

**Chapter 16.46
WETLANDS PROTECTION**

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16.46.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the “Wetlands Protection Ordinance.” (Ord. 1542 § 1 (part), 1992)

16.46.020 Purpose.

The purpose of this chapter is to regulate the use of land on and around wetlands; to protect wetlands from new nearby activities; to comply with the Washington State Growth Management Act and other city and state regulations and policies; and to protect the public health, safety and welfare by preventing the adverse environmental impacts of development, and by:

A. Preserving, protecting and restoring wetlands by regulating development within them and their buffers and thereby protecting surface water quality, providing flood storage and protecting and preserving fish and wildlife habitat;

B. Protecting the public against losses from:

1. Unnecessary maintenance and replacement of public facilities;
2. Publicly funded mitigation of avoidable impacts;
3. Expenditures for public emergency rescue and relief operations; and
4. Potential litigation from improper construction practices authorized for wetland areas;

C. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands; and

D. Providing the city with information to evaluate, approve, condition, or deny public or private development proposals. (Ord. 2212 § 2, 2007; Ord. 1542 § 1 (part), 1992)

16.46.030 Definitions.

For the purposes of this chapter, the following definitions shall supplement the definitions of SMC 16.40.060, Definitions, and shall apply to this chapter except that the definition of “activity” shall not apply to this chapter:

1. “Building setback” means a distance where no structures may be built. A fence may be allowed in the building setback, provided it does not exceed six feet in height and does not bisect wetlands or streams or impede the movement of native wildlife.
2. “Replacement project” means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency

actions.

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

a. "Restoration" – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland.

b. "Creation" – The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deep water site, where a wetland previously did not exist.

c. "Enhancement" – The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present.

4. "Developable area" means an area of land outside of wetlands and wetland buffers.

5. "Ecology Department" means the Washington State Department of Ecology.

6. "Emergent wetland" means a regulated wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

7. "Exotic" means any species of plants or animals that are foreign to the planning area.

8. "Mitigation" means avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

a. Avoiding the impact altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

c. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;

d. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

e. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

f. Monitoring the hazard or other required mitigation and taking remedial action when

necessary.

Mitigation for individual actions may include a combination of the above measures.

9. "Ongoing agriculture" includes agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining agricultural lands under production or cultivation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

10. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the city council would prevent all reasonable economic use of the parcel.

11. "Forested wetland" means a regulated wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height.

12. "Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper horizon(s).

13. "Hydrologically distinct wetlands" means those regulated wetlands which:

- a. Are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and
- b. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

14. "Hydrophytic vegetation" means sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present.

15. "In-kind mitigation" means compensatory mitigation to replace wetlands with substitute wetlands of the same type and functions as those wetlands destroyed or degraded by a regulated activity.

16. "Native vegetation" means plant species which are indigenous to the area in question.

17. "Off-site replacement" means to replace wetlands away from the site on which a wetland has

been impacted by a regulated activity.

18. "On-site replacement" means to replace wetlands on the site on which a wetland has been impacted by a regulated activity.

19. "Out-of-kind mitigation" means compensatory mitigation to replace wetlands with substitute wetlands whose types and functions are different from those destroyed or degraded by a regulated activity.

20. "Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

21. "Qualified wetlands professional" means an individual or team that has both the academic qualifications of a minimum two years' full-time work experience as a wetland professional, including delineating wetlands using the federal manual and supplements, preparing wetland reports, conducting function assessments and developing and implementing mitigation plans; and field experience to provide the technical expertise for making competent wetland delineations and recommendations necessary to implement the requirements of this chapter.

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.

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

24. "Scrub-shrub wetland" means a regulated wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

25. "Serviceable" means presently usable.
26. "Unavoidable and necessary impacts" are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practicable alternative exists.
27. "Water-dependent" means a use that requires direct contact with water and cannot exist at a nonwater location due to the nature of the use.
28. "Wetlands" or "wetland areas" means 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. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.
29. "Wetland buffer" or "wetland buffer zone" is an area that surrounds and protects a regulated wetland from adverse impacts to the wetland's functions and values.
30. "Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter. (Ord. 2693 § 1, 2019; Ord. 2549 § 1, 2015; Ord. 2532 § 2, 2015; Ord. 2212 § 3, 2007; Ord. 1542 § 1 (part), 1992)

16.46.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.200. (Ord. 1542 § 1 (part), 1992)

16.46.050 Applicability.

Wetlands and wetlands buffers are those areas within the city which satisfy the definitions established in this chapter. (Ord. 1542 § 1 (part), 1992)

16.46.060 Mapping.

A. The approximate location and extent of wetlands in the city is displayed on the map titled "Wetland Inventory Map, 2007." This 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.

B. The exact location of the wetland boundary shall be determined by the applicant through the

performance of a field investigation by a qualified wetland professional applying the regulated wetland definition provided for in this chapter. (Ord. 2532 § 3, 2015; Ord. 2212 § 4, 2007; Ord. 1542 § 1 (part), 1992)

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. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

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, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

1. Category I. Category I wetlands are: (a) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (b) bogs; (c) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.
2. Category II. Category II wetlands are: wetlands with a moderately high level of functions (scoring between 20 and 22 points).
3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
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 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.

C. Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge. (Ord. 2693 § 2, 2019; Ord. 2212 § 5, 2007;

Ord. 1542 § 1 (part), 1992)

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;
- 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; provided, that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
- 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, including quantity, or the introduction of pollutants. (Ord. 2212 § 6, 2007; Ord. 1542 § 1 (part), 1992)

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). If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical areas report for wetlands meeting the requirements in SMC [16.46.100](#) and [16.46.180](#) must be submitted:

- 1. All isolated Category IV wetlands less than 4,000 square feet that:
 - a. Are not associated with riparian areas or their buffers.
 - b. Are not associated with shorelines of the state or their associated buffers.
 - c. Are not part of a wetland mosaic.

d. Do not score six or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication No. 14-06-029, or as revised and approved by Ecology).

e. Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in chapter [16.56 SMC](#).

2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

B. In addition to those activities listed in SMC 16.40.080, the following activities shall be allowed within a wetland or wetland buffer 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:

1. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of 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. BMPs and/or farm plans should address potential impacts to wetlands from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. BMPs and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat;

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 community development director; and provided, that wetland impacts are minimized and that disturbed areas are immediately restored:

a. Normal maintenance, repair, or operation of existing serviceable 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 structures within a buffer zone where modification does not adversely impact wetland functions or increase the size of the structure's footprint; and
 - c. Utility line activities listed under SMC 16.40.100(G); provided, that BMPs are used and impacts are mitigated;
5. Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter when it is necessary to:
- a. Prevent an imminent threat to public health or safety; or
 - b. Prevent imminent danger to public or private property; or
 - c. Prevent an imminent threat of serious environmental degradation.

Prior to engaging in the action, the director shall provide a written determination on a case-by-case basis that the emergency action satisfies the general requirements of this subsection.

In the event a person or emergency agency determines that the need to take emergency action is so urgent that there is insufficient time for review by the director, such emergency action may be taken immediately. Once the immediate threat has been addressed, any adverse impacts on critical areas should be minimized and mitigated. The person or agency undertaking such action shall notify the director within two working days following the commencement of the emergency action. Following such notification the director shall determine if the action taken was within the scope of the emergency actions allowed by this subsection. If the director determines that the action taken or part of the action taken is beyond the scope of allowed emergency actions, enforcement action is warranted. The director may require payment of fees to recover the costs associated with reviewing the emergency action;

6. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed;

7. Enhancement of a wetland through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of

noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species;

8. Normal and routine maintenance and repair of any 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;

9. Stormwater Management Facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, runoff treatment or flow control BMP if all of the following criteria are met:

- a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of three to five points; and
- b. There will be “no net loss” of functions and values of the wetland; and
- c. The wetland does not contain a breeding population of any native amphibian species; and
- 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” (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a shoreline master program or other local or regional watershed plan; and
- e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
- f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and
- g. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced. Stormwater LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 2693 § 3, 2019; Ord. 2212 § 7, 2007; Ord. 1542 § 1 (part), 1992)

16.46.100 Permit applications.

The following provisions are supplemental to the provisions of SMC 16.40.135:

A. Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination of applicability from the director. Such a request for determination shall be processed as a Type I decision according to chapter 18.56 SMC, Procedures for Land Use Permits, and shall contain plans, data and other information as may be specified by the director.

B. If it is determined that this chapter is applicable, an RWHA permit shall be requested. Unless the director waives one or more of the following information requirements, applications for an RWHA approval subject to this chapter shall include the items listed below. These items may be required following the initial RWHA submittal and must be completed in consultation with a qualified wetlands professional.

1. A description and maps overlaid on an aerial photograph at a scale no smaller than one inch equals 400 feet showing the entire parcel of land owned by the applicant and lands within 315 feet of the proposed project, the exact boundary of the wetland pursuant to SMC [16.46.060](#), and the required wetland buffer;
2. Documentation of any fieldwork performed on the site including field data sheets for wetland delineations, wetland rating forms, etc.;
3. A description of the methods used to conduct the wetland delineation, function assessment, and impact analysis;
4. A description of the vegetative cover of the wetland and adjacent area, including dominant species;
5. The wetland rating and required buffer widths for the subject property, and the rating and buffers for wetlands on any adjacent properties whose buffers extend onto the subject property;
6. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals 400 feet showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations;
7. The exact sites and specifications for all regulated activities including areas of impacts to wetlands and buffers based on a professional survey;
8. Elevations of the site and adjacent lands within the wetland and its buffer at contour intervals of no greater than five feet;
9. Top view and typical cross-section views of the wetland and its buffer to scale;

10. The purposes of the project and an explanation why the proposed activity cannot be located at other sites including an explanation of how the proposed activity is dependent upon wetlands or water-related resources;

11. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal.

C. The director may require additional information including, but not limited to, an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a wetland; a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. (Ord. 2532 § 4, 2015; Ord. 2212 § 8, 2007; Ord. 1695 § 27, 1995; Ord. 1542 § 1 (part), 1992)

16.46.110 Title notification.

All activity in wetlands protection areas shall be accompanied by the recording of a notice with the Pierce County auditor in the form set forth below:

WETLANDS PROTECTION AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This site lies within a Wetlands Protection Area as defined by Chapter [16.46](#), Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on _____.

Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a Wetlands Protection Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

(Ord. 1542 § 1 (part), 1992)

16.46.120 Plat notification.

For all proposed short subdivisions and subdivision proposals within wetlands protection areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within a Wetlands Protection Area as defined by the Sumner Municipal Code. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation.

(Ord. 1542 § 1 (part), 1992)

16.46.130 Review process.

Repealed by Ord. 1695. (Ord. 1542 § 1 (part), 1992)

16.46.135 Review process.

A. Following the submittal of a complete application for RWHA approval subject to this chapter, the director shall provide public notice according to the procedures for Type II permits in chapter 18.56 SMC, Procedures for Land Use Permits.

B. Applications involving activity in Category I wetlands or buffers shall be sent to the Washington State Department of Ecology for review and comment. The Ecology Department shall have 30 days to review the application and comment to the director. An extension of up to 30 days for comment may be approved upon request by the Ecology Department and approval by the director. (Ord. 2212 § 9, 2007; Ord. 1695 § 29, 1995)

16.46.140 Standard of review.

A. A permit shall only be granted if the permit, on its face or as conditioned, is consistent with the provisions of this chapter and the following criteria:

1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss of wetland area and function; or
3. Denial of a permit would cause an extraordinary hardship on the applicant.

B. The proposal has been shown by the applicant to satisfy the mitigation preferences provided below in the following order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Addressing the impact by replacing, enhancing, or providing substitute resources or

environments;

6. Monitoring the impact and the replacement project and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

C. Wetlands permits shall not be effective and no activity shall be allowed during the time provided to file a permit appeal.

D. In approving an RWHA application subject to this chapter, the director may impose any conditions necessary to ensure compliance with the goals of this chapter, including but not limited to SMC [16.50.100](#), [16.56.090](#), or the comprehensive plan. (Ord. 2212 § 10, 2007; Ord. 1542 § 1 (part), 1992)

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). The adjacent land use intensity is assumed to be high. Following the department's determination of the category for a wetland associated with a proposal, the department shall determine appropriate buffer widths. Wetland buffer zones shall be evaluated for all development proposals and activities adjacent to wetlands to determine their need to protect the integrity, functions and values of the wetland. Wetland buffer widths are determined by the category of wetland, the intensity of impacts of a land use and the functions or special characteristics of the wetland that need to be protected as determined by the rating system. All wetland buffer zones are measured perpendicular from the wetland boundary as surveyed in the field. Except as otherwise permitted by this chapter, wetland buffers shall consist of a relatively intact native vegetation community adequate to protect the wetland functions and values at the time of proposed activity. If the vegetation is inadequate then the buffer width shall be planted to maintain the buffer width.

A. 1. For wetlands that score six points or more for habitat function, the buffers in Table 1 can be used if both of the following criteria are met:

a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW website at: <http://wdfw.wa.gov/hab/phshabs.htm>.

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

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 1 may be used with the required measures in Table 2 alone.

b. The measures in Table 2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score three to five habitat points, only the measures in Table 2 are required for the use of Table 1.
3. If an applicant chooses not to apply the mitigation measures in Table 2, or is unable to provide a protected corridor where available, then Table 3 must be used.
4. The buffer widths in Tables 1 and 3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 1 – Wetland Buffer Requirements for Western Washington if Table 2 Is Implemented and Corridor Provided

Wetland Category	Buffer width (in feet) based on habitat score		
	3 – 5	6 – 7	8 – 9
Category I: Based on total score	75	110	225
Category I: Bogs and wetlands of high conservation value	190		225
Category I: Coastal lagoons	150	110	225
Category I: Interdunal			225
Category I: Forested	75	110	225
Category I: Estuarine	150 (buffer width not based on habitat scores)		
Category II: Based on score	75	110	225
Category II:	110	110	225

Interdunal wetlands	110	110	225
Category II: Estuarine	110 (buffer width not based on habitat scores)		
Category III (all)	60	110	225
Category IV (all)	40		

Table 2 – Required Measures to Minimize Impacts to Wetlands

(Measures are required if applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • 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 wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use low intensity development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect

	with a conservation easement
Dust	• Use best management practices to control dust

Table 3 – Wetland Buffer Requirements for Western Washington if Table 2 Is NOT Implemented or Corridor NOT provided

Wetland Category	Buffer width (in feet) based on habitat score		
	3 – 5	6 – 7	8 – 9
Category I: Based on total score	100	150	300
Category I: Bogs and wetlands of high conservation value	250		300
Category I: Coastal lagoons	200		300
Category I: Interdunal			300
Category I: Forested	100	150	300
Category I: Estuarine	200 (buffer width not based on habitat scores)		
Category II: Based on score	100	150	300
Category II: Interdunal wetlands	150	150	300
Category II: Estuarine	150 (buffer width not based on habitat scores)		
Category III (all)	80	150	300
Category IV (all)	50		

5. Low Intensity Land Use. Buffer reduction up to 75 percent of the required buffer may be granted for low intensity land uses. The buffer reduction shall only apply to the below uses:

- a. Passive recreation areas;
- b. Nature parks with undeveloped trails.

6. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case

basis as determined by the administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

- a. The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
- c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

7. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

- a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
- b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
- c. The total area of the buffer after averaging is equal to the area required without averaging.
- d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

8. Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

- a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
- b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional.
- c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

9. Low impact such as passive unpaved recreation trails.

B. To facilitate long-range planning using a landscape approach, the administrator may identify and pre-assess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The administrator will prepare maps of wetlands that have been pre-assessed in this manner.

C. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

D. Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

E. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond (SMC [16.46.190](#)(D) and (E)).

F. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in SMC [16.46.170](#).

G. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

H. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

1. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
2. Passive recreation facilities designed and in accordance with an approved critical areas report, including:

a. Walkways and trails; provided, that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.

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

6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.

7. Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

I. Signs and Fencing of Wetlands and Buffers.

1. Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur.

The marking is subject to inspection by the administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.

a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one every 50 feet, or one per lot if the lot is less than 50 feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the director:

Protected Wetland Area Do Not Disturb

Contact City of Sumner

Regarding Uses, Restrictions, and Opportunities for Stewardship

b. The provisions of subsection (1)(2)(a) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing.

a. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

b. Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

J. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation shall be required.

K. Regulated activities as specified in SMC [16.46.080](#) shall not be allowed in a buffer zone except for the following:

1. Activities directly related to the cultural, recreational, scientific and education aspects of the wetland and which have a minimal adverse impact on the buffer and wetland area. These may include passive recreational facilities, trails, view points, short-term scientific or educational activities, and sport fishing or hunting;

2. In all but Category I wetlands, public utility corridors may be allowed in buffer areas provided the proposal is subject to review under the State Environmental Policy Act and measures are provided to restore, replace and enhance the buffers and protect the wetland;
3. In Category III and IV wetland buffers, stormwater management facilities having no reasonable alternative on-site location, or can show added wetland function and value; or
4. In Category III and IV wetland buffers, development accessory to the site's primary use and having no feasible alternative location.

L. A building setback line of 10 feet is required from the edge of any wetland buffer. Structural intrusions into the area of the building setback may be allowed if the director determines that such intrusions will not negatively impact the wetland. (Ord. 2693 § 4, 2019; Ord. 2549 § 2, 2015; Ord. 2532 § 5, 2015; Ord. 2212 § 11, 2007; Ord. 1542 § 1 (part), 1992)

16.46.160 Avoiding wetland impacts.

A. Regulated activities shall not be authorized in a regulated wetland except where either of the following conditions exist:

1. The impact is both unavoidable and necessary due to site-specific constraints not caused by the applicant.
2. All reasonable economic use of the property would be denied.

B. With respect to Category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

C. With respect to Category II and III wetlands, the following provisions shall apply:

1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.
2. Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:
 - a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
 - b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less,

adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

D. With respect to Category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

E. Surface water discharge to a wetland from a flow control or water quality treatment facility, sediment pond or other surface water management activity or facility may be allowed if the discharge does not increase the rate of flow, does not adversely impact the plant composition in the wetland or decrease the water quality of the wetland. (Ord. 2212 § 12, 2007; Ord. 1542 § 1 (part), 1992)

16.46.170 Minimizing and replacing wetlands impacts.

A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation.

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1*, (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006, or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication No. 09-06-32, Olympia, WA,

December 2009).

2. Mitigation ratios shall be consistent with subsection H of this section.

3. Mitigation requirements may also be determined using the credit/debit tool described 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) consistent with subsection I of this section.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or

2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

D. Approaches to Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on the approaches listed below.

1. Wetland Mitigation Banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under chapter 173-700 WAC is allowed if:

a. The approval authority determines that it would provide appropriate compensation for the proposed impacts; and

b. The impact site is located in the service area of the bank; and

c. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and

d. Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.

2. In-Lieu Fee Mitigation. Credits from an approved in-lieu fee program may be used when all of the following apply:

- a. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
- b. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.
- c. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu fee program.
- d. The impacts are located within the service area specified in the approved in-lieu fee instrument.

3. Permittee-Responsible Mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that the proposed approach is ecologically preferable to use of a bank or ILF program, consistent with the criteria in this section.

E. Types of Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

1. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

- a. Reestablishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
- b. Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Establishment (Creation). The manipulation of the physical, chemical, or biological

characteristics of a site to develop a wetland on an upland or deep water site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:

- i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
- ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and
- iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

4. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, or repairing water control structures or fences. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:

- a. The approval authority determines that the proposed preservation is the best mitigation option;

- b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;
- c. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
 - i. Category I or II wetland rating (using the wetland rating system for Western Washington);
 - ii. Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands, estuarine wetlands) or aquatic habitat that is rare or a limited resource in the area;
 - iii. The presence of habitat for priority or locally important wildlife species;
 - iv. Provides biological and/or hydrological connectivity;
 - v. Priority sites in an adopted watershed plan;
- d. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust;
- e. The approval authority may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site;
- f. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.

F. Location of Compensatory Mitigation. Compensatory mitigation actions shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advance mitigation.

1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and required

widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat;
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland;
4. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or
 - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or
 - c. Fees are paid to an approved in-lieu fee program to compensate for the impacts;
5. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

G. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will impact wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

H. Wetland Mitigation Ratios.¹

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement
Category I: Bog, natural heritage site	Not considered possible	Case by case	Case by case
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

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 Parts I and II* (Ecology Publication No. 06-06-011a-b, Olympia, WA, March 2006), 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).

J. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

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).

L. Alternative Mitigation Plans. The administrator may approve alternative wetland mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

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

1. 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).
2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
3. Mitigation according to subsection E of this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
4. There is clear potential for success of the proposed mitigation at the proposed mitigation site.
5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in SMC [16.46.180](#).
6. The plan shall be reviewed and approved as part of overall approval of the proposed use.
7. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
8. Mitigation guarantees shall meet the minimum requirements as outlined in SMC [16.46.180](#).
9. Qualified professionals in each of the critical areas addressed shall prepare the plan.
10. The city may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. (Ord. 2693 § 5, 2019; Ord. 2532 § 6, 2015; Ord. 2212 § 13, 2007; Ord. 1542 § 1 (part), 1992)

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 approved by the director and shall contain the following:

- A. A description of the proposal and summary of impacts to wetlands and buffers;
- B. Baseline information for the impacted and any compensation site including written assessment and accompanying maps of the existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership;

- C. Establish specific criteria (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;
- D. Specify and describe the existing functions of the wetland and buffer to be impacted and how lost functions will be replaced;
- E. Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;
- F. Detailed construction plans which establish the appropriate methods of construction, sequencing, and times of construction;
- G. Planting plan and list of plant species to be installed;
- H. Include provisions for monitoring the mitigation area to determine whether the mitigation plan is successful. Monitoring of the area shall include:
 - 1. Selection and appointment by the director of a qualified wetlands professional, at the expense of the applicant, and independent of the development, for purposes of monitoring the progress of the mitigated wetland;
 - 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. (Ord. 2212 § 14, 2007; Ord. 1542 § 1 (part), 1992)

16.46.190 Security and bonding.

- A. An applicant or other holder of a permit shall be required to create a separate sensitive area tract or tracts containing the wetland and wetland buffer(s) or provide a permanent conservation easement, covenant or other instrument acceptable to the director to ensure the long-term protection of the wetland and buffers.
- B. The following note shall appear on the face of all plats, short plats, PRDs, PMUDs, or other approved site plans containing separate sensitive area tracts, and shall be recorded on the title of record for all affected lots:

NOTE: All lots adjoining separate sensitive area tracts identified as Native Vegetation Protection Easements or protected by deed restriction are responsible for maintenance

and protection of the tracts. Maintenance includes insuring that no alterations occur within the separate tract and that all vegetation remains undisturbed unless the express written authorization of the city has been received.

C. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be approved prior to the commencement of permitted activities. Such field markings shall be maintained by the applicant throughout the duration of the permit.

D. The director shall require the applicant to post a cash performance bond, assignment of funds or other security acceptable to the director in an amount and with surety and conditions sufficient to fulfill the requirements of this chapter and any applicable conditions of approval. Provisions for monetary security shall be in an amount equal to 120 percent of the estimated funds necessary to complete work and monitoring in accordance with the mitigation plan, including restoration or rehabilitation to be performed if planned mitigation fails within the designated period of implementation.

E. The director shall require the holder of an approval issued pursuant to this chapter to post a cash performance bond, assignment of funds or other security acceptable to the director in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for a minimum of five years after they have been completed. The director shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. The maintenance bond applicable to a compensation project shall not be released until the director determines that performance standards established for evaluating the effect and success of the project have been met. (Ord. 2212 § 15, 2007; Ord. 1542 § 1 (part), 1992)

16.46.200 Nonconforming activities.

A regulated activity that was approved prior to the passage of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the provisions of the Sumner zoning code.² (Ord. 1542 § 1 (part), 1992)

16.46.210 Appeals.

In addition to the reasonable use appeal provided in SMC 16.40.120, applicants for approvals pursuant to this chapter shall be able to request an interpretation and appeal such interpretation as provided in chapter 18.54 SMC, Interpretations. (Ord. 1695 § 30, 1995; Ord. 1542 § 1 (part), 1992)

16.46.220 Assessment relief.

The Pierce County assessor shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the city or a nonprofit organization to permanently control

some or all regulated activities in the wetland shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 1542 § 1 (part), 1992)

¹Ratios 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 1: Agency Policies and Guidance – Version 1* (Ecology Publication No. 06-06-011a, Olympia, WA, March 2006 or as revised). See also subsection (E)(4) of this section for more information on using preservation as compensation.

²The zoning code is codified in Title 18 SMC.

**Chapter 16.48
AQUIFER RECHARGE AREA**

Sections:

[16.48.010 Short title.](#)

[16.48.020 General authority.](#)

[16.48.030 Purpose.](#)

[16.48.040 Relationship to framework ordinance.](#)

[16.48.050 Applicability.](#)

[16.48.060 Mapping.](#)

[16.48.070 Title notification.](#)

[16.48.080 Plat notification.](#)

[16.48.090 Regulations.](#)

[16.48.100 Performance standards – Specific uses.](#)

16.48.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the “Aquifer Recharge Area Ordinance.” (Ord. 1543 § 1 (part), 1992)

16.48.020 General authority.

This chapter is adopted under the authority of RCW 36.70A.050. (Ord. 1543 § 1 (part), 1992)

16.48.030 Purpose.

The purpose of this chapter is to regulate development and the use of land in aquifer recharge areas in order to ensure long-term protection of the water supply resources that exist under the city; and to comply with the Washington State Growth Management Act. (Ord. 1543 § 1 (part), 1992)

16.48.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210. (Ord. 2071 § 12, 2003; Ord. 1543 § 1 (part), 1992)

16.48.050 Applicability.

Aquifer recharge areas are areas within the city where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute to the replenishment of groundwater. (Ord. 1543 § 1 (part), 1992)

16.48.060 Mapping.

Aquifer recharge areas are those areas defined as follows:

A. Areas with the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range, as identified in Map of Groundwater Pollution Potential, Pierce County, Washington, National Water Well Association, U.S. Environmental Protection Agency; or

B. Wellhead protection areas designated for water supply wells and springs (pursuant to WAC 246-290-135) and located within the municipal boundary of the city of Sumner. (Ord. 2071 § 13, 2003: Ord. 1543 § 1 (part), 1992)

16.48.070 Title notification.

All activity in aquifer recharge areas shall be accompanied by the recording of a notice with the Pierce County auditor in the form set forth below:

AQUIFER RECHARGE AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This site lies within an Aquifer Recharge Area as defined by Chapter 16.48, Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on _____.

Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of an Aquifer Recharge Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

(Ord. 1543 § 1 (part), 1992)

16.48.080 Plat notification.

For all proposed short subdivisions and subdivision proposals within aquifer recharge areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within an Aquifer Recharge Area as defined by the Sumner Municipal Code. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation.

(Ord. 1543 § 1 (part), 1992)

16.48.090 Regulations.

A. The following uses of land shall require a hydrogeologic assessment of the proposed site if the site is located in an aquifer recharge area, except that uses in subsection (A)(3) of this section need only provide an assessment of nitrate contamination:

1. Hazardous substance processing or handling;
2. Hazardous waste treatment, storage or disposal facility;
3. Disposal of on-site generated sewage for subdivisions, and commercial and industrial developments;
4. Sludge land application sites categorized as S-3, S-4, and S-5, as defined in this division;
5. Animal containment areas;
6. Landfills;
7. Sewage treatment plants for off-site generated sewage;
8. Mining.

B. The hydrogeologic assessment shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments and shall include, but is not limited to:

1. Geologic setting;
2. Groundwater survey information, groundwater elevations, background water quality, direction and gradient of groundwater flow, location/depth of perched water tables, recharge potential (permeability and transmissivity);
3. Survey of nearby wells and springs, including all wells and springs within 1,000 feet of the site;
4. Location of nearby surface water and recharge potential;
5. Description of water supply to the site;
6. Information sources for assessment, including any well logs or borings used;
7. Discussion of the effects of the proposed project on the groundwater resource;
8. Recommendations to mitigate the adverse impacts of the project on the groundwater resource;

9. Other information as required by the Tacoma-Pierce County health department (TPCHD).

C. The director shall forward the assessment to the TPCHD for review. The applicant shall be responsible for paying any review costs required by the TPCHD. Based on the review by the TPCHD the proposal shall be either approved, approved with conditions or denied. Conditions may be imposed to reduce the impacts of the proposal on the aquifer, reduce the risk of contamination, and protect the long-term viability of the water resource. A proposal may be denied upon a finding that feasible mitigating measures are not sufficient to reduce the contamination risk.

D. The following activities and uses are prohibited within one-year time-of-travel zones for any wellhead protection area:

1. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste landfills;
2. Underground injection wells that are Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;
3. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
4. Storage, processing, or disposal of radioactive substances. Facilities that store, process, or dispose of radioactive substances;
5. Community septic systems; and
6. Other:
 - a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
 - b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
 - c. Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers. (Ord. 2071 § 14, 2003: Ord. 1543 § 1 (part), 1992)

16.48.100 Performance standards – Specific uses.

The following are performance standards for specific uses within the one-year time-of-travel zones for wellhead protection areas:

A. All storage tanks proposed must comply with local building code requirements and must conform to the following requirements:

1. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
 - b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
 - c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
2. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
 - b. Have a primary containment area enclosing or underlying the tank or part thereof; and
 - c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

B. Vehicle Repair and Servicing.

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
2. No dry wells shall be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be decommissioned and mitigated using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

C. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

D. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the Departments of Ecology and Health.

1. Surface spreading must meet the ground water recharge criteria given in RCW 90.46.080 and 90.46.010(10).

2. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

E. All uses and development within an aquifer recharge area shall be in accordance with applicable state and federal regulations. (Ord. 2071 § 15, 2003)

**Chapter 16.50
LANDSLIDE AND EROSION HAZARD AREA**

Sections:

[16.50.010 Short title.](#)

[16.50.020 General authority.](#)

[16.50.030 Purpose.](#)

[16.50.035 Exemptions.](#)

[16.50.040 Relationship to framework ordinance.](#)

[16.50.050 Applicability.](#)

[16.50.060 Mapping.](#)

[16.50.070 Title notification.](#)

[16.50.080 Plat notification.](#)

[16.50.090 Submittal requirements.](#)

[16.50.100 Regulations.](#)

[16.50.110 Performance standards.](#)

[16.50.120 Buffers.](#)

[16.50.130 Subdivision regulations.](#)

[16.50.140 Erosion control.](#)

16.50.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the "Landslide and Erosion Hazard Area Ordinance." (Ord. 1544 § 1 (part), 1992)

16.50.020 General authority.

This chapter is adopted under the authority of RCW 36.70A.050. (Ord. 1544 § 1 (part), 1992)

16.50.030 Purpose.

The purpose of this chapter is to regulate land disturbing activity; to protect lives, property and public infrastructure from impacts associated with construction on steep slopes; reduce erosion impacts associated with construction; reduce sedimentation and water quality impacts associated with uncontrolled surface runoff; and reduce risk of landslide activity; and conform with the

Washington State Growth Management Act. (Ord. 1544 § 1 (part), 1992)

16.50.035 Exemptions.

The following activities are exempt from this chapter:

A. Approved mining activities on mineral resource lands pursuant to chapter 16.44 SMC. (Ord. 2071 § 16, 2003)

16.50.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210. (Ord. 2071 § 17, 2003; Ord. 1544 § 1 (part), 1992)

16.50.050 Applicability.

A. Unless otherwise stated, landslide hazard areas are those areas subject to risk of mass movement and meeting any of the following criteria:

1. Areas of historic land failures, including areas of unstable old and recent landslides;
2. Areas with all three of the following characteristics:
 - a. Slopes steeper than 15 percent; and
 - b. Hillside intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
 - c. Any signs of springs or groundwater seepage; and
 - d. Concave slopes and swales;
3. Slopes that are parallel or subparallel to planes of weakness, such as bedding planes, joint systems, and fault planes, in subsurface materials;
4. Slopes having gradients steeper than 80 percent subject to rockfall during seismic shaking;
5. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;
6. Any area with a slope of 15 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least 10 feet of vertical relief. Qualifying slopes of 15 percent or greater to less than 25 percent shall be termed "Type II landslide hazard areas" for purposes of this chapter. Qualifying slopes of 25 percent or greater shall be termed "Type I landslide hazard areas";
7. Areas which have a "severe" limitation for building site development because of slope conditions, according to the U.S. Department of Agriculture's Natural Resource Conservation

Service;

8. Slopes that contain impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel);

9. Any area which has indications of mass wasting during the Holocene epoch (from 10,000 years ago to the present) or which is underlain by mass wastage debris of that epoch.

B. Erosion hazard areas are those areas that are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions which are vulnerable to excessive erosion. Erosion hazard areas are those areas that are classified as having moderate to severe, severe or very severe erosion potential according to the Natural Resource Conservation Service. (Ord. 2071 § 18, 2003: Ord. 1544 § 1 (part), 1992)

16.50.060 Mapping.

Areas meeting the criteria established above may be delineated in the following documents:

A. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA);

B. Areas designated as slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geologic Survey or Washington Department of Natural Resources Division of Geology and Earth Resources;

C. Existing or newly developed topographic surveys prepared by the city, USGS, the state, or by applicants or their representatives;

D. The actual presence or location of an active landslide hazard area and/or additional potential landslide hazard areas that have not been mapped, but may be present on or adjacent to a site, shall be evaluated using the site evaluation procedures established in this chapter. (Ord. 2071 § 19, 2003: Ord. 1544 § 1 (part), 1992)

16.50.070 Title notification.

A. All activity in Type I landslide hazard areas shall be accompanied by the recording of a notice with the Pierce County auditor in the form set forth below:

HIGH LANDSLIDE HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This site lies within a Landslide Hazard Area as defined by Chapter [16.50](#), Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on_____. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a Landslide Hazard Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

B. All activity in erosion hazard areas shall be accompanied by the recording of a notice with the Pierce County Auditor in the form set forth below:

EROSION HAZARD AREA NOTICE

Parcel Number:_____

Address:_____

Legal Description:_____

Notice: This site lies within an Erosion Hazard Area as defined by Chapter [16.50](#), Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on_____. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of an Erosion Hazard Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

(Ord. 1544 § 1 (part), 1992)

16.50.080 Plat notification.

A. For all proposed short subdivisions and subdivision proposals within Type I landslide hazard areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within a Landslide Hazard Area as defined by the Sumner Municipal Code. Restrictions on use or alterations on the site may exist due to natural conditions of the site and resulting regulation.

B. For all proposed short subdivisions and subdivision proposals within erosion hazard areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within an Erosion Hazard Area as defined by the Sumner Municipal Code. Restrictions on use or alterations on the site may exist due to natural conditions of the site and resulting regulation.

(Ord. 1544 § 1 (part), 1992)

16.50.090 Submittal requirements.

A. For all nonexempt activity proposed within a Type I landslide hazard area, a site evaluation shall be submitted; provided, where an applicant can demonstrate through submittal of a geotechnical letter, that there are no Type I landslide hazard areas on-site, the requirement for the site evaluation as set forth in subsection B of this section may be waived. The geotechnical letter shall include at a minimum the following:

1. A brief description of the project (including the proposed land use) and a description of the area to be developed.
2. A paragraph that states the following specific language:

The services described in this report were prepared under the responsible charge of (Individual's Name). (Individual's Name) meets the qualifications contained in Title 16, Section [16.50.090](#) to prepare a landslide hazard geological assessment. (Individual's Name) understands the requirements of the current Landslide and Erosion Hazard Area Chapter [16.50](#) and the definitions of the applicable terms contained within Chapter 16.04. Individuals under the responsible charge of (Individual's Name) have performed a landslide hazard geological assessment, conducted a field investigation, and researched historic records on or in the vicinity of the above referenced site. In my opinion, the scope of services completed for this project is adequate to meet the requirements of the Sumner Municipal Code and it does not appear that an active landslide hazard area exists on site.

3. The geotechnical letter shall be prepared under the responsible charge of an appropriately licensed geotechnical professional(s) and be signed, sealed and dated by the geotechnical professional(s).

B. The site evaluation shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The site evaluation shall include at a minimum the following:

1. Topographic data showing the site with a maximum five-foot contour interval. Slopes shall be clearly delineated for the ranges between 15 and 24 percent, and 25 percent or greater, including calculations for areal coverage of each slope category on the site. When site conditions indicate the necessity, the department may require the topographic data to be field

- surveyed and/or may require that a contour interval of one foot be used.
2. Site history data describing prior uses, grading, soil instability, or slope failures on the property.
 3. Geotechnical report prepared by a professional engineer, geologist, engineering geologist, or hydrogeologist, licensed by the state of Washington with expertise in geotechnical engineering. The report shall include the following:
 - a. Results from boring logs, exploration pits, and any other exploration methods;
 - b. Data concerning the vulnerability of the site to unusual seismic events;
 - c. Slope stability analysis and opinion(s) regarding the stability of the slope;
 - d. Proposed angles of cut and fill slopes and site grading requirements;
 - e. Structural foundation requirements and estimated foundation settlements;
 - f. Soil compaction criteria;
 - g. Proposed surface and subsurface drainage and calculations regarding design;
 - h. Lateral earth pressure values and calculations for all lateral pressure walls;
 - i. Suitability of on-site material for fill;
 - j. Laboratory data and soil index properties for soil samples; and
 - k. Any additional information necessary for the director to determine the stability of the site and adjacent properties.
 4. Location of all vegetation, including location and description of all trees and shrubs over three inches diameter measured five feet above the base of the trunk.
 5. Grading plans showing all proposed grading activity, timing of construction, location of existing and proposed structures, location of underground utilities, location of any required buffers or conservation easements, and location and nature of any off-site improvements which are associated with the activity. (Ord. 2071 § 20, 2003: Ord. 1544 § 1 (part), 1992)

16.50.100 Regulations.

The provisions of this section apply in all Type I landslide hazard areas:

- A. Any disturbance of the earth shall be limited to no more than 25 cubic yards of cut and fill provided such grading is in conjunction with construction of access roads, pedestrian paths and utility corridors. Essential public facilities may disturb more than 25 cubic yards, but shall not

exceed the minimum necessary for the public facility.

B. Any clearing of natural or planted vegetation shall be prohibited, except that up to 2,500 square feet of clearing may be allowed in order to construct access roads, pedestrian paths and utility corridors provided no removal of trees greater than six inches in diameter shall occur. Essential public facilities may clear more than 2,500 square feet, but shall not exceed the minimum necessary for the public facility.

C. Upon a showing that the trees are not necessary to preserve slope stability or reduce erosion, the director may permit a maximum of 40 percent of the trees greater than six inches in diameter to be removed in conjunction with construction.

D. Based on the information provided in the site evaluation, project plans, and geotechnical report, the director may approve, conditionally approve or deny the proposal. Any conditions shall be necessary to ensure the stabilization of the site during and/or following construction.

E. Water tanks shall be screened or use a minimally invasive design to reduce visual impacts to adjacent property owners and major transportation thoroughfares. (Ord. 2321 § 1, 2010; Ord. 1544 § 1 (part), 1992)

16.50.110 Performance standards.

The following standards shall apply to all actions in Type I and Type II landslide hazard areas:

A. All disturbed areas on the site, including areas proposed for disturbance, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction consistent with chapter 16.05 SMC, and revegetated as soon as possible to promote drainage control and prevent erosion during and after construction. In cases where erosion potential could threaten the stability of the site, the director may require a revegetation plan be submitted and implemented prior to permit issuance.

B. The director may restrict development coverage and construction activity areas to the most level, environmentally suitable and naturally stable portion of the site. Grading activities may be restricted beyond those required by SMC [16.50.100](#) if necessary to ensure stability of the site.

C. Impervious surfaces shall only be located within the site's development coverage and construction activity areas and shall be limited to a maximum of 40 percent of the lot area. The maximum lot coverage restrictions may be waived by the city council in approving a planned residential development pursuant to the zoning code.

D. All drainage systems and discharge points associated with actions shall be approved by the city engineer.

E. All grading in all landslide hazard areas shall be stabilized by October 1st of each year and may

not resume until April 1st of the following year; provided, that if the applicant submits documentation to substantiate that adverse impacts will not result from construction and site activity between these dates, the director may authorize certain activity.

F. Construction shall adhere to a prepared schedule to be approved with the construction plans.

G. Construction and site actions shall conform to best management practices for the types of construction or activity. (Ord. 2071 § 21, 2003; Ord. 1544 § 1 (part), 1992)

16.50.120 Buffers.

A. A buffer, consisting of undisturbed natural vegetation and measured horizontally from all sides of Type I landslide hazard areas, shall be provided. The buffer width shall be as required by the International Building Code as adopted by the city.

B. In order to increase the functional attributes of the buffer, the director may require that the applicant enhance the buffer with native vegetation.

C. The edge of the buffer shall be clearly staked, flagged, and fenced prior to any site clearing or construction. Field marking shall be shown on the construction plans and shall remain in place, in functional condition, for the duration of construction.

D. The director may require additional building setbacks or buffers if recommended by the geotechnical report.

E. Buffers shall be shown or described on all plats recorded in conjunction with development. (Ord. 2439 § 15, 2013; Ord. 1544 § 1 (part), 1992)

16.50.130 Subdivision regulations.

Where a site is proposed for short subdivision or subdivision, up to 50 percent of the total site's area which is designated as being a Type I landslide hazard area (25 percent slope or greater), may be permitted for use in calculating minimum lot area for the proposed lots. (Ord. 2071 § 22, 2003; Ord. 1544 § 1 (part), 1992)

16.50.140 Erosion control.

All actions shall conform to the city requirements for erosion control established in chapter 16.05 SMC. Erosion control plans and the requirements of that section apply regardless of the exemption status resulting from this title. (Ord. 2071 § 23, 2003; Ord. 1544 § 1 (part), 1992)

Chapter 16.52 SEISMIC HAZARD AREA

Sections:

[16.52.010 Short title.](#)

[16.52.020 General authority.](#)

[16.52.030 Purpose.](#)

[16.52.040 Relationship to framework ordinance.](#)

[16.52.050 Applicability.](#)

[16.52.060 Mapping.](#)

[16.52.070 Title notification.](#)

[16.52.080 Plat notification.](#)

[16.52.090 Regulations.](#)

16.52.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the "Seismic Hazard Area Ordinance." (Ord. 1545 § 1 (part), 1992)

16.52.020 General authority.

This chapter is adopted under the authority of RCW 36.70A.050. (Ord. 1545 § 1 (part), 1992)

16.52.030 Purpose.

The purpose of this chapter is to regulate the use of land in seismic hazard areas in order to protect lives, property, and public infrastructure; and to comply with the Washington State Growth Management Act. (Ord. 1545 § 1 (part), 1992)

16.52.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210. (Ord. 2071 § 24, 2003; Ord. 1545 § 1 (part), 1992)

16.52.050 Applicability.

Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, fault rupture, or soil liquefaction. (Ord. 2071 § 25, 2003; Ord. 1545 § 1 (part), 1992)

16.52.060 Mapping.

Seismic hazard areas are areas where the suspected risk of earthquake-induced landsliding,

dynamic settlement, fault rupture, or ground deformation caused by soil liquefaction, is sufficient to require a further seismic hazard area review as set forth in SMC [16.52.090](#). These potential seismic hazard areas are determined using the following criteria:

A. Earthquake-Induced Landslide Hazard Areas. Areas identified as potential landslide hazard areas in SMC [16.50.050](#).

B. Liquefaction and/or Dynamic Settlement Hazard Areas. Areas identified as high and moderate liquefaction and dynamic settlement hazard areas on the Washington Department of Natural Resources, Division of Geology and Earth Resources liquefaction and dynamic settlement hazard area Geographic Map No. 44. (Ord. 2071 § 26, 2003: Ord. 1545 § 1 (part), 1992)

16.52.070 Title notification.

All activity in seismic hazard areas shall be accompanied by the recording of a notice with the Pierce County auditor in the form set forth below:

SEISMIC HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This site lies within a Seismic Hazard Area as defined by Chapter 16.52, Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on _____.

Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a Seismic Hazard Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

(Ord. 1545 § 1 (part), 1992)

16.52.080 Plat notification.

For all proposed short subdivisions and subdivision proposals within seismic hazard areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within a Seismic Hazard Area as defined by the Sumner Municipal Code. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation.

(Ord. 1545 § 1 (part), 1992)

16.52.090 Regulations.

For all nonexempt activities, except the construction of wood frame structures less than 5,000 square feet and all prefabricated structures less than 2,000 square feet, proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer, geologist, or engineering geologist licensed by the state of Washington with expertise in geotechnical engineering shall be submitted.

A. The geotechnical report shall address the existing geologic, topographic and hydrologic conditions on a site, including an evaluation of the ability of the soil and structure to withstand the anticipated earthquake ground shaking and subsequent effects.

B. The geotechnical report shall include a discussion of the mitigation measures which can be taken to reduce seismic risks associated with the underlying surficial geology.

C. The geotechnical report shall include an evaluation of the effectiveness of the proposed mitigation measures.

D. The development proposal may be approved, approved with conditions, or denied based on the director's evaluation of the ability of the proposed mitigation measures to reduce seismic risks associated with the underlying surficial geology.

E. The development may be approved subject to additional review of the architectural and structural drawings by the building official for conformance with the geotechnical report and recommendations.

F. Should an applicant question the presence of seismic hazard areas on-site, the applicant may submit a geotechnical assessment sufficient to demonstrate to the building official's satisfaction, that the site is not located in a seismic hazard area. If the building official determines that the site is not in a seismic hazard area, the provisions of this chapter may be waived except that the requirements of SMC [16.52.070](#) and [16.52.080](#) may not be modified. (Ord. 2071 § 27, 2003; Ord. 1545 § 1 (part), 1992)

Chapter 16.54 VOLCANIC HAZARD AREA

Sections:

[16.54.010 Short title.](#)

[16.54.020 General authority.](#)

[16.54.030 Purpose.](#)

[16.54.040 Relationship to framework ordinance.](#)

[16.54.050 Applicability.](#)

[16.54.060 Mapping.](#)

[16.54.070 Title notification.](#)

[16.54.080 Plat notification.](#)

[16.54.090 Regulations.](#)

16.54.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the "Volcanic Hazard Area Ordinance." (Ord. 1551 § 1 (part), 1992)

16.54.020 General authority.

This chapter is adopted under the authority of RCW 36.70A.050. (Ord. 1551 § 1 (part), 1992)

16.54.030 Purpose.

At over 14,410 feet high, Mount Rainier dominates the skyline of the southern Puget Sound region. This glacier-clad active volcano is capable of spewing ash from pyroclastic eruptions, and generating large volumes of lahars and floods which have, in the recent geologic past, inundated various watersheds and reached the shores of Puget Sound significantly altering pre-flood conditions. The purpose of this chapter is to regulate the use of land in and around volcanic hazard areas in order to protect lives, property, and public infrastructure; and to comply with the Washington State Growth Management Act. (Ord. 2071 § 28, 2003; Ord. 1551 § 1 (part), 1992)

16.54.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.200. (Ord. 1551 § 1 (part), 1992)

16.54.050 Applicability.

Volcanic hazard areas are areas within the city which show a likelihood of lahars, debris flows and related flooding associated with volcanic activity from Mt. Rainier. (Ord. 2071 § 29, 2003; Ord. 1551

§ 1 (part), 1992)

16.54.060 Mapping.

A. Volcanic hazard areas are those areas that, in the recent geologic past, have been inundated by Case I or Case II lahars or other types of debris flows, according to a map showing Volcano Hazards from Mount Rainier, Washington: Pyroclastic-flow hazard zone and inundation zones for Case I, II, and III lahars, published by the U.S. Geological Survey, Revised 1998: USGS Open-File Report 98-428. Volcanic hazard areas also include areas that have not been affected recently, but could be affected by future such events. Volcanic hazard areas are classified into the following categories:

1. Inundation Zone for Case I Lahars. Areas that could be affected by cohesive lahars that originate as enormous avalanches of weak chemically altered rock from the volcano. Case I lahars can occur with or without eruptive activity. The average reoccurrence rate for Case I lahars on Mount Rainier is about 500 to 1,000 years.
2. Inundation Zone for Case II Lahars. Areas that could be affected by relatively large noncohesive lahars, which most commonly are caused by the melting of snow and glacier ice by hot rock fragments during an eruption, but which can also have a noneruptive origin. The average time interval between Case II lahars from Mount Rainier is near the lower end of the 100- to 500-year range, making these flows analogous to the so-called "100-year flood" commonly considered in engineering practice.

B. Time Travel Zones. The ability to evacuate people from within a volcanic hazard area correlates to the distance from the source of an event (i.e., those areas closest to the event will have less time to evacuate than those areas farther away from the source of an event) and the amount of time for evacuation from the public notification (via a warning alarm system) that a lahar event has occurred. The amount of time that is anticipated for a debris flow, lahar, flood, or avalanche (estimated at 100 million cubic feet of volume) to travel from either the source of the event or the point where the AFM alarm is sounded is classified into the time travel zones. The city of Sumner and the urban growth area boundary are within Time Travel Zone C identified on the Pierce County Volcanic Hazard Areas Map which is based on the Bulletin of Volcanology, Vol. 60, pp. 98-109, titled: An Empirical Method for Estimating Travel Times for Wet Volcanic Mass Flows by T.C. Pierson, 1998. Time Travel Zone C is described as follows:

1. Time Travel Zone C on the Nisqually and White River systems is that area greater than an estimated 1-1/2-hour travel distance and less than or equal to an estimated two-hour travel distance from the source of the event.
2. Time Travel Zone C on the Puyallup and Carbon River systems is that area greater than an estimated one-hour travel distance and less than or equal to a 1-1/2-hour travel distance from the point where the AFM alarm is sounded. (Ord. 2071 § 30, 2003: Ord. 1551 § 1 (part), 1992)

16.54.070 Title notification.

All activity in volcanic hazard areas shall be accompanied by the recording of a notice with the Pierce County auditor in the form set forth below:

VOLCANIC HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This site lies within a Volcanic Hazard Area as defined by Chapter [16.54](#), Sumner Municipal Code. The site was the subject of a development proposal for _____, Sumner application number ____ filed on _____.

Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a Volcanic Hazard Area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

(Ord. 1551 § 1 (part), 1992)

16.54.080 Plat notification.

For all proposed short subdivisions and subdivision proposals within volcanic hazard areas, the applicant shall include a note on the face of the plat as set forth below:

Notice: This site lies within a Volcanic Hazard Area as defined by the Sumner Municipal Code. Restrictions on use or alterations of the site may exist due to natural conditions of the site and resulting regulation.

(Ord. 1551 § 1 (part), 1992)

16.54.090 Regulations.

A. No critical facilities shall be constructed or located in volcanic hazard areas as set forth in SMC [16.54.060](#). Critical facilities are those listed below:

1. Hospitals;
2. Jails and detention facilities, excluding temporary holding cells in police stations;
3. Institutional or congregate care facilities for care of greater than 50 incapacitated patients;

4. All structures with occupant load of greater than 5,000 people as established by the International Building Code.

B. The applicant or property owner for a critical facility shall submit to the director, prior to occupancy of any critical facility, a written plan for evacuation of residents or occupants. The plan shall be approved by the city prior to final occupancy approval. The applicant or property owner shall also obtain and maintain a weather radio as approved by the National Oceanic and Atmospheric Administration (NOAA) for receiving notice of a lahar. (Ord. 2439 § 14, 2013; Ord. 2071 § 31, 2003; Ord. 1551 § 1 (part), 1992)

**Chapter 16.56
WILDLIFE HABITAT AREA**

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.](#)

16.56.010 Short title.

The ordinance codified in this chapter, together with any amendments, shall be known as the “Fish and Wildlife Habitat Area Ordinance.” (Ord. 2071 § 32, 2003: Ord. 1546 § 1 (part), 1992)

16.56.020 General authority.

This chapter is adopted under the authority of RCW 36.70A.050. (Ord. 1546 § 1 (part), 1992)

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 and wildlife habitat; and to conform with the Washington State Growth Management Act. (Ord. 2071 § 33, 2003: Ord. 1546 § 1 (part), 1992)

16.56.040 Relationship to framework ordinance.

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.200. (Ord. 1546 § 1 (part), 1992)

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. Designated critical habitat for federally or state-listed endangered, threatened, or sensitive

species of fish, wildlife, or plants;

B. Areas containing priority habitat and species as identified by the Washington State Department of Fish and Wildlife that are of local importance;

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;

G. 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. (Ord. 2596S § 6, 2017: Ord. 2596 § 6, 2017: Ord. 2532 § 7, 2015: Ord. 2071 § 34, 2003: Ord. 1546 § 1 (part), 1992)

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;

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 documents prepared by qualified professional consultants for the city. (Ord. 2596S § 7, 2017: Ord. 2596 § 7, 2017: Ord. 2532 § 8, 2015: Ord. 2071 § 35, 2003: Ord. 1546 § 1 (part), 1992)

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. 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 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 habitat or species applicable to the potential habitat site. (Ord. 2596S § 8, 2017: Ord. 2596 § 8, 2017: Ord. 2532 § 9, 2015: Ord. 2071 § 36, 2003: Ord. 1546 § 1 (part), 1992)

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 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.

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 identifies flow alterations, locates fish passage barriers, and determines 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.
- C. 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:
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 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 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. (Ord. 2596S § 9, 2017: Ord. 2596 § 9, 2017: Ord. 2532 § 10, 2015: Ord. 2071 § 37, 2003: Ord. 1546 § 1 (part), 1992)

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 will result in extirpation or isolation of other critical fish, wildlife, or plant species or their 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. (Ord. 2596S § 10, 2017: Ord. 2596 § 10, 2017: Ord. 2532 § 11, 2015: Ord. 2071 § 38, 2003: Ord. 1546 § 1 (part), 1992)

16.56.100 Buffers.

A. Based on the information provided in the habitat management plan, buffers of undisturbed native vegetation shall be provided to ensure retention of fish and wildlife habitat areas.

B. Buffers established for fish and wildlife habitat areas shall be established by the director in order to provide adequate protection of the resource. The buffer shall be established in consultation with state and federal resource agencies. Buffers established by other regulations in this title shall be given substantial weight towards addressing the mitigation of fish and wildlife and habitat impacts.

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). The buffer shall extend landward from the ordinary high water mark of the water body. The buffer shall not extend landward beyond a public right-of-way that contains an improved street. 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 and wildlife and shall be approved by the director. The width of the buffer shall be established by the chart below. 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.

DNR Water Type	Buffer Width in Feet
F	100
Np	50
Ns	25

D. 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:

DNR Water Type	Buffer Width in Feet
Np	25
Ns	20

F. 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 and a showing that the following are satisfied:

1. The subject parcel is less than 200 feet in depth as measured perpendicular from the ordinary high water mark;
2. The buffer is not reduced below 75 feet and there is not net loss of buffer function;
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;
4. Appropriate 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;
5. Fish, wildlife and plant habitat will not be harmed by the reduction in buffer area based on the proposed use and site development proposed;
6. 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 and shall be monitored per SMC [16.56.080\(C\)](#);

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;

8. Monitoring of mitigation actions is required to verify long-term functional improvement of the enhanced buffer area per SMC [16.56.080](#)(C).

G. The following uses are allowed in fish and wildlife buffers:

1. Activities directly related to the cultural, recreational, scientific and educational aspects of the stream and which have a minimal adverse impact on the buffer and wildlife area. These may include passive recreational facilities, trails, view points, short-term scientific or educational facilities, and sports fishing and hunting;

2. Public utility corridors and large-scale public recreational facilities such as regional trails and parks may be allowed in buffer areas, 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. (Ord. 2532 § 12, 2015; Ord. 2071 § 39, 2003; Ord. 1906 §§ 5, 6, 1999; Ord. 1546 § 1 (part), 1992)