



**CITY OF FIRCREST
PLANNING COMMISSION
MEETING AGENDA**

**TUESDAY, APRIL 07, 2026
6:00 P.M.**

**COUNCIL CHAMBERS
FIRCREST CITY HALL, 115 RAMSDELL STREET**

Pg. #

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
 - A. Motion to Excuse Absent Planning Commissioners
- 4. APPROVAL OF THE AGENDA**
- 5. APPROVAL OF THE MINUTES**
 - A. [January 06, 2026, Regular Meeting](#) 2
 - B. [March 03, 2026, Regular Meeting](#) 5
- 6. CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)**
- 7. PUBLIC HEARING**
- 8. UNFINISHED BUSINESS**
 - A. [Critical Areas Ordinance \(CAO\) Update Discussion](#) 8
 - B. [2026 Fircrest Planning Legislative Priorities](#) 78
- 9. NEW BUSINESS**
- 10. COMMISSIONER COMMENTS/ROUNDTABLE UPDATES/STAFF UPDATES**
- 11. FUTURE BUSINESS**
- 12. ADJOURNMENT**



**CITY OF FIRCREST
PLANNING COMMISSION
MEETING MINUTES**

**TUESDAY, JANUARY 06, 2026
6:00 P.M.**

**COUNCIL CHAMBERS
FIRCREST CITY HALL, 115 RAMSDELL STREET**

1. CALL TO ORDER

Permit Coordinator Danielle O’Galleher called the Fircrest Planning Commission regular meeting to order at 6:00 PM.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Planning Commissioners Present: Commissioner Kathy McVay, Commissioner Shirley Schultz, and Commissioner Andreas Schonger

Motion to excuse Commissioner Eric Lane.

Motion: Commissioner Schultz

Vote: Unanimous

Second: Commissioner McVay

Abstaining: None

The Motion Carried (3-0).

Motion to excuse Commissioner Ben Ferguson.

Motion: Commissioner Schultz

Second: Commissioner Schonger

The Motion Failed (1-2) with Commissioner McVay and Schultz dissenting.

Commissioner Ferguson was absent and unexcused.

City Staff Present: Permit Coordinator Danielle O’Galleher, City Clerk Arlette Burkhart.

4. NOMINATION OF CHAIR AND VICE CHAIR, PURSUANT TO FMC 23.08.070

Permit Coordinator O’Galleher reviewed the process for the nomination of Chair and Vice Chair based on the information provided by the Planning and Building Department. She highlighted that the positions serve a one-year term. Permit Coordinator O’Galleher stated that two motions would need to occur.

Commissioner Schultz nominated Commissioner Kathy McVay to serve as the Chair of the City of Fircrest Planning Commission for a one-year term, effective immediately; seconded by Commissioner Schonger. Permit Coordinator O’Galleher invited Commissioner comment; none were provided.

The Motion Carried (3-0).

Permit Coordinator O’Galleher opened the floor for nominations for the vice chair position.

Commissioner Schultz nominated Commissioner Eric Lane to serve as the Vice Chair of the City of Fircrest Planning Commission for a one-year term, effective immediately; seconded by Chair McVay. Permit Coordinator O’Galleher invited Commissioner comment; none were provided.

The Motion Carried (3-0).

5. APPROVAL OF THE AGENDA

Motion to approve the agenda for the January 6, 2026, Regular Planning Commission Meeting.

Motion: Commissioner Schultz Vote: Unanimous
Second: Commissioner Schonger Abstaining: None

The Motion Carried (3-0).

6. APPROVAL OF THE MINUTES

Motion to approve the minutes for the May 20, 2025, Special Planning Commission Meeting.

Motion: Commissioner Schultz Vote: Unanimous
Second: Commissioner Schonger Abstaining: None

The Motion Carried (3-0).

Motion to approve the minutes for the December 02, 2025, Regular Planning Commission Meeting.

Motion: Commissioner Schonger Vote: Unanimous
Second: Commissioner Schultz Abstaining: None

The Motion Carried (3-0).

7. CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

Chair McVay invited public comments. There were none.

8. PUBLIC HEARING

There was no public hearing scheduled.

9. UNFINISHED BUSINESS

A. Joint Planning Commission/Council Meeting Agenda Topics Discussion

Permit Coordinator O’Galleher briefed the Planning Commission on the upcoming Joint City Council and Planning Commission meeting on February 3, 2026. The Planning Commission identified several topics to include the 2026 Comprehensive Plan Amendment, including STEP Housing, design review relating to Middle Housing Legislation, and traffic calming measures. Discussions included residential design standards, commercial signage updates, and built environmental considerations.

B. HB 1220 - STEP Housing Discussion

Kimberly Gunderson, Mahoney Planning LLC, presented draft amendments to implement House Bill 1220, requiring cities to allow permanent supportive housing, transitional housing, emergency housing, and emergency shelters. She highlighted the creation of a new Type II C Administrative Use Permit, notice of application and notice of decision requirements, appeal rights to the Hearing Examiner, parking requirements, operational agreement requirements, removal of family definition from the code, and codification of approval criteria.

10. NEW BUSINESS

A. Critical Areas Ordinance (CAO) Update Discussion

Kimberly Gunderson, Mahoney Planning LLC, provided an overview of the upcoming Critical Areas Ordinance update required under the Growth Management Act and Department of Commerce checklist. There were critical areas identified in Fircrest to include wetlands, critical aquifer recharge areas (CARAs), fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Mrs. Gunderson reported that future draft amendments will be presented for review.

B. 2026 Fircrest Legislative Priorities

Kim Gunderson, Mahoney Planning LLC, presented the draft legislation regarding STEP Housing and the schedule for legislative compliance and development regulation updates. The schedule extends throughout the year, with the Planning Commission’s main engagement in Q2 2026.

11. COMMISSIONER COMMENTS/ROUNDTABLE UPDATES/STAFF UPDATES

None.

12. FUTURE BUSINESS

None.

13. ADJOURNMENT

Motion to adjourn the January 6, 2026 Planning Commission regular meeting at 7:41 PM.

Motion: Commissioner Schonger Vote: Unanimous
Second: Commissioner Schultz Abstaining: None

The Motion Carried (3-0).

Kathy McVay
Chair, Fircrest Planning Commission

Danielle O’Galleher
Permit Coordinator



**CITY OF FIRCREST
PLANNING COMMISSION
MEETING MINUTES**

**TUESDAY, MARCH 03, 2026
6:00 P.M.**

**COUNCIL CHAMBERS
FIRCREST CITY HALL, 115 RAMSDELL STREET**

1. CALL TO ORDER

Vice Chair Eric Lane called the Fircrest Planning Commission regular meeting to order at 6:00 PM.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Planning Commissioners Present: Vice Chair Eric Lane, Commissioner Andreas Schonger, Commissioner Ben Ferguson and Commissioner Shirley Schultz.

City Staff Present: Permit Coordinator Danielle O’Galleher

Motion to excuse Chair Kathy McVay.

**Motion: Commissioner Ferguson
Second: Commissioner Schultz**

**Vote: Unanimous
Abstaining: None**

The Motion Carried (4-0).

4. APPROVAL OF THE AGENDA

Motion to approve the agenda for the March 03, 2026 Regular Planning Commission Meeting.

**Motion: Commissioner Schultz
Second: Commissioner Ferguson**

**Vote: Unanimous
Abstaining: None**

The Motion Carried (4-0).

5. APPROVAL OF THE MINUTES

Motion to approve the minutes for the January 06, 2026 Regular Planning Commission Meeting.

**Motion: Commissioner Schonger
Second: Commissioner Schultz**

**Vote: Failed
Abstaining: Vice Chair Lane, Commissioner
Ferguson**

The January 06, 2026 meeting minutes were deferred for approval until the next regular meeting.

6. CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

There was no public comment.

7. PUBLIC HEARING

There was no public hearing scheduled.

8. UNFINISHED BUSINESS

A. Critical Areas Ordinance (CAO) Update Discussion

Kim Gunderson, Mahoney Planning, provided a presentation on the Critical Areas Ordinance (CAO) update, including progress since January 2026, proposed revisions, and next steps. She stated that the City is required to update the CAO within 12 months of its Comprehensive Plan update and its completion is necessary to maintain eligibility for certain grant funding. Ms. Gunderson reviewed the five regulated critical areas which include wetlands, critical aquifer recharge areas, fish and wildlife conservation areas, frequently flooded areas, and geologically hazardous areas.

Commission discussions included identifying wetlands, review of potential critical areas, and wildlife presence in wetlands.

B. 2026 Fircrest Planning Legislative Priorities

Kim Gunderson, Mahoney Planning, presented an overview of 2026 Fircrest Planning Legislative Priorities, and stated that required updates would bring the City in compliance with recent state laws. She highlighted affordable housing density requirements (HB 1377), residential lot splitting (HB 1096), limitations on regulating residential conversions (HB 1757), reduced parking requirements (HB 6015), and unit lot subdivision provisions.

Commission discussions included implementation considerations such as utilities, access and coordination with Public Works and other service providers, and concerns regarding long-term affordability enforcement.

C. 2026 Comprehensive Plan Amendment

Kim Gunderson, Mahoney Planning, presented updates to the STEP Housing code and the 2026 Comprehensive Plan Amendment, including minor revisions to development standards, background check requirements and parking ratios. Ms. Gunderson outlined how STEP Housing and code changes to support the City's land capacity analysis and housing element requirement under the Growth Management Act, including permanent supportive housing.

Commissioner discussions included feasibility, incentives, and implementation challenges, including limitations, infrastructure considerations, and long-term housing viability.

9. NEW BUSINESS

There was no new business.

10. COMMISSIONER COMMENTS/ROUNDTABLE UPDATES/STAFF UPDATES

There were no comments or updates provided.

11. FUTURE BUSINESS

None.

12. ADJOURNMENT

Motion to adjourn the March 03, 2026 Planning Commission regular meeting at 7:19 PM.

**Motion: Commissioner Ferguson
Second: Commissioner Schonger**

**Vote: Unanimous
Abstaining: None**

The Motion Carried (4-0).

Eric Lane
Vice Chair, Fircrest Planning Commission

Danielle O’Galleher
Permit Coordinator

March 23, 2026

City of Fircrest Planning Commission
115 Ramsdell Street
Fircrest, WA 98466

Re: Critical Areas Ordinance Update, RCW 36.70A.070

Dear Planning Commission,

The City of Fircrest is overdue to update its critical areas ordinance (CAO), chiefly codified as FMC Chapters 22.92, 22.93, 22.94, 22.97, 22.99, and 22.100.

As a fully planning city subject to the Washington Growth Management Act (“GMA,” RCW Chapter 36.70A), Fircrest is required to update its CAO in alignment with the schedule set forth in RCW 36.70A.130(7)(a)(ii)¹. Being a city in Pierce County, Fircrest’s Periodic Comprehensive Plan Amendment and its implementing regulations were due in December 2024. As it relates specifically to regulations that protect critical area features in Fircrest, the Washington legislature allowed cities 12 months after the due date of their Comprehensive Plan update to amend their CAOs before deeming the city “out of compliance” with Comprehensive Planning deadlines established in the GMA. Therefore, Fircrest was due to update its CAO by December 2025.

Fircrest has timely adopted its 2024 Periodic Comprehensive Plan Update, but had not advanced progress toward its CAO Update meaningfully enough to meet the December 2025 deadline, and is therefore noncompliant with the GMA in this manner. Cities that are noncompliant with the CAO Update deadline are ineligible for state monies issued under RCW Chapter 43.155 (Public Works Projects) and RCW Chapter 70A.135 (Water Pollution Control Facilities Financing). While important for the City to progress toward GMA compliance, the City’s 2026 budget does not include any reliance on state monies from these RCWs, and so no projects planned in 2026 will be affected by the City’s ineligibility for these particular funds.

Mahoney Planning has been tasked to update the City’s CAO in 2026. The effort of this project is to comply with the GMA, and also to adopt germane provisions of the RCW and WAC that afford protections to Fircrest’s critical areas based on today’s best available science (BAS). Mahoney Planning has prepared a project schedule that aims to complete this project in November 2026, positioning the City as an eligible recipient of funds sourced from RCW Chapters 43.155 and 70A.135 for 2027 projects, as needed (see **Figure 1** of this memo).

¹ RCW 36.70A.130(7)(a)(ii): “The requirements imposed on counties and cities under this section shall be considered “requirements of this chapter” under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW...The county or city demonstrates substantial progress towards compliance with the deadlines in this section for development regulations that protect critical areas. For the purposes of this subsection (7)(a)(ii), a county or city that is fewer than 12 months out of compliance with the deadlines in this section for development regulations that protect critical areas is making substantial progress towards compliance with the deadlines in this section.”

Fircrest Guiding Context

Beyond simply complying with state mandates to update Fircrest’s CAO, it is Fircrest’s consistently outspoken intention to foster a sense of community that balances the enjoyment of its natural settings, accommodates the built environment needs of its citizens, and minds our evolving understanding of how critical area protections add value and resilience in our communities. These intentions are captured in Fircrest’s guiding documents and offer important framework to inform the scope of this project.

Comprehensive Plan Principles

Principle 2: *Peaceful and connected to nature. This principle suggests the City aspires to remain a walkable and forested place that provides a peaceful setting to live in. The City will prioritize the walkability and protection of natural resources in Fircrest so that it remains a peaceful place that is connected to nature.*

Comprehensive Plan Goals

Goal CR-2: *Manage surface, ground, storm, waste, and creek waters in an ecologically responsible manner and as interconnected components of the region’s watershed to achieve a healthy watershed that is resilient to climate change.*

Goal CR-4: *Protect vulnerable infrastructure and the local economy from climate impacts.*

Goal P-5: *Enhance Fircrest’s landscape and provide habitat for wildlife by increasing the amount of property permanently dedicated for open space uses with preference given to properties having the greatest significance as critical areas, properties that can act as buffers between different land use types and intensities, and properties that represent a valuable natural or aesthetic asset to the community.*

Goal LU-10: *Guide land uses and development and redevelopment projects to preserve and improve the natural environment as well as the built environment and protect development from climate change impacts.*

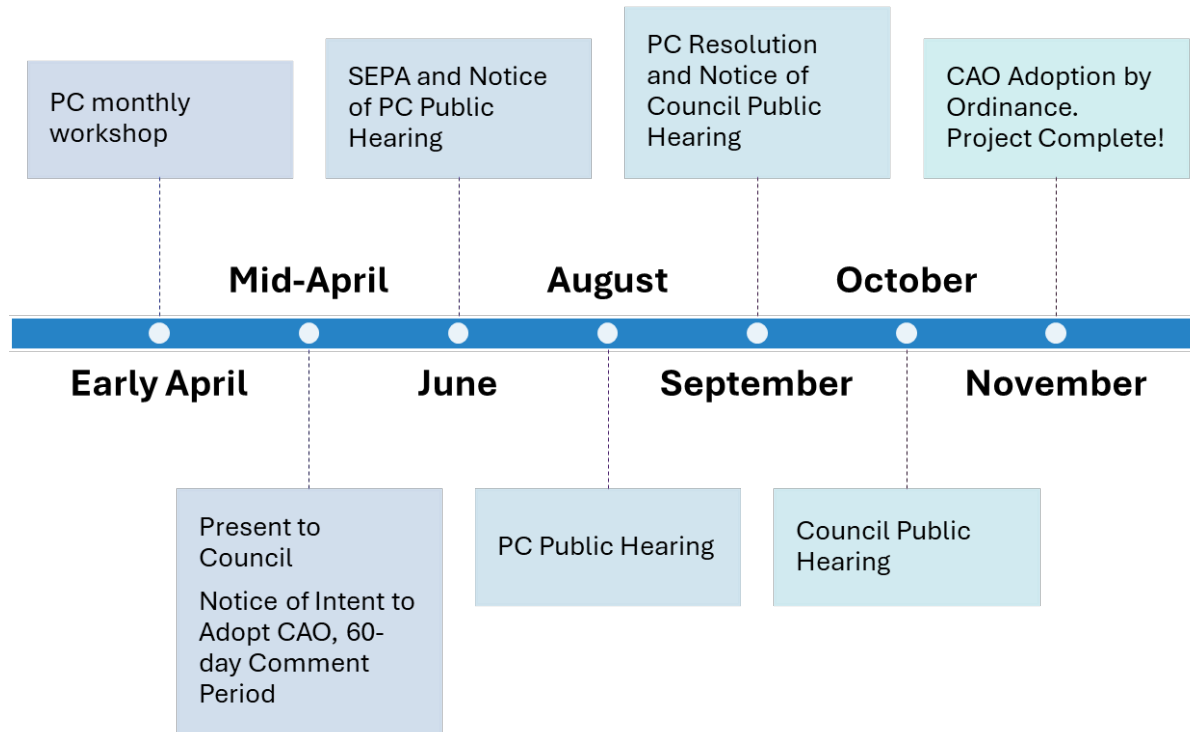
Focus of April 7 Meeting

At the April 7, 2026 Planning Commission meeting, I will present the Planning Commission with final edits that have been drafted to the City’s CAO (**Exhibit A**) incorporating feedback from the City Manager.

Project Schedule

Fircrest's CAO Update is expected to be complete by November 2026. Importantly, the project schedule affords ample engagement with Fircrest's elected and appointed officials, state agencies, interested parties, and the general public. See **Figure 1** below.

Figure 1
Fircrest CAO Project Schedule



A final draft CAO which incorporates final feedback from the City Manager will be presented to Planning Commission in April before being transmitted to the Commerce for a 60-day comment period.

I look forward to discussing this project with Planning Commission at its April 7 meeting!



Kimberly A. Gunderson
Mahoney Planning, LLC

Exhibits:

[A. FMC Chapter 22.92 in redline to reflect CAO Updates](#)

Chapter 22.92 CRITICAL AREAS

Sections:

22.92.010	Purpose.
22.92.020	Authority.
22.92.030	Relationship to other regulations.
22.92.040	Jurisdiction – Critical areas.
22.92.050	Protection of critical areas.
22.92.060	Best available science.
22.92.070	Applicability.
22.92.080	Exemptions.
22.92.090	Exception – Public agency and utility.
22.92.100	Exception – Reasonable use.
22.92.110	Allowed activities.
22.92.120	General requirements.
22.92.130	Critical area preapplication consultation.
22.92.140	Repealed.
22.92.150	Public notice of initial determination.
22.92.160	Critical area report – Requirements.
22.92.170	Critical area report – Modifications to requirements.
22.92.180	Mitigation requirements.
22.92.190	Mitigation sequencing.
22.92.200	Mitigation plan requirements.
22.92.210	Innovative mitigation.
22.92.220	Determination.
22.92.230	Review criteria.
22.92.240	Favorable determination.
22.92.250	Unfavorable determination.
22.92.260	Completion of the critical area review.
22.92.270	Appeals.
22.92.280	Variances.
22.92.290	Unauthorized critical area alterations and enforcement.
22.92.300	Critical area markers and signs.
22.92.310	Title notice.
22.92.320	Native growth protection areas.
22.92.330	Critical area tracts.
22.92.340	Building setbacks.
22.92.350	Bonds to ensure mitigation, maintenance, and monitoring.
22.92.360	Critical area inspections.

22.92.010 Purpose.

(a) The purpose of the city’s critical areas regulations contained in Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99 and 22.100 FMC is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

(b) These regulations are to implement the goals, policies, guidelines, and requirements of the city’s comprehensive plan and the Growth Management Act.

(c) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of floodwaters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

(d) Goals. By limiting development and alteration of critical areas, these regulations seek to:

- (1) Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;
- (2) Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
- (3) Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
- (4) Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas.

(e) These regulations are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

(f) These regulations are to be administered with flexibility and attention to site-specific characteristics. Consistent with RCW 36.70A.020(12), it is not the intent of these regulations to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

(g) The city's enactment or enforcement of these regulations shall not be construed for the benefit of any individual person or group of persons other than the general public. (Ord. 1375 § 1, 2005).

22.92.020 Authority.

(a) As provided herein, the director is given the authority to interpret and apply, and the responsibility to enforce these regulations, to accomplish the stated purpose.

(b) The city may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with these regulations. (Ord. 1375 § 1, 2005).

22.92.030 Relationship to other regulations.

(a) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(b) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any existing regulation, easement, covenant, or deed restriction conflicts with these critical areas regulations, that regulation which provides more protection to the critical areas shall apply.

(c) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as adopted by the city. Any conditions required pursuant to these regulations shall be included in the SEPA review and threshold determination.

(d) Compliance with these critical areas regulations does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, and National Pollution Discharge Elimination System (NPDES) permits). The applicant is responsible for complying with these requirements, apart from the process established in the city's critical areas regulations. (Ord. 1375 § 1, 2005).

22.92.040 Jurisdiction – Critical areas.

(a) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

(b) Critical areas regulated by this title include:

- (1) Wetlands as designated in Chapter 22.93 FMC;
- (2) Critical aquifer recharge areas as designated in Chapter 22.94 FMC;
- (3) Frequently flooded areas as designated in Chapter 22.99 FMC;
- (4) Fish and wildlife habitat conservation areas as designated in Chapter 22.97 FMC; and
- (5) Geologically hazardous areas as designated in Chapter 22.100 FMC.

(c) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of the applicable critical areas chapters.

(d) Areas Adjacent to Critical Areas Subject to Regulation. Areas adjacent to critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of the applicable critical areas chapters and ensure protection of the functions and values of critical areas. "Adjacent" shall mean any activity located:

- (1) On a site immediately adjoining a critical area;
- (2) A distance equal to or less than the required critical area buffer width and the building setback established in FMC 22.92.340;
- (3) A distance equal to or less than 800 feet from a bald eagle nest;
- (4) A distance equal to or less than 300 feet upland from a stream, wetland, or water body; or
- (5) Within the floodway, floodplain, or channel migration zone. (Ord. 1375 § 1, 2005).

22.92.050 Protection of critical areas.

Any action taken pursuant to the applicable critical areas chapters shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with the mitigation sequencing order specified in FMC 22.92.190 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas. (Ord. 1375 § 1, 2005).

22.92.060 Best available science.

(a) Protect Functions and Values of Critical Areas with Special Consideration to Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, consistent with RCW 36.70A.172.1.

(b) Best Available Science to Be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

(c) Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the director shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

- (1) Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;
 - (2) Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;
 - (3) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;
 - (4) Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods;
 - (5) Context. The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and
 - (6) References. The assumptions, analytical techniques, and conclusions are well-referenced with citations to relevant, credible literature and other pertinent existing information.
- (d) Nonscientific Information. Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:
- (1) Anecdotal Information. One or more observations that are not part of an organized scientific effort (for example, “I saw a bald eagle in that area while I was hiking”);
 - (2) Non-Expert Opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, “I do not believe there are bald eagles in that area”); and
 - (3) Hearsay. Information repeated from communication with others (for example, “At a lecture last week, Dr. Jones said there were no bald eagles in that area”).
- (e) Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the director shall:
- (1) Take a “precautionary” or a “no-risk approach,” that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and
 - (2) Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
 - (A) Address funding for the research component of the adaptive management program;
 - (B) Change course based on the results and interpretation of new information that resolves uncertainties; and
 - (C) Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries. (Ord. 1375 § 1, 2005).

22.92.070 Applicability.

(a) The provisions of the critical areas chapters shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of these chapters.

(b) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of these chapters.

(c) Approval of a permit or development proposal pursuant to the provisions of these chapters does not discharge the obligation of the applicant to comply with the provisions of these chapters. (Ord. 1375 § 1, 2005).

22.92.080 Exemptions.

(a) Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the director that describes the activity and states the exemption listed in this section that applies.

The director shall review the exemption request to verify that it complies with the applicable critical areas chapters and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of these chapters.

(b) Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from the applicable critical areas chapters does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of the applicable critical areas chapters; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

(1) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of these chapters.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within 30 days, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of FMC 22.92.290 shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner;

(2) Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation,

maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

(3) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to the public and private pedestrian trails standards specified in FMC 22.92.110(c)(5);

(4) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222;

(5) Construction within Previously Approved Planned Developments. Construction or reconstruction of a single-family, duplex or condominium unit on a lot that was platted or approved within a planned development subsequent to the city's adoption of interim critical areas regulations in 1993 and prior to the effective date of the ordinance codified in this chapter, provided such unit is constructed in accordance with all applicable critical areas regulations in effect at the time of platting or approval; and

(6) Structural Modification of, Additions to, or Replacement of, Existing Residential Structures. Structural modification of, additions to, or replacement of, existing principal residential structures lawfully established prior to the effective date of the ordinance codified in this chapter that do not meet the critical area buffer or building setback requirements; provided, that:

(A) The structure is located within a wetland buffer, fish and wildlife habitat conservation area buffer, or associated buffer building setback;

(B) The structure is not located within a frequently flooded area, geologically hazardous area buffer, or associated buffer building setback;

(C) The modification, addition, replacement or related activity will not increase impervious surface by more than 500 square feet, in total, on the site;

(D) There is no other practicable location within the site that will accommodate the activity, meet the buffer and building setback requirements, and satisfy all other requirements of this title; and

(E) For lots adjoining Leach Creek or Ross Creek, the proposed activity will not encroach into the required buffer beyond that of the existing principal residential structure, and any increase in impervious surface will be compensated for by the planting of native plants within the buffer at a 1:1 ratio of native planting area to increased impervious surface area (i.e., 100 square feet of native planting area would need to be installed in the buffer for 100 square feet of new impervious surface). (Ord. 1375 § 1, 2005).

22.92.090 Exception – Public agency and utility.

(a) If the application of a critical areas chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (d) of this section.

(d) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

- (1) There is no other practical alternative to the proposed development with less impact on the critical areas;
- (2) The application of the critical areas chapter would unreasonably restrict the ability to provide utility services to the public;
- (3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (4) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- (5) The proposal is consistent with other applicable regulations and standards.
- (6) All proposed activities will be conducted using the best management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 60, 2019; Ord. 1375 § 1, 2005).

22.92.100 Exception – Reasonable use.

(a) If the application of a critical areas chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a reasonable use exception shall be made to the city and shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (d) of this section.

(d) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow; one or more may apply:

- (1) The application of the critical areas chapters would deny all reasonable economic use of the property;
- (2) No other reasonable economic use of the property has less impact on the critical area;
- (3) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
- (4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant, or its predecessor, after the effective date of the critical area chapters;
- (5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
- (6) The proposal will result in no net loss of critical area functions and values consistent with the best available science.

(7) All proposed activities will be conducted using best available management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 61, 2019; Ord. 1375 § 1, 2005).

22.92.110 Allowed activities.

(a) Critical Area Report. Activities allowed under the applicable critical areas chapter(s) shall have been reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate critical area report, unless such submittal was required previously for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of these chapters to protect critical areas.

(b) Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices adopted by the city, including but not limited to those contained within the Department of Ecology Stormwater Management Manual for Western Washington, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Allowed Activities. The following activities are allowed:

(1) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

(A) The provisions of the applicable critical areas chapter(s) have been previously addressed as part of another approval;

(B) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(C) There is no new information available that is applicable to any critical area review of the site or particular critical area;

(D) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and

(E) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;

(2) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;

(3) Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater, subject to the following:

- (A) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
 - (B) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
- (4) Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and that do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:
- (A) There is no practical alternative to the proposed activity with less impact on critical areas;
 - (B) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
 - (C) The activity involves disturbance of an area less than 75 square feet;
- (5) Public and Private Pedestrian Trails. Public and private pedestrian trails, subject to the following:
- (A) The trail surface shall meet all other requirements including water quality standards set forth in the Department of Ecology Stormwater Management Manual for Western Washington;
 - (B) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas;
 - (C) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report; and
 - (D) Trails proposed to be located in fish and wildlife habitat conservation areas or the outer 25 percent of wetland buffers which are limited to permeable surfaces no more than five feet wide and designed for pedestrian use only, and located to avoid removal of significant trees, old growth trees, or mature trees.
- (6) Select Vegetation Removal Activities. The following vegetation removal activities; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the director:
- (A) The removal of the following vegetation with hand labor and light equipment:
 - (i) Invasive and noxious weeds classified by the Washington State Noxious Weed Board;
 - (ii) English ivy (*Hedera helix*);
 - (iii) Himalayan blackberry (*Rubus armeniacus*, *R. procerus*); and
 - (iv) Evergreen blackberry (*Rubus laciniatus*);
 - (B) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:
 - (i) The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - (ii) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;

- (iii) All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
 - (iv) The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;
 - (v) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
 - (vi) Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter;
- (C) Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and
- (D) Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;
- (7) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use shall be restricted in accordance with State Department of Fish and Wildlife management recommendations and the regulations of the State Department of Agriculture, the State Department of Ecology, and the U.S. Environmental Protection Agency;
- (8) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
- (9) Boundary Markers. Construction or modification of boundary markers. (Ord. 1574 § 1, 2016; Ord. 1375 § 1, 2005).

22.92.120 General requirements.

(a) As part of this review, the city shall:

- (1) Verify the information submitted by the applicant;
- (2) Evaluate the project area and vicinity for critical areas;
- (3) Determine whether the proposed project is likely to impact the functions or values of critical areas; and
- (4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

(b) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:

- (1) Require a critical area report from the applicant that has been prepared by a qualified professional;

- (2) Review and evaluate the critical area report;
- (3) Determine whether the development proposal conforms to the purposes and performance standards of the applicable critical areas chapters, including the review criteria in FMC 22.92.230;
- (4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
- (5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of the applicable critical areas chapters. (Ord. 1375 § 1, 2005).

22.92.130 Critical area preapplication consultation.

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of a critical areas chapter may conduct a consultation meeting with the director prior to submitting an application for development or other approval. At this meeting, the director shall discuss the requirements of these chapters; provide critical area maps, scientific information, and other source materials, if available; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements. (Ord. 1375 § 1, 2005).

22.92.140 Repealed.

22.92.150 Public notice of initial determination.

The city shall notify the public of proposals in accordance with Chapter 22.07 FMC.

- (a) If the director determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.
- (b) If the director determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report is required. (Ord. 1375 § 1, 2005).

22.92.160 Critical area report – Requirements.

(a) Preparation by Qualified Professional. If required by this chapter, the applicant shall submit a critical area report prepared by a qualified professional as defined herein, and as defined in FMC Chapter 22.98, Definitions.

(b) Incorporating of Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of the applicable critical areas chapters.

(c) Minimum Report Contents. At a minimum, the report shall contain the following:

- (1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
- (2) A copy of the site plan for the development proposal including:
 - (A) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
 - (B) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
- (3) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
- (4) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

- (5) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- (6) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- (7) An analysis of site development alternatives including a no development alternative;
- (8) A description of reasonable efforts made to apply mitigation sequencing pursuant to FMC 22.92.190 to avoid, minimize, and mitigate impacts to critical areas;
- (9) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with FMC 22.92.200, including, but not limited to:
 - (A) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - (B) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
- (10) A discussion of the performance standards applicable to the critical area and proposed activity;
- (11) Financial guarantees to ensure compliance; and
- (12) Any additional information required for the critical area as specified in the corresponding chapter.

(d) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1375 § 1, 2005).

22.92.170 Critical area report – Modifications to requirements.

(a) Limitations to Study Area. The director may limit the required geographic area of the critical area report as appropriate if:

- (1) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or
- (2) The proposed activity will affect only a limited part of the subject site.

(b) Modifications to Required Contents. The applicant may consult with the director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

(c) Additional Information Requirements. The director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with the applicable critical areas chapters. Additional information that may be required includes, but is not limited to:

- (1) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
- (2) Grading and drainage plans; and
- (3) Information specific to the type, location, and nature of the critical area. (Ord. 1375 § 1, 2005).

22.92.180 Mitigation requirements.

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in the applicable critical areas chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated

using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

(b) Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach such as the use of off-site mitigation, mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report. (Ord. 1574 § 2, 2016; Ord. 1375 § 1, 2005).

22.92.190 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

(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, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact to wetlands, critical aquifer recharge areas, geologically hazardous areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary. Monitoring shall occur at least annually for five (5) years, unless best available science would inform otherwise. A monitoring report shall be provided to the City following each monitoring event and shall document the success of the mitigation against performance standards established in the mitigation plan accepted by the City.

Mitigation for individual actions may include a combination of the above measures. (Ord. 1375 § 1, 2005).

22.92.200 Mitigation plan requirements.

When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the critical area report. The mitigation plan shall include:

(a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

(1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

(2) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

(3) An analysis of the likelihood of success of the compensation project.

(b) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of the applicable critical areas chapters have been met.

(c) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

- (1) The proposed construction sequence, timing, and duration;
- (2) Grading and excavation details;
- (3) Erosion and sediment control features;
- (4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- (5) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(d) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, two, three, five, seven and 10 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years, or 10 years for forested and scrub-shrub wetland communities.

(e) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(f) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with FMC 22.92.350. (Ord. 1375 § 1, 2005).

22.92.210 Innovative mitigation.

(a) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (1) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- (2) The group demonstrates the organizational and fiscal capability to act cooperatively;
- (3) The group demonstrates that long-term management of the habitat area will be provided; and
- (4) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(b) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. (Ord. 1375 § 1, 2005).

22.92.220 Determination.

The director shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of the applicable critical areas chapters. The director's determination shall be based on the criteria of FMC 22.92.230. (Ord. 1375 § 1, 2005).

22.92.230 Review criteria.

(a) Any alteration to a critical area, unless otherwise provided for in the applicable critical areas chapters, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- (1) The proposal minimizes the impact on critical areas in accordance with the mitigation sequencing order specified in FMC 22.92.190;
- (2) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (3) The proposal is consistent with the general purposes of the applicable critical areas chapters and the public interest;
- (4) Any alterations permitted to the critical area are mitigated in accordance with FMC 22.92.180;
- (5) The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
- (6) The proposal is consistent with other applicable regulations and standards.

(b) The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by the applicable critical areas chapters.

(c) Except as provided for by the applicable critical areas chapters, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in FMC 22.92.190 shall be denied. (Ord. 1375 § 1, 2005).

22.92.240 Favorable determination.

If the director determines that the proposed activity meets the criteria in FMC 22.92.230 and complies with the applicable provisions of the applicable critical areas chapters, the director shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the director.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval. (Ord. 1375 § 1, 2005).

22.92.250 Unfavorable determination.

If the director determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in FMC 22.92.230 and the provisions of the applicable critical areas chapters, the director shall prepare written notice of the determination that includes findings of noncompliance.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of the applicable critical areas chapters.

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable critical areas chapters, the applicant may request consideration of a revised critical area

report. If the revision is found to be substantial and relevant to the critical area review, the director may reopen the critical area review and make a new determination based on the revised report. (Ord. 1375 § 1, 2005).

22.92.260 Completion of the critical area review.

The city's determination regarding critical areas pursuant to the applicable critical areas chapters shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved. (Ord. 1375 § 1, 2005).

22.92.270 Appeals.

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of a critical areas chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1375 § 1, 2005).

22.92.280 Variances.

(a) Variances from the standards of a critical areas chapter may be authorized by the city in accordance with the procedures set forth in Chapter 22.74 FMC. The director or hearing examiner, as authorized, shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(b) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth in FMC 22.74.003 and as follows:

(1) A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

(2) The granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical areas; and

(3) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

(c) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(d) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1638 § 62, 2019; Ord. 1375 § 1, 2005).

22.92.290 Unauthorized critical area alterations and enforcement.

(a) When a critical area or its buffer has been altered in violation of a critical areas chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of the applicable critical areas chapter.

(b) Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (c) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(c) Minimum Performance Standards for Restoration.

(1) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

(A) The historic structural and functional values shall be restored, including water quality and habitat functions;

(B) The historic soil types and configuration shall be replicated;

(C) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and

(D) Information demonstrating compliance with the requirements in FMC 22.92.250 shall be submitted to the director.

(2) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

(A) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;

(B) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

(C) The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(d) Site Investigations. The director is authorized to make site inspections and take such actions as are necessary to enforce the city's critical areas regulations pursuant to Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99, and 22.100 FMC. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property. (Ord. 1375 § 1, 2005).

22.92.300 Critical area markers and signs.

(a) The boundary at the outer edge of critical area tracts and easements shall be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.

(b) The boundary at the outer edge of the critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.

(c) These provisions may be modified by the director as necessary to ensure protection of sensitive features or wildlife needs. (Ord. 1375 § 1, 2005).

22.92.310 Title notice.

(a) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of the critical areas regulations to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall "run with the land."

(b) This title notice shall not be required for a development proposal by a public agency or public or private utility:

(1) Within a recorded easement or right-of-way;

(2) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or

(3) On the site of a permanent public facility.

(c) The applicant shall submit proof that the notice has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, and planned unit developments, at or before recording. (Ord. 1375 § 1, 2005).

22.92.320 Native growth protection areas.

(a) Unless otherwise required in the applicable critical areas chapters, native growth protection areas shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Native growth protection areas shall be recorded on all documents of title of record for all affected lots.

(c) Native growth protection areas shall be designated on the face of the plat of recorded drawing in a format approved by the city. The designation shall include the following restrictions:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction. (Ord. 1375 § 1, 2005).

22.92.330 Critical area tracts.

(a) Critical area tracts shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below that total 5,000 or more square feet:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Critical area tracts shall be recorded on all documents of title of record for all affected lots.

(c) Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include the following restriction:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction.

(d) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract). (Ord. 1375 § 1, 2005).

22.92.340 Building setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- (a) Landscaping;
- (b) Uncovered decks;
- (c) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
- (d) Impervious and pervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted in the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 1, 2005).

22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.

- (a) When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.
- (b) The bond shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- (c) The bond shall be in the form of a surety bond, performance bond, assignment of a savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.
- (d) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- (e) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- (f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- (g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
- (h) Any funds recovered pursuant to this section shall be used to complete the required mitigation. (Ord. 1375 § 1, 2005).

22.92.360 Critical area inspections.

Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. (Ord. 1375 § 1, 2005).

Chapter 22.93 WETLANDS

Sections:

- 22.93.010 Designating, defining, identifying, and mapping wetlands.
- 22.93.020 Regulated activities.
- 22.93.030 Activities allowed in wetlands.
- 22.93.040 Wetland ratings.
- 22.93.050 Standards – General requirements.
- 22.93.060 Critical area report – Additional requirements for wetlands.
- 22.93.070 Compensatory mitigation requirements.
- 22.93.080 Standards – Subdivisions.
- 22.93.090 Signs and fencing of wetlands.
- 22.93.100 Wetland buffers.
- 22.93.110 Residential density and on-site density transfer.
- 22.93.120 *Repealed.*
- 22.93.130 Alternate review process – Army Corps of Engineers Section 404 individual permits.

22.93.010 Designating, defining, identifying, and mapping wetlands.

(a) Designating, Defining and Identifying Wetlands. Wetlands are those areas designated in accordance with the procedures outlined in WAC 173-22-035.

All areas within the city meeting the wetland definition criteria, regardless of whether these areas have previously been identified or mapped, are hereby designated critical areas and are subject to the provisions of Chapter 22.92 FMC and this chapter.

(b) Mapping. The approximate location and extent of wetlands are shown on the adopted critical area map contained within the comprehensive plan. In addition, the maps contained within the National Wetlands Inventory are hereby adopted. Additionally, soil maps produced by the U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas. These maps are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified.

It is the actual presence of a wetland on a parcel, as delineated by WAC 173-22-035, which triggers the requirements of Chapter 22.92 FMC and this chapter, whether or not the wetland is identified on the adopted maps. The exact location of a wetland's boundary shall be determined through the performance of a field delineation by a qualified wetlands professional in accordance with the approved federal wetland delineation manual and applicable regional supplements pursuant to WAC 173-22-035. (Ord. 1512 § 6, 2011; Ord. 1375 § 2, 2005).

22.93.020 Regulated activities.

Regulated activities, if they occur in a regulated wetland or its buffer, include but are not limited to:

- (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 wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or

(h) Activities that result in:

- (1) A significant change of water temperature;
- (2) A significant change of physical or chemical characteristics of the sources of water to the wetland;
- (3) A significant change in the quantity, timing or duration of the water entering the wetland; or
- (4) The introduction of pollutants. (Ord. 1375 § 2, 2005).

22.93.030 Activities allowed in wetlands.

The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions established in FMC 22.92.110. These activities do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

- (a) Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.
- (b) 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.
- (c) Drilling for utilities/utility corridors under a wetland with the 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.
- (d) 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 disposed of appropriately. 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 the species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- (e) Educational and scientific research activities.
- (f) 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. (Ord. 1574 § 3, 2016; Ord. 1375 § 2, 2005).

22.93.040 Wetland ratings.

(a) Wetlands shall be rated according to the Washington State Department of Ecology Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 23-06-029) or as revised by Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(b) Wetland Rating Categories.

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

minimum of 23 points on the wetland rating form. Category I wetlands can include, but are not limited to: large undisturbed estuarine wetlands, wetlands of high conservation value, bogs, wetlands with mature old-growth forests, wetlands in coastal lagoons, or interdunal wetlands larger than 1 acre and scoring 8-9 points for habitat scores on the wetland rating form..

(2) Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands in western Washington can include, but are not limited to: smaller estuarine wetlands, wetlands that score between 20-22 points on wetland rating form questions related to the functions present at the wetland, interdunal wetlands larger than 1 acre, or those in a wetland mosaic.

(3) Category III. Category III wetlands are 1) wetlands with a moderate level of functions (scores between 16-19 points on the wetland rating form), 2) can often be adequately replaced with a well-planned mitigation project, and 3) interdunal wetlands between 0.1 and 1 ac in size. Wetlands scoring between 16-19 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 (scores fewer than 16 points on the wetland rating form) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and also need to be protected. (Ord. 1574 § 4, 2016; Ord. 1375 § 2, 2005).

22.93.050 Standards – General requirements.

(a) Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in Chapter 22.92 FMC and this chapter.

(b) Category I Wetlands. Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of Chapter 22.92 FMC.

(c) Category II and III Wetlands. For activities proposed in Category II and III wetlands, the following standards shall apply:

(1) Activities and uses shall be prohibited unless the applicant can demonstrate that:

(A) The basic project purpose cannot reasonably be accomplished on another site or sites in the general region while still successfully avoiding or resulting in less adverse impact on a wetland; and

(B) All on-site alternative designs that would avoid or result in less adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

Full compensation for the loss of acreage and functions of wetland and buffers shall be provided under the terms established under FMC 22.93.070.

(d) Category IV Wetlands. Activities and uses that result in unavoidable impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and compensatory mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the loss of acreage and functions of wetlands and buffers shall be provided under the terms established under FMC 22.93.070. (Ord. 1375 § 2, 2005).

22.93.060 Critical area report – Additional requirements for wetlands.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for wetlands must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a minimum of five years' experience in the field of wetland science and with experience preparing wetland reports.

(b) Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

- (1) The project area of the proposed activity;
- (2) All wetlands and recommended buffers within 300 feet of the project area; and
- (3) All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 300 feet of the project area.

(c) Minimum Standards for Wetland Reports. In addition to the minimum required contents in FMC 22.92.160, a critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

- (1) A written assessment and accompanying maps of the wetlands and buffers within 300 feet of the project area, including the following information at a minimum:
 - (A) Wetland delineation and required buffers;
 - (B) Existing wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions);
 - (C) Wetland rating and category based on entire wetland complex;
 - (D) Cowardin classification of vegetation communities including vegetation characterization;
 - (E) Habitat elements;
 - (F) Soil and substrate conditions based on site assessment and/or soil survey information;
 - (G) Topographic elevations, at two-foot contours;
 - (H) A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – algal mats, flood debris, and sediment deposits); and
 - (I) Hydrogeomorphic (HGM) classification.
- (2) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
- (3) A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.
- (4) Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.
- (5) A scale map of the development proposal site and adjacent area.
- (6) A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.
- (7) A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.
- (8) Title Notification. All activity in critical area protection areas shall be accompanied by a notice on title.

(d) Compensatory Mitigation Reports. When a project involves wetland and/or buffer impacts, a compensatory mitigation report shall be required (in addition to the wetland critical area report), meeting the following minimum standards:

(1) Preparation by a Qualified Professional(s). A compensatory mitigation report for wetland or buffer impacts shall be prepared by one or more qualified professional(s) including someone who is a certified professional wetland scientist or a noncertified professional wetland scientist; either of them must have a minimum of five years' experience designing compensatory mitigation designs that have been installed and monitored for a minimum of two years to verify success. In addition, the design team may include civil engineers, landscape architects or landscape designers depending upon the complexity of the project.

(2) Minimum Standards for Compensatory Mitigation Report. This report shall include a written report and plan sheets that contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Ecology Publication No. 06-06-011b, March 2006).

(A) The written report must contain, at a minimum:

(i) The name and contact information of the applicant, the name, qualifications, and contact information for the primary author(s) of the report, a description of the proposal, a summary of the impacts and proposed compensation concept, and identification of all the local, state, and/or federal wetland related permit(s) required for the project, plus a vicinity map for the project;

(ii) Description of the existing wetland and buffer areas proposed to be impacted including: acreages (or square footage) based on professional surveys of the delineations; Cowardin classifications including dominant vegetation community types (for upland and wetland habitats); the results of a functional assessment for the entire wetland and the portions proposed to be impacted; wetland rating based on the provisions of this chapter;

(iii) An assessment of the potential changes in wetland hydroperiod from the proposed project and how the design has been modified to avoid, minimize or reduce adverse impacts to the wetland hydroperiod;

(iv) A description of the proposed conceptual compensation actions for wetland and upland areas. A description of future vegetation community types for years one, three, five, 10 and 25 post-installation including the succession of vegetation community types and dominants expected. A description of the successional sequence of expected changes in hydroperiod for the compensation site(s) for the same time periods as vegetation success. A description of the change in habitat characteristics expected over the same 25-year time period;

(v) An assessment of existing conditions in the zone of the proposed compensation, including: vegetation community structure and composition, existing hydroperiod, existing soil conditions, and existing habitat functions. An estimate of future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);

(vi) The field data collected to document existing conditions and on which future condition assumptions are based for hydroperiod (e.g., soil pit data – hand dug or mechanically trenched; soil boring data). Soil survey data is not sufficient to rely upon for establishing existing conditions;

(vii) A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs;

(viii) A bond estimate for the entire compensatory mitigation including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring; and

(ix) Proof of establishment of a notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

(B) The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

(i) Existing wetland and buffer surveyed edges, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;

(ii) Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Existing cross-sections of on-site wetland areas that are proposed to be impacted. Cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;

(iii) Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Illustration of how data for existing hydrologic conditions were utilized to inform the estimates of future hydrologic regimes;

(iv) Proposed conditions expected from the proposed actions on site including future HGM types, vegetation community types by dominant species (wetland and upland), and future hydrologic regimes;

(v) Required wetland buffers for existing wetlands and proposed compensation areas. Zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;

(vi) A plant schedule including all species by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, "typical" clustering patterns, total number of each species by community type, and timing of installation;

(vii) Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each bi-annum.

(e) Additional Information. When appropriate, the director may also require the critical area report to include an evaluation by the state Department of Ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.

(1) If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit, which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the proposed site and whether the applicant previously had been found in violation of this title. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.

(2) The director shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of Chapter 22.92 FMC and this chapter. (Ord. 1574 § 5, 2016; Ord. 1375 § 2, 2005).

22.93.070 Compensatory mitigation requirements.

(a) 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 Selected Wetland Mitigation Sites using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009).

(b) Mitigation shall be required 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.

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

(6) Monitoring the impact and taking appropriate corrective measures.

(c) Compensation for Lost or Affected Functions. Compensation 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 as determined by a site-specific function assessment, 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) Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:

(1) Restoration (reestablishment and rehabilitation) of wetlands.

(2) Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is anticipated in the design.

(3) Preservation (protection and maintenance) of wetlands. The removal of a threat to, or preventing the decline of, wetlands by an action in or near those wetlands. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms such as recording conservation easements and providing structural protection like fences and signs. Preservation does not result in a gain of aquatic resource area or functions but may result in a gain in functions over the long term. Preservation of a wetland and associated buffer can be used only if:

(a) The Administrator 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 and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:

(i) Category I or II wetland rating;

(ii) Rare or irreplaceable wetland type (e.g. peatlands, mature forested wetland, estuaries, vernal pools, alkali wetlands) or aquatic habitat that is rare or a limited resource in the area;

(iii) The presence of habitat for threatened or endangered species (state, federal, or both);

(iv) Provides biological and/or hydrological connectivity to other habitats;

(v) Priority sites identified in an adopted watershed plan.

(d) Permanent preservation of the wetland and buffer shall be provided through a legal mechanism such as a conservation easement or tract held by an appropriate natural land resource manager/land trust.

(e) The Administrator may approve another legal and administrative mechanism in lieu of a conservation easement if it is determined to be adequate to protect the site.

(4) Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

(e) Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except when all of the following apply:

(1) There are no reasonable on-site or in-subdrainage basin opportunities (e.g., on-site options would require elimination of high functioning upland habitat), or on-site and in-subdrainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

(2) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

(3) Off-site locations shall be in the same subdrainage basin unless:

(A) Established watershed goals for water quality, flood 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 mitigation and the use of credits is consistent with the terms of the bank's certification.

(f) Timing of Compensatory Mitigation. It is preferred that compensation projects be completed prior to activities that will disturb the on-site 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.

The director 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 (for example, project delay lapses past a fisheries window; or plan installation should be delayed until the dormant season to ensure greater survivability 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, and 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 mitigation plan. The justification must be verified and approved by the city.

(g) Mitigation Ratios.

(1) Acreage Replacement Ratios. The following ratios in Table 22.93.A shall apply to creation or restoration, rehabilitation, reestablishment or creation and enhancement, or enhancement only, that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When

credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank’s certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Table 22.93.A Mitigation Ratios

Category and Type of Wetland	Reestablishment or Creation	Rehabilitation**	1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Wetland Preservation or Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 4:1 E	8:1
All Category II	3:1	6:1	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 20:1 E	24:1
Category I based on score for functions	4:1	8:1	1:1 R/C and 12:1 E	16:1
Category I Natural Heritage site or Bog	Not considered possible*	Case-by-case	Not considered possible*	Case-by-case

* Natural Heritage sites and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetlands.

** Rehabilitation ratios are based on the assumption that actions judged to be most effective for that site are being implemented.

(2) Increased Replacement Ratio. The director may increase the ratios under the following circumstances:

- (A) Uncertainty exists as to the probable success of the proposed restoration or creation; or
- (B) A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or
- (C) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- (D) The impact was an unauthorized impact.

(3) Reduced Replacement Ratio. The director may reduce the ratios under the following circumstances:

- (A) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience; or
- (B) Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being impacted; or
- (C) The proposed actions for compensation are conducted in advance of the impact and are shown to be successful; or
- (D) In wetlands where several HGM classes are found within one delineated boundary, the ratios can be decreased if:
 - (i) Impacts to the wetland are all within an area that has a different HGM class from the one used to establish the category; and
 - (ii) The category of this area with a different class is “lower” than that of the entire wetland; and

(iii) The proponents provide adequate hydrologic and geomorphic data to establish that the boundary between the HGM classes lies outside of the footprint of the impacts.

(h) Preservation. Impacts to wetlands may be mitigated by preservation of wetland areas when used in combination with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. Preservation may also be used by itself, but more restrictions apply as outlined below.

(1) Preservation in Combination with Other Forms of Compensation. Using preservation as compensation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by restoration or creation and the criteria below are met:

(A) The impact area is small, and/or impacts are to a Category III or IV wetland;

(B) Preservation of a high quality system occurs in the same water resource inventory area (WRIA) or watershed basin where the wetland impact occurs;

(C) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and

(D) Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being mitigated and the quality of the wetlands being preserved.

(2) Preservation as the Sole Means of Compensation for Wetland Impacts. Preservation of at-risk, high quality habitat may be considered as the sole means of compensation for wetland impacts when all of the following criteria are met:

(A) Preservation is used as a form of compensation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;

(B) Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;

(C) The impact area is small, and/or impacts are to a Category III or IV wetland;

(D) Preservation of a high quality system occurs in the same water resource inventory area (WRIA) or watershed basin where the wetland impact occurs;

(E) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;

(F) The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on-site or off-site activities. "Potential" includes permitted, planned, or likely actions that are not adequately protected under existing regulations (e.g., logging of forested wetlands); and

(G) The area proposed for preservation is of high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality sites:

(i) Category I or II wetland rating;

(ii) Rare wetland type (e.g., bogs and mature forested wetlands);

(iii) Habitat for threatened or endangered species;

(iv) Wetland type that is rare in the area;

(v) Provides biological and/or hydrological connectivity;

- (vi) High regional or watershed importance (e.g., listed as priority site in watershed plan); and
- (vii) Large size with high species diversity (plants and/or animals) and/or high abundance.

(H) Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.

(i) Wetland Mitigation Banks.

(1) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- (A) The bank is certified under state rules;
- (B) The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- (C) The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

(2) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

(3) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

(j) 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 director may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report," (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

(k) In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when subsections (k)(1) through (6) of this section apply:

- (1) The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
- (2) The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.
- (3) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.
- (4) Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
- (5) Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.

(6) Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument.

(l) 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.

(m) Alternative Mitigation Plans. The director may approve alternative critical areas mitigation plans that are based on best available science. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The director 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 FMC 22.93.060(d).
- (6) The plan shall be reviewed and approved as part of overall approval of the proposed use.
- (7) A wetland of a different type is 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 FMC 22.93.060(d)(2)(A)(viii).
- (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 resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. (Ord. 1574 § 6, 2016; Ord. 1375 § 2, 2005).

22.93.080 Standards – Subdivisions.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

- (a) Land that is located wholly within a wetland or its buffer may not be subdivided.
- (b) Land that is located partially within a wetland or its buffer may be subdivided; provided, that an accessible and contiguous portion of each new lot is located outside of the wetland and its buffer.
- (c) Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the city determines that no other feasible alternative exists and when consistent with Chapter 22.92 FMC and this chapter. (Ord. 1375 § 2, 2005).

22.93.090 Signs and fencing of wetlands.

- (a) 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 director 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.

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

(1) 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 per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

Protected Wetland Area
Do Not Disturb
Contact City of Fircrest
Regarding Uses, Restrictions, and Opportunities for Stewardship

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

(c) Fencing.

(1) The director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the director shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.

(2) 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.

(3) 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. (Ord. 1375 § 2, 2005).

22.93.100 Wetland buffers.

(a) Buffer Requirements. The standard buffer widths in Table 22.93.B, below, 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.

(1) The use of the standard buffer widths requires the implementation of the measures in Table 22.93.C, below, where applicable, to minimize the impacts of the adjacent land uses.

(2) If an applicant chooses not to apply the mitigation measures in Table 22.93.C, then a 33 percent increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.

(3) The standard buffer widths 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.

(4) Additional buffer widths are added to the standard buffer widths.

Table 22.93.B Wetland Buffer Requirements for Western Washington

Wetland Buffer Requirements				
Overall Wetland Rating	Wetland Characteristics	Intensity Land Use on the Upland Side of the Buffer		
		High¹	Medium²	Low³
Category I	Habitat score of 8-9 points	300'	225'	150'
Category I	Habitat score of 6-7 points	150'	110'	75'
Category I	Water quality score of 8-9 points and a habitat score of less than 6 points	100'	75'	50'
Category I	Wetlands that do not meet the characteristics described above for category I wetlands	100'	75'	50'
Category II	Habitat score of 8-9 points	300'	225'	150'
Category II	Habitat score of 6-7 points	150'	110'	75'
Category II	Water quality score of 8-9 points and a habitat score of less than 6 points	100'	75'	50'
Category II	Wetlands that do not meet the characteristics described above for category II wetlands	100'	75'	50'
Category III	Habitat score of 8-9 points	300'	225'	150'
Category III	Habitat score of 6-7 points	150'	110'	75'
Category III	Habitat score of 3-5 points	80'	60'	40'
Category IV	Scores for all 3 basic functions are less than 16 points	50'	40'	25'

Table 22.93.C Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• 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	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered

¹ High intensity land uses include commercial, industrial, and retail developments; institutional use; residential developments at more than 1 unit per acre; high intensity recreation areas (golf course, ball fields, etc.); and solar farms.

² Moderate intensity land uses include residential developments at less than 1 unit per acre; moderate intensity open space (parks with biking, jogging, etc.); and paved trails and utility corridors with maintenance roads.

³ Low intensity land uses include low intensity open space (hiking, birdwatching, preservation of natural resources, etc.); and unpaved trails and utility corridors without maintenance roads.

Disturbance	Required Measures to Minimize Impacts
	<ul style="list-style-type: none"> • 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 (per PSAT publication on LID techniques)
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	<ul style="list-style-type: none"> • Use best management practices to control dust
Disruption of corridors or connections	<ul style="list-style-type: none"> • Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

(b) Conditions for Increasing Buffer Widths or Enhancing Buffers.

(1) Buffer is not vegetated with plants appropriate for the region. The recommended widths for buffers are based on the assumption that the buffer is vegetated with a native plant community appropriate for the ecoregion or with one that performs similar functions. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with nonnative 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 in the buffer are provided. Generally, improving the vegetation will be more effective than widening the buffer.

(2) Buffer has a steep slope. The effectiveness of buffers at removing pollutants before they enter a wetland decreases as the slope increases. If the buffer for a wetland is to be based on the score for its ability to improve water quality rather than habitat or other criteria, then the buffer should be increased by 50 percent if the slope is greater than 30 percent.

(3) Buffer is used by sensitive species. If the wetland provides habitat for a particularly sensitive species (such as a threatened or endangered species), the buffer width should be increased to provide adequate protection for the species based on its particular life history needs. Buffer requirements for certain priority species may be obtained from the Washington State Department of Fish and Wildlife.

(c) Buffer Averaging. The widths of buffers may be averaged if this will improve the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel.

(1) 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; and

(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; and

(C) The total area of the buffer after averaging is equal to the area required without averaging; and

(D) The buffer at its narrowest point is never less than 75 percent of the standard width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

(2) Averaging to allow reasonable use of a parcel may be permitted when all of the following conditions are met:

(A) There are no feasible alternatives to the site design that could be accomplished without buffer averaging; and

(B) The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert; and

(C) The total area of the buffer after averaging is equal to the area required without averaging; and

(D) The buffer at its narrowest point is never less than 75 percent of the standard width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

(d) Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter and based on expected or target category of the proposed wetland mitigation site.

(e) Buffer Maintenance. Except as otherwise specified or allowed in accordance with Chapter 22.92 FMC and this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive nonnative weeds is required for the duration of the mitigation bond.

(f) Buffer Uses. The following uses may be permitted within a wetland buffer in accordance with the review procedures of Chapter 22.92 FMC and 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 and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(2) Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

(A) Walkways and trails; provided, that those pathways are limited to minor crossings that have 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 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 area may be acceptable; and

(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 the 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 will 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 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 the species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(8) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

- (A) No other location is feasible;
- (B) The location of such facilities will not degrade the functions or values of the wetland; and
- (C) Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(9) Nonconforming uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity. (Ord. 1574 § 7, 2016; Ord. 1375 § 2, 2005).

22.93.110 Residential density and on-site density transfer.

The purpose of on-site density transfer is to cluster development in a manner that provides protection for wetlands and allows transfer of residential density from a wetland and/or wetland buffer to an area on the same site that is neither wetland nor buffer. A request for on-site density transfer shall be considered pursuant to the planned development review process in Chapter 22.76 FMC.

Those portions of the wetland and/or wetland buffer in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

- (a) For sites containing regulated wetland buffer areas, full density credit may be transferred from the buffer area to the nonbuffer area.
- (b) For sites containing regulated wetland areas, density transfer shall be calculated from the following table.

On-Site Density Transfer

Percentage of site in wetland	Amount of credit
0 – 25%	75%
26 – 50%	50%
51 – 100%	25%

(Ord. 1375 § 2, 2005).

22.93.120 Stormwater management impacts to wetlands.

Repealed by Ord. 1574. (Ord. 1375 § 2, 2005).

22.93.130 Alternate review process – Army Corps of Engineers Section 404 individual permits.

When an Army Corps of Engineers Section 404 permit is required for a project involving wetlands, the Army Corps permitting process may be substituted for the city permitting process. If a proposal reviewed and conditioned by the Corps satisfies the intent of this chapter, no further wetland review shall be required by the city. If a proposal reviewed and conditioned by the Corps does not satisfy the intent of this chapter, then a critical areas report shall be prepared in accordance with FMC 22.93.030, and modifications made to the project if warranted, in order to demonstrate compliance with this chapter. All permits and approvals required by other city development regulations shall be required. (Ord. 1375 § 2, 2005).

Chapter 22.94 CRITICAL AQUIFER RECHARGE AREAS

Sections:

- 22.94.010 Critical aquifer recharge areas designation.
- 22.94.020 Aquifer recharge area susceptibility ratings.
- 22.94.030 Location and designation of critical aquifer recharge areas.
- 22.94.040 Activities allowed in critical aquifer recharge areas.
- 22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.
- 22.94.060 Performance standards – General requirements.
- 22.94.070 Performance standards – Specific uses.
- 22.94.080 Uses prohibited from critical aquifer recharge areas.

22.94.010 Critical aquifer recharge areas designation.

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These areas include the following:

- (a) Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.
- (b) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.
- (c) Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to Chapter 173-100 WAC.
- (d) Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.
- (e) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.
- (f) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology. (Ord. 1375 § 3, 2005).

22.94.020 Aquifer recharge area susceptibility ratings.

Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology. (Ord. 1375 § 3, 2005).

22.94.030 Location and designation of critical aquifer recharge areas.

The entire city is located within the Clover-Chambers Creek Groundwater Management Area, which has a critical recharging effect on the Tacoma and Clover-Chambers Creek Aquifers. The EPA Region X has designated the Clover-Chambers Creek Aquifer a sole source aquifer. (Ord. 1375 § 3, 2005).

22.94.040 Activities allowed in critical aquifer recharge areas.

The following activities are allowed in critical aquifer recharge areas pursuant to FMC 22.94.010 and do not require submission of a critical area report:

(a) Construction of structures and improvements, including additions, resulting in less than five percent or 2,500 square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

(b) Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent total site impervious surface area that do not increase the use of a hazardous substance.

(c) On-site domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited under FMC Title 20. (Ord. 1375 § 3, 2005).

22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for critical aquifer recharge areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. An aquifer recharge area critical area report 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.

(b) Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer recharge area, a critical area report shall contain a level one hydrogeological assessment. A level two hydrogeologic assessment shall be required for any of the following proposed activities:

- (1) Activities that result in five percent or more impervious site area;
- (2) Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;
- (3) The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;
- (4) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited by FMC Title 20; or
- (5) Any other activity determined by the director likely to have an adverse impact on ground water quality or quantity or on the recharge of the aquifer.

(c) Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site- and proposal-related information at a minimum:

- (1) Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
- (2) Ground water depth, flow direction, and gradient based on available information;
- (3) Currently available data on wells and springs within 1,300 feet of the project area;
- (4) Location of other critical areas, including surface waters, within 1,300 feet of the project area;
- (5) Available historic water quality data for the area to be affected by the proposed activity; and
- (6) Best management practices proposed to be utilized.

(d) Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:

- (1) Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;
- (2) Ground water monitoring plan provisions;
- (3) Discussion of the effects of the proposed project on the ground water quality and quantity, including:
 - (A) Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
 - (B) Predictive evaluation of contaminant transport based on potential releases to ground water; and
- (4) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail. (Ord. 1375 § 3, 2005).

22.94.060 Performance standards – General requirements.

- (a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely effect the recharging of the aquifer.
- (b) The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and Tacoma-Pierce County Health Department.
- (c) The proposed activity must be designed and constructed in accordance with the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 3, 2005).

22.94.070 Performance standards – Specific uses.

- (a) Storage Tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:
 - (1) Underground Tanks. 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) Aboveground Tanks. 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 in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

(c) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(d) Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the state Departments of Ecology and Health.

(1) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The state Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).

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

(e) State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

**Statutes, Regulations, and Guidance Pertaining to
 Ground-Water-Impacting Activities**

Activity	Statute – Regulation – Guidance
Aboveground Storage Tanks	WAC 173-303-640
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56)
Belowground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	WAC 173-303-182
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection Wells	40 CFR Parts 144 and 146, Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (< 14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC

(Ord. 1375 § 3, 2005).

22.94.080 Uses prohibited from critical aquifer recharge areas.

The following activities and uses are prohibited in critical aquifer recharge areas:

- (a) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;
- (b) Underground Injection Wells. 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;
- (c) Mining.
 - (1) Metals and hard rock mining; and
 - (2) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;
- (d) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
- (e) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances; and
- (f) Other Prohibited Uses or Activities.
 - (1) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
 - (2) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and
 - (3) Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer recharge areas associated with sole source aquifers. (Ord. 1375 § 3, 2005).

Chapter 22.97
FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

- 22.97.010 Designation of fish and wildlife habitat conservation areas.
- 22.97.020 Critical area report – Additional requirements for habitat conservation areas.
- 22.97.030 Performance standards – General requirements.
- 22.97.040 Performance standards – Specific habitats.

22.97.010 Designation of fish and wildlife habitat conservation areas.

(a) Fish and wildlife habitat conservation areas include:

(1) Areas with which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association.

(A) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

(B) State-designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington, identified by the Washington State Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State-designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

(2) State Priority Habitats and Areas Associated with State Priority Species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

(3) Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the city, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(4) Naturally Occurring Ponds Under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

(5) Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used).

(6) Lakes, ponds, streams, and rivers planted with game fish by a governmental entity.

(7) State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.

(8) Areas of Rare Plant Species and High Quality Ecosystems. Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.

(9) Land useful or essential for preserving connections between habitat blocks and open spaces.

(b) All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of Chapter 22.92 FMC and this chapter and shall be managed consistent with the best available science, such as the Washington State Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species.

(c) Mapping. The approximate location and extent of habitat conservation areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:

- (1) Washington State Department of Fish and Wildlife Priority Habitat and Species maps;
- (2) Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;
- (3) Washington State Department of Natural Resources Natural Heritage Program mapping data;
- (4) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission; and
- (5) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.

These maps are to be used as a guide for the city, project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 1375 § 6, 2005).

22.97.020 Critical area report – Additional requirements for habitat conservation areas.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.

(b) Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for habitat conservation areas:

- (1) The project area of the proposed activity;
- (2) All habitat conservation areas and recommended buffers within 300 feet of the project area; and
- (3) All shoreline areas, floodplains, other critical areas, and related buffers within 300 feet of the project area.

(c) Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:

- (1) Detailed description of vegetation on and adjacent to the project area and its associated buffer;

(2) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

(3) A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(4) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;

(5) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with the mitigation sequencing order specified in FMC 22.92.190; and

(6) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

(d) Additional Information May Be Required. When appropriate due to the type of habitat or species present or the project area conditions, the director may also require the habitat management plan to include:

(1) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;

(2) A request for consultation with the Washington State Department of Fish and Wildlife or other appropriate agency; and

(3) Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 1375 § 6, 2005).

22.97.030 Performance standards – General requirements.

(a) Alterations. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with Chapter 22.92 FMC and this chapter.

(b) Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(c) Mitigation and Contiguous Corridors. Mitigation sites shall be located to reserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(d) Approvals of Activities. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

(1) Establishment of buffer zones;

(2) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

(3) Limitation of access to the habitat area, including fencing to deter unauthorized access;

(4) Seasonal restriction of construction activities;

(5) Establishment of a duration and timetable for periodic review of mitigation activities; and

(6) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(e) Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

(f) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(g) Buffers.

(1) Establishment of Buffers. The director shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection areas and critical area tracts in accordance with FMC 22.92.320 and 22.92.330.

(2) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

(3) Habitat Buffer Averaging. The director may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the best available science, and the management recommendations issued by the Washington State Department of Fish and Wildlife, only if:

(A) It will not reduce stream or habitat functions;

(B) It will not adversely affect salmonid habitat;

(C) It will provide additional natural resource protection, such as buffer enhancement;

(D) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

(E) The buffer area width is not reduced by more than 25 percent in any location.

(h) Signs and Fencing of Habitat Conservation Areas.

(1) Temporary Markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and verified by the director 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 director may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer.

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

Habitat Conservation Area
Do Not Disturb
Contact City of Fircrest
Regarding Uses, Restrictions and Opportunities for Stewardship

(B) The provisions of subsection (h)(2)(A) of this section may be modified by the director as necessary to assure protection of sensitive features or wildlife.

(3) Fencing.

(A) The director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the director shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.

(B) The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

(C) 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 habitat impacts.

(i) Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:

(1) Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.

(2) Land that is located partially within a habitat conservation area or its buffer may be divided; provided, that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of this title.

(3) Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this chapter. (Ord. 1375 § 6, 2005).

22.97.040 Performance standards – Specific habitats.

(a) Endangered, Threatened, and Sensitive Species.

(1) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington State Department of Fish and Wildlife or applicable state or federal agency.

(2) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington State Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

(3) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within 800 feet. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington State Department of Fish and Wildlife.

(b) Anadromous Fish.

(1) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- (A) Activities shall be timed to occur only during the allowable work window as designated by the Washington State Department of Fish and Wildlife for the applicable species;
- (B) An alternative alignment or location for the activity is not feasible;
- (C) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
- (D) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and
- (E) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

(2) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(3) Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water dependent use.

(c) Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in Chapter 22.93 FMC. If nonwetlands habitat and wetlands are present at the same location, the provisions of Chapter 22.93 FMC or this chapter, whichever provides greater protection to the habitat, shall apply.

(d) Riparian Habitat Areas. Unless otherwise allowed in Chapter 22.92 FMC and this chapter, all structures and activities shall be located outside of the riparian habitat area.

(1) Establishment of Riparian Habitat Areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.

(2) Riparian Habitat Area Widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to subsection (d)(3) of this section, or a lesser width is allowed pursuant to subsection (d)(4) of this section. Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Riparian Habitat Areas

Stream type	Recommended RHA widths
Type 1 and 2; or shorelines of the state, or shorelines of statewide significance	250 feet
Type 3; or other perennial or fish-bearing streams, 5 – 20 feet wide	200 feet

Stream type	Recommended RHA widths
Type 3; or other perennial or fish-bearing streams, < 5 feet wide	150 feet
Type 4 and 5; or intermittent streams and washes with low mass wasting potential	150 feet

(3) Increased Riparian Habitat Area Widths. The recommended riparian habitat area widths shall be increased, as follows:

- (A) When the director determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
- (B) When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
- (C) When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
- (D) When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional 50 feet on the windward side; or
- (E) When the habitat area is within an erosion or landslide hazard area or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

(4) Riparian Habitat Area Width Averaging. The director may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:

- (A) The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;
- (B) The width reduction will not degrade the habitat, including habitat for anadromous fish;
- (C) The proposal will provide additional habitat protection;
- (D) The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
- (E) The recommended riparian habitat area width is not reduced by more than 25 percent in any one location;
- (F) The width reduction will not be located within another critical area or associated buffer; and
- (G) The reduced riparian habitat area width is supported by the best available science.

(5) Riparian Habitat Mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same subdrainage basin as the habitat impacted.

(6) Alternative Mitigation for Riparian Habitat Areas. The performance standards set forth in this subsection may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.

(e) Aquatic Habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, and water of the state or associated buffer subject to the standards of this subsection.

(1) Clearing and Grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

- (A) Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
 - (B) Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
 - (C) The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
 - (D) The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
 - (E) Erosion and sediment control that meets or exceeds the standards set forth in the Department of Ecology Stormwater Management Manual for Western Washington shall be provided.
- (2) Shoreline Erosion Control Measures. New, replacement, or substantially improved shoreline erosion control measures may be permitted in accordance with an approved critical area report that demonstrates the following:
- (A) Natural shoreline processes will be maintained. The project will not result in alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.
 - (B) The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.
 - (C) Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the proposed shoreline erosion control measures.
- (3) Streambank Stabilization. Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
- (4) Roads, Trails, Bridges, and Rights-of-Way. Construction of trails, roadways, and minor road bridging, less than or equal to 30 feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:
- (A) There is no other feasible alternative route with less impact on the environment;
 - (B) The crossing minimizes interruption of downstream movement of wood and gravel;
 - (C) Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
 - (D) Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
 - (E) Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;
 - (F) Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
 - (G) Road bridges are designed according to the Washington State Department of Fish and Wildlife Fish Passage Design at Road Culverts, 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000; and
 - (H) Trails and associated viewing platforms shall not be made of continuous impervious materials.
- (5) Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report, if they comply with the following standards:

- (A) Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
 - (B) Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
 - (C) The utilities shall cross at an angle greater than 60 degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
 - (D) Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
 - (E) The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
 - (F) The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
- (6) Public Flood Protection Measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report and the approval of a federal biological assessment by the federal agency responsible for reviewing actions related to a federally listed species.
- (7) Instream Structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
- (8) Stormwater Conveyance Facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
- (A) No other feasible alternatives with less impact exist;
 - (B) Mitigation for impacts is provided;
 - (C) Stormwater conveyance facilities shall incorporate fish habitat features; and
 - (D) Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.
- (9) On-Site Sewage Systems and Wells.
- (A) New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.
 - (B) Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:
 - (i) Connection to an available public sanitary sewer system;
 - (ii) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Tacoma-Pierce County Health Department; or
 - (iii) Repair to the existing on-site septic system. (Ord. 1375 § 6, 2005).

Chapter 22.99 FREQUENTLY FLOODED AREAS

Sections:

- 22.99.010 Designation of frequently flooded areas.
- 22.99.020 Critical area report – Additional requirements.
- 22.99.030 Warning and disclaimer of liability.
- 22.99.040 Performance standards – General requirements.
- 22.99.050 Performance standards – Specific uses.
- 22.99.060 Performance standards – Areas of shallow flooding.
- 22.99.070 Uses and activities prohibited from frequently flooded areas.
- 22.99.080 Variances – Additional considerations for frequently flooded areas.

22.99.010 Designation of frequently flooded areas.

(a) Frequently Flooded Areas. Frequently flooded areas shall include:

(1) Areas Identified on the Flood Insurance Map(s). The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Pierce County, and Incorporated Areas” dated March 7, 2017, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and the FIRM are on file at City Hall, 115 Ramsdell Street, Fircrest WA.

(2) Areas Identified by the Director. Those areas of special flood hazard identified by the director, or his or her designee, based on review of base flood elevation and floodway data available from federal, state, city, or other valid sources when base flood elevation data has not been provided from the Federal Insurance Administration [“A” zone of the flood insurance map(s)].

(b) Use of Additional Information. The director may use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.

(c) Flood Elevation Data. When base flood elevation data is not available (“A” zones), the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer this chapter.

(d) Designation Made by Director. The flood insurance maps are to be used as a guide for the city, project applicants and/or property owners and the public and should be considered a minimum designation of frequently flooded areas. As flood insurance maps may be continuously updated as areas are reexamined or new areas are identified, newer and more restrictive information for flood hazard area identification shall be the basis for regulation.

(e) Maintenance of Records. Where base flood elevation data is provided through the flood insurance study or required through subsection (c) of this section, the director shall obtain and record the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement. The director shall also maintain for public inspection all records of floodplain hazards, certificates of floodproofing, and flood elevation data. (Ord. 1596 § 1, 2017; Ord. 1375 § 4, 2005).

22.99.020 Critical area report – Additional requirements.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for frequently flooded areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A frequently flooded areas report shall be prepared by a qualified professional who is a hydrologist or engineer, licensed in the state of Washington with experience in preparing flood hazard assessments.

(b) Areas to Be Addressed. The following areas shall be addressed in a critical area report for frequently flooded areas:

- (1) The site area of the proposed activity;
- (2) All areas of a special flood hazard area, as indicated on the flood insurance map(s) within 200 feet of the project area; and
- (3) All other flood areas indicated on the flood insurance map(s) within 200 feet of the project area.

(c) Flood Hazard Assessment. A critical area report for a proposed activity within a frequently flooded area shall contain a flood hazard assessment including the following site- and proposal-related information at a minimum:

- (1) Site and Construction Plans. A copy of the site and construction plans for the development proposal showing:
 - (A) Floodplain (100-year flood elevation), 10- and 50-year flood elevations, floodway, other critical areas, buffers, and shoreline areas;
 - (B) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain;
 - (C) Clearing limits; and
 - (D) Elevation of the lowest floor (including basement) of all structures, and the level to which any nonresidential structure has been floodproofed.
- (2) Watercourse Alteration. Alteration of natural watercourses shall be avoided, if feasible. If unavoidable, a critical area report shall include:
 - (A) Extent of Watercourse Alteration. A description of and plan showing the extent to which a watercourse will be altered or relocated as a result of proposal;
 - (B) Maintenance Program Required for Watercourse Alterations. A maintenance program that provides maintenance practices for the altered or relocated portion of the watercourse to ensure that the flood-carrying capacity is not diminished; and
 - (C) Compliance Documentation. Information describing and documenting how the proposed watercourse alteration complies with the requirements of Chapter 22.97 FMC, Fish and Wildlife Habitat Conservation Areas, and other applicable state or federal permit requirements.

(d) Information Regarding Other Critical Areas. Potential impacts to wetlands, fish and wildlife habitat, and other critical areas shall be addressed in accordance with the applicable critical area chapters. (Ord. 1375 § 4, 2005).

22.99.030 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. The provisions of this chapter do not imply that land outside frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. These provisions shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 1375 § 4, 2005).

22.99.040 Performance standards – General requirements.

The following standards shall be adhered to in all frequently flooded areas, except as otherwise provided for in this chapter:

- (a) **Development Permit.** A development permit shall be obtained before land is altered or a new use is commenced within a frequently flooded area. For application of this chapter, development shall include any manmade alteration to land, including but not limited to buildings, structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials within the area of special flood hazard.
- (b) **All Other Necessary Permits.** The director shall verify that all necessary permits have been obtained from those governmental agencies from which prior approval is required by federal, state, or local law including Section 404 of the Federal Water Pollution Control Act Amendment of 1972 and the Endangered Species Act of 1973.
- (c) **Before Regulatory Floodway.** In areas where the base flood elevation is provided, but where a regulatory floodway has not been designated, new construction, substantial improvements, or other development, including fill, shall not be permitted within zones A1 – 30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (d) **Areas Without Base Flood Elevation Data.** Where base flood elevation data is not available (“A” zones) and there is insufficient data available from federal, state, or other sources, the director shall determine the base flood elevation using approved engineering methods and historical data, such as high water marks, photographs of past flooding, and other available information. If there is insufficient data available for the director to make a determination of the base flood elevation and standards requiring a base flood elevation cannot be implemented, the director shall require measures that ensure the proposed structures will be reasonably safe from flooding. At a minimum, the base flood elevation should be set at least two feet above the highest adjacent grade to avoid higher flood insurance rates.
- (e) **Construction Materials and Methods.**
 - (1) **Structures Shall Be Located Outside the Floodplain.** All structures, utilities, and other improvements shall be located on the buildable portion of the site out of the floodplain unless there is no buildable site area out of the floodplain. For sites with no buildable area out of the floodplain, structures, utilities, and other improvements shall be placed on the highest land on the site, oriented parallel to flow rather than perpendicular, and sited as far from the watercourse and other critical areas as possible. However, in no case shall stormwater treatment or flow control facilities be allowed within the floodplain. If the director detects any evidence of active hyporheic exchange on a site, the development shall be located to minimize disruption of such exchange.
 - (2) **Methods That Minimize Flood Damage.** All new construction and substantial improvements shall be constructed using flood-resistant materials and using methods and practices that minimize flood damage.
 - (3) **Utility Protection.** Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (f) **Elevation Certificate Following Construction.** Following construction of a structure within the floodplain where the base flood elevation is provided, the applicant shall obtain an elevation certificate that records the elevation of the lowest floor. The elevation certificate shall be completed by a surveyor or engineer licensed in the state of Washington and shall be submitted to the city for recording.
- (g) **Anchoring.**
 - (1) **Anchoring Requirement.** All new construction and substantial improvements within the floodplain shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - (2) **Manufactured Homes.** All manufactured homes placed within the floodplain must be anchored to prevent flotation, collapse, or lateral movement and shall be installed using methods and practices that minimize flood

damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(h) Fill and Grading. Fill and grading within the floodplain shall only occur on a determination from a qualified professional that the fill or grading will not block side channels, inhibit channel migration, increase flood hazards to others, or be placed within a channel migration zone, whether or not the city has delineated such zones as of the time of the application. (Ord. 1375 § 4, 2005).

22.99.050 Performance standards – Specific uses.

Specific uses shall adhere to the following relevant standards, in addition to the general standards of FMC 22.99.040. Subsections (a) through (d) of this section apply where base flood elevation data is provided through the flood insurance study or required through FMC 22.99.010(c); subsections (e) through (g) of this section apply to all frequently flooded areas.

(a) Residential Construction.

(1) Must Be Above Base Flood Elevation. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated two feet or more above the base flood elevation.

(2) Areas Below the Lowest Floor. Fully enclosed areas below the lowest floor that are subject to flooding shall only be allowed when designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(B) The bottom of all openings shall be no higher than one foot above grade; and

(C) Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

(b) Manufactured Homes Must Be Elevated. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated two feet or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Recreational Vehicles. Recreational vehicles are required to either:

(1) Be on the site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(3) Obtain a development permit and meet the requirements, including elevation and anchoring, for manufactured homes.

(d) Nonresidential Construction.

(1) Above Base Flood Elevation. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated two feet or more above the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

(A) Be floodproofed so that below two feet or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(C) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Such certification shall be provided to the director in accordance with FMC 22.99.010(e). Following construction of the structure, certifications shall be submitted to the city that record the actual (as-built) elevation to which the structure was floodproofed.

Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are two feet below the floodproofed level (for example, a building floodproofed to the base flood level will be rated as two feet below).

(2) Areas Below the Lowest Floor. Fully enclosed areas below the lowest floor that are not floodproofed shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

(A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(B) The bottom of all openings shall be no higher than two feet above grade; and

(C) Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

(e) Utilities.

(1) Infiltration of Floodwaters. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(2) Sanitary Sewage Systems. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(3) On-Site Waste Disposal Systems. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. New on-site sewage disposal systems are prohibited pursuant to FMC 22.99.070(c).

(f) Subdivision Proposals.

(1) Adequate Space Outside Flood Areas. All lots created through subdivision or short subdivision shall have adequate building space outside the 100-year floodplain, the floodway, and the channel migration zone.

(2) All subdivisions and short subdivisions shall:

(A) Minimize Flood Damage. Subdivisions and short subdivisions shall be designed to minimize or eliminate flood damage and impacts to floodplain functions and values. Public utilities and facilities that are installed as part of such subdivisions, such as sewer, gas, electrical, and water systems, shall be located and constructed to also minimize flood damage and impacts to floodplain functions and values. Subdivisions should be designed using natural features of the landscape and should not incorporate flood protection changes.

(B) Have Adequate Drainage. Subdivisions and short subdivisions shall have adequate natural surface water drainage in accordance with the Department of Ecology Stormwater Management Manual for Western Washington, as modified by the city, and to reduce exposure to flood hazards; and

(C) Show Flood Areas on Plat Maps. Subdivisions and short subdivisions shall show the 100-year floodplain, floodway, and channel migration zone on the preliminary and final plat and short plat maps and designate such areas as “no build,” when applicable.

(3) Detailed Base Flood Elevation Data. Where detailed base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres, whichever is less.

(g) Alteration of Watercourses. Alteration of natural watercourses shall be avoided, if feasible. If unavoidable, the following provisions shall apply to the alteration:

(1) Habitat Regulations. Watercourse alterations shall only be allowed in accordance with the fish and wildlife habitat conservation areas standards in Chapter 22.97 FMC.

(2) Blockage. Watercourse alteration projects shall not result in blockage of side channels.

(3) Notification. The city shall notify adjacent communities, the state Departments of Ecology and Fish and Wildlife, and the Federal Insurance Administration about the proposed watercourse alteration at least 30 days prior to permit issuance.

(4) Maintenance of Alterations. The applicant shall maintain the altered or relocated portion of the watercourse to ensure that the flood-carrying capacity is not diminished. Maintenance shall be bonded for a period of five years, and be in accordance with an approved maintenance program. (Ord. 1375 § 4, 2005).

22.99.060 Performance standards – Areas of shallow flooding.

Uses in areas of shallow flooding shall adhere to the following standards, in addition to the general standards of FMC 22.99.040 and relevant specific standards of FMC 22.99.050.

(a) Residential Structures. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, one foot or more above the depth number specified in feet on the flood insurance map or at least two feet if no depth number is specified.

(b) Nonresidential Structures. New construction and substantial improvements of nonresidential structures within AO zones shall either:

(1) Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site one foot or more above the depth number specified on the flood insurance map or at least two feet if no depth number is specified; or

(2) Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Following construction of the structure, certifications shall be submitted to the city that record the actual (as-built) elevation to which the structure was floodproofed.

(c) Drainage Paths. All development shall include adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(d) Recreational Vehicles. Recreational vehicles placed on sites within AO zones on the flood insurance map(s) shall meet the requirements of this chapter. (Ord. 1375 § 4, 2005).

22.99.070 Uses and activities prohibited from frequently flooded areas.

(a) Critical Facilities. Critical facilities are prohibited from frequently flooded areas to prevent damage to such facilities, to avoid costs that will be incurred by the public, and to maintain functionality of such facilities during

flood events. If such a prohibition is unreasonable, an allowance for critical facilities in frequently flooded areas may be made with the following specific conditions:

- (1) Construction of new critical facilities shall be permissible within frequently flooded areas if no feasible alternative site is available.
- (2) Critical facilities constructed within frequently flooded areas shall have the lowest floor elevated three feet or more above the level of the base floor elevation (100-year flood).
- (3) Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.
- (4) Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(b) Wells Used for Potable Water. Water wells shall be located on high ground and are prohibited from the floodway.

(c) On-Site Sewage Disposal Systems. On-site sewage disposal systems are prohibited from the floodway, the channel migration zone, and the 10-year floodplain elevation.

(d) Construction in Floodways.

(1) New Construction Certification. Encroachments, including new construction, substantial improvements, fill, and other development, are prohibited within designated floodways unless certified by a registered professional engineer. Such certification shall demonstrate through hydrologic and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.

Small projects that are solely to protect or create fish habitat and designed by a qualified professional may be allowed without certification, if the director determines that the project will not obstruct flood flows. Fish protection projects shall be reviewed on behalf of the city by a qualified professional in the field of hydraulics.

(2) Residential Construction and Reconstruction. Construction and reconstruction of residential structures is prohibited within designated floodways, except for:

(A) Repairs, reconstruction, or improvements to a structure that do not increase the ground floor area; and

(B) Repairs, reconstruction, or improvements to a structure, for which the cost does not exceed 50 percent of the market value of the structure either:

(i) Before the repair or reconstruction is started, or

(ii) If the structure has been damaged and is being restored, before the damage occurred.

Improvement to a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to ensure safe living conditions or to structures identified as historic places may be excluded from the 50 percent.

(3) If subsections (d)(1) and (2) of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions. (Ord. 1375 § 4, 2005).

22.99.080 Variances – Additional considerations for frequently flooded areas.

(a) Additional Variance Considerations. In review of variance requests for activities within frequently flooded areas, the hearing examiner shall consider all technical evaluations, relevant factors, standards specified in this chapter, and:

- (1) The danger to life and property due to flooding, erosion damage, or materials swept onto other lands during flood events;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the proposed use;
 - (3) The importance of the services provided by the proposed use to the community;
 - (4) The necessity to the proposed use of a waterfront location, where applicable, and the availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (7) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (b) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances. Unavoidable impacts to floodplain functions and values shall be mitigated in accordance with the mitigation sequencing order specified in FMC 22.92.190.
- (c) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 1638 § 68, 2019; Ord. 1375 § 4, 2005).

Chapter 22.100 GEOLOGICALLY HAZARDOUS AREAS

Sections:

- 22.100.010 Designation of geologically hazardous areas.
- 22.100.020 Designation of specific hazard areas.
- 22.100.030 Classification of geologically hazardous areas.
- 22.100.040 Mapping of geologically hazardous areas.
- 22.100.050 Activities allowed in geologically hazardous areas.
- 22.100.060 Critical area report – Additional requirements for geologically hazardous areas.
- 22.100.070 Critical area report – Additional technical information requirements for specific hazards.
- 22.100.080 Performance standards – General requirements.
- 22.100.090 Performance standards – Erosion and landslide hazard areas.

22.100.010 Designation of geologically hazardous areas.

Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas:

- (a) Erosion hazard; and
- (b) Landslide hazard.
- (c) Seismic hazard. (Ord. 1375 § 5, 2005).

22.100.020 Designation of specific hazard areas.

(a) Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shoreland and/or stream bank erosion and those areas within a river's channel migration zone.

(b) Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

- (1) Areas of historic failures, such as:

- (A) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

- (B) Those areas mapped by the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

- (C) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey, Washington State Department of Natural Resources, or the Washington Geological Survey's Washington Geologic Information Portal ;

- (2) Areas with all three of the following characteristics:

- (A) Slopes steeper than 15 percent;

- (B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(C) Springs or ground water seepage.

(3) Areas that have shown movement during the Holocene epoch (from 10,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

(4) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(5) Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

(6) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.

(c) Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis. (Ord. 1375 § 5, 2005).

22.100.030 Classification of geologically hazardous areas.

All geologic hazard areas should be classified according to the following categories for each geologic hazard type:

Classification	Documentation and Data Sources
Known or Suspected Risk	Documentation or projection of the hazard by a qualified professional exists.
Risk Unknown	Documentation or projection of the lack of hazard by a qualified professional exists, or data are not available to determine the presence or absence of a geologic hazard.

(Ord. 1375 § 5, 2005).

22.100.040 Mapping of geologically hazardous areas.

(a) The approximate location and extent of geologically hazardous areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:

- (1) U.S. Geological Survey landslide hazard and seismic hazard maps;
- (2) Washington State Department of Natural Resources seismic hazard maps for Western Washington, including its Geologic Information Portal;
- (3) Washington State Department of Natural Resources slope stability maps; and
- (4) Federal Emergency Management Administration flood insurance maps.

(b) These maps are to be used as a guide for the city, project applicants and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 1375 § 5, 2005).

22.100.050 Activities allowed in geologically hazardous areas.

The following activities are allowed in geologically hazardous areas pursuant to FMC 22.92.110:

(a) Erosion and Landslide Hazard Areas. Except as otherwise provided for in the applicable critical area chapters, only those activities approved and permitted consistent with an approved critical area report in accordance with these chapters shall be allowed in erosion or landslide hazard areas. (Ord. 1375 § 5, 2005).

22.100.060 Critical area report – Additional requirements for geologically hazardous areas.

(a) Preparation by a Qualified Professional. A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

(b) Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for geologically hazardous areas:

(1) The project area of the proposed activity; and

(2) All geologically hazardous areas within 200 feet of the project area or that have potential to be affected by the proposal;

(c) Geological Hazards Assessment. A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site- and proposal-related information at a minimum:

(1) Site and Construction Plans. The report shall include a copy of the site plans for the proposal showing:

(A) The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within 200 feet of, or that are likely to impact the proposal;

(B) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;

(C) The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and

(D) Clearing limits; and

(2) Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:

(A) A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;

(B) A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site-specific measurements, tests, investigations, or studies that support the identification of geologically hazardous areas; and

(C) A description of the vulnerability of the site to seismic and other geologic events;

(3) Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and

(4) Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

(d) Incorporation of Previous Study. Where a valid critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.

(e) Mitigation of Long-Term Impacts. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the preexisting conditions following abandonment of the activity. (Ord. 1375 § 5, 2005).

22.100.070 Critical area report – Additional technical information requirements for specific hazards.

In addition to the general critical area report requirements of FMC 22.92.160 and 22.100.060, critical area reports for geologically hazardous areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Erosion and Landslide Hazard Areas. In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

- (1) Site Plan. The critical area report shall include a copy of the site plan for the proposal showing:
 - (A) The height of slope, slope gradient, and cross-section of the project area;
 - (B) The location of springs, seeps, or other surface expressions of ground water on or within 200 feet of the project area or that have potential to be affected by the proposal; and
 - (C) The location and description of surface water runoff features;
- (2) Hazards Analysis. The hazards analysis component of the critical areas report shall specifically include:
 - (A) A description of the extent and type of vegetative cover;
 - (B) A description of subsurface conditions based on data from site-specific explorations;
 - (C) Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
 - (D) An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
 - (E) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event;
 - (F) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on downslope properties;
 - (G) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
 - (H) Recommendations for building siting limitations; and
 - (I) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;
- (3) Geotechnical Engineering Report. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
 - (A) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
 - (B) Recommendations for drainage and subdrainage improvements;

(C) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

(D) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;

(4) Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the Department of Ecology Stormwater Management Manual for Western Washington;

(5) Drainage Plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the Department of Ecology Stormwater Management Manual for Western Washington, as modified by the city. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;

(6) Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and

(7) Monitoring Surface Waters. If the director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the city. (Ord. 1375 § 5, 2005).

22.100.080 Performance standards – General requirements.

(a) Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

(1) Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

(2) Will not adversely impact other critical areas;

(3) Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than predevelopment conditions; and

(4) Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

(b) Critical Facilities Prohibited. Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative. (Ord. 1375 § 5, 2005).

22.100.090 Performance standards – Erosion and landslide hazard areas.

Activities on sites containing erosion or landslide hazards shall meet the standards of FMC 22.100.080 and the specific following requirements:

(a) Buffer Requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.

(1) Minimum Buffer. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater.

(2) Buffer Reduction. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.

(3) Increased Buffer. The buffer may be increased where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

(b) Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:

(1) The development will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;

(2) The development will not decrease slope stability on adjacent properties; and

(3) Such alterations will not adversely impact other critical areas;

(c) Design Standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of the applicable critical areas chapters. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

(1) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

(2) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;

(3) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;

(4) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

(5) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

(6) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

(7) Development shall be designed to minimize impervious lot coverage;

(d) Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;

(e) Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the Washington State Department of Natural Resources;

(f) Utility Lines and Pipes. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located aboveground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

(g) Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

- (1) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge;
- (2) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or
- (3) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

(h) Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:

- (1) Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard area or its buffer.
- (2) Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the city determines that no other feasible alternative exists; and

(i) Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers. (Ord. 1375 § 5, 2005).

March 19, 2026

City of Fircrest Planning Commission
115 Ramsdell Street
Fircrest, WA 98466

Re: 2026 Planning Legislative Priorities (Group 2 of 2) | SBs 5509, 5571, 5290

Dear Planning Commission,

This memorandum has been prepared to support Part 2 of Fircrest’s 2026 Planning Legislative Priorities. This project has been separated into two segments, grouping house bills (HBs) and senate bills (SBs) governing local legislative amendments into more manageable efforts. Planning Commission began assessing “Group 1 of 2” planning legislative priorities at its March 3 regular meeting and will be presented with “Group 2 of 2” at its April 7 regular meeting. This meeting is intended to introduce Planning Commission to the topics of these bills and general areas of the Fircrest Municipal Code (FMC) that will need to be amended to implement each bill.

Fircrest Planning Legislative Priorities, Group 2 of 2, include:

- SB 5509 | Siting of Childcare Centers
- SB 5571 | Exterior Cladding Materials
- SB 5290 | Local Project Review

Table 1 has been prepared to summarize each of the aforementioned bills and offer early indications of broad areas in the FMC that will require amendments.

Table 1
Fircrest Planning Legislative Priorities, Group 2 of 2

HB/SB	RCW	Bill Summary	FMC Changes
<p><u>5509</u> Siting of childcare centers</p>	<p>35A.21 35.21</p>	<p>Cities must allow child care centers, and the conversion of existing buildings into child care centers, as an outright permitted use in all zones except industrial zones, light industrial zones, and open space zones. Cities must allow child care centers in industrial areas via Conditional Use Permit.</p> <p>Cities may impose reasonable restrictions on the use, such as pick-up and drop-off areas.</p> <p>GMA-planning cities are required to adopt provisions by ordinance implementing this law by July 2027.</p> <p>SB 5509 is included as Exhibit A to this memo.</p>	<p>FMC Chapters 22.32, 22.34, 22.36, 22.38, 22.40, 22.42, 22.43, 22.44, 22.46, 22.48, 22.50, and 22.56</p> <ul style="list-style-type: none"> • Add “child care center” as an outright allowed use in each of the aforementioned zones. <p>FMC Chapter 22.98, Definitions</p> <ul style="list-style-type: none"> • Add definition for “child care centers” that matches RCW 43.216.010.
<p><u>5571</u> Exterior cladding materials</p>	<p>35.21.992 35A.21.443</p>	<p>Cities cannot require or exclude exterior cladding materials that are in compliance with the state building code.</p> <p>This limitation does not extend to HOAs, plat communities, structures in historic districts on the national register of historic places, structures designated as historic landmarks, or cities with laws requiring old Bavarian architectural themes.</p> <p>A city that adopts building codes requiring fire-resistant siding materials as protection from wildfire is not in violation of this law. Areas subject to provisions of the international wildland urban interface code adopted by a city are exempt from this requirement.</p> <p>SB 5571 is included as Exhibit B to this memo.</p>	<p>FMC Section 22.64.12, Design Guidelines – Building Materials</p> <ul style="list-style-type: none"> • Include statement that building code-compliant materials are not specifically required or excluded, and that listed materials are either encouraged or discouraged. <p>FMC Chapter 22.98, Definitions</p> <ul style="list-style-type: none"> • Add definition for “exterior cladding”

HB/SB	RCW	Bill Summary	FMC Changes
<p><u>5290, 2418</u> Local project review</p>	<p>36.70B</p>	<p>Related to consolidating local permit review processes:</p> <ul style="list-style-type: none"> • Reduces permit review times to 65, 100, or 170 days based on degree of noticing required. Does not include building permits. Specifies periods which are not counted against the review timelines. • Site plan review cannot include interior remodels (with limited exception) • Refines requirements for Determination of Completeness. Requires permit application forms to specify required application materials. • Obligates NOA within 14 days of Determination of Completeness • Financially penalizes cities for failing to meet review timelines, unless at least 3 specified procedures are in place (Fircrest meets this requirement) • Requires annual reporting on permitting timelines (applies to cities 20,000 or more. Fircrest does not qualify.) <p>The 2025-2026 legislative session passed HB 2418 adds further specificity to RCW 36.70B definitions, procedural requirements, calculated permit timelines, limitations on special purpose or utility districts, and the assignment of a “permit responsible official” for project permit applications who must be the same person as the SEPA Responsible Official. HB 2418 has been passed by the legislature and, as of the date of this memo, is on Governor Ferguson’s desk awaiting his action to either pass the bill into law or veto the bill.</p> <p>SB 5290 is included as Exhibit C to this memo.</p>	<p>FMC Chapter 22.05, Types of Project Permit Applications</p> <ul style="list-style-type: none"> • Add a requirement for Determination of Complete Application more broadly • Remove exemption of Determination of Completeness from listed permits <p>FMC Chapter 22.06, Type I-IV Project Permit Applications</p> <ul style="list-style-type: none"> • Update Determination of Completeness section to align with RCW. Update other related procedural requirements. <p>FMC Section 22.09.008</p> <ul style="list-style-type: none"> • Revise reference to 120-day permit processing time <p>FMC Sections 22.17.009, 22.18.005, and 22.19.007</p> <ul style="list-style-type: none"> • Amend plat-specific approval timelines to align with new RCW <p>Fircrest would need to update its Planning permit application forms to ensure a Determination of Completeness or Incompleteness is supported by instructions on the forms.</p>

Focus of April 7 Meeting

At the regular Planning Commission meeting on April 7, 2026, I will present a summary of each of these bills (now passed into legislation) and describe their effect on the FMC. The intent of the meeting is to familiarize the Planning Commission with these new laws, priming a presentation of recommended FMC amendments at its May meeting which would implement Fircrest Planning Legislative Priorities, Group 2 of 2.

I look forward to discussing this project with Planning Commission at its April 7 meeting!



Kimberly A. Gunderson
Mahoney Planning, LLC

Exhibits:

- A. [SB 5509](#)
- B. [SB 5571](#)
- C. [SB 5290](#)

Exhibit A
April 7, 2026
Fircrest Planning Commission
Planning Legislative Priorities, Group 2 of 2

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5509

Chapter 276, Laws of 2025

69th Legislature
2025 Regular Session

CHILD CARE CENTERS—ZONING

EFFECTIVE DATE: July 27, 2025

Passed by the Senate March 6, 2025
Yeas 42 Nays 7

DENNY HECK

President of the Senate

Passed by the House April 10, 2025
Yeas 95 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 13, 2025 10:51 AM

BOB FERGUSON

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5509** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 14, 2025

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5509

Passed Legislature - 2025 Regular Session

State of Washington 69th Legislature 2025 Regular Session

By Senate Local Government (originally sponsored by Senators Alvarado, Salomon, Bateman, Conway, Nobles, Saldaña, Trudeau, Valdez, and C. Wilson)

READ FIRST TIME 02/14/25.

1 AN ACT Relating to the siting of child care centers; adding a new
2 section to chapter 35.21 RCW; and adding a new section to chapter
3 35A.21 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21
6 RCW to read as follows:

7 (1) Cities and towns must allow child care centers, and the
8 conversion of existing buildings for use as child care centers, as an
9 outright permitted use in all zones except industrial zones, light
10 industrial zones, and open space zones.

11 (2) Cities may impose reasonable restrictions on the permit,
12 including pickup and drop-off areas.

13 (3) Cities that plan under the growth management act and that are
14 required to submit their next comprehensive plan update in 2027
15 pursuant to RCW 36.70A.130 must adopt or amend by ordinance, and
16 incorporate into their development regulations, zoning regulations,
17 and other official controls, the requirements of this section in
18 their next comprehensive plan update. All other cities must implement
19 the requirements of this section within two years of the effective
20 date of this section.

1 (4) Nothing in this section limits a city from allowing child
2 care centers in other zones, including industrial zones or light
3 industrial zones. A city must provide for a conditional use approval
4 of an on-site child care center in industrial or light industrial
5 zones, except in or around high hazard facilities.

6 (5) For the purposes of this section, "child care centers" has
7 the same meaning as in RCW 43.216.010.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 35A.21
9 RCW to read as follows:

10 (1) Code cities and towns must allow child care centers, and the
11 conversion of existing buildings for use as child care centers, as an
12 outright permitted use in all zones except industrial zones, light
13 industrial zones, and open space zones.

14 (2) Code cities may impose reasonable restrictions on the permit,
15 including pickup and drop-off areas.

16 (3) Code cities that plan under the growth management act and
17 that are required to submit their next comprehensive plan update in
18 2027 pursuant to RCW 36.70A.130 must adopt or amend by ordinance, and
19 incorporate into their development regulations, zoning regulations,
20 and other official controls, the requirements of this section in
21 their next comprehensive plan update. All other code cities must
22 implement the requirements of this section within two years of the
23 effective date of this section.

24 (4) Nothing in this section limits a code city from allowing
25 child care centers in other zones, including industrial zones or
26 light industrial zones. A code city must provide for a conditional
27 use approval of an on-site child care center in industrial or light
28 industrial zones, except in or around high hazard facilities.

29 (5) For the purposes of this section, "child care centers" has
30 the same meaning as in RCW 43.216.010.

Passed by the Senate March 6, 2025.

Passed by the House April 10, 2025.

Approved by the Governor May 13, 2025.

Filed in Office of Secretary of State May 14, 2025.

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Exhibit B
April 7, 2026
Fircrest Planning Commission
Planning Legislative Priorities, Group 2 of 2

CERTIFICATION OF ENROLLMENT

SENATE BILL 5571

Chapter 270, Laws of 2025

69th Legislature
2025 Regular Session

EXTERIOR CLADDING MATERIALS—CITIES

EFFECTIVE DATE: July 27, 2025

Passed by the Senate April 24, 2025
Yeas 33 Nays 15

DENNY HECK

President of the Senate

Passed by the House April 23, 2025
Yeas 64 Nays 33

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 13, 2025 10:35 AM

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5571** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 14, 2025

BOB FERGUSON

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 5571

AS AMENDED BY THE HOUSE

Passed Legislature - 2025 Regular Session

State of Washington

69th Legislature

2025 Regular Session

By Senators Bateman and Nobles

Read first time 01/29/25. Referred to Committee on Local Government.

1 AN ACT Relating to regulating exterior cladding materials; adding
2 a new section to chapter 35.21 RCW; adding a new section to chapter
3 35A.21 RCW; and adding a new section to chapter 36.01 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21
6 RCW to read as follows:

7 (1) Except as provided in subsection (3) of this section, a city
8 is prohibited from requiring or excluding exterior cladding materials
9 that are in compliance with the state building code.

10 (2) "Exterior cladding" means a nonload-bearing material attached
11 to the exterior of a building.

12 (3) The limitation in this section does not apply to homeowners'
13 associations governed by chapter 64.38 RCW, plat communities governed
14 by chapter 64.90 RCW, structures in an area designated as a local
15 historic district, structures located in an area designated as a
16 historic district on the national register of historic places,
17 structures designated as a local, state, or national historic
18 landmark, areas subject to provisions of the international wildland
19 urban interface code adopted by a city or town, and any city or town
20 with old world Bavarian architectural themed building requirements in
21 law. Furthermore, a city or town that adopts building codes requiring

1 fire-resistant siding materials as protection from wildfire is not in
2 violation of the provisions of this section.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 35A.21
4 RCW to read as follows:

5 (1) Except as provided in subsection (3) of this section, a code
6 city is prohibited from requiring or excluding exterior cladding
7 materials that are in compliance with the state building code.

8 (2) "Exterior cladding" means a nonload-bearing material attached
9 to the exterior of a building.

10 (3) The limitation in this section does not apply to homeowners'
11 associations governed by chapter 64.38 RCW, plat communities governed
12 by chapter 64.90 RCW, structures in an area designated as a local
13 historic district, structures located in an area designated as a
14 historic district on the national register of historic places,
15 structures designated as a local, state, or national historic
16 landmark, areas subject to provisions of the international wildland
17 urban interface code adopted by a code city, and any code city with
18 old world Bavarian architectural themed building requirements in law.
19 Furthermore, a code city that adopts building codes requiring fire-
20 resistant siding materials as protection from wildfire is not in
21 violation of the provisions of this section.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01
23 RCW to read as follows:

24 (1) Except as provided in subsection (3) of this section, a
25 county is prohibited from requiring or excluding exterior cladding
26 materials that are in compliance with the state building code.

27 (2) "Exterior cladding" means a nonload-bearing material attached
28 to the exterior of a building.

29 (3) The limitation in this section does not apply to homeowners'
30 associations governed by chapter 64.38 RCW, plat communities governed
31 by chapter 64.90 RCW, structures in an area designated as a local
32 historic district, structures located in an area designated as a
33 historic district on the national register of historic places,
34 structures designated as a local, state, or national historic
35 landmark, areas subject to provisions of the international wildland
36 urban interface code adopted by a county, and any structures in a
37 county that are adjacent to a city or code city with old world
38 Bavarian architectural themed building requirements in law.

1 Furthermore, a county that adopts building codes requiring fire-
2 resistant siding materials as protection from wildfire is not in
3 violation of the provisions of this section.

Passed by the Senate April 24, 2025.

Passed by the House April 23, 2025.

Approved by the Governor May 13, 2025.

Filed in Office of Secretary of State May 14, 2025.

--- END ---

Exhibit C
April 7, 2026
Fircrest Planning Commission
Planning Legislative Priorities, Group 2 of 2

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE SENATE BILL 5290

Chapter 338, Laws of 2023

68th Legislature
2023 Regular Session

PROJECT PERMITS—LOCAL PROJECT REVIEW—VARIOUS PROVISIONS

EFFECTIVE DATE: July 23, 2023—Except for section 7, which takes effect January 1, 2025.

Passed by the Senate April 17, 2023
Yeas 47 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 10, 2023
Yeas 98 Nays 0

LAURIE JINKINS

Speaker of the House of Representatives

Approved May 8, 2023 1:17 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5290** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 10, 2023

Secretary of State
State of Washington

SECOND SUBSTITUTE SENATE BILL 5290

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Mullet, Kuderer, Fortunato, Lias, Nobles, Saldaña, and C. Wilson; by request of Office of the Governor)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to consolidating local permit review processes;
2 amending RCW 36.70B.140, 36.70B.020, 36.70B.070, 36.70B.080, and
3 36.70B.160; reenacting and amending RCW 36.70B.110; adding new
4 sections to chapter 36.70B RCW; creating new sections; and providing
5 an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 36.70B.140 and 1995 c 347 s 418 are each amended to
8 read as follows:

9 (1) A local government by ordinance or resolution may exclude the
10 following project permits from the provisions of RCW 36.70B.060
11 through 36.70B.090 and 36.70B.110 through 36.70B.130: Landmark
12 designations, street vacations, or other approvals relating to the
13 use of public areas or facilities, or other project permits, whether
14 administrative or quasi-judicial, that the local government by
15 ordinance or resolution has determined present special circumstances
16 that warrant a review process or time periods for approval which are
17 different from that provided in RCW 36.70B.060 through 36.70B.090 and
18 36.70B.110 through 36.70B.130.

19 (2) A local government by ordinance or resolution also may
20 exclude the following project permits from the provisions of RCW
21 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary

1 adjustments and building and other construction permits, or similar
2 administrative approvals, categorically exempt from environmental
3 review under chapter 43.21C RCW, or for which environmental review
4 has been completed in connection with other project permits.

5 (3) A local government must exclude project permits for interior
6 alterations from site plan review, provided that the interior
7 alterations do not result in the following:

8 (a) Additional sleeping quarters or bedrooms;

9 (b) Nonconformity with federal emergency management agency
10 substantial improvement thresholds; or

11 (c) Increase the total square footage or valuation of the
12 structure thereby requiring upgraded fire access or fire suppression
13 systems.

14 (4) Nothing in this section exempts interior alterations from
15 otherwise applicable building, plumbing, mechanical, or electrical
16 codes.

17 (5) For purposes of this section, "interior alterations" include
18 construction activities that do not modify the existing site layout
19 or its current use and involve no exterior work adding to the
20 building footprint.

21 NEW SECTION. Sec. 2. A new section is added to chapter 36.70B
22 RCW to read as follows:

23 (1) Subject to the availability of funds appropriated for this
24 specific purpose, the department of commerce must establish a
25 consolidated permit review grant program. The department may award
26 grants to any local government that provides, by ordinance,
27 resolution, or other action, a commitment to the following building
28 permit review consolidation requirements:

29 (a) Issuing final decisions on residential permit applications
30 within 45 business days or 90 calendar days.

31 (i) To achieve permit review within the stated time periods, a
32 local government must provide consolidated review for building permit
33 applications. This may include an initial technical peer review of
34 the application for conformity with the requirements of RCW
35 36.70B.070 by all departments, divisions, and sections of the local
36 government with jurisdiction over the project.

37 (ii) A local government may contract with a third-party business
38 to conduct the consolidated permit review or as additional inspection

1 staff. Any funds expended for such a contract may be eligible for
2 reimbursement under this act.

3 (iii) Local governments are authorized to use grant funds to
4 contract outside assistance to audit their development regulations to
5 identify and correct barriers to housing development.

6 (b) Establishing an application fee structure that would allow
7 the jurisdiction to continue providing consolidated permit review
8 within 45 business days or 90 calendar days.

9 (i) A local government may consult with local building
10 associations to develop a reasonable fee system.

11 (ii) A local government must determine, no later than July 1,
12 2024, the specific fee structure needed to provide permit review
13 within the time periods specified in this subsection (1)(b).

14 (2) A jurisdiction that is awarded a grant under this section
15 must provide a quarterly report to the department of commerce. The
16 report must include the average and maximum time for permit review
17 during the jurisdiction's participation in the grant program.

18 (3) If a jurisdiction is unable to successfully meet the terms
19 and conditions of the grant, the jurisdiction must enter a 90-day
20 probationary period. If the jurisdiction is not able to meet the
21 requirements of this section by the end of the probationary period,
22 the jurisdiction is no longer eligible to receive grants under this
23 section.

24 (4) For the purposes of this section, "residential permit" means
25 a permit issued by a city or county that satisfies the conditions of
26 RCW 19.27.015(5) and is within the scope of the international
27 residential code, as adopted in accordance with chapter 19.27 RCW.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70B
29 RCW to read as follows:

30 (1) Subject to the availability of funds appropriated for this
31 specific purpose, the department of commerce must establish a grant
32 program for local governments to update their permit review process
33 from paper filing systems to software systems capable of processing
34 digital permit applications, virtual inspections, electronic review,
35 and with capacity for video storage.

36 (2) The department of commerce may only provide a grant under
37 this section to a city if the city allows for the development of at
38 least two units per lot on all lots zoned predominantly for
39 residential use within its jurisdiction.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70B
2 RCW to read as follows:

3 (1) Subject to the availability of amounts appropriated for this
4 specific purpose, the department of commerce must convene a digital
5 permitting process work group to examine potential license and
6 permitting software for local governments to encourage streamlined
7 and efficient permit review.

8 (2) The department of commerce, in consultation with the
9 association of Washington cities and Washington state association of
10 counties, shall appoint members to the work group representing groups
11 including but not limited to:

- 12 (a) Cities and counties;
- 13 (b) Building industries; and
- 14 (c) Building officials.

15 (3) The department of commerce must convene the first meeting of
16 the work group by August 1, 2023. The department must submit a final
17 report to the governor and the appropriate committees of the
18 legislature by August 1, 2024. The final report must:

- 19 (a) Evaluate the existing need for digital permitting systems,
20 including impacts on existing digital permitting systems that are
21 already in place;
- 22 (b) Review barriers preventing local jurisdictions from accessing
23 or adopting digital permitting systems;
- 24 (c) Evaluate the benefits and costs associated with a statewide
25 permitting software system; and
- 26 (d) Provide budgetary, administrative policy, and legislative
27 recommendations to increase the adoption of or establish a statewide
28 system of digital permit review.

29 **Sec. 5.** RCW 36.70B.020 and 1995 c 347 s 402 are each amended to
30 read as follows:

31 Unless the context clearly requires otherwise, the definitions in
32 this section apply throughout this chapter.

33 (1) "Closed record appeal" means an administrative appeal on the
34 record to a local government body or officer, including the
35 legislative body, following an open record hearing on a project
36 permit application when the appeal is on the record with no or
37 limited new evidence or information allowed to be submitted and only
38 appeal argument allowed.

39 (2) "Local government" means a county, city, or town.

1 (3) "Open record hearing" means a hearing, conducted by a single
2 hearing body or officer authorized by the local government to conduct
3 such hearings, that creates the local government's record through
4 testimony and submission of evidence and information, under
5 procedures prescribed by the local government by ordinance or
6 resolution. An open record hearing may be held prior to a local
7 government's decision on a project permit to be known as an "open
8 record predecision hearing." An open record hearing may be held on an
9 appeal, to be known as an "open record appeal hearing," if no open
10 record predecision hearing has been held on the project permit.

11 (4) "Project permit" or "project permit application" means any
12 land use or environmental permit or license required from a local
13 government for a project action, including but not limited to
14 (~~building permits,~~) subdivisions, binding site plans, planned unit
15 developments, conditional uses, shoreline substantial development
16 permits, site plan review, permits or approvals required by critical
17 area ordinances, site-specific rezones (~~authorized by a~~
18 ~~comprehensive plan or subarea plan~~) which do not require a
19 comprehensive plan amendment, but excluding the adoption or amendment
20 of a comprehensive plan, subarea plan, or development regulations
21 except as otherwise specifically included in this subsection.

22 (5) "Public meeting" means an informal meeting, hearing,
23 workshop, or other public gathering of people to obtain comments from
24 the public or other agencies on a proposed project permit prior to
25 the local government's decision. A public meeting may include, but is
26 not limited to, a design review or architectural control board
27 meeting, a special review district or community council meeting, or a
28 scoping meeting on a draft environmental impact statement. A public
29 meeting does not include an open record hearing. The proceedings at a
30 public meeting may be recorded and a report or recommendation may be
31 included in the local government's project permit application file.

32 **Sec. 6.** RCW 36.70B.070 and 1995 c 347 s 408 are each amended to
33 read as follows:

34 (1) (a) Within (~~twenty-eight~~) 28 days after receiving a project
35 permit application, a local government planning pursuant to RCW
36 36.70A.040 shall (~~mail or~~) provide (~~in person~~) a written
37 determination to the applicant(~~, stating~~).

38 (b) The written determination must state either:

39 (~~(a)~~) (i) That the application is complete; or

1 ~~((b))~~ (ii) That the application is incomplete and that the
2 procedural submission requirements of the local government have not
3 been met. The determination shall outline what is necessary to make
4 the application procedurally complete.

5 (c) The number of days shall be calculated by counting every
6 calendar day.

7 (d) To the extent known by the local government, the local
8 government shall identify other agencies of local, state, or federal
9 governments that may have jurisdiction over some aspect of the
10 application.

11 (2) A project permit application is complete for purposes of this
12 section when it meets the procedural submission requirements of the
13 local government ~~((and is sufficient for continued processing even~~
14 ~~though additional information may be required or project~~
15 ~~modifications may be undertaken subsequently)), as outlined on the
16 project permit application. Additional information or studies may be
17 required or project modifications may be undertaken subsequent to the
18 procedural review of the application by the local government. The
19 determination of completeness shall not preclude the local government
20 from requesting additional information or studies either at the time
21 of the notice of completeness or subsequently if new information is
22 required or substantial changes in the proposed action occur.
23 However, if the procedural submission requirements, as outlined on
24 the project permit application have been provided, the need for
25 additional information or studies may not preclude a completeness
26 determination.~~

27 (3) The determination of completeness may include or be combined
28 with the following ~~((as optional information))~~:

29 (a) A preliminary determination of those development regulations
30 that will be used for project mitigation;

31 (b) A preliminary determination of consistency, as provided under
32 RCW 36.70B.040; ~~((or))~~

33 (c) Other information the local government chooses to include; or

34 (d) The notice of application pursuant to the requirements in RCW
35 36.70B.110.

36 (4) (a) An application shall be deemed procedurally complete on
37 the 29th day after receiving a project permit application under this
38 section if the local government does not provide a written
39 determination to the applicant that the application is procedurally
40 incomplete as provided in subsection (1) (b) (ii) of this section. When

1 the local government does not provide a written determination, they
2 may still seek additional information or studies as provided for in
3 subsection (2) of this section.

4 (b) Within (~~fourteen~~) 14 days after an applicant has submitted
5 to a local government additional information identified by the local
6 government as being necessary for a complete application, the local
7 government shall notify the applicant whether the application is
8 complete or what additional information is necessary.

9 (c) The notice of application shall be provided within 14 days
10 after the determination of completeness pursuant to RCW 36.70B.110.

11 **Sec. 7.** RCW 36.70B.080 and 2004 c 191 s 2 are each amended to
12 read as follows:

13 (1) (a) Development regulations adopted pursuant to RCW 36.70A.040
14 must establish and implement time periods for local government
15 actions for each type of project permit application and provide
16 timely and predictable procedures to determine whether a completed
17 project permit application meets the requirements of those
18 development regulations. The time periods for local government
19 actions for each type of complete project permit application or
20 project type should not exceed (~~one hundred twenty days, unless the~~
21 ~~local government makes written findings that a specified amount of~~
22 ~~additional time is needed to process specific complete project permit~~
23 ~~applications or project types)) those specified in this section.~~

24 (~~The~~) (b) For project permits submitted after January 1, 2025,
25 the development regulations must, for each type of permit
26 application, specify the contents of a completed project permit
27 application necessary for the complete compliance with the time
28 periods and procedures.

29 (~~2~~) (c) A jurisdiction may exclude certain permit types and
30 timelines for processing project permit applications as provided for
31 in RCW 36.70B.140.

32 (d) The time periods for local government action to issue a final
33 decision for each type of complete project permit application or
34 project type subject to this chapter should not exceed the following
35 time periods unless modified by the local government pursuant to this
36 section or RCW 36.70B.140:

37 (i) For project permits which do not require public notice under
38 RCW 36.70B.110, a local government must issue a final decision within
39 65 days of the determination of completeness under RCW 36.70B.070;

1 (ii) For project permits which require public notice under RCW
2 36.70B.110, a local government must issue a final decision within 100
3 days of the determination of completeness under RCW 36.70B.070; and

4 (iii) For project permits which require public notice under RCW
5 36.70B.110 and a public hearing, a local government must issue a
6 final decision within 170 days of the determination of completeness
7 under RCW 36.70B.070.

8 (e) A jurisdiction may modify the provisions in (d) of this
9 subsection to add permit types not identified, change the permit
10 names or types in each category, address how consolidated review time
11 periods may be different than permits submitted individually, and
12 provide for how projects of a certain size or type may be
13 differentiated, including by differentiating between residential and
14 nonresidential permits. Unless otherwise provided for the
15 consolidated review of more than one permit, the time period for a
16 final decision shall be the longest of the permit time periods
17 identified in (d) of this subsection or as amended by a local
18 government.

19 (f) If a local government does not adopt an ordinance or
20 resolution modifying the provisions in (d) of this subsection, the
21 time periods in (d) of this subsection apply.

22 (g) The number of days an application is in review with the
23 county or city shall be calculated from the day completeness is
24 determined under RCW 36.70B.070 to the date a final decision is
25 issued on the project permit application. The number of days shall be
26 calculated by counting every calendar day and excluding the following
27 time periods:

28 (i) Any period between the day that the county or city has
29 notified the applicant, in writing, that additional information is
30 required to further process the application and the day when
31 responsive information is resubmitted by the applicant;

32 (ii) Any period after an applicant informs the local government,
33 in writing, that they would like to temporarily suspend review of the
34 project permit application until the time that the applicant notifies
35 the local government, in writing, that they would like to resume the
36 application. A local government may set conditions for the temporary
37 suspension of a permit application; and

38 (iii) Any period after an administrative appeal is filed until
39 the administrative appeal is resolved and any additional time period
40 provided by the administrative appeal has expired.

1 (h) The time periods for a local government to process a permit
2 shall start over if an applicant proposes a change in use that adds
3 or removes commercial or residential elements from the original
4 application that would make the application fail to meet the
5 determination of procedural completeness for the new use, as required
6 by the local government under RCW 36.70B.070.

7 (i) If, at any time, an applicant informs the local government,
8 in writing, that the applicant would like to temporarily suspend the
9 review of the project for more than 60 days, or if an applicant is
10 not responsive for more than 60 consecutive days after the county or
11 city has notified the applicant, in writing, that additional
12 information is required to further process the application, an
13 additional 30 days may be added to the time periods for local
14 government action to issue a final decision for each type of project
15 permit that is subject to this chapter. Any written notice from the
16 local government to the applicant that additional information is
17 required to further process the application must include a notice
18 that nonresponsiveness for 60 consecutive days may result in 30 days
19 being added to the time for review. For the purposes of this
20 subsection, "nonresponsiveness" means that an applicant is not making
21 demonstrable progress on providing additional requested information
22 to the local government, or that there is no ongoing communication
23 from the applicant to the local government on the applicant's ability
24 or willingness to provide the additional information.

25 (j) Annual amendments to the comprehensive plan are not subject
26 to the requirements of this section.

27 (k) A county's or city's adoption of a resolution or ordinance to
28 implement this subsection shall not be subject to appeal under
29 chapter 36.70A RCW unless the resolution or ordinance modifies the
30 time periods provided in (d) of this subsection by providing for a
31 review period of more than 170 days for any project permit.

32 (l)(i) When permit time periods provided for in (d) of this
33 subsection, as may be amended by a local government, and as may be
34 extended as provided for in (i) of this subsection, are not met, a
35 portion of the permit fee must be refunded to the applicant as
36 provided in this subsection. A local government may provide for the
37 collection of only 80 percent of a permit fee initially, and for the
38 collection of the remaining balance if the permitting time periods
39 are met. The portion of the fee refunded for missing time periods
40 shall be:

1 (A) 10 percent if the final decision of the project permit
2 application was made after the applicable deadline but the period
3 from the passage of the deadline to the time of issuance of the final
4 decision did not exceed 20 percent of the original time period; or

5 (B) 20 percent if the period from the passage of the deadline to
6 the time of the issuance of the final decision exceeded 20 percent of
7 the original time period.

8 (ii) Except as provided in RCW 36.70B.160, the provisions in
9 subsection (1)(i) of this section are not applicable to cities and
10 counties which have implemented at least three of the options in RCW
11 36.70B.160(1) (a) through (j) at the time an application is deemed
12 procedurally complete.

13 (2)(a) Counties subject to the requirements of RCW 36.70A.215 and
14 the cities within those counties that have populations of at least
15 ((~~twenty thousand~~)) 20,000 must, for each type of permit application,
16 identify the total number of project permit applications for which
17 decisions are issued according to the provisions of this chapter. For
18 each type of project permit application identified, these counties
19 and cities must establish and implement a deadline for issuing a
20 notice of final decision as required by subsection (1) of this
21 section and minimum requirements for applications to be deemed
22 complete under RCW 36.70B.070 as required by subsection (1) of this
23 section.

24 (b) Counties and cities subject to the requirements of this
25 subsection also must prepare an annual performance report((s)) that
26 ((~~include, at a minimum, the following information for each type of~~
27 ~~project permit application identified in accordance with the~~
28 ~~requirements of (a) of this subsection;~~

29 ~~(i) Total number of complete applications received during the~~
30 ~~year;~~

31 ~~(ii) Number of complete applications received during the year for~~
32 ~~which a notice of final decision was issued before the deadline~~
33 ~~established under this subsection;~~

34 ~~(iii) Number of applications received during the year for which a~~
35 ~~notice of final decision was issued after the deadline established~~
36 ~~under this subsection;~~

37 ~~(iv) Number of applications received during the year for which an~~
38 ~~extension of time was mutually agreed upon by the applicant and the~~
39 ~~county or city;~~

1 ~~(v) Variance of actual performance, excluding applications for~~
2 ~~which mutually agreed time extensions have occurred, to the deadline~~
3 ~~established under this subsection during the year; and~~

4 ~~(vi) The mean processing time and the number standard deviation~~
5 ~~from the mean.~~

6 ~~(c) Counties and cities subject to the requirements of this~~
7 ~~subsection must:~~

8 ~~(i) Provide notice of and access to the annual performance~~
9 ~~reports through the county's or city's website; and~~

10 ~~(ii) Post electronic facsimiles of the annual performance reports~~
11 ~~through the county's or city's website. Postings on a county's or~~
12 ~~city's website indicating that the reports are available by~~
13 ~~contacting the appropriate county or city department or official do~~
14 ~~not comply with the requirements of this subsection.~~

15 ~~If a county or city subject to the requirements of this~~
16 ~~subsection does not maintain a website, notice of the reports must be~~
17 ~~given by reasonable methods, including but not limited to those~~
18 ~~methods specified in RCW 36.70B.110(4).~~

19 ~~(3)) includes information outlining time periods for certain~~
20 ~~permit types associated with housing. The report must provide:~~

21 ~~(i) Permit time periods for certain permit processes in the~~
22 ~~county or city in relation to those established under this section,~~
23 ~~including whether the county or city has established shorter time~~
24 ~~periods than those provided in this section;~~

25 ~~(ii) The total number of decisions issued during the year for the~~
26 ~~following permit types: Preliminary subdivisions, final subdivisions,~~
27 ~~binding site plans, permit processes associated with the approval of~~
28 ~~multifamily housing, and construction plan review for each of these~~
29 ~~permit types when submitted separately;~~

30 ~~(iii) The total number of decisions for each permit type which~~
31 ~~included consolidated project permit review, such as concurrent~~
32 ~~review of a rezone or construction plans;~~

33 ~~(iv) The average number of days from a submittal to a decision~~
34 ~~being issued for the project permit types listed in subsection~~
35 ~~(2)(a)(ii) of this section. This shall be calculated from the day~~
36 ~~completeness is determined under RCW 36.70B.070 to the date a~~
37 ~~decision is issued on the application. The number of days shall be~~
38 ~~calculated by counting every calendar day;~~

39 ~~(v) The total number of days each project permit application of a~~
40 ~~type listed in subsection (2)(a)(ii) of this section was in review~~

1 with the county or city. This shall be calculated from the day
2 completeness is determined under RCW 36.70B.070 to the date a final
3 decision is issued on the application. The number of days shall be
4 calculated by counting every calendar day. The days the application
5 is in review with the county or city does not include the time
6 periods in subsection (1)(g)(i)-(iii) of this section;

7 (vi) The total number of days that were excluded from the time
8 period calculation under subsection (1)(g)(i)-(iii) of this section
9 for each project permit application of a type listed in subsection
10 (2)(a)(ii) of this section.

11 (c) Counties and cities subject to the requirements of this
12 subsection must:

13 (i) Post the annual performance report through the county's or
14 city's website; and

15 (ii) Submit the annual performance report to the department of
16 commerce by March 1st each year.

17 (d) No later than July 1st each year, the department of commerce
18 shall publish a report which includes the annual performance report
19 data for each county and city subject to the requirements of this
20 subsection and a list of those counties and cities whose time periods
21 are shorter than those provided for in this section.

22 The annual report must also include key metrics and findings from
23 the information collected.

24 (e) The initial annual report required under this subsection must
25 be submitted to the department of commerce by March 1, 2025, and must
26 include information from permitting in 2024.

27 (3) Nothing in this section prohibits a county or city from
28 extending a deadline for issuing a decision for a specific project
29 permit application for any reasonable period of time mutually agreed
30 upon by the applicant and the local government.

31 ~~((4) The department of community, trade, and economic~~
32 ~~development shall work with the counties and cities to review the~~
33 ~~potential implementation costs of the requirements of subsection (2)~~
34 ~~of this section. The department, in cooperation with the local~~
35 ~~governments, shall prepare a report summarizing the projected costs,~~
36 ~~together with recommendations for state funding assistance for~~
37 ~~implementation costs, and provide the report to the governor and~~
38 ~~appropriate committees of the senate and house of representatives by~~
39 ~~January 1, 2005.))~~

1 **Sec. 8.** RCW 36.70B.160 and 1995 c 347 s 420 are each amended to
2 read as follows:

3 (1) Each local government is encouraged to adopt further project
4 review and code provisions to provide prompt, coordinated review and
5 ensure accountability to applicants and the public(~~(, including~~
6 ~~expedited review for project permit applications for projects that~~
7 ~~are consistent with adopted development regulations and within the~~
8 ~~capacity of systemwide infrastructure improvements)) by:~~

9 (a) Expediting review for project permit applications for
10 projects that are consistent with adopted development regulations;

11 (b) Imposing reasonable fees, consistent with RCW 82.02.020, on
12 applicants for permits or other governmental approvals to cover the
13 cost to the city, town, county, or other municipal corporation of
14 processing applications, inspecting and reviewing plans, or preparing
15 detailed statements required by chapter 43.21C RCW. The fees imposed
16 may not include a fee for the cost of processing administrative
17 appeals. Nothing in this subsection limits the ability of a county or
18 city to impose a fee for the processing of administrative appeals as
19 otherwise authorized by law;

20 (c) Entering into an interlocal agreement with another
21 jurisdiction to share permitting staff and resources;

22 (d) Maintaining and budgeting for on-call permitting assistance
23 for when permit volumes or staffing levels change rapidly;

24 (e) Having new positions budgeted that are contingent on
25 increased permit revenue;

26 (f) Adopting development regulations which only require public
27 hearings for permit applications that are required to have a public
28 hearing by statute;

29 (g) Adopting development regulations which make preapplication
30 meetings optional rather than a requirement of permit application
31 submittal;

32 (h) Adopting development regulations which make housing types an
33 outright permitted use in all zones where the housing type is
34 permitted;

35 (i) Adopting a program to allow for outside professionals with
36 appropriate professional licenses to certify components of
37 applications consistent with their license; or

38 (j) Meeting with the applicant to attempt to resolve outstanding
39 issues during the review process. The meeting must be scheduled
40 within 14 days of a second request for corrections during permit

1 review. If the meeting cannot resolve the issues and a local
2 government proceeds with a third request for additional information
3 or corrections, the local government must approve or deny the
4 application upon receiving the additional information or corrections.

5 (2) (a) After January 1, 2026, a county or city must adopt
6 additional measures under subsection (1) of this section at the time
7 of its next comprehensive plan update under RCW 36.70A.130 if it
8 meets the following conditions:

9 (i) The county or city has adopted at least three project review
10 and code provisions under subsection (1) of this section more than
11 five years prior; and

12 (ii) The county or city is not meeting the permitting deadlines
13 established in RCW 36.70B.080 at least half of the time over the
14 period since its most recent comprehensive plan update under RCW
15 36.70A.130.

16 (b) A city or county that is required to adopt new measures under
17 (a) of this subsection but fails to do so becomes subject to the
18 provisions of RCW 36.70B.080(1)(1), notwithstanding RCW
19 36.70B.080(1)(1)(ii).

20 ~~((2))~~ (3) Nothing in this chapter is intended or shall be
21 construed to prevent a local government from requiring a
22 preapplication conference or a public meeting by rule, ordinance, or
23 resolution.

24 ~~((3))~~ (4) Each local government shall adopt procedures to
25 monitor and enforce permit decisions and conditions.

26 ~~((4))~~ (5) Nothing in this chapter modifies any independent
27 statutory authority for a government agency to appeal a project
28 permit issued by a local government.

29 NEW SECTION. Sec. 9. A new section is added to chapter 36.70B
30 RCW to read as follows:

31 (1) The department of commerce shall develop and provide
32 technical assistance and guidance to counties and cities in setting
33 fee structures under RCW 36.70B.160(1) to ensure that the fees are
34 reasonable and sufficient to recover true costs. The guidance must
35 include information on how to utilize growth factors or other
36 measures to reflect cost increases over time.

37 (2) When providing technical assistance under subsection (1) of
38 this section, the department of commerce must prioritize local

1 governments that have implemented at least three of the options in
2 RCW 36.70B.160(1).

3 **Sec. 10.** RCW 36.70B.110 and 1997 c 429 s 48 and 1997 c 396 s 1
4 are each reenacted and amended to read as follows:

5 (1) Not later than April 1, 1996, a local government planning
6 under RCW 36.70A.040 shall provide a notice of application to the
7 public and the departments and agencies with jurisdiction as provided
8 in this section. If a local government has made a threshold
9 determination under chapter 43.21C RCW concurrently with the notice
10 of application, the notice of application may be combined with the
11 threshold determination and the scoping notice for a determination of
12 significance. Nothing in this section prevents a determination of
13 significance and scoping notice from being issued prior to the notice
14 of application. Nothing in this section or this chapter prevents a
15 lead agency, when it is a project proponent or is funding a project,
16 from conducting its review under chapter 43.21C RCW or from allowing
17 appeals of procedural determinations prior to submitting a project
18 permit (~~(application)~~).

19 (2) The notice of application shall be provided within
20 (~~(fourteen)~~) 14 days after the determination of completeness as
21 provided in RCW 36.70B.070 and, except as limited by the provisions
22 of subsection (4)(b) of this section, (~~(shall)~~) must include the
23 following in whatever sequence or format the local government deems
24 appropriate:

25 (a) The date of application, the date of the notice of completion
26 for the application, and the date of the notice of application;

27 (b) A description of the proposed project action and a list of
28 the project permits included in the application and, if applicable, a
29 list of any studies requested under RCW 36.70B.070 (~~(or 36.70B.090)~~);

30 (c) The identification of other permits not included in the
31 application to the extent known by the local government;

32 (d) The identification of existing environmental documents that
33 evaluate the proposed project, and, if not otherwise stated on the
34 document providing the notice of application, such as a city land use
35 bulletin, the location where the application and any studies can be
36 reviewed;

37 (e) A statement of the public comment period, which shall be not
38 less than fourteen nor more than thirty days following the date of
39 notice of application, and statements of the right of any person to

1 comment on the application, receive notice of and participate in any
2 hearings, request a copy of the decision once made, and any appeal
3 rights. A local government may accept public comments at any time
4 prior to the closing of the record of an open record predecision
5 hearing, if any, or, if no open record predecision hearing is
6 provided, prior to the decision on the project permit;

7 (f) The date, time, place, and type of hearing, if applicable and
8 scheduled at the date of notice of the application;

9 (g) A statement of the preliminary determination, if one has been
10 made at the time of notice, of those development regulations that
11 will be used for project mitigation and of consistency as provided in
12 RCW 36.70B.030(2) and 36.70B.040; and

13 (h) Any other information determined appropriate by the local
14 government.

15 (3) If an open record predecision hearing is required for the
16 requested project permits, the notice of application shall be
17 provided at least fifteen days prior to the open record hearing.

18 (4) A local government shall use reasonable methods to give the
19 notice of application to the public and agencies with jurisdiction
20 and may use its existing notice procedures. A local government may
21 use different types of notice for different categories of project
22 permits or types of project actions. If a local government by
23 resolution or ordinance does not specify its method of public notice,
24 the local government shall use the methods provided for in (a) and
25 (b) of this subsection. Examples of reasonable methods to inform the
26 public are:

27 (a) Posting the property for site-specific proposals;

28 (b) Publishing notice, including at least the project location,
29 description, type of permit(s) required, comment period dates, and
30 location where the notice of application required by subsection (2)
31 of this section and the complete application may be reviewed, in the
32 newspaper of general circulation in the general area where the
33 proposal is located or in a local land use newsletter published by
34 the local government;

35 (c) Notifying public or private groups with known interest in a
36 certain proposal or in the type of proposal being considered;

37 (d) Notifying the news media;

38 (e) Placing notices in appropriate regional or neighborhood
39 newspapers or trade journals;

1 (f) Publishing notice in agency newsletters or sending notice to
2 agency mailing lists, either general lists or lists for specific
3 proposals or subject areas; and

4 (g) Mailing to neighboring property owners.

5 (5) A notice of application shall not be required for project
6 permits that are categorically exempt under chapter 43.21C RCW,
7 unless an open record predecision hearing is required or an open
8 record appeal hearing is allowed on the project permit decision.

9 (6) A local government shall integrate the permit procedures in
10 this section with ~~((its))~~ environmental review under chapter 43.21C
11 RCW as follows:

12 (a) Except for a threshold determination and except as otherwise
13 expressly allowed in this section, the local government may not issue
14 a decision or a recommendation on a project permit until the
15 expiration of the public comment period on the notice of application.

16 (b) If an open record predecision hearing is required, the local
17 government shall issue its threshold determination at least fifteen
18 days prior to the open record predecision hearing.

19 (c) Comments shall be as specific as possible.

20 (d) A local government is not required to provide for
21 administrative appeals of its threshold determination. If provided,
22 an administrative appeal ~~((shall))~~ must be filed within fourteen days
23 after notice that the determination has been made and is appealable.
24 Except as otherwise expressly provided in this section, the appeal
25 hearing on a threshold determination ~~((of nonsignificance shall))~~
26 must be consolidated with any open record hearing on the project
27 permit.

28 (7) At the request of the applicant, a local government may
29 combine any hearing on a project permit with any hearing that may be
30 held by another local, state, regional, federal, or other agency, if:

31 (a) The hearing is held within the geographic boundary of the
32 local government; and

33 (b) ~~((The joint hearing can be held within the time periods
34 specified in RCW 36.70B.090 or the))~~ The applicant agrees to the
35 schedule in the event that additional time is needed in order to
36 combine the hearings. All agencies of the state of Washington,
37 including municipal corporations and counties participating in a
38 combined hearing, are hereby authorized to issue joint hearing
39 notices and develop a joint format, select a mutually acceptable
40 hearing body or officer, and take such other actions as may be

1 necessary to hold joint hearings consistent with each of their
2 respective statutory obligations.

3 (8) All state and local agencies shall cooperate to the fullest
4 extent possible with the local government in holding a joint hearing
5 if requested to do so, as long as:

6 (a) The agency is not expressly prohibited by statute from doing
7 so;

8 (b) Sufficient notice of the hearing is given to meet each of the
9 agencies' adopted notice requirements as set forth in statute,
10 ordinance, or rule; and

11 (c) The agency has received the necessary information about the
12 proposed project from the applicant to hold its hearing at the same
13 time as the local government hearing.

14 (9) A local government is not required to provide for
15 administrative appeals. If provided, an administrative appeal of the
16 project decision and of any environmental determination issued at the
17 same time as the project decision, shall be filed within fourteen
18 days after the notice of the decision or after other notice that the
19 decision has been made and is appealable. The local government shall
20 extend the appeal period for an additional seven days, if state or
21 local rules adopted pursuant to chapter 43.21C RCW allow public
22 comment on a determination of nonsignificance issued as part of the
23 appealable project permit decision.

24 (10) The applicant for a project permit is deemed to be a
25 participant in any comment period, open record hearing, or closed
26 record appeal.

27 (11) Each local government planning under RCW 36.70A.040 shall
28 adopt procedures for administrative interpretation of its development
29 regulations.

30 NEW SECTION. **Sec. 11.** The department of commerce shall develop
31 a template for counties and cities subject to the requirements in RCW
32 36.70B.080, which will be utilized for reporting data.

33 NEW SECTION. **Sec. 12.** The department of commerce shall develop
34 a plan to provide local governments with appropriately trained staff
35 to provide temporary support or hard to find expertise for timely
36 processing of residential housing permit applications. The plan shall
37 include consideration of how local governments can be provided with
38 staff that have experience with providing substitute staff support or

1 that possess expertise in permitting policies and regulations in the
2 local government's geographic area or with jurisdictions of the local
3 government's size or population. The plan and a proposal for
4 implementation shall be presented to the legislature by December 1,
5 2023.

6 NEW SECTION. **Sec. 13.** Section 7 of this act takes effect
7 January 1, 2025.

Passed by the Senate April 17, 2023.

Passed by the House April 10, 2023.

Approved by the Governor May 8, 2023.

Filed in Office of Secretary of State May 10, 2023.

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