development regulations to classify, designate, and protect critical areas and to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. RCW 36.70A.172(1) requires to incorporate appropriate “best available science” be included in policies ~~into the~~ and regulations to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, resource lands, wildlife habitat, and natural hazard areas(RCW 36.70A.172(1)) ~~These regulations are ;~~ and to promote the public health, safety and general welfare in accordance with the standards established by the federal government, state and the city, and to:

- A. Protect areas of land with valuable and nonrenewable resources for future generations...
- B. Regulate development on and around critical areas in order to protect lives, property and public infrastructure;
- C. Prevent development which is incompatible with certain critical areas which are particularly susceptible to water quality, noise, and air quality impacts associated with nearby development;
- D. Establish mechanisms to inform present and future landowners of their location on or near natural resource lands or critical landsareas;
- E. Establish mechanisms to process and review development proposals for consistency with the new regulations...
- ...

*NOTE: THESE UPDATED DEFINITIONS ARE RECOMMENDED FOR CLARITY WHEN EVALUATING CRITICAL AREAS AS THEY ARE CONSISTENT WITH AGENCY DEFINITIONS.*

#### 16.40.060 Definitions.

For the purpose of this title, the following definitions shall apply:

“Action” means any grading, clearing, filling, construction, dredging, removal of trees or use on a piece of property.

“Activity” means any application for the following actions: building permit creating additional habitable space in a residential structure as defined by the International Building Code; building permit for a nonresidential structure; conditional use approval; shoreline permit; rezone; planned residential development; planned mixed-use development; shoreline variance or conditional use; shoreline redesignation; subdivision of land; SEPA review or other similar land use or environmental discretionary review.

"Adaptive management" means using scientific methods to evaluate how well regulatory and nonregulatory actions protect the sensitive area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. Management policy may be adapted based on a periodic review of new information.

"Anadromous fish" means fish species that spend most of their lifecycle in salt water but return to freshwater to reproduce.

“Aquifer recharge area” or “Critical aquifer recharge area” means areas that have a critical recharging effect on groundwaters-aquifers used for potable water, including areas where an aquifer that is a source of drinking water is supplies and/or that demonstrate a high level of susceptibility or vulnerability-vulnerable to groundwater-contamination that would affect the potability of the water, or is susceptible to reduced rechargefrom land use-activities.

Examples of aquifer recharge areas include:

1. Wellhead protection areas delineated pursuant to the Federal Safe Drinking Water Act; and
2. Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;
3. Areas established for special protection pursuant to a groundwater management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;
4. Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in WAC 365-190.

~~Other areas with a high level of susceptibility or vulnerability to contamination as demonstrated through the use of the DRASTIC model.~~

"Best available science (BAS)" means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore sensitive areas. As defined by WAC 365-195-900 through 925, best available science is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

“Best management practices (BMPs)” mean physical, structural, and/or managerial practices, that when used singly or in combination, ~~prevent or reduce water pollution, erosion, groundwater contamination, slope instability and similar impacts of construction, development and other actions. Source control BMPs include those which keep the pollutant from ever coming in contact with stormwater, and stormwater treatment BMPs include those which consist of various methods of treating stormwater. BMPs could include, but are not limited to, use of hay bales and plastic coverings to reduce erosion, education programs for employees regarding the use and disposal of chemicals, signage for customers regarding use of gasoline fueling facilities, and use of grass lined swales to reduce pollutants in stormwater.~~

(a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;

(b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

(c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and

(d) Provide standards for proper use of chemical herbicides within critical areas.

“Building official” means the city staff person responsible for the administration of the International Building Code or his or her designee.

“Critical areas” are those areas established as wetlands, volcanic hazard areas, wetlands, critical aquifer recharge areas (CARAs), frequently flooded hazard areas (special flood hazard areas), fish and wildlife habitat areas, seismic hazard areas, landslide hazard areas, erosion hazard areas, seismic hazard areas, volcanic hazard areas, and fish and wildlife habitat conservation areas aquifer recharge areas.

Development. Refer to the definition in the zoning code, chapter 18.04 SMC.

“Director” means the development services director or his or her designee.

...

"Frequently flooded areas" means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the city in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas

include, at a minimum, the one hundred (100) year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. Also known as special flood hazard areas (see SMC 15.52).

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

...

“Landslide hazard area – Type I” means a slope of 25 percent or greater.

“Landslide hazard area – Type II” means a slope of less than 25 percent and equal to or greater than 15 percent.

...

“Riparian” means adjacent to a water body: stream, river, lake, or pond.

“Riparian management zone” means the regulated buffer area that includes the land from the ordinary high water mark to a specified distance as measured horizontally in each direction.

“Wellhead protection area” (WHPAs) means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health WAC-190-030, WAC 246-290-020, WAC 246-290-135. (Ord. 2788 § 13, 2021; 1Ord. 2439 § 11, 2013; Ord. 2071 § 2, 2003; Ord. 1539 § 1 (part), 1992). They are:

- Group A wells serve 15 or more service connections or 25 or more people at least 60 days per year.
- Group B wells serve fewer than 15 connections and fewer than 25 people per day. ~~means the area within the 10-year time-of-travel zone boundary of a group A public water system well, as delineated by the water system purveyor or its designee, pursuant to WAC 246-290-135. (Ord. 2788 § 13, 2021; 1Ord. 2439 § 11, 2013; Ord. 2071 § 2, 2003; Ord. 1539 § 1 (part), 1992)~~

#### **16.40.070 General application.**

A. This division shall apply to all properties which are designated as critical areas or natural resource lands....

...

#### **16.40.080 Mapping.**

Maps have been developed to indicate the location of natural resource lands and critical areas by state and federal agencies. Maps may be developed by the city which show the general location of natural resource lands and critical areas for informational purposes. The actual presence of critical areas and natural resource lands shall be determined by the classification criteria established for each natural resource land and critical area. The burden and costs associated with further delineation of resource or critical lands shall be borne by project applicants.

#### **16.40.090 Permitted uses.**

Uses permitted on properties designated as critical areas or natural resource lands shall be the same as those permitted by the underlying zone classification and the Sumner shoreline master program unless specifically regulated by this division. (Ord. 1539 § 1 (part), 1992) See Section 16.40.135 Application and review process for RWHA (Resource, Wildlife, and Hazard) permit.

#### **16.40.100 Exemptions.**

The following activities shall be exempt from the application and permit requirements at SMC 16.40.135 unless specifically modified in SMC 16.46.090, SMC 16.56.100 or other sections of this division. All activities in critical areas must comply with SMC 16.40.110, ~~Best-best~~ management practices, regardless of exemption status. These exemptions apply specifically to activities regulated by the ~~city~~ City of Sumner. Other state and federal permits and approvals may still apply.

- A. Agricultural activities ...
- B. Forest practices regulated and conducted in accordance with the provisions of chapter 76.09 RCW...
- C. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
- D. Outdoor recreational activities, including, but not limited to, fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;
- E. Education, scientific research, and use of nature trails;
- F. Operation, maintenance or reconstruction-repair or improvements of existing structures or infrastructure (e.g. roads, bridges, and associated storm drainage facilities); provided, that reconstruction activities does not alter or increase impacts to critical areas and there is no increased risk to life or property~~involve expansion of facilities~~;
- G. The following utility line activities, if there is no other practical alternative to the proposed development with less impact on the critical areas; when the proposal is consistent with other applicable regulations and standards; the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and the proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science;

...

*NOTE: EXISTING CODE EXEMPTS UTILITY LINE ACTIVITIES, SUCH AS NORMAL REPAIR, RELOCATION OF POLES/APPURTENANCES, ETC. WHEN WITHIN IMPROVED RIGHT OF WAY.*

- H. ~~Reconstruction, remodeling, Interior remodeling~~ or maintenance of existing ~~single-family residential structures, accessory structures, where legally preexisting~~; provided, that ~~a cumulative expansion of the building footprint, developed area and impervious surface area does not increase by more than 25 percent; and provided further, that the new construction or related activity does not further intrude into~~ the activity does not impact the critical area or buffer;

- I. ~~Reconstruction, remodeling, or maintenance of structures, where legally preexisting, other than single-family structures and accessory structures; provided, that such reconstruction, remodeling, or maintenance does not increase the building footprint or height, or increase developed or impervious surface area;~~

*NOTE: THE ABOVE "EXEMPTIONS" APPLY TO ALL CRITICAL AREAS, NOT JUST STREAMS AND WETLANDS. ALSO 1) THIS CLARIFIES INTERIOR CHANGES ARE EXEMPT; 2) EXEMPTIONS FOR EXISTING STRUCTURES HAVE BEEN MOVED TO "PARTIAL EXEMPTIONS" SECTION BELOW.*

- J. Minor site investigative work necessary for land use and building application submittals such as surveys...
- K. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation, in a timeframe too short to allow for compliance with the requirements of the critical areas regulations. The director shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken. The action may require necessary permits after the fact, including any restoration or mitigation;

...

- N. Projects with the primary purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat conservation areas; provided, that:
  1. Such projects are part of an approved local, state, or federal restoration or enhancement plan; and
  2. The project would not result in adverse impacts to any critical area;

...

**16.40.105 Partial Exemptions.**

The following activities require a RWHA permit processed as a Type + I decision, pursuant to SMC 18.56.030(B):

*NOTE: MOVED WORDING FROM 16.56.100 ABOVE TO THIS SECTION. RATHER THAN A BLANKET EXEMPTION, A PARTIAL EXEMPTION IS PROPOSED, WHICH IS A SIMPLE PERMIT PROCESS. WITHOUT*

*SOME INPUT/OVERVIEW FROM STAFF, THE ACTIVITIES ABOVE HAVE THE POTENTIAL TO CAUSE HARM TO THE RESOURCE.*

~~1. Reconstruction, remodeling, or maintenance of existing single family residential structures, and accessory structures where legally preexisting; provided, that a cumulative expansion of the building footprint, developed area and impervious surface area does not increase by more than 25 percent; and provided further, that the new construction or related activity does not increase the building footprint, development area, impervious surface area or construction impacts further intrude into within the critical area or its buffer.~~

~~2. Reconstruction, remodeling, or maintenance of structures, where legally preexisting, other than single-family structures and accessory structures; provided, that such reconstruction, remodeling, or maintenance does not increase the building footprint or height, or increase developed or impervious surface area.~~

**NOTE:** *THIS SECTION IS UPDATED TO TREAT ALL MINOR DEVELOPMENT THE SAME (INSTEAD OF DISTINGUISHING SINGLE FAMILY STRUCTURES).*

#### **16.40.120 Variances.**

*NOTE: THE PURPOSE OF VARIANCE PROVISIONS IS TO ALLOW FOR ADJUSTMENTS DUE TO EXTRAORDINARY CIRCUMSTANCES, ATYPICAL SITE CHARACTERISTICS, AND SIMILAR SITUATIONS WHERE APPLYING THE CODE WOULD CREATE A SIGNIFICANT HARDSHIP. BUFFER REDUCTIONS FOR TYPICAL DEVELOPMENT PROJECTS ARE COVERED ELSEWHERE IN THE CODE.*

- A. The purpose of a variance is strictly limited to granting relief to specific development standards set forth in this division. A variance is also appropriate where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this division would impose unnecessary hardships on the applicant. These provisions should be applied in a manner, which while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner. Other state and federal permits and approvals may still apply.
- B. In all instances of granting a variance, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- C. An application for a variance shall be processed as a Type IV decision pursuant to chapter 18.56 SMC, Procedures for Land Use Permits...
- D. Criteria for Granting Variances. Variances for development that will be located landward of the ordinary high water mark, within a wetland buffer, stream buffer, or landslide or erosion hazard area may be authorized provided the applicant can demonstrate all of the following:
  1. That the strict requirements of the development standards set forth in this division preclude or significantly interfere with a reasonable use of the property...
  2. That the hardship described above is specifically related to the property, and is the result of unique conditions ...and not, for example, from deed restrictions, ~~or and not from~~ the applicant's own actions.
  3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the critical area.
  4. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.
  5. That the public interest will suffer no substantial detrimental effect, and the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
- E. Criteria for Granting In-water and Wetland Variances. Variances for development that will be located either waterward of the ordinary high water mark or within regulated wetlands may be authorized provided the applicant can demonstrate compliance with all the criteria stated above as well as the following:
  - a. That the strict application of the development standards set forth in this division precludes all reasonable use of the property; and

- ~~b. That the proposal is consistent with the criteria established under subsections (D)(1) through (4) of this section;~~
- ~~b. The impact is both unavoidable and necessary due to site-specific constraints not caused by the applicant.~~
- ~~c. The proposal is consistent with other applicable regulations and standards, at the local, state and federal levels.~~

~~E.F.~~ In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area...

~~F. G.~~ U.S. Fish and Wildlife Service and the National Marine Fisheries Service or agencies with jurisdiction shall be sent a notice of application for any variance requesting the reduction of buffer widths on Type ~~III~~F streams. (Ord. 2071 § 4, 2003: Ord. 1695 § 20, 1995: Ord. 1539 § 1 (part), 1992)

*NOTE: THE VARIANCE CRITERIA ABOVE SET A HIGHER STANDARD IF THE IMPACT OCCURS IN ACTUAL WETLAND/SURFACE WATERS, BECAUSE THE RESOURCE IMPACTS ARE MUCH GREATER AND IRREVERSIBLE. THEREFORE, A DEVELOPMENT MUST DEMONSTRATE THAT ALL REASONABLE USES IS PRECLUDED, NOT JUST A HARDSHIP.*

**16.40.125 Nonconforming uses, structures, activities**

A. A structure, use or activity legally preexisting on the effective date of this title or at the time of any amendments thereto that does not conform to this title is considered nonconforming with the provisions of this title.

B. Expansion, reconstruction, maintenance or modification of ~~a nonconforming~~ an existing structure, accessory structure, use or activity, where legally preexisting, located in a critical area or its associated buffer may be allowed, provided, that the structure, use or activity does not remove native vegetation, or increase the activity footprint, developed area, or impervious surfaces, or create other construction impacts within the critical area or its associated buffer.

- ~~1. Further expand or intensify the footprint of activity; or~~
- ~~2. Increase impervious surface area; or~~
- ~~3. Remove vegetation;~~
- ~~within the critical area or its associated buffer area.~~

C. Routine repair and maintenance of nonconforming uses or structures, where legally preexisting within a critical area or buffer, may be allowed, provided it does not further impact the critical area or increase the degree of nonconformity.

**16.40.135 Application and review process for RHWA permit.**

A. Activities which require resource, wildlife and hazard area (RWHA) approval shall be processed as Type I or Type II decisions pursuant to chapter 18.56 SMC, Procedures for Land Use Permits. ...

**16.40.150 Relationship to other regulations.**

...

D. Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

...

## WETLANDS PROTECTION

*NOTE: THROUGHOUT THIS CHAPTER, NEW CODE WILL UPDATE TERMS FOR WETLANDS TO REMOVE THE TERM "REGULATED" WETLAND, SINCE ALL WETLANDS DEFINED IN THIS CHAPTER ARE REGULATED.*

### 16.46.030 Definitions.

...

~~22. "Regulated wetlands" means ponds 20 acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the federal Clean Water Act, 33 U.S.C. 1251 et seq., and rules promulgated pursuant thereto, and shall be those areas that are inundated or saturated by surface 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. Regulated wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.~~

*NOTE: THE TERM "REGULATED" DOES NOT EXPLAIN WHO IS REGULATING. SOME WETLANDS ARE NOT REGULATED FEDERALLY BUT ARE STILL REGULATED BY THE STATE.*

...

### 16.46.060 Mapping.

A. The approximate location and extent of wetlands in the city is displayed on the City of Sumner, WA Public Webmap, the National Wetland Inventory (US Fish and Wildlife Service), and the Priority Habitat and Species Map (Washington Department of Fish and Wildlife Service) map titled "Wetland Inventory Map, 2007." ~~This These maps are inventory is~~ general and not designed to support permit applications and ~~does~~ not establish jurisdictional boundaries. Furthermore, as site conditions change (due to natural and human processes), wetland areas and characteristics may change as well.

...

### 16.46.070 Wetlands rating.

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement...

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication No. 14-06-029...

1. Category I. ...

2. Category II. ...

3. Category III. ...

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that are good candidates for replacement and improvement. ~~However, we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case.~~ These wetlands may provide some important functions and should be protected to some degree.

...

### 16.46.080 Regulated activities.

A resource, wildlife, and hazard area (RWHA) approval shall be obtained prior to undertaking the following in a ~~regulated~~ wetland or its buffer unless authorized by SMC 16.46.090:



- A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- B. The dumping, discharging, or filling with any material;
- C. The draining, flooding, or disturbing of the water level or water table;
- D. The driving of pilings;
- E. The placing of obstructions;
- F. The construction, reconstruction, demolition, or expansion of any structure, unless specifically exempted under SMC 16.46.090(B);
- G. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation within a ~~regulated~~-wetland or its buffer that would alter the character of a regulated wetland...
- H. Activities adjacent to a ~~regulated~~-wetland or its buffer that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources...

**16.46.090 Exemptions and allowed uses in wetlands.**

A. The following wetlands may be exempt from the requirement to avoid impacts (SMC 16.46.170(A)(1)), and they may be filled if the impacts are fully mitigated based on the remaining actions in SMC 16.46.170(A)(2) through (6)...

- 1. All isolated Category IV wetlands less than 4,000 square feet that:
  - a. Are not associated with ~~riparian fish and wildlife habitat conservation~~ areas or their buffers.
  - b. Are not associated with shorelines of the state or their ~~associated~~-buffers.

...

B. In addition to those activities listed in SMC 16.40.100, the following activities shall be allowed within a wetland or wetland buffer without having to obtain a RWHA permit provided they are conducted using best management practices, except where such activities result in the conversion of a ~~regulated~~-wetland or wetland buffer to a use to which it was not previously subjected or have the potential to result in a loss of the functions, values or area of a wetland or wetland buffer:

- 1. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops...or the wetland by changing existing topography, water conditions or water sources...
- 2. Ongoing agricultural activities, provided they implement applicable ~~best management practices (BMPs)~~ contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or develop a farm conservation plan in coordination with the local conservation district, and forest clearing and other forest practices regulated under the State Forest Practices Act,

...

- 3. The maintenance of drainage facilities and new drainage facilities provided they are an integral part of an ongoing agricultural activity and approved by the director;
- 4. The following uses are allowed within ~~wetlands and/or~~ wetland buffers; provided, that written notice at least 10 days prior to the commencement of such work has been given to the director; and provided, that wetland impacts are minimized and that disturbed areas are immediately restored:
  - a. Normal maintenance, repair, or operation of existing serviceable legally established structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road;
  - b. Minor modification of existing serviceable legally established structures within a wetland buffer ~~zone~~ where modification does not adversely impact wetland functions or increase the size of the structure's footprint;

- c. Utility line activities listed under SMC 16.40.100(G); provided, that BMPs are used and impacts are mitigated; and
- d. Normal and routine maintenance and repair of any legally preexisting public or private facility within an existing improved right-of-way...
- 5. Emergency actions which must be undertaken immediately...
- 6. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer...
- 7. Enhancement of a wetland through the removal of nonnative invasive plant species...
- 8. Normal and routine maintenance and repair of any legally established existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not expand the footprint of the facility or right-of-way; and has no adverse effect on the wetland or buffer.
- 9. Stormwater Management Facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of a LID, runoff treatment or flow control BMP if all of the following criteria are met:
  - ...
  - d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the "Guide for Selecting Mitigation Sites Using a Watershed Approach" (Ecology Publication No. 09-06-032, or as revised and approved by Ecology available here: - <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that intended to achieves restoration goals identified in a shoreline master program or other local or regional watershed plan; and
  - ...

*NOTE: THE OTHER CRITERIA IN THIS SECTION RELATE TO AREAS WITH LESS HABITAT VALUE AND WHERE WETLAND FUNCTIONS WILL NOT BE IMPAIRED.*

**16.46.150 Buffer requirements.**

The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication No. 14-06-029, or as revised and approved by Ecology)...

J. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition...

K. Regulated activities as specified in SMC 16.46.080 shall not be allowed in a buffer zone except...

L. A building setback line of 10 feet is required from the edge of any wetland buffer...

M. Buffer Establishment.

N. Functionally Disconnected Buffer Area. Buffers may exclude areas that are functionally and effectively disconnected from the wetland by an improved public street or legally established development, as determined by the director. Functionally and effectively disconnected means that the street or other significant development blocks the protective functions provided by a buffer. The director shall evaluate whether the interruption will affect the entirety of the buffer, considering the following:

- 1. Significant development includes public streets and railroads, and private developments such as homes or commercial structures and parking lots.

2. Linear development extending across a buffer results in a different variation of buffer interruption than isolated features such as houses or accessory structures. Linear development such as roads and continuous parking lots typically result in the greatest interruption of buffer functions.
3. Individual structures, such as a house, often do not fully interrupt buffer functions. In such cases, the allowable buffer exclusion should be limited to just the portion of the buffer that is within the footprint of the isolated structure and its contiguous improvements such as a paved driveway.
4. A critical area report (CAR) shall be submitted to the director, evaluating the buffer functions and impact of intervening structures. If the CAR demonstrates that functions are greatly reduced by the intervening structure, the director may waive or reduce the required buffer width based on the information provided in the CAR.
5. Any future modifications to buffers shall be consistent with regulations outlined in SMC 16.46.150(A).

...

#### H. Wetland Mitigation Ratios.<sup>1</sup>

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Preservation <sup>a</sup> or Enhancement
Category I: Bog, natural heritage site <sup>a</sup>	<del>Case by case<sup>b</sup></del> <del>Not-considered possible</del>	Case by case <sup>b</sup>	Case by case <sup>b</sup>
Category I: Mature forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

1 Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or reestablishment. See Table 1a, *Wetland Mitigation in Washington State – Part I: Agency Policies and Guidance – Version 1* (Ecology Publication No. 06-06-011a, Olympia, WA, March 2006 or as revised). See also subsection (C)(4) of this section for more information on using preservation as compensation.

a Areas proposed for preservation must be unique, high quality wetlands systems such as bogs, meeting criteria found in *Wetland Mitigation in Washington State Part I (version 2) and II* (Ecology Publication No. 21-06-003 and 06-06-011b, or as revised)

b Complete avoidance of bogs and natural heritage sites is required unless overriding project need and lack of practicable options results in unavoidable impacts. In those cases, the proposed mitigation must include 24:1 preservation of the same wetland type (e.g., bog) at a minimum of a 24:1 ratio, plus protective buffer of sufficient width to protect the unique water quality conditions that support these unique wetlands. Additional wetland creation, rehabilitation and enhancement would be considered in determining the final mitigation ratios.

I. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance *Wetland Mitigation in Washington State Part I (version 2) and II* (Ecology Publication No. 21-06-003 and 06-06-011a-b, ~~Olympia, WA, March 2006 or as revised~~), the administrator may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report* (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

...

K. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with *Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation* (Ecology Publication No. 12-06-015, ~~Olympia, WA, December 2012~~ or as revised).

L. Alternative Mitigation Plans. The administrator may approve alternative wetland mitigation plans that are based on best available science...

The administrator shall consider the following for approval of an alternative mitigation proposal:

- G. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication No. 09-06-32, ~~Olympia, WA, December 2009~~ or as revised).

...

#### **16.46.180 Mitigation plans.**

All wetland and buffer restoration, creation, and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals...

...

C. Establish specific criteria/performance standards (including water quality standards, survival rates of planted vegetation, species abundance and diversity targets, or other ecological, geological or hydrological criteria) for evaluating the mitigation proposal relative to the objectives of this chapter and the goals and objectives of the city's comprehensive plan;

...

2. Monitoring shall begin by the designated consultant with a wetland analysis of the wetland being altered. Consultants will use the same data sheets within this analysis as will be used in the monitoring procedure; and

...

3. Five years of monitoring and maintenance shall be required for mitigation of impacts. Monitoring reports shall be submitted by the qualified wetland professional to the city during the following years: one, three, and five for a five-year monitoring period. Monitoring and maintenance may be extended if performance standards are not met, the applicant remains responsible for managing the mitigation project until the goals of the mitigation plan are achieved. (Ord. 2212 § 14, 2007; Ord. 1542 § 1 (part), 1992)

---

## **Chapter 16.50**

### **LANDSLIDE AND EROSION GEOLOGICALLY HAZARDOUS AREAS**

*NOTE: THERE ARE NO CHANGES TO THIS CHAPTER, JUST THE TITLE*

Sections:

16.50.010 through 16.50.140:

Short title. General authority. Purpose. Exemptions. Relationship to framework ordinance. Applicability. Mapping. Title notification. Plat notification. Submittal requirements. Regulations. Performance standards. Buffers. Subdivision regulations. Erosion control

## Chapter 16.56

### FISH AND WILDLIFE HABITAT CONSERVATION AREAS

#### Sections:

16.56.010	Short title.
16.56.020	General authority.
16.56.030	Purpose.
16.56.040	Relationship to framework ordinance.
16.56.050	Applicability.
16.56.060	Mapping and documentation.
16.56.070	Habitat assessments.
16.56.080	Habitat management plans.
16.56.090	Regulations.
16.56.100	Buffers.

...

#### **16.56.030 Purpose.**

The purpose of this chapter is to regulate development and the use of land in order to preserve and protect areas of critical and endangered fish, including anadromous or resident salmonid species, and wildlife habitat; and to conform with the Washington State Growth Management Act. (Ord. 2071 § 33, 2003: Ord. 1546 § 1 (part), 1992)

...

#### **16.56.050 Applicability.**

Fish and wildlife habitat conservation 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...

*NOTE: THESE AREAS INCLUDE CRITICAL HABITAT FOR LISTED FISH, WILDLIFE OR PLANTS.*

...

H. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

*NOTE: DEFINITION IS TO BE UPDATED TO BE CONSISTENT WITH NEW STATE RCWs AND WACs.*

#### **16.56.060 Mapping and documentation.**

Fish and wildlife habitat conservation areas shall be identified in the following documents: *[list of agency-prepared maps]*

...

**NOTE:** *THE ENVIRONMENT REGULATIONS PLACE THE ULTIMATE RESPONSIBILITY ON THE PROPERTY OWNER TO VERIFY ACTUAL LOCATIONS OF WETLANDS AND STREAMS (SMC 16.40.080). THE CITY AND AGENCIES PROVIDE GENERAL MAPS AS A RESOURCE, AND OWNERS CAN GET SITE-SPECIFIC ASSISTANCE FROM AGENCIES.*

#### **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...

**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, then the development can proceed without further requirements ...

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:

- ...
- 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, adaptive management, and maintenance programs;
  - 8. An assessment of habitat recommendations proposed by resource agencies...
- ...

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. Monitoring and maintenance may be extended if performance standards are not met. The applicant remains responsible for managing the mitigation project until the goals of the mitigation plan are achieved. The city shall forward the monitoring reports annually to the federal agencies with expertise regarding the particular fish or wildlife identified in the HMP along with the following:

...

**16.56.100 Buffers.**

*NOTE: THESE BUFFERS DO NOT APPLY TO AREAS SUBJECT TO THE SUMNER SHORELINE MASTER PROGRAM (GENERALLY WITHIN 200 FEET OF THE WATER'S EDGE (the Ordinary High Water Mark); SHORELINE BUFFERS ARE ESTABLISHED IN THE SHORELINE MASTER PROGRAM APPROVED BY THE STATE.*

...

C. Buffers, consisting of undisturbed native vegetation, shall be required along all streams, ~~lakes and ponds~~ as classified by the DNR water typing classification system (WAC 222-16-030).

- 1. The buffer shall extend landward from the ordinary high water mark of the water body with the width of the buffer established by the chart below, except as provided in Subsections D and E below. ~~The buffer shall not extend landward beyond a public right-of-way that contains an improved street.~~

DNR Water Type	Buffer Width in Feet
Fish Bearing (F)	100 feet
Non-Fish Bearing perennial (Np)	50-100 feet
Non-Fish Bearing seasonal (Ns)	25-100 feet

*NOTE: "DNR" IS STATE DEPARTMENT OF NATURAL RESOURCES. BASED ON DISCUSSIONS WITH THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE REGARDING BUFFERS, SUMNER'S STREAMS SHOULD HAVE A BUFFER OF BETWEEN 100'-225' ON THE VALLEY FLOOR AND A BUFFER BETWEEN 194'-231' ALONG FORESTED HILLSIDES*

- *WDFW RECOMMENDATIONS BASED ON TREE SPECIES AND SOIL TYPE.*
- *THE MAJORITY OF THE STREAMS IN SUMNER CONTAINS TREE SPECIES AND SOIL TYPES WITH 100' OR 105' WDFW-RECOMMENDED BUFFERS, WITH JUST A FEW AREAS OF 225'.*
- *100' IS THE MINIMUM RECOMMENDED BUFFER –*
  - *95% or more removal efficacy of phosphorous, sediment, and most pesticides; and*
  - *80% removal efficacy for surface runoff containing excess nitrogen.*

*ALL NON-FISH BEARING STREAMS SHOULD HAVE THE SAME BUFFER AS FISH-BEARING, DUE TO THE CRITICAL ROLE THESE TRIBUTARIES PLAY IN PROTECTING WATER QUALITY (TEMPERATURE,*

*SEDIMENT, POLLUTANTS, BANK STABILITY, NUTRIENT INPUT (LEAF LITTER) IN STREAMS IDENTIFIED AS CRITICAL SPECIES (SALMONID) HABITAT.*

2. The buffer shall be separated from adjacent private property by a physical barrier such as, but not limited to, a pathway, berm, vegetation, or fence. The barrier shall be designed to allow for the movement of fish, including salmonid habitat, and wildlife and shall be approved by the director.
3. The buffer shall be established by a permanent protective easement, public or private land trust dedication, or similar protective mechanism as approved by the director. An easement shall also be provided by the underlying property owner that grants the city access to the buffer for the placement of further conservation/restoration measures.
4. Enhancement of the buffer shall not be required unless a buffer reduction is proposed pursuant to SMC 16.56.100(G).

D. Functionally Disconnected Buffer Area. The director may waive or reduce the required buffer due to intervening structures, pursuant to SMC 16.46.150(N).

DE. For projects in areas subject to the requirements of the Sumner Shoreline Master Program, the buffer widths and applicable regulations shall be established in the Sumner Shoreline Master Program.

E. Buffers for Type Np and Ns streams which are not required by other regulations may be modified by the director upon a showing that the following are satisfied:

1. Fish, wildlife and plant habitat will not be harmed by the reduction in buffer area based on the proposed use and site development proposed;
2. The buffer area includes enhancement measures to improve the functional attributes of the buffer through the use of plantings of native plant species. The improvements must be shown to improve the habitat conditions for wildlife;
3. A best management practices plan addressing the proper design, layout, construction and use of the site is provided which is sufficient to mitigate impacts to wildlife and habitat areas;
4. Under no circumstance shall the buffer be reduced below those shown in the table below:

<u>DNR Water Type</u>	<u>Buffer Width in Feet</u>
<u>Np</u>	<u>25</u>
<u>Ns</u>	<u>20</u>

F. Buffers for Non-Typed or Unknown Waters shall be the same as those for fish bearing streams. Applicants or landowners may apply for a water type modification as outlined by Washington State Department of Natural Resources.

GF. Buffer reductions. Buffers for Type F streams which are not required by other regulations may be modified upon approval of a variance per SMC 16.40.120 by the director, under procedures for Type II permits in chapter 18.56 SMC, Procedures for Land Use Permits and a showing that the following are satisfied:

NOTE: STAFF PROPOSES MAKING STREAM BUFFER REDUCTION PROCESS LESS ONEROUS THAN A VARIANCE. PROPOSED LANGUAGE IS THE SAME AS A PERMIT FOR WETLAND BUFFER REDUCTIONS WHICH DO NOT REQUIRE A VARIANCE PROCESS. THIS IS AN ADMINISTRATIVE DECISION BY THE DEPARTMENT DIRECTOR.

1. The subject parcel is less than 200 feet in depth as measured perpendicular from the ordinary high water mark. There are no feasible alternatives to the site design or development that could be accomplished without buffer reduction; and

**NOTE:** THIS IS SIMILAR TO WHAT IS ALLOWED FOR WETLAND BUFFER REDUCTION/AVERAGING, AND REMOVES THE ARBITRARY 200-FOOT “SMALL PROPERTY” REQUIREMENT TO MAKE BUFFER REDUCTION AVAILABLE TO ALL PROPERTIES IF APPROPRIATE.

2. The buffer is not reduced below 75 feet and there is not net loss of buffer function; and

3.6. The buffer area includes enhancement measures to improve the functional attributes of the buffer through the use of plantings of native plant species and removal of invasive species. The improvements must be shown to improve the habitat conditions for fish and wildlife and shall be monitored per SMC 16.56.080(C); and

4. Buffers shall provide conservation or protection measures necessary to preserve or enhance anadromous fisheries including measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Habitat protection measures should be based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species.

5. Design and management measures in Table 1 are implemented; and

**Table 1 – Required Measures to Minimize Impacts to Streams**

<b><u>Disturbance</u></b>	<b><u>Required Measures to Minimize Impacts</u></b>
<u>Lights</u>	<u>Direct lights away from stream</u>
<u>Noise</u>	<u>Locate activity that generates noise away from stream</u> <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer stream buffer</u>
<u>Toxic runoff</u>	<u>Route all new, untreated runoff away from stream while ensuring stream is not dewatered</u> <u>Establish covenants limiting use of pesticides within 150 feet of stream</u> <u>Apply integrated pest management</u>
<u>Stormwater runoff</u>	<u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> <u>Prevent channelized flow from lawns that directly enters the buffer</u> <u>Use low intensity development techniques (for more information refer to the drainage ordinance and manual)</u>
<u>Change in water regime</u>	<u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<u>Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> <u>Place stream and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<u>Use best management practices to control dust</u>

**NOTE:** THE ABOVE TABLE IS SIMILAR TO WHAT IS REQUIRED FOR WETLAND BUFFER REDUCTION. REDUCING A STREAM BUFFER BY ONE-FOURTH OF THE MINIMUM BUFFER COULD STILL IMPACT THE STREAM, UNLESS THESE ADDITIONAL PROTECTIVE MEASURES ARE IMPLEMENTED ON THE SITE.



- ~~3. The impervious surface of the reduced portion of the buffer shall not exceed 10 percent unless the following measures are taken:~~
- ~~a. The removal of an equivalent amount of existing impervious surface within the sub-basin of the Type F stream; and~~
  - ~~b. The permanent setting aside and habitat restoration of area(s) where impervious surface has been removed;~~

*NOTE: THE ABOVE REQUIREMENT #3 IS PROPOSED TO BE DELETED. A 10% IMPERVIOUS LIMIT FOR THE AREA REMOVED FROM THE BUFFER ESSENTIALLY PROHIBITS DEVELOPMENT IN THE REMOVED AREA, WHICH DEFEATS THE PURPOSE OF A BUFFER REDUCTION. OTHER REQUIREMENTS IN SECTION (F) PROVIDE ADEQUATE RESOURCE PROTECTION.*

4. ~~5.~~ Appropriate state and federal agencies shall be consulted if requirements of subsection (F)(2) or (3) of this section are not possible and appropriate state agencies may be consulted; and

- ~~5.6.~~ Documentation provided demonstrates that fish, wildlife and plant habitat will not be harmed by the reduction in buffer area based on the proposed use and site development proposed; and

7. A best management practices plan addressing the proper design, layout, construction and use of the site is provided which is sufficient to mitigate impacts to wildlife and habitat areas; and

8. Monitoring of mitigation actions is required shall be implemented to verify long-term functional improvement of the enhanced buffer area per SMC 16.56.080(~~E~~) (E); and

9. The proposal includes a habitat management plan prepared by qualified professional biologist approved by the director that includes the submittal requirements in 16.56.080 Habitat Management Plans; and

10. The stream buffer shall be retained in an undisturbed or enhanced condition for the life of the project.

GH. Partial Exemptions. The following uses are allowed in fish and wildlife habitat buffers:

1. Activities directly related to the cultural, recreational, scientific and educational aspects of the stream...
2. Public utility corridors and large-scale public recreational facilities such as regional trails and parks may be allowed in buffer areas, through obtaining a RWHA permit, provided that the proposal is subject to review under the State Environmental Policy Act, and that the structure and function of impacted fish and wildlife habitat is replaced and restored and mitigated; and that appropriate federal and state agencies are notified of the project.