

Chapter 37

CRITICAL AREAS

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37.010 User guide.

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or

its buffer unless such alteration is in compliance with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in Section 37.050.

Maps of known critical areas are maintained by the city. However, the presence, location and boundaries of all critical areas are not known. A site-specific analysis may be required to determine the presence, location and classification of critical areas. (Ord. 2909-06 § 1, 2006)

37.020 Purpose.

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to designate, classify and protect the critical areas of the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;

B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;

C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;

D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:

1. Unnecessary maintenance and replacement of public facilities,

2. Publicly funded mitigation of avoidable impacts,

3. Public costs for emergency rescue and relief operations where the causes are avoidable, or

4. Degradation of the natural environment;

E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;

F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals; and

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 20.04 of the Everett Municipal Code, the city’s comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city. (Ord. 2909-06 § 2, 2006)

37.030 Applicability.

A. This chapter establishes regulations for the protection of critical areas that are not otherwise regulated by the Shoreline Management Act and city of Everett shoreline master program. The provisions of this chapter apply to all lands, all land uses and development activity, and all structures or facilities outside of shoreline jurisdiction in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government 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 this chapter. No development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.

B. In addition to the requirements of this chapter, the applicant shall obtain all necessary state and federal and other local permits. (Ord. 2909-06 § 3, 2006)

37.040 Critical area features.

On all lots containing or adjoining critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

A. Area of flood hazard (if located in a designated floodplain, see Chapter 19.30 of the Everett Municipal Code);

B. Wetlands;

C. The following geologically hazardous areas:

1. Erosion hazard areas;
2. Landslide hazard areas;
3. Seismic (liquefaction) hazard areas;

D. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes and ponds less than twenty acres in size, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas listed in Section 37.140.A.5;

E. Ground water discharge areas, such as springs and seeps, that are associated with or occur upon any of the critical areas listed in subsections A through D of this section. (Ord. 2909-06 § 4, 2006)

37.050 Exemptions—Exceptions—Modifications.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the admin-

istrative modifications which can be granted to other requirements of this title of the city code.

All activities or developments which are exempted, excepted, or granted modifications shall use reasonable methods to avoid and minimize potential impacts to critical areas, including use of any applicable best management practices. Such activities or developments which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable.

A. Exemptions. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. 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 expense of the property owner.

1. Emergencies that threaten the public health, safety and welfare, as verified by the city. 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 and/or its buffer;

2. Legally constructed structures and improvements in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, expanded or replaced; provided, that the new construction or related activity does not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code;

3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of the date this chapter becomes effective. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas;

4. Normal and routine maintenance of legally constructed irrigation and drainage ditches; provided, that this exemption shall not apply to any ditches used by salmonids;

5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;

6. Entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;

7. Wetland Size Exemptions. The following wetlands are exempt from compliance with the mitigation sequencing provisions in Section 37.120.A of this chapter:

a. Category I, II, III, and IV wetlands less than one thousand square feet in area that meet all of the following criteria:

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

ii. The wetland is not part of a wetland mosaic; and

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

b. Category III and IV wetlands between one thousand square feet and four thousand square feet in area that meet all of the following criteria:

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

ii. The wetland is not part of a wetland mosaic;

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

iv. The wetland scores less than twenty points for habitat in the 2004 Western Washington Wetland Rating System.

Mitigation must be provided for any approved impacts per Section 37.120.C through F or payment of a mitigation fee to the city. Payment of a mitigation fee is allowed subject to the city establishing a program to mitigate cumulative impacts of wetland losses by acquiring wetlands, acquiring conservation easements which will protect wetlands, establishing wetland mitigation banks or purchasing mitigation credits in established wetland mitigation banks, or creating wetlands. The program must establish a mitigation fee schedule for exempt wetlands. Mitigation fees shall be paid to the city prior to the issuance of permits authorizing wetland alteration.

8. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets

and public park facilities when the activity does not expand or encroach further into the critical area, does not significantly impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

a. Normal, routine, and emergency maintenance or repair of existing utility structures or rights-of-way, including vegetation management.

b. Installation, construction, or modification in improved street rights-of-way and replacement, operation or alteration of the following facilities:

i. Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures;

ii. Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures;

c. Normal and routine maintenance or repair of public streets, state highways, and public park facilities, including vegetation management. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area, nor does it include construction of a maintenance road or the dumping of maintenance debris;

9. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the state Department of Natural Resources.

B. Reasonable Use Exception.

1. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

a. There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and

b. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

c. Any alterations permitted subject to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a

boundary line, thereby creating the undevelopable condition after the effective date of the ordinance codified in this chapter; and

e. The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

2. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the submittal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

a. The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;

b. A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;

c. An analysis of the minimum development necessary to achieve "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

d. An analysis of the impact that the development described in subsection B.2.c of this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;

e. An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether preproject mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the Department of Ecology's Stormwater Management Manual for Western Washington (2005), including low impact development techniques when feasible;

f. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the critical areas;

g. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

h. A description of any modifications needed for the required front, side and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the critical areas;

i. A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible.

j. Such other information as the planning director determines is reasonably necessary to evaluate the issue of

reasonable economic use as it relates to the proposed development.

3. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

a. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while providing greater protection to the critical areas than if the standard were met;

b. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the critical areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot. Where buffer reduction is permitted, enhancement/restoration of the buffer and/or critical area must be provided so that mitigation results in no net loss of critical area and buffer functions to the maximum extent feasible; or

c. If a reasonable economic use of a lot cannot exist by means of either subsection B.3.a or b of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection B.3.a or b of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

i. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

(A) The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property; or

(B) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to

allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be single-family dwellings.

ii. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

iii. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

iv. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

4. All other requirements of this chapter shall apply to the subject property, including but not limited to submittal of mitigation plans, monitoring reports, and assurance devices, installation of fencing and signs, and recording of protective covenants.

C. Public Utility and Infrastructure Exception. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title 15, Local Project Review Procedures.

The hearing examiner may approve, or approve with modifications, such a request only when the following findings are made:

1. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements;
2. There is no other reasonable alternative to the proposed development with less impact on the critical area; and

3. The proposal fully mitigates any impacts on the critical areas.

D. Prohibition on Variances—Other Exceptions Permitted by This Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following sections permit alteration or modification of the requirements of this chapter for protection of critical areas:

1. Section 37.080 for modification of standards for geologically hazardous areas;
2. Section 37.110 for modification of standards for wetlands and their required buffers;
3. Section 37.170 for modification of standards for streams and their required buffers.

E. Alternative Best Available Science Analysis. The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, authorize a modification to the standards in this chapter as follows:

1. An applicant must submit a critical area study by a qualified professional that documents that the proposed development design/standards will result in a net improvement of the functions of the critical area over that which would be obtained by applying the standard prescriptive measures contained in this chapter. The study must address best available science as it relates to the critical area functions.
2. The study must be circulated to appropriate state and federal resource agencies for review and comment opportunity prior to planning director authorization.
3. The development design/standards may include, but are not necessarily limited to, measures prescribed in an approved watershed conservation plan or other similar conservation plan that addresses critical areas protection consistent with this section.
4. The proposed design/standards must not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located. (Ord. 2909-06 § 5, 2006)

37.060 Permitted uses and activities.

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations.

B. The following uses/activities are permitted in critical areas and their buffers:

1. Minor utility construction projects. Utility projects which have minor or short-duration impacts to critical areas, provided such projects are constructed using best management practices to avoid and minimize impacts to

critical areas and required buffers, subject to the following criteria:

a. The activity does not significantly impact a Type F stream or category 1 wetland, or a fish and wildlife habitat conservation area; and

b. There is no reasonable alternative to the proposed activity with less impact on the critical area; and

c. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility; and

d. The activity results in disturbing less than one hundred square feet of critical area and buffer.

2. Buffer management when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted subject to written approval from the director:

a. Hazard tree removal with replanting. The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

i. The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, an assessment and recommendation from a certified arborist, registered landscape architect or professional forester that documents the hazard and provides a replanting schedule for replacement trees.

ii. Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

iii. Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan.

iv. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified biologist shall be consulted to determine timing and methods of removal that will minimize impacts. The biologist's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.

v. If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property.

vi. Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.

b. Weed removal. The removal of the following invasive, nonnative and noxious weeds in conjunction with a mitigation plan or buffer management plan approved by the director, including revegetation with native plants. The director may require that only hand tools or light equipment be used for removal.

i. Invasive and noxious weeds identified in a list adopted by the city or county;

ii. English Ivy (*Hedera helix*);

iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*) and evergreen blackberry (*Rubus laciniatus*);

iv. Scot's broom (*Cytisus scoparius*).

4. Public and private pedestrian paths and trails. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and subject to approval by the director:

a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer edge of the buffer, except for areas which provide for public viewpoints or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded.

b. The trail surface meets all other requirements including all applicable water quality standards. Use of pervious surfaces is encouraged.

c. Critical area and buffer widths shall be increased where possible, equal to the width of the trail corridor, including disturbed areas.

d. 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.

e. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.

5. Stormwater facilities are allowed in stream and wetland buffers subject to all of the following criteria:

a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.

b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.

c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does

not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.

d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.

e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.

f. All site development plans should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System. (Ord. 2909-06 § 6, 2006)

37.070 Submittal requirement—Supporting information.

A. Submittal Requirements. Applications for land uses or developments proposed on lots on or adjacent to critical areas shall be filed with the planning department. The city may waive specific submittal requirements determined to be unnecessary for review of a specific application. All developments proposed on lots which may contain or adjoin critical areas and/or buffers shall be evaluated by the applicant to provide the information necessary for the planning department to determine if and to what extent the site contains critical areas.

B. Supporting Information. All land uses and developments proposed on or adjacent to critical areas and their buffers shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by experts with demonstrated qualifications in the area of concern, who shall prepare the studies in accordance with the requirements of this chapter to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies and/or conduct site evaluations which are outside the range of staff expertise. The planning director is authorized to develop and maintain a detailed list of required study contents. (Ord. 2909-06 § 7, 2006)

37.080 Geologically hazardous areas.

A. Designation. Except for geologically hazardous areas regulated by the shoreline master program, the following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

a. Those areas defined as high and very high/severe risk of landslide hazard in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991:

i. Very high/severe: slopes greater than fifteen percent in the Qtb, Qw, and Qls geologic units; and slopes greater than fifteen percent with uncontrolled fill.

ii. High: slopes greater than forty percent in all other geologic units (not Qtb, Qw, and Qls or uncontrolled fill).

b. Those areas defined as medium risk of landslide hazard in the Dames and Moore Methodology for Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, when combined with springs or seeps, immature vegetation, and/or no vegetation:

i. Slopes less than fifteen percent for Qtb, Qw, and Qls geologic units and uncontrolled fill.

ii. Slopes of twenty-five percent to forty percent in all other geologic units.

c. Any area with all three of the following characteristics:

i. Slopes greater than fifteen percent; and

ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

iii. Springs, groundwater seepage, or saturated soils.

d. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to the present) or which is underlain or covered by mass wastage debris of that epoch.

e. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action.

f. Areas of historic failures, including areas of unstable, old and recent landslides or landslide debris within a head scarp, and areas exhibiting geomorphological features indicative of past slope failure, such as hummocky ground, slumps, earthflows, mudflows, etc.

g. Any area with a slope of forty percent or steeper and with a vertical relief of fifteen or more feet, except those manmade slopes created under the design and inspection of a geotechnical professional, or slopes composed of consolidated rock.

h. Areas that are at risk of landslide due to high seismic hazard.

i. Areas that are at risk of landslides or mass movement due to severe erosion hazards.

2. Seismic/liquefaction hazard areas:

a. Those areas mapped as seismic/liquefaction hazards per the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991.

b. Those areas mapped as high and moderate to high liquefaction susceptibility on the Liquefaction Susceptibility Map of Snohomish County, Washington, Washington State Department of Natural Resources, Palmer, Stephen, et al., September, 2004.

3. Erosion hazard areas:

a. Those areas defined as high and very high/severe risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991:

i. High erosion hazard areas include slopes of twenty-five to forty percent in Qva and Qal geologic units; and slopes of greater than forty percent in other (not Qva or Qal) geologic units.

ii. Very high/severe erosion hazard areas include slopes of greater than forty percent in Qva and Qal geologic units.

b. Those areas defined as medium risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, when they contain debris and mud flows, gullyng or rifling, immature vegetation, or no vegetation:

i. Slopes of twenty-five to forty percent in other (not Qva or Qal) geologic units.

4. Other areas which the city has reason to believe are geologically hazardous.

B. Protective Requirements.

1. Geotechnical Assessment Requirements. Development proposals on or within two hundred feet of any area designated as or which, based on site-specific field investigation, the city has reason to believe are geologically hazardous areas shall submit a geological assessment as required by subsection F of this section.

2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 18 of the International Building Code (IBC), or as the IBC is updated and amended.

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the spe-

cific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

b. The city may require larger setback buffer widths under any of the following circumstances:

i. The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.

ii. The area has a severe risk of slope failure or downslope stormwater drainage impacts.

iii. The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.

3. Unless otherwise permitted as part of an approved alteration, the setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation in conjunction with any proposed development activity.

4. The city may impose seasonal restrictions on clearing and grading within two hundred feet of any geologically hazardous areas.

C. Permitted Alterations. Unless associated with another critical area, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow alteration of an area identified as a geologically hazardous area or the setback buffers specified in the IBC if an approved geotechnical report demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;

2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;

4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;

5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;

6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;

7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and

8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.

D. Additional Requirements. As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by subsection B of this section:

1. The city shall require:

a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by Section 37.220 of this chapter;

b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.

2. The city may require:

a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;

b. Vegetation and other soil-stabilizing structures or materials be retained or provided.

c. Long-term maintenance of slopes and on-site drainage systems.

E. Prohibited Alterations. Modification of geologically hazardous areas shall be prohibited under the following circumstances:

1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under Section 37.050 of this chapter. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.

2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on-site or off-site shall be prohibited.

F. Geological Assessment. A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity.

1. A field investigation and geological assessment shall be completed under the responsible charge of a geologist to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.

a. The geological assessment shall be submitted in the form of a geotechnical letter when the geologist finds that no active geological hazard area exists on or within two hundred feet of the site. The geotechnical letter shall meet the minimum required content and shall be in the format established by the director.

b. The geological assessment shall be submitted in the form of a geotechnical report when the geologist finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements established by the director pursuant to Section 37.070 of this chapter.

2. Geological assessments shall be submitted to the department for review and approval as part of the integrated permit review process described in EMC Title 15, Local Project Review Procedures. The department shall review the geological assessment and either:

a. Accept the geological assessment; or

b. Reject the geological assessment and require revisions or additional information.

3. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title 15, Local Project Review Procedures.

4. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.

5. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.

6. A geological assessment shall include the following minimum information and analysis:

a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in subsection A of this section, Designation.

b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on-site or off-site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off-site.

c. Identification of any mitigation measures required to eliminate potentially significant geological hazards

both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.

d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments, or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.

e. The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.

7. Geological assessments shall be prepared under the responsible charge of a geologist, and signed, sealed and dated by the geologist. (Ord. 2909-06 § 8, 2006)

37.090 Wetland designation, delineation, mapping and rating.

A. Wetland Delineation. Wetlands shall be identified and delineated in accordance with the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94) as required by RCW 36.70A.175. All areas within the city meeting the criteria in the wetland definition in the Washington State Wetlands Identification and Delineation Manual, regardless of any formal identification, are hereby designated critical areas and shall be subject to the provisions of this chapter; provided, however, that wetlands in shoreline jurisdiction are regulated by the shoreline master program, rather than this chapter.

B. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified. It is the actual presence of wetlands on a property that triggers the requirements of this chapter. The exact location of a wetland boundary shall be determined through field investigation by a qualified professional applying the Washington State Wetlands Identification and Delineation Manual methods and procedures.

C. Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington, Revised (Ecology Publication No. 04-06-025). Wetlands, as defined by this chapter, shall be classified as category I, category II, category III, or category IV.

1. Category I wetlands are those that: (a) represent a unique or rare wetland type; or (b) are more sensitive to disturbance than most wetlands; or (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a very high level of function. All wetlands that meet one or more of the following criteria shall be considered category I wetlands:

a. Wetlands that are designated as Natural Heritage Wetlands by the Washington State Department of Natural Resources;

b. Bogs;

c. Mature forested wetlands larger than one acre;

d. Wetlands that perform a very high level of function as evidenced by a score of seventy points or more on the Wetland Rating Form—Western Washington.

2. Category II wetlands are ecologically important and provide a high level of function. They are difficult but not impossible to replace. Wetlands that meet the following criteria shall be considered category II wetlands:

a. Wetlands that do not meet the criteria of category I wetlands;

b. A wetland identified by the state Department of Natural Resources as containing "sensitive" plant species;

c. Wetlands with high functions and values as indicated by a score of fifty-one to sixty-nine points on the Wetland Rating System Form—Western Washington.

3. Category III wetlands provide a moderate level of functions. They are typically more disturbed, smaller, and/or more isolated in the landscape than category I or II wetlands. Wetlands that meet the following criteria shall be considered category III wetlands:

a. Wetlands that score thirty to fifty points on the Wetland Rating Form—Western Washington.

4. Category IV wetlands provide the lowest level of function and are often heavily disturbed, but still provide important functions. Category IV wetlands include:

a. All wetlands that score less than thirty points on the Wetland Rating Form—Western Washington. (Ord. 2909-06 § 9, 2006)

37.100 Wetland critical area report criteria.

A. Wetland Report Required. If the city determines that wetland or buffer impacts may occur as a result of the proposal, a wetland report as required by Section 37.070 of this chapter and this section must be submitted by the applicant.

B. 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, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland reports, or a professional who demonstrates expertise in wetland science to the satisfaction of the planning direc-

tor. The qualifications of the professional who prepared the plan shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the plan.

C. Minimum Standards for Wetland Reports. The written report (and the accompanying plan sheets) shall contain the following information, at a minimum:

1. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; and a description of the proposal;
2. Documentation of any fieldwork performed on the site, including delineations, function assessments, base-line hydrologic data, etc.;
3. Identification and characterization of all critical areas, wetlands, and buffers on or adjacent to the proposed project area. For areas off-site of the project site, estimate conditions within three hundred feet of the project boundaries using the best available information;
4. The wetland rating; hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site;
5. A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation;
6. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development;

Habitat Points	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Buffer Width	75	75	75	90	105	120	135	150	165	180	195	210	225	225	225	225	225	225

- c. Category IV wetlands that score nineteen or fewer points for habitat shall have a minimum buffer width of thirty-five feet.
 - d. Category IV wetlands that score twenty or more points for habitat shall have a minimum buffer width of forty-four feet.
2. Required Mitigation.
- a. For wetlands that score moderate or high for habitat (twenty points or more for the habitat functions), the following criteria must be met:
 - i. When feasible, a relatively undisturbed vegetated corridor at least one hundred feet wide must be protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife ("relatively undisturbed" and "vegetated corridor" are defined in questions H.2.1 and H.2.2 of the Wash-

7. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas pursuant to the mitigation sequencing provisions of this chapter;
8. A description of measures taken to protect and enhance existing habitat connections with other natural areas;
9. Site maps and site plans depicting delineated wetlands and buffers, impacts of the proposal on critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the director. (Ord. 2909-06 § 10, 2006)

37.110 Standard wetland buffer width requirements.

A. Standard Buffer Width.

1. Bogs shall have a minimum buffer width of one hundred ninety feet. The following minimum buffers of native vegetation shall apply to all other wetlands based upon the wetland category and score for habitat functions from the Wetland Rating Form—Western Washington. Buffers shall be measured from the wetland boundary delineated as required by Section 37.090.A of this chapter.
 - a. Category II and III wetlands scoring less than nineteen points for habitat function shall have the following buffers:

	Category II wetlands	Category III wetlands
Buffer Width	75	60

- b. Category I, II, and III wetlands that score nineteen or more points for habitat shall have the following buffers:

ington State Wetland Rating System for Western Washington, Revised. Priority habitats include:

- (A) Wetlands;
- (B) Riparian zones;
- (C) Marine/estuarine shorelines;
- (D) Urban natural open space.

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

ii. Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 37.1, are applied.

b. For wetlands that score less than twenty points for habitat, measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 37.1, must be applied.

Table 37.1: Mitigation Measures

Examples of Disturbance	Activities and Uses That Cause Disturbance	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential areas 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential areas 	<ul style="list-style-type: none"> • Locate noise-generating activities away from the wetland to the extent feasible
Polluted runoff*	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping 	<ul style="list-style-type: none"> • Comply with the Department of Ecology's Stormwater Management Manual for Western Washington (2005)
Stormwater runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Commercial • Landscaping 	<ul style="list-style-type: none"> • Comply with the Department of Ecology's Stormwater Management Manual for Western Washington (2005)
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Comply with the Department of Ecology's Stormwater Management Manual for Western Washington (2005)
Pets and human disturbance	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the Puget Lowland ecoregion; place wetland and its buffer in a separate tract
Dust	<ul style="list-style-type: none"> • Tilled fields 	<ul style="list-style-type: none"> • Use best management practices to control dust
*Additional mitigation to minimize polluted runoff may be necessary if threatened or endangered species are present at the site.		

3. All projects must include and integrate mitigation of land use impacts into the proposed project. Required mitigation measures shall be based upon the site-specific analysis required by this section. An analysis of potential impacts and recommended mitigation measures must be included in the wetland study required by this chapter.

Additionally, at a minimum the analysis shall address the potential land use impacts identified in Table 37.1. Mitigation of land use impacts must include, but not be limited to, reasonable mitigation of impacts identified in Table 37.1. In addition, for wetlands that score twenty or more points for habitat, the study shall include an analysis of existing habitat connections to priority habitats and include measures necessary to maintain those connections as required by subsection A.2 of this section.

4. The buffers required by subsection A.1 of this section assume high impact land uses adjacent to the wetland with mitigation of land use impacts sufficient to reduce buffers down to that required for moderate land use activities. Where a low impact land use is located adjacent to a wetland with a habitat score of nineteen or lower, the

buffer width may be reduced by twenty-five percent. High, medium and low impact land uses are defined as follows:

a. High impact land uses include: commercial, industrial, institutional, retail sales, high-intensity recreation (golf courses, ball fields), and residential uses with a density of more than one dwelling unit per acre.

b. Moderate impact land uses include residential uses with a density of one unit per acre or less, moderate-intensity open space (parks), and paved trails.

c. Low impact land uses include: low-intensity open space (such as passive recreation and natural resources preservation) and unpaved trails.

5. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be that required for the category of the wetland.

6. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and groundcover. If the existing buffer is

unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer vegetation shall be enhanced or restored to the width required by this section. The vegetation shall include native plant communities that are appropriate for the Puget Lowland ecoregion or with a plant community that provides similar functions.

7. To maintain the integrity of the buffer, buildings and other structures shall be set back a minimum of ten feet from the edges of all wetland buffer boundaries.

8. Hazard Trees in Buffer. The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of Section 37.060.B.3 prior to final approvals for a development proposal.

B. Increased Standard Wetland Buffer Width. The minimum buffer width stated in subsection A of this section shall be increased:

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

- a. The minimum buffer for that particular wetland; or
- b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;

2. When the wetland is used by salmonids, plant and/or animal species proposed or listed by the federal government or state as endangered, threatened, rare, candidate, sensitive or monitored; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees, and the increased buffer is necessary to protect such habitat;

When a habitat assessment or habitat management plan is required by Section 37.190 of this chapter and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;

3. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by Section 37.080 of this chapter;

4. When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

5. When the city finds, based upon a site-specific wetland analysis, that impacts on the wetland from a proposed development can only be mitigated by a greater buffer width.

C. Standard Buffer Width Reduction for Category IV Wetlands. Buffer reductions are allowed; provided, that the applicant demonstrates the proposal meets criteria in subsections C.1 through C.3 and either C.4 or C.5 of this section. If the criteria are met, buffers may be reduced by up to twenty-five percent or no less than twenty-six feet.

1. The buffer area has less than fifteen percent slopes, the existing buffer provides minimal vegetative cover and cannot provide the minimum water quality or habitat functions, and enhancement is proposed consistent with the following criteria:

a. A mitigation plan consistent with Sections 37.120.D, E and F is approved by the director, including, but not limited to, maintenance, monitoring and provisions for an assurance device;

b. The plan shall include plant densities not less than five feet on center for shrubs and ten feet on center for trees;

2. A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science and special consideration for the conservation or protection measures necessary to preserve or enhance anadromous fisheries consistent with WAC 365-195-900 through 365-195-925; and

3. Buffer width averaging is not utilized; and either

4. Structures, public roads, or other substantial improvements separate the subject upland property from the wetland and due to their height or width, prevent or impair the delivery of buffer functions to the wetland, in which cases the reduced buffer width shall reflect the buffer functions that can be delivered to the wetland; or

5. The wetland scores nineteen points or less for wildlife habitat.

D. Buffer Width Averaging. The city may allow buffer width averaging; provided, that the total area on the lot contained within the buffer is not less than that required within the standard buffer, and that averaging will not reduce the wetland functions. The city may require buffer width averaging in order to provide protection to a particular portion of a wetland which is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland. The adjusted minimum buffer width shall not be less than seventy-five percent of the standard buffer width.

1. Protection of Significant Trees within the Buffer. If buffer width averaging is utilized and significant trees are identified on the outer edge of the reduced buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

a. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.

b. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.

c. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.

d. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.

e. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.

f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

g. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

E. Required Fencing—Signs.

1. A temporary construction fence shall be placed along the construction setback line to prevent encroachment during construction. Except for utility and road projects, the city shall require any development proposed on a lot which contains or adjoins a wetland to provide a permanent fence or other structural protection at the edge of the wetland buffer to minimize encroachment into and disturbance of the wetland and buffer area after construction. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas.

2. The city may require the applicant to provide informational signs in conspicuous locations on the fence or near the wetland to identify the wetland as a critical area and the importance of maintaining it in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 36 of this title.

F. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the standard wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement plan. (Ord. 2909-06 § 11, 2006)

37.120 Avoiding wetland impacts.

A. Preservation and Protection Goals. It is the short-term goal of this chapter that there be no net loss of the acreage or functions and values of all wetlands regulated by this chapter. The long-term goal is a net gain in functions and values. To realize wetland preservation goals,

the city will require the following methods of wetland impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;

2. Minimize impact 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 impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;

4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;

6. Monitor the impact and take appropriate corrective measures.

Where impacts cannot be avoided, the applicant shall seek to implement other appropriate mitigation actions.

B. Wetland Preservation/Alteration Thresholds.

1. Category I Wetlands. All category I wetlands shall be preserved except as provided in this chapter. The planning director, using the review process as described in EMC Title 15, Local Project Review Procedures, may allow alteration of category I wetlands:

a. Where alteration is allowed pursuant to Section 37.050 of this chapter; or

b. The alteration is to allow a public park or public recreational use; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

2. Category II, III, and IV Wetlands. All category II, III, and IV wetlands shall be preserved except as provided in this chapter. The planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow alteration of category II wetlands:

a. Where alteration is allowed pursuant to Section 37.050 of this chapter; or

b. Where impacts cannot be avoided, and the applicant demonstrates through a mitigation sequencing analysis that reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer are not feasible and will not accomplish the basic purpose of the project;

3. Category I, II, III, and IV Wetlands in the Silver Lake Watershed. When alteration of wetlands in the Silver Lake Watershed is allowed in subsections B.1 and B.2 of this section, the applicant must also demonstrate to the satisfaction of the planning director and public works director that such activities will result in an enhancement of

wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if the water quality functions of the wetland will not be degraded. Any such proposed activities shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures;

4. The director may approve alteration of wetlands and buffers when completed to restore or enhance wetland functions.

C. Compensating for Wetland Impacts. Wetland and buffer alteration allowed by this section shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall wetland or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection D of this section.

4. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, non-native vegetation, or other material detrimental to the area

by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

5. Wetland Compensation Ratios. In approving alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section apply to creation, restoration, and enhancement which is in-kind (within the same hydrogeomorphic (HGM) class), on or adjacent to the site, timed prior to or concurrent with alteration, and has a high probability of success. The city may accept or recommend compensation which is off-site and/or out-of-kind, if the applicant can demonstrate that on-site compensation is infeasible due to constraints such as parcel size or wetland type or that a wetland of a different type or location is justified based on regional needs or functions. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.2 shall be used, except as otherwise provided below in this subsection.

Table 37.2: Standard Wetland Compensation Ratios

Category and Type of Wetland	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
Category I					
Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Bog	Irreplaceable—Avoidance Required	6:1 Rehabilitation of a Bog	R/C not considered possible	R/C not considered possible	Case-by-case
Natural Heritage	Irreplaceable—Avoidance Required	6:1 Rehabilitation of a Natural Heritage Site	R/C not considered possible	R/C not considered possible	Case-by-case
Others	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category II					
Forested	4:1	8:1	1:1 R/C and 4:1 RH	1:1 R/C and 6:1 E	16:1
Others	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 2:1 E	8:1
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
<p>Creation = The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevation that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.</p>					

Table 37.2: Standard Wetland Compensation Ratios (Continued)

Category and Type of Wetland	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
<p>Reestablishment = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Reestablishment results in a gain in wetland acres. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.</p>					
<p>Rehabilitation = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic function of a degraded wetland. Activities could involve breaching a dike or reconnecting wetland to a floodplain or returning tidal influence to a wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.</p>					
<p>Enhancement = The manipulation of the physical, chemical or biological characteristics of a wetland site to heighten, intensify or improve functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying the site elevation or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland function, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.</p>					

- a. Increased Mitigation Ratios. The city may increase the ratios under any one of the following circumstances:
 - i. Uncertainty as to the probable success of the proposed restoration or creation;
 - ii. Significant period of time between destruction and replication of wetland functions;
 - iii. The proposed mitigation will result in a lower category wetland or projected losses in functions relative to the wetland being impacted;
 - iv. The relocation is off-site or the replacement is with out-of-kind compensation;
 - v. The wetland has been illegally filled or altered.
 - b. Decreased Mitigation Ratios. The city may decrease these ratios under the following circumstances:
 - i. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success.
 - ii. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions will provide significantly greater functions than the wetland being impacted.
 - iii. The mitigation actions are conducted in advance of the impact and have been shown to be successful.
 - c. In no case shall the mitigation acreage be less than that which is altered.
6. When wetland compensation is allowed, the city may require that the wetland compensation be completed and functioning prior to allowing the existing wetland to be filled or altered. For category I wetlands, the city shall require the relocated wetland area to be completed and

- functioning prior to allowing the existing wetland to be altered.
- 7. The city may limit certain development activities near a wetland to specific months in order to minimize impacts on wetland functions.
 - 8. The city may apply additional conditions or restrictions or require specific construction techniques in order to minimize impacts on wetland functions.
 - 9. Wetland compensation shall not occur in areas having high-quality terrestrial habitat.
 - 10. When wetland compensation is allowed, mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas.
 - 11. When wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.
 - 12. Wetland mitigation banks are sites where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.
 - a. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland, a wetland of lesser size or functional value than the wetland being altered, or where the mitigation bank site substantially increases wetland functions in the watershed within which it is located.

Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have a higher wetland function rating than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in subsection C.5 of this section as a guide. The amount of credit will be dependent upon the functions of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in EMC Title 15, Local Project Review Procedures, may allow wetland mitigation banking under the following circumstances:

- i. When alteration is allowed pursuant to the "reasonable use" exception as provided in Section 37.050.B of this chapter;
 - ii. When alteration is allowed for a water-dependent or water-related use;
 - iii. When on-site or off-site mitigation in the immediate vicinity of the project is not reasonable;
 - iv. When the wetland being altered is of a lower quality and has lesser functions than the wetland which is being used for the mitigation banking.
- b. Wetland mitigation banks may be approved under the provisions of Chapter 173-700 WAC (currently a draft). For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland bank may be approved for use as compensation for unavoidable impacts to wetlands when:
- i. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts.
 - ii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
 - iii. Replacement ratios for projects using bank credits shall be consistent with the terms and conditions of the bank's certification.
 - iv. 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.

D. Wetland and Buffer Mitigation Plans. When wetland or buffer alteration or buffer reduction is permitted by this chapter, a mitigation plan shall be required to describe the methods the applicant will use to minimize impacts to wetland functions. This plan is in addition to the requirements of Section 37.100 of this chapter. A detailed mitigation plan shall be approved by the city prior to any development activity occurring on a lot upon which wetland or wetland buffer alteration, restoration, creation

or enhancement is proposed. The mitigation plan shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, or a professional who demonstrates expertise in wetland science to the satisfaction of the planning director. The qualifications of the professional who prepared the plan shall be included in the mitigation plan. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the plan. The plan shall use accepted methodologies and include information as required by the planning director's administrative guidelines, and shall:

1. Include a baseline study that quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation;
2. Specify how functions will be preserved or replaced;
3. Specify how impacts will be avoided, minimized or compensated for;
4. Assess the potential changes in wetland hydroperiod from the proposed project and identify how the project design will mitigate adverse impacts to the wetland hydroperiod;
5. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;
6. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
7. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
8. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and
9. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occurs on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the

applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

E. **Construction Plans.** Construction plans necessary to implement requirements of the detailed mitigation plan shall be provided prior to issuance of construction permits. Plans shall include the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; a planting plan specifying plant species, quantities, location, size, spacing, density, proper placement, fertilization standards, and provisions for temporary irrigation systems.

F. **Protective Covenants and Tracts.** Wetlands and their buffers on development sites, including compensatory mitigation areas, shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter. (Ord. 2909-06 § 12, 2006)

37.130 Areas of special flood hazard.

Areas of special flood hazard shall be governed by the provisions of Chapter 30 of this title. (Ord. 2909-06 § 13, 2006)

37.140 Fish and wildlife habitat conservation areas designation and mapping.

A. "Fish and wildlife habitat conservation areas" means an area of habitat that is necessary and suitable for maintaining individual species, species diversity, or biological diversity. Fish and wildlife habitat conservation areas include:

1. Lakes and ponds less than twenty acres in size;
2. Streams/riparian corridors;
3. Habitats of primary association;
4. Continuous vegetative corridors linking watersheds; and
5. Significant biological areas listed by the city:
 - a. Plant associations of infrequent occurrence;
 - b. Commercial and recreational shellfish areas;
 - c. Kelp and eelgrass beds;
 - d. Herring, sand lance, and smelt spawning areas;
 - e. State natural area preserves and natural resource conservation areas; and
 - f. Significant biological areas of local importance:
 - i. Maulsby Swamp,
 - ii. Kasch Park (Bomarc) Bog,
 - iii. Simpson site, category I wetlands,
 - iv. Narbeck Swamp,
 - v. Jetty Island.

B. **Fish and Wildlife Habitat Conservation Areas Designation.** All areas meeting the definition of fish and wildlife habitat conservation areas above are designated as fish and wildlife habitat conservation areas, and are

subject to the regulations in Sections 37.150 through 37.190 of this chapter, except that developments in shoreline jurisdiction are subject to the requirements in the shoreline master program.

C. **Fish and Wildlife Habitat Conservation Areas Mapping.** The approximate location and extent of fish and wildlife habitat conservation areas within the city of Everett's planning area are shown on maps compiled and maintained by the city planning and community development department. These maps shall be used as a general guide only for the assistance of property owners, project applicants, and other interested parties; boundaries are generalized. The actual type, extent and boundaries of fish and wildlife habitat conservation areas shall be determined by a qualified scientific professional according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the habitat location or type shown on the city's fish and wildlife habitat conservation areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.

D. Other mapping sources include:

1. Washington State Department of Fish and Wildlife priority habitat and species maps.
2. Washington State Department of Natural Resources Natural Heritage Program mapping data.
3. Anadromous and resident salmonid distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission.
4. Washington State Department of Natural Resources state natural area preserves and natural resources conservation area maps. (Ord. 2909-06 § 14, 2006)

37.150 Lakes, ponds, and created ponds.

A. **Lakes.** Lakes which are twenty acres or more shall be protected as required by the shoreline master program. Lakes and ponds which are less than twenty acres in size and are not subject to the shoreline master program shall be subject to the regulations in this section.

B. **Buffers.** Lakes and ponds have the following buffers of native vegetation:

1. Lakes and ponds used by salmonids: one hundred feet;
2. Lakes and ponds with no salmonid use: fifty feet.

If a wetland or stream occurs along the fringe of the pond or lake, the buffer shall be the greater of that required for the pond or lake or for the wetland or stream.

C. **Buffer Reduction.** If the required buffer is sparsely vegetated or vegetated with exotic invasive species, the city may allow the buffer to be reduced by up to twenty-five percent when the buffer is enhanced.

D. **Access to the Water Through Buffers.** Trails may be provided through the buffer to access the water. The width of trails shall be the minimum necessary, and should

not exceed four feet. The trails should be one hundred percent porous to the maximum extent feasible.

E. All new development and redevelopment adjacent to lakes and ponds should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

F. Docks.

1. Repair and maintenance of an existing dock is permitted; provided, that:

- a. There is no expansion in overwater coverage;
- b. There is no increase in the size and number of pilings;
- c. There is no use of toxic materials, such as creosote, CCA and other treated wood products;
- d. There is no new spanning of water between three and thirteen feet deep; and
- e. There is no new increase in the use of materials creating shade.

2. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions.

G. A critical area report is required for any development that will potentially impact a lake or pond or its buffer. The report shall be prepared by a professional wetland specialist, fisheries biologist, or wildlife biologist, as applicable. The report shall include information as required by the planning director's administrative guidelines, and shall:

1. Include a baseline study that quantifies the existing functions of the lake/pond, functions that will be lost, and the functions after mitigation;
2. Specify how functions will be preserved or replaced;
3. Specify how impacts will be avoided, minimized or compensated for;
4. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
5. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
6. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and
7. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

H. Construction Plans. Construction plans necessary to implement requirements of the detailed mitigation plan

shall be provided prior to issuance of construction permits. Plans shall include site plans, cross-sections, the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; and a planting plan specifying plant species, quantities, location, size, spacing, and density.

I. Protective Covenants and Tracts. Lakes/ponds and their buffers on development sites, including compensatory mitigation areas, shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter.

J. Created Lakes and Ponds. Lakes and ponds created to mitigate alteration, restoration, creation, or enhancement activities allowed pursuant to this chapter shall be protected according to the applicable category (with salmonids or without salmonids) being replaced. (Ord. 2909-06 § 15, 2006)

37.160 Classification of streams.

A. Streams shall be classified based upon an amended version of the water classification system established under WAC 222-16-030 as follows:

1. Type S Stream. Those streams, within their ordinary high water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant thereto, including the periodically inundated areas of their associated wetlands.

2. Type F Stream. Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands that are not Type S streams, and which are demonstrated or provisionally presumed to be used by salmonid fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and have a gradient of sixteen percent or less for basins less than or equal to fifty acres in size, or have a gradient of twenty percent or less for basins greater than fifty acres in size, are provisionally presumed to be used by salmonid fish. A provisional presumption of salmonid fish use may be refuted at the discretion of the community development director where any of the following conditions are met:

a. It is demonstrated to the satisfaction of the city that the stream segment in question is upstream of a complete, permanent, natural fish passage barrier, above which no stream section exhibits perennial flow;

b. It is demonstrated to the satisfaction of the city that the stream segment in question has confirmed, long-term, naturally occurring water quality parameters incapable of supporting salmonid fish;

c. Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of salmonid fish use, as determined in consultation with the Washington State

Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;

d. The Washington State Department of Fish and Wildlife has issued a hydraulic project approval pursuant to RCW 77.55.100, which includes a determination that the stream segment in question is not used by salmonid fish;

e. No salmonid fish are discovered in the stream segment in question during a stream survey conducted according to the protocol provided in the Washington Forest Practices Board Manual, Section 13, Guidelines for Determining Fish Use for the Purpose of Typing Waters under WAC 222-16-031; provided, that no unnatural fish passage barriers have been present downstream of said stream segment over a period of at least two years;

f. The following stream segments shall not be considered Type F streams:

i. Merrill and Ring Creek south of Merrill Creek Parkway;

ii. Edgewater Creek;

iii. Narbeck Creek;

iv. Forgotten Creek.

3. Type Np Stream. Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are perennial and are not Type S or Type F streams. However, for the purpose of classification, Type Np streams include intermittent dry portions of the channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. Type Ns Stream. Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are not Type S, Type F, or Type Np streams. These include seasonal streams in which surface flow is not present for at least some portion of a year of normal rainfall that are not located downstream from any Type Np stream segment.

B. Definitions. For the purposes of this chapter:

1. "Channel gradient" refers to a measurement over a representative section of at least five hundred linear feet, where available, with at least ten evenly spaced measurement points along the normal stream channel, but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds, and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States Geological Survey topographic maps (see Washington Forest Practices Board Manual, Section 23) or a more detailed survey specific to the project site and/or area.

2. "Intermittent" refers to those stream segments that normally go dry during a portion of a year of normal rainfall or greater.

3. "Normal rainfall" refers to rainfall that is at or above the mean of the accumulated rainfall record, based upon the water year, for the city as recorded at the Seattle-Tacoma International Airport, or other local rainfall recording station recognized by the city.

4. "Perennial stream" refers to those stream segments that do not go dry at any time during a year of normal rainfall.

5. "Riparian corridor" means a perennial, intermittent, ephemeral stream or swale including its channel bottom, lower and upper banks, and area beyond the top of the upper bank which influences the stream through shading and organic matter input, and is influenced by the presence of water, particularly in regard to plant composition. The riparian corridor is the transitional area between aquatic and upland ecosystems and does not necessarily include the entire floodplain of a stream.

6. "Stream" refers to those areas, excluding erosion caused by the inappropriate discharge or rerouting of storm or surface water, where surface waters flow with sufficient volume, velocity, duration, and/or frequency to scour away leaf litter and other vegetative matter and/or scour away or prevent the growth of vegetation such that clear evidence of the passage of flow is present on the land and remains even in the absence of such flow. Sod-lined or other heavily vegetated swales and wetted areas, which remain lined with leaf litter or other vegetative matter, do not meet the criteria of a stream. Excavated or other artificial watercourses, including swales, roadside ditches, and irrigation canals, are not considered streams unless they are used to convey water which flowed in a naturally defined channel prior to the creation of the artificial watercourse or are used by salmonid fish.

C. Periodically inundated wetlands that fall within the stream classifications are also subject to the wetland regulations of this chapter. (Ord. 2909-06 § 16, 2006)

37.170 Standard stream buffer requirements.

A. Standard Buffer Width. It is the goal of this chapter to preserve streams and their buffers in a natural condition to the maximum extent possible.

1. Buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature.

2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and groundcover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with inva-

sive species, the buffer width shall be increased as required by this section.

3. Except as otherwise provided by Section 37.050 of this chapter, the following minimum buffers of native vegetation shall apply to streams based upon stream classification:

Stream Classification (Type)	Standard Buffer: Intact Native Vegetation	Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	Buffer determined by requirements of city of Everett shoreline master program (SMP)	Buffer determined by requirements of city of Everett shoreline master program (SMP)
Type F	100 feet	150 feet
Type Np	50 feet	75 feet
Type Ns	50 feet	75 feet

4. To maintain the integrity of the buffer, buildings and other structures shall be set back a minimum of ten feet from the edges of all stream buffer boundaries.

B. Standard Buffer Width Increase. The city shall require increased buffer widths as necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts and the increased buffer width is necessary to protect the critical areas described in this subsection. Circumstances which may require buffers beyond minimum requirements include, but are not limited to, the following:

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

- a. The minimum buffer for that particular stream; or
- b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;

2. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and native tribes;

3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees;

4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

C. Standard Stream Buffer Width Reduction with Enhancement. The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots resulting in the existing buffer being unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria. Where buffer reduction with enhancement is permitted by this chapter, it shall be limited to portions of buffers that have minimal functions due to prior legal alteration.

1. The planning director shall only allow a buffer width reduction when the proposal includes a stream and buffer enhancement plan that improves the functions of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in the standard buffer width for buffers that are unvegetated, sparsely vegetated, or vegetated with invasive species; and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

2. A mitigation/enhancement plan shall be prepared per Section 37.180.E of this chapter. The plan shall include a comparative analysis of buffer functions prior to and after enhancement, and demonstrate, as part of a critical area report, that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the buffer and stream functions when compared with the function of the standard buffer. At a minimum, the report shall address soils, slopes, existing and proposed vegetation, temporary irrigation, maintenance, monitoring and contingency.

3. If a limited portion of the buffer has been previously legally altered and meets the criteria in this section, a buffer width reduction may be approved for that portion of the required buffer only.

4. The following criteria shall be used to determine when a required buffer is degraded and substantial legal alterations are present:

a. The required buffer area has been graded or substantially altered and has not been substantially revegetated (i.e., the buffer is covered with gravel, impervious surface, mowed lawn, or is vegetated with primarily invasive species such as reed canary grass, Himalayan blackberry, purple loosestrife, or other nonnative invasive species covering more than seventy-five percent of the buffer area).

b. Substantial clearing of the buffer was authorized and substantial revegetation with native species has not occurred.

c. A buffer that has been logged in the past but that has been revegetated with an overstory of willow, cotton-

wood, alder, evergreen, or mixed evergreen/deciduous overstory, and an understory shrub layer of noninvasive species does not constitute substantial alteration.

D. Riparian Wetland. Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply.

E. Standard Buffer Width Averaging. The city may allow buffer width averaging; provided, that the total area on the lot contained within the averaged buffer is not less than that required within the standard buffer. The city may require buffer width averaging in order to provide protection to a particular portion of a stream which is especially sensitive or to incorporate existing significant vegetative or habitat features into the buffer. Averaging shall not adversely impact the functions of the stream system. In either case, the adjusted minimum buffer width shall not be less than seventy-five percent of the standard buffer width.

F. Protection of Significant Trees When Using Buffer Width Reduction or Averaging. If buffer width averaging or reduction is utilized and significant trees are identified on the outer edge of the reduced buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.

2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.

3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.

4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.

5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.

6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

G. Buffers for Restored Stream Channels. When a culverted portion of a stream is proposed to be restored to an open channel, the buffer width shall be determined by the director following review of a critical area study. The study must include an analysis of the buffer width necessary to protect water quality and habitat functions of the stream.

H. Hazard Trees in Buffer. The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of Section 37.060.B.3 of this chapter prior to final approvals for a development proposal.

I. Riparian Corridors. When a development is proposed on a lot with a disturbed riparian corridor, the city shall require that the habitat be enhanced by creating more diversity and eliminating any source of degradation, including, but not limited to:

1. Vegetative plantings of native or preferred wildlife food species;

2. Construction of nesting islands or installation of nesting boxes;

3. Removal of pollutant sources or fish movement blockages; or

4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat. (Ord. 2909-06 § 17, 2006)

37.180 Avoiding stream impacts.

A. Stream Preservation/Alteration Goal and Priorities. It is the short-term goal of this section that there be no net loss of the functions of all streams in the city, and the long-term goal is to improve the quality and functions of the stream systems in Everett. To realize stream preservation and protection goals, the city will use the following methods of stream impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;

2. Minimize impact 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 impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected sensitive areas;

4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute streams and environments;

6. Monitor the impact and take appropriate corrective measures to achieve performance objectives.

B. Stream Preservation/Alteration Thresholds.

1. Type S Streams. All Type S streams shall be regulated by the city of Everett shoreline master program.

2. Type F Streams. All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:

a. Where alteration is allowed pursuant to Section 37.050 of this chapter;

b. Stream Crossings. Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;

c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.

3. Type Np and Type Ns Streams.

a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by Section 37.050 of this chapter; or

b. The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, allow alteration or relocation of Type Np and Ns streams under the following conditions:

i. Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;

ii. The equivalent base flood storage volume shall be maintained;

iii. There shall be no impact to local ground water;

iv. There shall be no increase in water velocity;

v. There is no interbasin transfer of water;

vi. The relocation shall occur on-site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;

vii. The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. Stream Crossings. Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common

access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. Watershed Management Plans. The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by Section 37.050 of this chapter, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

C. Compensating for Stream Impacts. Stream system and buffer alteration, when allowed by this chapter, shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection D of this section.

4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.

5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.

6. When stream system relocation or compensation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.

7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.

8. The city may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers.

9. Stream compensation shall not occur in areas having high-quality terrestrial habitat.

D. Voluntary daylighting of streams in pipes and culverts.

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection D.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:

a. The plan is prepared by a qualified professional;

b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

c. If the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection D.1.b of this section are provided as effectively as they would be without the relocation.

2. If the director finds the conditions in subsection D.1 of this section are met, the director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection D.1 of this section and shall be in the following order of priority:

a. Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.

b. The stream and adjacent buffer area may count toward required landscaping.

c. The stream and adjacent buffer area may count toward open space requirements for all multiple-family and M-1 zone requirements.

d. Building heights may be increased.

E. Stream and Buffer Impact Mitigation Plans.

1. When development is proposed within two hundred feet of a Type F stream, a habitat assessment or habitat management plan shall be prepared subject to the provisions of Section 37.190 of this chapter.

2. When stream or buffer alteration or buffer reduction or averaging is permitted, a mitigation plan shall be prepared. Mitigation shall be required for the loss of stream system and buffer functions. All required mitigation shall be specified in a detailed mitigation plan, which shall be approved by the city prior to any development activity occurring on a site upon which stream system alteration is proposed. The mitigation plan shall be prepared by a qualified professional using accepted methodologies and include information as required by the planning director's administrative guidelines. Mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to min-

imize the isolating and fragmenting effects of development on habitat areas. Mitigation plans shall:

a. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;

b. Specify how functions will be replaced;

c. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

d. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

e. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

f. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

F. All new development and redevelopment adjacent to streams and riparian areas should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

G. Protective Covenants and Tracts. Streams and their buffers on development sites shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter.

H. Fencing and Other Protection Mechanisms. Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a stream provide a fence or other structural protection along the upland side of the stream and its buffer to minimize encroachment into and disturbance of the stream and buffer area. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas. (Ord. 2909-06 § 18, 2006)

37.190 Additional fish and wildlife habitat conservation areas requirements.

A. Definitions.

1. "Habitats of primary association" means a critical component(s) of the habitats of federally or state-listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of primary association include, but are not limited to: winter ranges, migration ranges, breeding sites, nesting sites, regular large concentrations, communal roosts, roosting sites, staging areas,

and “priority habitats” listed by the Washington State Department of Fish and Wildlife.

2. “Continuous vegetative corridors linking watersheds” means areas that link larger habitat blocks. The corridors can provide wildlife habitat and allow for relatively free movement of animals among larger habitat blocks that would otherwise be isolated. This allows use of habitat patches that are not themselves large enough to support sustainable breeding populations. The corridors also allow wildlife to move from a habitat area used for one activity, such as feeding, to a habitat area used for another activity, such as nesting.

3. “Significant biological areas” means the following areas of the city:

- a. Plant associations of infrequent occurrence;
- b. Commercial and recreational shellfish areas;
- c. Kelp and eelgrass beds;
- d. Herring, sand lance, and smelt spawning areas;
- e. State natural area preserves and natural resource conservation areas; and
- f. Significant biological areas of local importance:
 - i. Maulsby Swamp,
 - ii. Bomarc Bog,
 - iii. Simpson site, category I wetlands,
 - iv. Narbeck Swamp,
 - v. Jetty Island.

B. Goals and Additional Requirements. It is the goal of the city to preserve, protect and enhance fish and wildlife habitat conservation areas through sound habitat management practices. Fish and wildlife habitat conservation areas in shoreline jurisdiction are regulated by the shoreline master program. All other fish and wildlife habitat conservation areas are regulated by this chapter.

1. All new development and redevelopment adjacent to fish and wildlife habitat conservation areas should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

2. If a development is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this section, the applicant shall provide a habitat assessment. If the habitat assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP), prepared by a qualified expert for evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial

elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

- a. Distance for Habitats of Primary Association.
 - i. Salmonids. When development is proposed on or within two hundred feet of a Type F stream, a habitat assessment shall be required.
 - ii. Bald Eagles. When a development is proposed within eight hundred feet of an eagle nest, or within one-half mile of a nest if also within two hundred fifty feet of the shoreline, or within one-quarter mile of a communal roost, a habitat assessment meeting the requirements of this chapter shall be required. In addition to the requirements of this chapter, the habitat assessment shall address the criteria contained in WAC 232-12-292, the Washington State Bald Eagle Protection Rules. The director is authorized to promulgate an administrative rule identifying the required content for an integrated habitat assessment consistent with these requirements.
 - iii. Other Species. If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or habitat management plan.

b. Continuous Vegetative Corridors Linking Watersheds. If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds, a habitat assessment is required.

c. Significant Biological Areas. If a development is proposed within three hundred feet of a significant biological area, a habitat assessment is required.

C. Habitat Assessment.

1. A habitat assessment is a site investigation process to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat potentially affected by a development proposal, and an assessment of the potential impacts of the proposal on any regulated species or habitat subject to these regulations.

2. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.

3. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.

4. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in subsection A of this section and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could

potentially adversely impact the regulated fish or wildlife habitat area and affected species.

5. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in subsection A of this section or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.

6. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in subsection A of this section or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, a habitat management plan shall be prepared. The habitat management plan must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.

7. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of a habitat management plan.

8. All habitat assessments submitted under the requirements of this chapter shall, at a minimum, include the following:

- a. The parcel number(s) of the subject property.
- b. A map showing the location of the site and the site address of the subject property, if one has been assigned by the city.
- c. The date and time when the site evaluation for the habitat assessment was conducted and the date when the habitat assessment was prepared.
- d. The credentials of the professional fish or wildlife biologist who prepared the habitat assessment.
- e. The mailing address and phone number of the property owner and the fish or wildlife biologist that prepared the habitat assessment.
- f. A detailed description of the project.
- g. A detailed description of the vegetation on and adjacent to the site.
- h. Identification and a detailed description of any critical fish or wildlife species or habitats, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.
- i. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and

plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.

j. An assessment of the project's direct and indirect potential impacts and cumulative impacts on the subject habitat, including water quality impacts.

k. A discussion of potential mitigation measures that would avoid or minimize temporary and permanent impacts, proposed mitigation measures, contingency measures, and monitoring plans.

l. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.

9. The department shall review the habitat assessment and either:

a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or

b. Require preparation of a habitat management plan if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

D. Habitat Management Plan. "Habitat management plan" means an activity proposed by a public agency or private entity, and approved by the planning director, within an area which may impact a fish and wildlife habitat conservation area to preserve, protect or enhance the fish and wildlife habitat conservation area.

1. The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for in Section 37.070 of this chapter.

2. Content of Habitat Management Plan. The director may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the following information:

i. All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with the requirements of this chapter;

ii. The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within a distance of the subject property that may impact an affected species or habitat; and

iii. The location of any observed evidence of use by a species regulated by the provisions of the fish and wildlife habitat sections of this chapter.

b. An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation area and any affected species including the potential direct, indirect, and cumulative effects of the proposed action on the regulated species and its habitat within the project area.

c. Provisions to reduce or eliminate the impacts of the proposed development activities on any fish and wildlife habitat conservation area and affected species. The HMP should describe components of the project that may benefit or promote the recovery of listed species and are included as an integral part of the proposed project. These conservation (or mitigation) measures serve to minimize or compensate for project effects on the species under review. The following items should be addressed:

i. Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; HMP conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

ii. Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness.

d. The HMP shall identify the specific habitat objectives. The HMP is designed to achieve and include recommendations regarding all actions taken to be necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term, and/or actions to maintain or enhance the significant features present.

e. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.

3. The HMP shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.

4. 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 to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the HMP. At a minimum, all requirements

and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

5. Fish and wildlife habitat conservation areas and their buffers shall be placed in a critical area protective covenant or tract as required by Section 37.220 of this chapter. (Ord. 2909-06 § 19, 2006)

37.200 Ground water discharge areas.

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, streams, fish, plant and wildlife habitat areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to geological hazards, streams, wetlands, fish, plant, and wildlife habitat areas, as applicable. (Ord. 2909-06 § 20, 2006)

37.210 Lot area—Lot coverage—Permitted number of dwelling units in multiple-family developments.

A. Lot Area. The calculation of minimum lot area for lots which contain areas classified as critical areas shall be determined as provided in this section. Lots that include land which is submerged beneath the mean high water mark of lakes and ponds, or Type F streams, shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

1. Single-Family Residential Developments. This subsection applies to new lots created through the subdivision, short subdivision, or cluster development process, where the land to be subdivided contains critical areas and/or buffers. This subsection is not to be used with the lot area averaging provisions in Section 39.130 of this title, or in easement access short subdivisions.

a. For any new residential lot created, one hundred percent of the area of those portions of the lot classified as critical areas and buffer may be credited toward the calculation of lot area. All such lots shall contain not less than four thousand square feet, exclusive of critical area or buffer. Land placed within a critical area protective tract may be included in the calculation of lot area as provided in this chapter. Where a protective tract is provided, all lots shall contain a net area, excluding the tract, of not less than four thousand square feet.

2. Multiple-Family Developments. In multiple-family residential developments, all of the area which is classified as critical area may be included in the calculation of minimum lot area; however, the permitted number of dwelling units shall be calculated in accordance with the requirements of subsection C of this section.

3. Commercial and Industrial Zones.

a. If the minimum lot area requirement is twelve thousand square feet or less, none of those portions of the lot which are classified as critical area may be used in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.

b. If the minimum lot area requirement is between twelve thousand square feet and one acre, up to twenty-five percent of the area of those portions of the lot classified as critical area may be included in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.

c. If the minimum lot area requirement is greater than one acre, up to fifty percent of those portions of the lot classified as critical area may be included in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.

B. Lot Coverage. For any zone in which lot coverage requirements apply, only the area defined as buildable shall be used in the calculation of lot coverage.

C. Permitted Number of Dwelling Units in Multiple-Family Developments. For zones in which multiple-family developments are permitted, the number of dwelling units allowed for lots which contain areas classified as critical area shall be determined using the formula specified in this subsection. Lots that include land which is submerged beneath lakes, ponds, Port Gardner Bay, or category F streams shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

$$[(D.U./Ac.) (Buildable Area)] + [(D.U./Ac.) (Undevelopable Area)] \times (Development Factor) = \text{Permitted Number of Dwelling Units.}$$

(D.U./Ac. is derived by dividing 43,560 square feet by the density standard in the applicable zone, as listed in the use standards table.)

The development factor is determined by the following table:

Percent of Lot in Buildable Area*	Development Factor
91—99	0.45
81—90	0.40
71—80	0.35
61—70	0.30
51—60	0.25
41—50	0.20
31—40	0.15

Percent of Lot in Buildable Area*	Development Factor
21—30	0.10
11—20	0.05
0—10	0.03

*Percentages of more than two digits shall be rounded down to two digits.

(Ord. 2909-06 § 21, 2006)

37.220 Covenants—Tracts—Notice on title.

A. Critical Area Covenants. Except as provided for below, the city shall require that all features classified as critical areas by this chapter and their buffers be placed in critical area protective covenants. Covenants shall not be required for:

1. Utility and road projects in public rights-of-way.
2. Utility and road projects on private easements where the proponent does not own the land.

B. Critical Area Tracts. The city may require that any area classified as a critical area and its buffer be placed in a separate tract, rather than included in the protective covenant. A tract shall be required when the proposal includes a short subdivision, subdivision, or binding site plan. Such a tract shall remain in the same ownership as the parcel it was segregated from; placed into undivided common ownership of all lots within a proposed subdivision, short subdivision, or binding site plan; or dedicated to a public agency which is willing to accept the tract for long-term management of the protected resource.

C. Notice on Title. The owner of any property on which a development proposal is submitted shall file with the Snohomish County auditor a notice approved by the planning department, which shall provide notice in the public record of the presence of the critical area covenant or tract, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city may approve any development proposal on the site. The notice shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property is a violation of this chapter. (Ord. 2909-06 § 22, 2006)

37.230 Appeals.

Any decision made by the city pursuant to this chapter shall be subject to the appeals provisions as set forth in EMC Title 15, Local Project Review Procedures. (Ord. 2909-06 § 23, 2006)

37.240 Assurance devices.

The city shall require performance or maintenance assurance devices in accordance with Chapter 40 of this title to ensure compliance with this chapter and adequate

protection and maintenance of critical areas. (Ord. 2909-06 § 24, 2006)

37.250 Previously altered critical areas.

It is the goal of this chapter to restore and enhance the condition of critical areas which have been previously altered. Properties containing critical areas which have been previously altered may be developed in accordance with all requirements of this chapter and this title of the code.

A. **Legal Alterations.** Critical areas regulated by this chapter which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this chapter. Any prior alteration which was legally commenced that resulted in a critical area which is regulated by this chapter being reclassified as buildable shall be evaluated using the review process described in EMC Title 15, Local Project Review Procedures. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this chapter as a critical area. The planning director shall use all authority granted by this chapter, SEPA, or other legal mechanism to require enhancement of the previously altered critical area to the condition which would be required by this chapter for new development, to the maximum extent feasible.

B. **Unauthorized Alterations.**

1. Critical areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas which were illegally altered shall be considered critical areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title 15, Local Project Review Procedures.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered critical area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functions or a higher quality critical area than possible in the area which has been previously altered.

3. Any illegal alteration of a critical area that occurred prior to the effective date of the ordinance codified in this chapter which is not proposed for development

as allowed by this chapter shall be restored as provided by this section. (Ord. 2909-06 § 25, 2006)

37.260 Enforcement—Violation—Penalties.

Notwithstanding the enforcement, violation and penalties provision found in Chapter 41 of this title, the provisions set forth in this section shall apply to all violations of this chapter. Penalty and enforcement provided in this section shall not be deemed exclusive, and the city may pursue any remedy or relief it deems appropriate.

A. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of Chapter 1.20.

B. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars. It shall be a separate offense for each and every day or portion thereof during which any violation of any provisions of this chapter is committed.

C. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter is liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation occurring. If an equivalent condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the critical area, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture.

D. Restoration shall include, but not be limited to, the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced, improper fill removed and slope stabilized. Studies by the qualified experts shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

E. Restoration shall also include installation and maintenance of interim and emergency erosion controls measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.

F. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.

G. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of

this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

H. The city is authorized to apply to any court of competent jurisdiction and any such court, upon hearing and for cause shown, may grant a preliminary, temporary or permanent injunction restraining any person, firm, and/or corporation from violating any of the provisions of this chapter and compelling compliance with the provisions thereof. The violator shall comply with the injunction and pay all costs incurred by the city in seeking the injunction. (Ord. 2909-06 § 26, 2006)