

CITY OF BLAINE
CONSISTENCY REVIEW AND INTEGRATION STRATEGY
TASK 3
Draft Shoreline Master Program
December, 2006



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**CITY OF BLAINE
ENVIRONMENTAL POLICY AND REGULATION MATRIX**

| COMPREHENSIVE PLAN | Issues | Recommendation |
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| GMA Planning Goals | | |
| GMA Planning Goal (8) Natural Resource Industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses. | None. | GMA Goal – Retain. |
| GMA Planning Goal (9) Open Space and Recreation. Encourage the retention of open space, enhance recreational opportunities and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities. | None. | GMA Goal – Retain. |
| GMA Planning Goal (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality and the availability of water. | None. | GMA Goal – Retain. |
| GMA Planning Goal (14) Shorelines of Statewide Significance. Protect the ecosystem-wide processes of shorelines in accordance with the Shoreline Management Act and implementing guidelines, integrating those provisions into the Comprehensive Plan's goals, policies, and implementing actions. | Title limits goal to shorelines of statewide significance, which is not consistent with RCW 36.70A or RCW 90.58. | Amend as follows: (14) Shoreline <u>Management</u> . Protect the <u>ecological functions and</u> ecosystem-wide processes of shorelines <u>of the state in</u> accordance with the <u>goals and policies of the</u> Shoreline Management Act and implementing <u>regulations</u> , integrating those provisions into the Comprehensive Plan's goals, policies, and implementing actions. |
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| Blaine Comprehensive Plan Policies (2006) | | |
| LAND USE GOALS POLICIES AND ACTIONS | | |
| GOAL 4 To protect the scenic beauty, water quality, wildlife habitat areas, open spaces, and cultural resources which contribute to the quality of life and give the | None. | Retain. |

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| Blaine area a rural character. | | |
| 4.1 Wetlands and Critical Areas - Development in areas which have designated shorelands, wetlands or critical areas, including flood plains, aquifer recharge areas, unstable slopes or important fish and shellfish habitat or wildlife and bird habitat areas should be conducted in a way which minimizes impacts to the areas and retains or replaces the physical or biological function of these areas. Wherever possible, wetlands, bird habitat and other critical areas should be utilized as buffers between dissimilar land uses. It is the policy of the City of Blaine to have no net loss of shoreline or wetland functions or values. | None. | Retain. |
| 4.2 Landscaping - the City should encourage the retention of natural vegetation or replacement of disturbed vegetation with appropriate landscaping or ground cover to prevent erosion, protect water quality, and enhance the appearance of the City. | None. | Retain. |
| 4.3 Interagency Coordination- The City of Blaine should coordinate with state and federal agencies to ensure the protection of fish and wildlife resources within the Blaine Urban Growth Area. Development projects shall be required to comply with state and federal fisheries and wildlife protection laws. | None. | Retain. |
| 4.4 Cultural Resources- Development in areas which have potentially significant historic, archaeological or traditional cultural properties should be conducted in a way which avoids or minimizes impacts to these resources. | None. | Retain. |
| 4.5 Watershed Restoration - Fish habitat projects conforming to RCW 36.70A.395 are not required to complete a Shoreline Substantial Development Permit and shall be considered to be consistent with Blaine's Shoreline Master Program. | Is this the correct statutory reference? Is this consistent with SMA requirements? | If consistent with SMA, include in shoreline exemptions. If not, delete policy. |
| Chapter 6: Utilities Drayton Harbor Watershed Action Plan The City of Blaine has been working cooperatively with other agencies, organizations and citizens since 1991 to complete and begin implementation of the Drayton Harbor Watershed Action Plan. This plan addresses a number of water quality issues affecting Drayton Harbor, including agricultural practices, failing septic tanks, sewage treatment plant overflows, stormwater management, ports and harbors, erosion and land use . The City of Blaine will continue to coordinate with the other parties involved to address these issues and implement the recommendations of this plan. | None. | Retain. |
| GOAL 7 To protect the water quality in the Drayton Harbor Watershed. | None. | Retain. |
| Policy 7.1 The City of Blaine should work cooperatively with other agencies, organizations and citizens to implement the recommendations of the Drayton Harbor Watershed Action Plan. | None. | Retain. |

| REGULATIONS | Issues | Recommendation |
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| CHAPTER 17.81 – SHORELINE MANAGEMENT MASTER PROGRAM | | |
| <p>17.81.010 Adoption and filing of copies. The city of Blaine shoreline management master program, as revised, is adopted by the city and the provisions of the master program are incorporated herein by reference as though fully set forth. The complete master program, as revised, shall be officially designated as the “Shoreline Management Master Program for the City of Blaine.” At least three copies of the complete text of the city’s latest edition of the shoreline management master program are on file in the community development department for public use. (Ord. 2554 § 3, 2003)</p> | None. | Replace with updated shoreline regulations as part of shoreline master program update. |
| <p>17.81.020 Relationship to critical areas management. In no case shall the regulations governing critical areas be construed to minimize or reduce the requirements imposed by the Shoreline Master Program, ensuring that qualities of regulated shorelines are maintained. (Ord. 2628 § 2, 2006)</p> | Provision attempts to compensate for inadequate critical areas regulations. | Strengthen both critical areas and shoreline regulations to provide required protection. Replace with updated shoreline regulations as part of shoreline master program update. |
| <p>17.81.030 Appeals. Any person aggrieved by the director’s decision regarding the application of the provisions of the city’s shoreline program to a particular proposal including any order requirement or administrative permit related to that proposal may appeal the decision to the hearing examiner. The appeal shall be processed as a Type II-HE decision requiring an open record appeal hearing. The Department of Ecology shall be considered a party of record and provided notice of the appeal as provided in BMC 17.06.180. (Ord. 2628 § 2, 2006; Ord. 2554 § 3, 2003. Formerly 17.81.020)</p> | None. | Administrative appeal procedures should be incorporated into the updated shoreline regulations. |

| REGULATIONS | Issues | Recommendation |
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| <p>CHAPTER 17.82 – NATURAL RESOURCE LANDS AND CRITICAL AREAS MANAGEMENT</p> | | |
| <p>17.82.010 Authority. The city adopts this chapter under the State Growth Management Act, Chapter 36.70A RCW. With the exception of wetlands and streams, this chapter contains this city's natural resource lands and critical areas procedures and policies. (Ord. 2554 § 3, 2003)</p> | <p>It may be inappropriate to regulate streams under Wetland Management</p> | <p>Consider adopting integrated critical areas ordinance that addresses all critical areas, including streams and wetlands.</p> |
| <p>17.82.020 Purpose. The Growth Management Act mandates local governments to assure the conservation of natural resource lands and requires local governments to adopt development regulations precluding land uses or development that is incompatible with critical areas. The purpose of this chapter is to provide a set of development regulations to accomplish this directive on the basis of the following goals: A. To maintain and enhance natural resource-based industries, to encourage the conservation of productive forest lands and agricultural lands, and to discourage land uses which are incompatible with these goals. B. To recognize the value of critical recharge areas for aquifers and protect the quantity and quality of the ground water resource. C. To recognize and respond to the need for flood control and flood-resistant building practices within frequently flooded areas. D. To protect the public health and safety through the use of land use regulations in areas which, due to geological hazards, are either not suited or have probable significant limitations to building siting, road construction or disturbance. E. To protect the habitat value of those areas providing critical habitat for threatened, endangered or sensitive wildlife species. (Ord. 2554 § 3, 2003)</p> | <p>Does not address wetlands or streams or other habitats, but does address habitats for threatened or endangered species.</p> | <p>Retain, but integrate all CAO purposes.</p> |
| <p>17.82.030 Applicability. A. All development proposals on natural resource lands or in critical areas, whether public or private, shall comply with the requirements and purposes of this chapter. It shall be the responsibility of the community development director to determine if the proposal meets the requirements for this chapter. Said decision must be in writing and included as part of the issued permit. B. For the purposes of this chapter, development proposals include proposals which require any of the following: building permit; land clearing, grading, or filling permit; shoreline substantial development permit; shoreline variance; shoreline conditional use</p> | <p>Applies to development proposals.</p> | <p>Expand applicability to address all actions that have the potential to adversely impact critical areas, even those that are below the permit threshold.</p> |

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| <p>permit; conditional use permit; variance; zoning amendment; preliminary development plan for a development contract district; subdivision; short subdivision; any other land use approvals required by this code. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.82.040 Special studies required. A. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area or any required buffer for a critical area is located on or adjacent to the site. The applicant shall identify the critical area(s). The applicant shall address how the regulations incorporated in this chapter are being met. B. In the case of fish and wildlife habitat areas and geologically hazardous areas, a map shall be provided that indicates the location of the critical area and any required buffer in relationship to the proposed development. C. The application shall include the classification of the critical area. The director may request that information submitted regarding critical areas be prepared by a qualified ecologist, engineer or similarly qualified expert in the critical area(s) affected. (Ord. 2554 § 3, 2003)</p> | <p>Only applies to development proposals. Special studies should be required to be prepared by a qualified specialist unless waived by the director.</p> | <p>Amend to authorize the Administrator to require special studies for activities not included in a development proposal, but which have the potential to adversely impact critical areas. Modify to require that special studies be prepared by qualified specialist unless waived by director.</p> |
| <p>17.82.050 Appeals. Any person aggrieved by the director's decision regarding the application of the provisions of this chapter to a particular proposal may appeal the decision to the hearing examiner. The appeal shall be processed as a Type II-HE decision requiring an open record appeal hearing. (Ord. 2554 § 3, 2003)</p> | <p>How does the Code address appeals involving multiple regulations (i.e.PC action, CAO and SMP)?</p> | <p>Review and integrate appeal process, if necessary.</p> |
| <p>17.82.060 Aquifer recharge areas. A. Classification. Classification of recharge areas shall be based upon the susceptibility of the aquifer. High susceptibility shall be defined as those areas where surficial geology and soils information both indicate high recharge potential. B. Land to Which This Section Applies. Those areas where high permeability surficial geology are indicated by the Map of Engineering Characteristics of Geologic Material, Whatcom County, Map I-854D prepared by Don Easterbrook in conjunction with the United States Geological Service and where the following soil types are present: 13A, 13B, 13C, 13D, 31A, 31C, 32B, 32D, 32E, 33A, 36A, 36B, 38A, 38B, 39A, 39B, 39C, 39D, 39E, 42A, 47A, 48A, 67A, 67B, 69B, 71A, 72A, 73A, 77A, 77B, 77C, 79A, 79B, 79E, 80A, 80B, 85A, 87A, 87B, 87C, 87D, 87E, 88A, 90A, 93A, 93B, 93C, 95A, and 96B as classified by the United States Department of Agriculture, Soil Conservation Service, Soil Survey for Whatcom County.</p> | <p>No mention is made of detailed studies prepared by a Hydrogeologist.</p> | <p>Retain, but add requirement that special studies be prepared by qualified hydrogeologist.</p> |

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| <p>C. Standards. The city shall require special control measures to protect aquifer recharge zones in the city. Any area found to have a high permeability shall require site plans for on-site storm drainage, on-site retention method and storm water treatment process. All plans shall be approved by the city prior to development approval for any type permit. Special use restrictions will be imposed in areas found to have a high permeability. These restrictions shall apply to, but not be limited to, those activities identified in Exhibit A at the end of this chapter. Such restrictions may include reductions in the maximum percent of impervious surfaces of a parcel, special wetland protection measures, or other restrictions as necessary to protect the quality and quantity of the resource.</p> <p>D. No permits shall be approved to carry on activity that is expected to cause hazardous waste to enter the aquifer. Whenever possible, all landscaping shall be of such nature as to provide for as much open permeable space as possible in critical recharge zones. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.82.070 Fish and wildlife habitat conservation areas.</p> <p>A. Classification. Areas conserved for management and maintenance of fish and wildlife habitat; for public health, safety and well-being. These areas may include other critical areas such as wetlands and their associated buffers.</p> <p>B. Land to Which This Section Applies.</p> <ol style="list-style-type: none"> 1. Areas with which endangered, threatened, and sensitive species have a primary association; 2. Commercial and recreational shellfish areas; 3. Kelp and eelgrass beds; herring and smelt spawning areas; 4. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from a dry site, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years' duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority; 5. Waters of the state. Waters of the state are defined in WAC Title 222, the forest practices rules and regulations. Said waters shall be classified as established in WAC 222-16-030; 6. Lakes, ponds, streams and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of federal, state, local or tribal programs or which support priority fish species as identified by the Department of Wildlife; 7. State natural area preserves and natural resource conservation areas. <p>C. Standards. Alterations of these critical areas may reduce the likelihood that the</p> | <p>Classification section is acceptable, but the standards section is completely inadequate.</p> | <p>Incorporate full set of requirements to protect fish and wildlife habitat conservation areas, including minimum standard buffers, provisions for buffer increasing, reducing and averaging, and mitigation.</p> |

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| <p>species will survive or reproduce. The city shall assure that activities allowed in fish and wildlife habitat conservation areas are consistent with all applicable state and federal regulations regarding that species. Development in these areas shall be in accordance with the requirements of any overlapping critical area classification. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.82.080 Frequently flooded areas. A. Classification. Classification for frequently flooded areas shall be consistent with the 100-year floodplain designation of the Federal Emergency Management Agency and the National Flood Insurance Program. B. Land to Which This Section Applies. All land which is classified within the 100-year floodplain by the Federal Emergency Management Agency and the National Flood Insurance Program. C. Standards. All development activities shall comply with Chapter 17.86 BMC. (Ord. 2565 § 3, 2004; Ord. 2554 § 3, 2003)</p> | None. | Retain. |
| <p>17.82.090 Geologically hazardous areas – Landslide. A. Classification. Landslide areas are classified as susceptible to erosion, sliding, earthquake or other geological events. B. Land to Which This Section Applies. These include slopes of 15 percent or greater that are underlain by weak, fine grained unconsolidated sediments, jointed or bedded bedrock, or landslide deposits. Also included are the top and toe of such areas. The following areas are included: 1. Lands indicated on the slope stability map in western Whatcom County (USGS I-854-C), a classification system that delineates four categories of slope stability in Whatcom County; 2. Lands indicated as active slide areas, potential or suspected slide areas of unknown slide areas identified in Map 10 of the Critical Areas of Blaine and its Surrounding Area, prepared by students of Western Washington University, 1991; 3. Areas with all three of the following characteristics: slopes of 15 percent or steeper; and hillsides intersecting geologic contracts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and springs or ground water seepage; 4. Areas of historic failures; 5. Areas that have shown movement during the Holocene Epoch (from 10,000 years ago to the present) or which are underlain or covered by mass wastage debris of that epoch; 6. Slopes that are parallel or subparallel to lines of weakness (such as bedded planes, joint systems and fault planes) in subsurface materials; 7. Slopes having gradients steeper than 80 percent that are subject to rockfall during</p> | Standards do not tie back to Areas to Which This Section Applies. No setbacks from top or toe of slopes required. | Refine standards to address all areas classified as landslide hazards and match level of effort required with severity of hazard. Establish required buffer from top or toe of slope and include these areas in the definition of critical area. |

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| <p>seismic shaking;</p> <p>8. Slopes potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action;</p> <p>9. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flow or catastrophic flooding;</p> <p>10. Any area with 40 percent slope or greater and with a vertical relief of 10 or more feet except areas composed of consolidated rock.</p> <p>C. Standards. All applications for development within an area with slopes of 15 percent or the top or toe of such slopes shall include a geotechnical report performed by a qualified engineering geologist or geotechnical engineer. Reports will be used to determine conditions for project approval. The report shall ensure that the following standards can be met:</p> <p>1. The development proposal causes no increase in surface water discharge or sedimentation to other properties and shall not decrease slope stability on other properties;</p> <p>2. Disturbance of trees and vegetation shall be minimal in order to prevent erosion, stabilize slopes, and preserve the natural character of the area;</p> <p>3. Structures shall conform to the natural contour of the slope and foundations shall be tiered or otherwise designed to generally conform to the existing topography of the site;</p> <p>4. Structures must be designed and clustered where possible to reduce disturbance and maintain natural topographic character; and</p> <p>5. Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural landforms and vegetation. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.82.100 Geologically hazardous areas – Erosion.</p> <p>A. Classification. Erosion hazard areas are sites designated by the USDA Soil Conservation Service as containing highly erodible soils.</p> <p>B. Land to Which This Section Applies. This section pertains to soils in Blaine that demonstrate critical erosion hazard potential under development conditions and/or have been identified as such by the Soil Conservation District of the U.S. Department of Agriculture as highly erodible or potentially erodible.</p> <p>C. Standards. All applications for development located in erosion hazard areas shall be accompanied with a report from a qualified consultant indicating measures to be taken to reduce erosion potential. (Ord. 2554 § 3, 2003)</p> | <p>Classification is not specific.</p> | <p>Provide greater details regarding soil types and applicability of Section.</p> |
| <p>17.82.110 Geologically hazardous areas – Seismic hazard.</p> <p>A. Classification. Seismic hazard areas are areas subject to a severe risk of earthquake damage as a result of seismically induced ground shaking, differential settlement or soil liquefaction.</p> <p>B. Land to Which This Section Applies. Development proposals on sites listed as having</p> | <p>None.</p> | <p>Retain.</p> |

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| <p>a very high response to seismic shaking as determined by Easterbrook, shown on Engineering Characteristics of Geologic Materials, Western Whatcom County (USGS I-854-D). Other lands to which this may apply include other geologically hazardous areas, hazards of human origin such as landfills or filled wetlands, areas of alluvial deposits subject to liquefaction, and others as determined by the city.</p> <p>C. Standards. All applications for development within a high seismic hazard area shall include preliminary information to assist the city to determine the need for a geological and geotechnical report. Preliminary information and reports will be used to determine conditions for project approval. Site analysis by a qualified geologist or geotechnical engineer may be required. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.82.120 Development exceptions. Exceptions to the development restrictions and standards set forth in this chapter shall be permitted pursuant to the provisions of this section.</p> <p>A. Modification of Existing Structures. Existing structures or improvements that do not meet the requirements of this chapter may be remodelled, reconstructed or replaced; provided, that the new construction does not further intrude into a critical area.</p> <p>B. Emergencies. The director may approve improvements that are necessary to respond to emergencies that threaten the public health and safety or public development proposals when it is determined that no reasonable alternative exists and the benefits outweigh the loss.</p> <p>C. Trails and Trail-Related Facilities. Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, viewing platforms, and campsites shall be allowed, but use of impervious surface shall be minimized. (Ord. 2554 § 3, 2003)</p> | <p>Do exceptions eliminate requirements for variances and submission of detailed studies under all cases? Exception (A) does not include Maintenance.</p> | <p>Expand list of exceptions, if appropriate. Add Reasonable Use Exception Section.</p> |
| <p>Additional Changes</p> | | <p>Address variances and reasonable use exceptions and ensure integrated procedure. Add definitions. Add field marking of required buffers. Consider adding requirement to place critical areas and buffers in conservation easement, recorded with Auditor and marked or fenced. Address habitats and species of local</p> |

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| CHAPTER 17.83 – WETLAND MANAGEMENT | Issues | Recommendation |
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| <p>17.83.020 Authority. This chapter is adopted pursuant to the provisions of Article 11 of the Washington State Constitution. (Ord. 2554 § 3, 2003)</p> | Should also cite GMA. | Add reference to RCW 36.70A. |
| <p>17.83.030 Purpose. The goals of this chapter are: A. To recognize the beneficial uses, functions and values of wetlands by encouraging the preservation and enhancement of wetland functions and values. B. To recognize that while the loss of wetlands is undesirable, there may be certain cases involving lower-value wetlands where property rights and public interest conflict with the city’s goal of preserving wetlands. In these cases of low-value wetlands, the goal of wetland preservation may be achieved through mitigation of wetland impacts by protecting or enhancing storm water retention, ground water recharge, water quality and habitat and, in appropriate cases, participation in off-site mitigation. C. It is furthermore the purpose of this chapter to promote planning to prevent or minimize damage to wetlands; to provide for compensation in the form of wetland and stream restoration, enhancement, creation or off-site mitigation to offset those wetland losses; and to provide for the protection of wetlands via implementation of all applicable ordinances and regulations. (Ord. 2554 § 3, 2003)</p> | Focuses on wetlands, but not on streams. | Integrate into unified CAO. |
| <p>17.83.040 Definitions. Words and phrases used in this chapter shall be interpreted as defined below, and, where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose. “Averaging” means adjusting the required buffer setback from a wetland or stream where it is demonstrated that certain portions of the wetland or stream are more sensitive to disturbance than other portions of the system. For every decrease in setback for an area, there must be an equal corresponding increase in another area, thus maintaining a specified buffer average. The total land area within the buffer for a given parcel shall remain at least as large as if the buffer were a uniform setback. “Buffer” means a vegetated area bordering a wetland, lake or stream that provides separation from the adjacent or surrounding area to help minimize disturbances resultant from human activity. Buffer widths required in this chapter are: Category one: 75 feet. Category two: 50 feet. Category three: 25 feet. Streams: 25 feet. “Contiguous” means immediately adjacent to, included within or directly linked</p> | Buffers should not be established in the Definitions Section. Wetland classification is clearer when set forth in Classification Section separate from Definitions. Some definitions missing or in need of updating. | Delete buffer widths and classifications from Definitions of Buffer and Wetland. Add and update definitions as necessary. |

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| <p>hydrologically with another water body.</p> <p>“Delineation” means the precise determination of wetland boundaries in the field according to the application of specific methodology as presently in use by the United States Army Corps of Engineers and the mapping thereof.</p> <p>“Fens” means peat wetlands that derive a portion of their water supply from surface water, whereas bogs are supplied primarily by precipitation and have no significant inflow and outflow streams.</p> <p>“Functions” means the beneficial roles wetlands may serve, including storage, conveyance and attenuation of floodwaters and storm waters; ground water recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game, and nongame birds, mammals, and other living resources; protection of habitat for rare, threatened and endangered species; food chain support for a broad range of wildlife and fisheries; educational, historical and archeological value protection; and scenic, aesthetic, and recreational amenities.</p> <p>“High bank” means a steeply rising, near vertical slope which abuts and rises from a water body or wetland. The top of a high bank is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is either the line of vegetation separating the unvegetated steep slope from the vegetated uplands plateau or, when the high bank is vegetated, the point where the bank slope diminishes to less than 15 percent.</p> <p>“High-quality native wetland” means wetlands which are on record with the Washington Natural Heritage Program as a high-quality native wetland.</p> <p>“Low-impact” means activities that might occur within wetlands and streams and their associated buffers which would have minimal adverse impact on their functions and values, physical setting and overall benefits. Such uses include, but are not limited to, pedestrian trails, interpretive signs, fishing access and scientific research which creates little disturbance.</p> <p>“Mature forested wetlands” means wetlands which meet all of the following criteria:</p> <ol style="list-style-type: none"> 1. Forested wetland where at least 50 percent of the tree canopy coverage is mature trees: trees 80 years or older for softwoods and 50 years or older for hardwoods; and 2. Presence of seedlings or saplings of one or more of the dominant overstory tree species; and 3. Nonnative species constitute less than 50 percent of herbaceous coverage; and 4. Area greater than one acre in size. <p>“Off-site” means a location with a different legal property description than that containing the specified wetland or affected portion thereof.</p> <p>“On-site” means anywhere within the property having the same legal description as the specified wetland or affected portion thereof.</p> | | |
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| <p>“Ordinary high water mark” means the mark on streams and tidal waters which will be found by examining the beds and bank and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. In cases where there is an absence of vegetation, the mean higher high tide shall be the ordinary high water mark.</p> <p>“Regulated activity” means an activity with a significant impact on any wetland, including:</p> <ol style="list-style-type: none"> 1. The removal, excavation, filling, grading, or dredging of soil, sand, gravel, minerals, organic matter, or materials of 12 cubic yards or more; 2. The changing of existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics; 3. The disturbance of wetland water level or water table by drainage, impoundment, or other means; 4. The driving of piles, placement of obstructions, and erection of buildings or structures of any kind; 5. The destruction or removal of plant life that would alter the character of a wetland; and 6. The conduct of an activity that results in a significant change of water temperature, a significant change of physical or chemical characteristics of wetland water sources, or introduction of pollutants. <p>“Significant” means having or likely to have considerable influence or effect.</p> <p>“Sphagnum wetlands” means peat wetland which is determined by the presence of sphagnum mosses.</p> <p>“Stream” means a physically defined channel, with seasonal or perennial water flow, that will at least periodically support a predominance of wetland and aquatic plants specifically adapted for growth in a saturated environment. Streams do not include streams artificially created from nonwetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals and landscape amenities.</p> <p>“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, such as irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetland. Methods for delineating</p> | | |
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wetlands shall be as described in the following publication: Federal Interagency Committee for Wetland Delineation Federal Manual for Identifying and Delineating Jurisdictional Wetlands in the version currently in use by the U.S. Army Corps of Engineers, Washington, D.C. Cooperative Technical Publication.

Wetland Categories.

1. "Category one wetland" means wetlands which have exceptional resource value based on unique qualities, presence of rare wetland communities and sensitivity to disturbance. These wetlands have one or more of the following features:

- a. Contain documented habitat of threatened, endangered or rare plant or animal, including fish, species recognized by state or federal agencies;
- b. High-quality native wetland sites which qualify as quality natural heritage wetlands;
- c. Contain irreplaceable or rare wetland types in the Puget Sound Basin. These types are sphagnum bogs, fens or significant peat deposits, marine-influenced wetlands and mature forested wetlands;
- d. Wetlands of exceptional local significance. The criteria for such a designation includes, but is not limited to, rarity, ground water recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed. Wetlands locally identified as having local significance shall be documented in the Blaine Inventory Map (specific criteria and wetlands of exceptional local significance have not been identified in the present inventory map; further work is required to identify which wetlands to include).

2. "Category two wetland" means wetlands not included in category one which are a significant resource based on functional values and diversity. These wetlands have one or more of the following features:

- a. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies;
- b. Wetlands with significant habitat value based on diversity and size, as follows:
 - i. Ten acres or greater in size, and two or more wetland classes (as defined in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al.)) together with 20 percent or greater permanent open water during a normal year; or
 - ii. Ten acres or greater in size, and three or more wetland classes; and five or more subclasses of vegetation in a dispersed pattern; or
 - iii. Five acres or greater in size, and 40 to 60 percent permanent open water during a normal year; and two or more subclasses of vegetation in a dispersed pattern;
- c. Wetlands contiguous with any stream.

3. "Category three wetland" means all wetlands not included in category one or two wetlands. These wetlands may be valuable for their functions in storm water retention, aquifer recharge and as water quality purifiers. Category three wetlands include

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| <p>wetlands that are not contiguous with a stream, with no threatened, endangered or sensitive plant or animal species or rare wetland types, and contain less than 20 percent permanent open water. Generally they provide only minimal habitat functions. Normally their functions and values may be mitigated or recreated artificially.</p> <p>“Wetland creation” means a human activity to bring a wetland or portion of a wetland into existence where one previously did not exist.</p> <p>“Wetland enhancement” means a human activity which increases the functions and values of a wetland, as determined by a professional in wetland enhancement.</p> <p>“Wetland restoration” means a human activity which restores the functions and values of a wetland to the extent that existed prior to disturbance or degradation, as determined by a professional in wetland restoration.</p> <p>“Wetlands specialist” means a person who has earned a degree in biological sciences with specific coursework concerning the function and value of wetlands from an accredited college or university. A qualified consultant or professional person who has had equivalent education and training or with equivalent experience may also qualify as wetlands biologist for the purpose of performing wetland delineations, analysis of functions and values and determination of possible mitigation. (Ord. 2554 § 3, 2003)</p> | | |
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| <p>17.83.050 Applicability. A. This chapter shall apply to: 1. All wetlands over 10,000 square feet in size; 2. All upland buffer zones: a. Category one wetlands: 75 feet, b. Category two wetlands: 50 feet, c. Category three wetlands: 25 feet; 3. All streams and upland buffer zones within 25 feet of the ordinary high water mark of the stream. B. This chapter shall not apply to: 1. Wetlands less than 10,000 square feet in size; 2. Artificially created wetlands that were not required to be constructed as mitigation for wetland impacts. These may include but are not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, reservoirs, wastewater treatment ponds, farm ponds and landscape amenities; 3. In the case where the United States Army Corps of Engineers requires an Individual 404 Permit consistent with the United States Clean Water Act and it is determined by the director that the requirements of this chapter are met, the director shall waive the procedural requirements of this chapter. (Ord. 2554 § 3, 2003)</p> | <p>Exempts wetlands under 10,000 square feet. Complete deferral to the Army Corps may not always be the optimal approach.</p> | <p>Eliminate exemption for wetlands less than 10,000 s.f. Allow the Director to waive procedural requirements upon his determination.</p> |
| <p>17.83.060 Rules for the determination of wetland boundaries and category. Determination of wetland boundaries and category will ultimately be the responsibility of the property owner, to be determined from a field survey by a city-approved wetland specialist applying the adopted wetland definition and category types. The city-wide wetland inventory maps and information will greatly assist in this process. When sufficient information exists from the city's wetland inventory, the requirement for a full or partial delineation and category determination shall be waived. Wetland delineations shall be performed in accordance with the procedures as specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands and any subsequent amendments thereto. Evidence documenting the results of the boundary survey may be required by the director. (Ord. 2554 § 3, 2003)</p> | <p>RCW 36.70A requires use of Ecology Wetland Rating system.</p> | <p>Amend to adopt Ecology Wetland Rating System for Western Washington (2004) or most recent update.</p> |
| <p>17.83.070 City-approved wetland specialist list. The director shall maintain a list of consultants qualified to perform the work required in this chapter including wetland delineation, buffer averaging, restoration and mitigation. (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Evaluate whether having list of qualified consultants is working. If so, retain.</p> |
| <p>17.83.080 Permit requirements – Compliance. No regulated activity within the regulated area of a wetland may be conducted without a permit from the city and full compliance with the terms of this chapter and other applicable regulations. (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Retain.</p> |

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| <p>17.83.090 Temporary emergency permit. Notwithstanding the provisions of this chapter or any other law to the contrary, if the director deems that an unacceptable threat to life or severe loss of property will occur, a temporary emergency permit may be issued. (Ord. 2554 § 3, 2003)</p> | None. | Retain with minor wording changes. |
| <p>17.83.100 Bond for performance. A. The director may require a bond in an amount and with surety and conditions sufficient to secure compliance with the intent of this chapter. In the event of a breach of any condition of any such bond, the city may initiate an action in a court of competent jurisdiction upon such bond. B. For projects which require less than \$2,000 in improvements associated with wetlands mitigation or preservation, no bond is necessary. If mitigation is not complete in accordance with a mitigation schedule, a fine of up to \$1,000 may be imposed. (Ord. 2554 § 3, 2003)</p> | Section does not specify bond amount (i.e. 125% of cost). Is \$1,000 fine lawful? | Specify bond amount; check with City Attorney regarding authority to exact fines. |
| <p>17.83.110 Abrogation and greater restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 2554 § 3, 2003)</p> | None. | Retain. |
| <p>17.83.120 Uses by right. Certain uses are allowed by right and do not require a wetland permit. However, when such uses are located in a category one wetland, the mitigation sequence identified in BMC 17.83.210(B)(1) shall be met. The following uses shall be allowed within a regulated wetland to the extent that they are not prohibited by any other ordinance or law: A. Construction of public transportation corridors, such as roads, sidewalks, bike lanes and trails, public utilities such as water and sewer lines, gas lines, public airports, telecommunications and power lines where it can clearly be demonstrated that the project is needed for the benefit of the public and no practicable alternative exists. Access to private property through wetlands is permitted where no practicable alternative exists. In undertaking the above projects, practices to ensure preservation of wetland function and values shall be implemented. B. Normal maintenance and repair and routine replacement of lawfully located existing facilities or structures such as buildings, transportation corridors and utilities including water and sewer lines, power, gas and telephone lines; provided, that they do not significantly disrupt the associated wetland or stream functions and values. C. Public parks, foot trails, educational and interpretive projects directly related to wetland understanding and enjoyment; provided, that they do not significantly disrupt the associated wetland or stream functions and values. D. Development of one single-family dwelling site within the buffer of a wetland or</p> | Development of single-family residence should not be a use by right, but rather should require variance or reasonable use exception with mitigation. | Delete (D) and possibly incorporate into the conditions under reasonable use exceptions. |

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| <p>stream on a legal development site shall be approved by the director if the applicant demonstrates that:</p> <ol style="list-style-type: none">1. The extent of the wetland disturbance within the buffer is limited to that which is necessary. In any case, it shall not be larger than 5,000 square feet;2. The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the wetland; and3. The development is consistent with the purpose and intent of this chapter. <p>E. The annual removal of an incidental amount of firewood for personal use on a single-family lot. No sale of firewood is allowed. (Ord. 2554 § 3, 2003)</p> | | |
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| <p>17.83.130 Wetland permit uses. Regulated activities other than those specified in BMC 17.83.120 may not be conducted except upon application to the director and issuance of a wetland permit. (Ord. 2554 § 3, 2003)</p> | <p>Duplicates 17.83.080</p> | <p>State permit requirement once.</p> |
| <p>17.83.140 Relationship to zoning ordinance. Provision has been made within the Blaine land use code to provide an incentive for wetland preservation by allowing procedures for zoning variances in cases where it is necessary to reduce zoning standards in order to protect a wetland. Proponents of projects should check BMC Title 17 in order to take advantage of this provision. (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Retain.</p> |
| <p>17.83.150 Wetland permits. Application for a permit to conduct a regulated activity shall be on forms furnished by the department of community development. Permits shall ordinarily be valid for a period of five years. Substantial progress toward development of the project must begin within two years of the issuance unless uncontrollable circumstances occur, in which case one-year extensions may be granted. (Ord. 2554 § 3, 2003)</p> | <p>Five years may be too long a time period.</p> | <p>Modify to allow three years for completion consistent with the timing for a building permit. Specify that extensions require written request prior to expiration.</p> |
| <p>17.83.160 Permit applications. Application for a permit for a regulated activity shall include: A. The purpose of the project and an explanation of the reason for the proposed location; B. A site plan drawn prepared to scale by a city-approved wetlands expert showing the following: 1. The wetland boundary as determined by field delineation; 2. Width and length of all existing and proposed structures, roads, watercourses and drainageways: water, wastewater and storm water facilities; C. A description of the wetland or wetlands to be affected prepared by a city-approved wetlands specialist. The study shall include: 1. Sketch plan at the scale of 1:200 for the wetland or portion thereof lying within the owner's property, 2. Area that may be filled or impacted, 3. Vegetation types, 4. Classification in accordance with the Blaine category system, 5. Location and number of wetland classes, utilizing as a guide the Classification of Wetlands and Deep Water Habitats of the United States, published by the U.S. Fish and Wildlife Service, Washington D.C., 1979, 6. Wetland water resources, 7. Common characterization of the habitat, wildlife and dominant plants,</p> | <p>May need to include additional items. Proposed mitigation should be included.</p> | <p>Review and revise to include all necessary information including proposed mitigation.</p> |

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| <p>8. Information on the presence of threatened or endangered species; D. Soil types on the site and the exact locations and specification for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods; E. Adjacent land use; and F. Elevations of the project site and adjacent lands within 100 feet of the site at contour intervals of five feet. (Ord. 2554 § 3, 2003)</p> | | |
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| <p>17.83.170 Request for predetermination. A. Any person intending to apply for a wetland permit is strongly encouraged to meet with community development staff during the earliest possible stages of project planning. B. Any person who wants to know whether a proposed activity or an area is subject to this chapter may request in writing a letter of determination from the director. The director shall acknowledge receipt of the application within five working days. If additional information is necessary in order to make a predetermination, a request for said information shall be supplied to the applicant within 10 working days. C. At the time of a request for determination, the applicant shall pay a filing fee which shall be specified by written policy by the city council. (Ord. 2554 § 3, 2003)</p> | <p>This Section inappropriately places the burden on the City. The timeline is also too short. Is wetland predetermination fee specified in fee schedule?</p> | <p>Delete. Include reference to critical areas or wetlands maps, but indicate that these are general in nature and actual presence on the ground determines applicability of Chapter.</p> |
| <p>17.83.180 Procedures. If the proposal is in conformance with the intent and regulations of this chapter, a wetlands permit shall be approved by the city. (Ord. 2554 § 3, 2003)</p> | <p>Does not include authority to establish conditions as part of approval.</p> | <p>Add Subsection that allows Director to establish conditions necessary to grant approval.</p> |
| <p>17.83.190 Appeal. Any person aggrieved by a decision of the director regarding the application of the provisions of this chapter to a particular proposal, including a determination of wetland classification or the approval or denial of a permit, may appeal the decision to the hearing examiner. The appeal shall be processed as a Type II-HE decision requiring an open record appeal hearing. (Ord. 2554 § 3, 2003)</p> | <p>Same language as 17.82.050.</p> | <p>Review and integrate appeal procedures, if necessary.</p> |
| <p>17.83.200 Other permits. The issuance of a city wetland permit in no way authorizes activity prohibited by the Federal Clean Water Act. Whenever a project may involve work in a wetland, proponents should consult with the U.S. Army Corps of Engineers regarding permit requirements. (Ord. 2554 § 3, 2003)</p> | <p>Non-regulatory – Advisory only.</p> | <p>Unnecessary. Consider deleting.</p> |
| <p>17.83.210 Standards for wetland permits. The director shall issue wetland permits in accordance with the category classification. The following standards will apply: A. Buffers. 1. Buffers are upland areas adjacent to wetlands that are intended to provide sufficient separation between the aquatic features and the surrounding areas to protect wetlands from disturbance due to human activities. Ideally, buffers should remain naturally</p> | <p>This Section covers too many different subjects. Single-family residence should not be</p> | <p>Separate into three or more Sections: Standards, Buffers, Low-impact uses, Buffer Reductions, Mitigation Sequence, Public Benefit Criteria. Delete single-</p> |

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| <p>vegetated with native species. In some instances, vegetation management may be necessary to reduce the presence of noxious weeds, invasive species or to restore an impacted buffer. In addition, it may be desirable to increase the diversity within the buffer by planting additional species.</p> <p>2. Low-impact uses and activities which are consistent with the purpose and function of the wetland buffer and do not detract from its integrity may be permitted depending on the sensitivity of the wetland. Examples of uses which may be permitted include pedestrian trails, interpretive signs, scientific research and fishing access.</p> <p>3. All buffers shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate.</p> <p>4. A standard buffer may be reduced if a report from a city-approved, qualified wetlands specialist determines the following:</p> <p>a. The adjacent land is extensively vegetated and has less than 15 percent slopes and that no direct or indirect short-term or long-term adverse impacts to wetlands or streams will result from the activity; or</p> <p>b. The adjacent land is on a high bank above the wetland and it can be clearly determined that no adverse impact will result from the activity.</p> <p>5. Single-family homes may be located within a required buffer.</p> <p>B. Minimum Requirements.</p> <p>1. Category one wetlands shall have a minimum 75-foot buffer; however, the buffer requirement may be increased and/or averaged where it is demonstrated by a city-approved wetland consultant that certain portions of the wetland are more sensitive to disturbance than others.</p> <p>2. No activity shall be permitted within a category one wetland or buffer except those specified in BMC 17.83.120 or subsection (A)(2) of this section.</p> <p>3. When an activity is permitted in a category one wetland, whether it be a use by right as identified in BMC 17.83.120 or permitted as a result of a variance as identified in BMC 17.83.260 and 17.83.270. The city shall consider the following order of preference in permitting the activity:</p> <p>a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action;</p> <p>b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce adverse impacts;</p> <p>c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment;</p> <p>d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action;</p> | <p>allowed by right in buffer. This Section states the standard buffers for the third time in this Chapter. Wetland categories are not based on Ecology Wetland Rating Manual. Standard buffers are not large enough and do not provide for different buffers based on intensity of use or habitat value for wildlife. It is unclear whether Subsection (B)(8) applies only to Category 3 wetlands. Subsection (B)(9) is redundant and unnecessary. Streams and stream buffers should not be included in this Chapter.</p> | <p>family residence as being allowed in buffer. Delete repetition of standard buffers – retain here, but delete elsewhere. Adopt Ecology Wetland Rating Manual. Increase standard buffers and provide for different buffers based on intensity of land use and habitat value for wildlife. Address streams separately. Increase standard stream buffer. Special studies should be prepared by qualified consultant – fish and wildlife biologist.</p> |
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| <p>e. Compensating for the adverse impact by replacing, enhancing, or providing substitute resources or environments;</p> <p>f. Monitoring the adverse impact and the compensation project and taking appropriate corrective measures.</p> <p>4. Category two wetlands shall have a minimum 50-foot buffer. However, the buffer requirement may be increased and/or averaged where it is demonstrated by a city-approved wetland consultant that certain portions of the wetland are more sensitive to disturbance than others.</p> <p>5. No activity shall be permitted within a category two wetland or buffer except those described in category one above, and those projects which provide substantial public benefit and are in the public interest as defined below. Projects shall require full mitigation for losses of wetland functions and values. The determination as to the public interest test shall be made by the city council. All other activities are prohibited.</p> <p>6. The director shall use the following criteria in determining if the activity is in the public interest:</p> <ul style="list-style-type: none"> a. The extent of the public need for the proposed activity; b. The long-term benefit to the community as a whole for the proposed project; c. The quality of the wetland that may be affected and amount of wetland to be disturbed; d. The economic value of the proposed regulated activity to the city; e. The functions and values of the wetland and probable impact on public health and safety, fish, plants and wildlife; f. The activity will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, and hydrological conditions; g. The activity will not cause significant degradation of ground water or surface water quality; h. The activity will provide for appropriate mitigation in accordance with a plan submitted by a city-approved wetlands specialist. <p>7. Category three wetlands shall have a 25-foot setback for impervious structures. No other specific buffer is required.</p> <p>8. Regulated activities are permitted provided the applicant replaces the function of the wetland through such measures as storm water retention and water quality treatment. If there is not a 5,000-square-foot upland development site with at least one driveway access and other requirements are met, the director shall authorize the permit. The application shall meet the following requirements:</p> <ul style="list-style-type: none"> a. The applicant has considered avoiding all or part of the wetland in the design of the project including consideration of administrative zoning variances to increase heights or | | |
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| <p>reduce setbacks;</p> <p>b. The activity will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, and hydrological conditions;</p> <p>c. The activity will not cause significant degradation of ground water or surface water quality;</p> <p>d. Appropriate function replacement shall be made on the basis of an analysis provided by the applicant from a city-approved wetlands expert.</p> <p>9. The decision of the director is appealable to the hearing examiner pursuant to BMC 17.06.180.</p> <p>10. Streams, except for those which are regulated by the shoreline master program, shall have a minimum 25-foot buffer. However, the buffer requirement may be increased and/or averaged where it is demonstrated by a city-approved wetland consultant that certain portions of the stream are more sensitive to disturbance than others.</p> <p>11. Streams shall be maintained as open channelways. Culverting of streams shall occur only in those instances where necessary driveways, road networks or utilities must cross channels. Streams may be diverted where it is shown by a city-approved wetlands specialist that the function of the stream will be maintained. (Ord. 2554 § 3, 2003)</p> | | |
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| <p>17.83.220 Wetland restoration and creation.</p> <p>A. When wetland restoration or creation is proposed, a report prepared by a city-approved wetland specialist shall be submitted. Said plan shall provide all necessary information to determine that the impact on the wetland may be mitigated. The following issues shall be addressed:</p> <ol style="list-style-type: none"> 1. The short- and long-range impacts of the action upon the wetland and associated ecosystem, and the reversible potential of the impairment or loss; 2. The overall and cumulative benefit of the wetland functions and associated resources lost; 3. The type, size and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part; 4. Observed or predicted trends with regard to the gains or losses of this type of wetland in the watershed, in light of natural and human processes; 5. The cost and likely success of the possible mitigation measures in relation to the magnitude of the proposed project or violation; and 6. The degree to which the applicant has demonstrated a good-faith effort to incorporate measures to minimize and avoid wetland impacts within the proposed project. <p>B. The plan should describe the location of the proposed project site, ownership, size, type, and ecological assessment (flora, fauna, hydrology, wetland functions, etc.) of the wetland being restored, enhanced or the area where a new wetland will be created; and the natural suitability of the proposed site for establishing the replacement wetland (i.e., water source and drainage patterns, topographic position, wildlife habitat opportunities, value of the existing area to be converted, etc.) and estimation of likely success based on comparable mitigation efforts. When necessary, the applicant shall submit plane view and cross-sectional scaled drawings; topographic survey data, including slope percentage and final grade elevations; and other technical information as required in sufficient detail to describe and provide for:</p> <ol style="list-style-type: none"> 1. Soil and substrate conditions, topographic elevation, grading and excavation, erosion and sediment control needed for wetland construction and long-term survival; 2. Planting plans specifying plant species types, quantities, locations, size, spacing, or density; source of plant materials, starts or seeds; timing, water needs, nutrient requirements for planting, and, where appropriate, measures to protect plants from predation; 3. Water quality parameters, water source, water depths, water control structures, and water level maintenance practices needed to achieve the necessary water conditions and hydrocycle/hydroperiod characteristics; 4. Project maintenance, monitoring and a replacement plan establishing responsibility in the event of initial failure or interference from undesirable or nuisance vegetation and | <p>Does not include wetland enhancement. Section could be clearer in stating requirements.</p> | <p>Revise and clarify requirements. Specify monitoring and reporting requirements.</p> |
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| permanent establishment of the wetland system and all its component parts; and 5. A demonstration of fiscal, administrative, and technical competence of sufficient standing to successfully execute the overall project barring failure as a result of natural catastrophe. (Ord. 2554 § 3, 2003) | | |
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| <p>17.83.230 Wetland restoration and creation alternatives. A. Ordinarily, the applicant or violator shall undertake restoration, enhancement or creation efforts on or adjacent to the site where permanent losses have been or may be sustained or where restoration of a former wetland is possible. Replacement of the impacted wetland will be the preferred alternative for mitigation efforts. Where the applicant has demonstrated through the city-approved wetlands consultant report that this approach is not feasible due to technical constraints, such as parcel or wetland size or wetland type, or that a wetland of different type or location is strongly justified based on regional or local needs or the functional value of the impacted wetland, the director may accept an alternative proposal. Such proposal may involve participation in a mitigation banking system or the restoration, enhancement or creation of a wetland off-site. B. Unless extraordinary benefits would be gained, category one wetlands are not to be used as sites for compensation of impacts to other wetlands. C. All mitigation or creation of wetlands shall be done within the same watershed as the proposed activity. D. The director will see that the site is appropriately monitored for effectiveness. E. A permit may be suspended or revoked if it is found that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. (Ord. 2554 § 3, 2003)</p> | <p>Title does not include enhancement.</p> | <p>Retain with modifications.</p> |
| <p>17.83.240 Nonconforming activities. A. A regulated activity that was lawful and commenced before the passage of the ordinance codified in this chapter, but which is not in conformity with the provisions of this chapter, may be continued except that no such activity shall be expanded, changed, enlarged, or altered in any way that increases its nonconformity. Activities which may continue include the maintenance of existing facilities in a manner that enables them to continue their functional use such as: 1. Dredging and cleaning of storm water facilities; 2. Mowing, trimming and other required maintenance of existing landscaping; 3. Filling, clearing, excavating, or draining areas to maintain existing functional use which does not further expand or increase the use, including those for public recreational amenities; 4. Maintenance of existing drainage facilities. B. In the event a nonconforming structure is destroyed by any cause, nothing in this chapter shall prevent the reconstruction of the building. Reconstruction must not expand the building in any way that increases its nonconformity from the previous structure. (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Retain. Clarify that such activities cannot be enlarged, etc. unless such expansion is authorized through wetland permit approval.</p> |
| <p>17.83.250 Variances.</p> | <p>Does a different</p> | <p>Review procedures and</p> |

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| <p>The planning commission may modify the terms of the chapter as it pertains to an individual project by granting a variance from a specific provision(s) of this chapter. (Ord. 2554 § 3, 2003)</p> | <p>review board consider zoning variances?</p> | <p>ensure integrated process for review of variances to avoid more than one open record hearing per project.</p> |
| <p>17.83.260 Variance criteria. The applicants shall be required to demonstrate that the variance request satisfies the criteria set out below. Upon a finding that the variance request satisfies all of the criteria, the planning commission may approve the request: A. That the variance granted shall not constitute a grant of special privilege, be based upon reason of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone; and B. Because of special circumstances applicable to the subject property (including size, shape, topography, location, or surroundings), the strict application of the provisions of this chapter is found to deprive the property of rights and privileges enjoyed by other property subject to this chapter; and C. That the granting of the variance will not be materially detrimental to the public interest nor injurious to the property or improvements in the vicinity and zone in which the subject property is located; and D. That the subject property together with all adjacent property under the same ownership cannot be reasonably used under the regulations as written. (Ord. 2554 § 3, 2003)</p> | <p>Does this allow for the establishment of conditions to make finding of consistency?</p> | <p>Clarify that Planning Commission may establish conditions necessary to reach finding of consistency.</p> |
| <p>17.83.270 Variance procedure. Variance procedures shall be as set forth in BMC 17.06.170(D); provided, that with respect to BMC 17.06.170(D)(3), the planning commission shall substitute the criteria listed in BMC 17.83.260 for the requirements of BMC 17.06.170(B)(1) through (4). (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Retain.</p> |
| <p>17.83.280 Assessment relief. Any owner of an undeveloped, restored, enhanced or created wetland who has dedicated an easement or entered into a perpetual conservation restriction with the city or a nonprofit organization to permanently control some or all regulated activities in the wetland and buffer shall be exempted from special assessment on the controlled wetland and buffer to defray the cost of municipal improvements such as sanitary sewers, storm sewers, water mains and roads. (Ord. 2554 § 3, 2003)</p> | <p>None.</p> | <p>Retain.</p> |

| REGULATIONS | Issues | Recommendation |
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| CHAPTER 17.84 – LAND DISTURBANCE | | |
| <p>17.84.010 Purpose. This chapter has been created for the following purposes: A. To protect and preserve the public interest by establishing standards for regulating land alterations; B. To control land-disturbing activities to minimize erosion, sedimentation, water pollution, and landslides; C. To protect environmentally sensitive areas from degradation and damage; D. To promote building and site planning practices that are consistent with the city's natural topography as well as the city's comprehensive plan and the Washington State Environmental Policy Act. (Ord. 2554 § 3, 2003)</p> | None. | Retain. |
| <p>17.84.020 Definitions. A. "Best management practices (BMPs)" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. B. "Buffer zone" means a parcel or strip of land that is required to remain permanently in a natural condition. C. "Canopy" means the circle that can be drawn around a tree surrounding its outermost branches. D. "Public works director" means the public works director or his/her designee. E. "Clearing, grading and fill permit" means the signed and approved written permission of the department of community development to the permittee to proceed with the act of clearing, grading and filling within the provisions of this chapter. F. "Clearing" means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site which exposes soil or results in the loss of forested areas. Clearing does not include selective removal of individual trees; provided, that no more than one tree is removed for every three trees remaining. G. "Critical area" means the following areas and their adjacent buffers as required in this chapter shall be regarded as critical areas: geologically hazardous areas, frequently flooded areas, aquifer recharge areas, fish and wildlife habitat conservation areas, and natural resource lands (see Chapter 17.82 BMC for definitions). H. "Drip line boundary" means the circle that can be drawn on the ground below a tree directly under its outermost branch tips. I. "Dry season" means, generally, the months of May through October. J. "Erosion" means the wearing away of the land or ground surface by the action of wind, water, ice, chemicals, gravity, or any of these combined.</p> | Wording in (G) is unclear. Definition of critical area should include wetlands. | Fix wording of (G). Definition of critical areas should simply reference CAO and should include wetlands. |

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| <p>K. "Filling" means the act of placing fill material on any soil surface, natural vegetative covering, or other fill material.</p> <p>L. "Grading" means any excavating or filling or combination thereof.</p> <p>M. "Major clearing permit" means a permit allowing the clearing of more than one acre of property.</p> <p>N. "Major grading/fill permit" means a permit allowing the removal, placement or disturbance of a combined total of 500 or more cubic yards of material on one site.</p> <p>O. "Minor clearing permit" means a permit allowing the clearing of more than 8,000 square feet of property, but less than one acre.</p> <p>P. "Minor grading/fill permit" means a permit allowing the removal, placement or disturbance of a combined total of 100 to less than 500 cubic yards of material on one site.</p> <p>Q. "Permittee" means the person, agent or entity to whom the clearing, grading and fill permit is issued.</p> <p>R. "Protected trees" means trees that have been noted to remain as part of the finished landscape.</p> <p>S. "Rainy season" means, generally, the months of November through April.</p> <p>T. "Sedimentation" means the process of deposition of soil and organic particles displaced, transported, and deposited by erosive processes.</p> <p>U. "Significant tree" means a healthy tree, evergreen or deciduous, six inches in diameter or greater, measured four feet above existing grade.</p> <p>V. "Site" means a lot or group of contiguous lots associated with a certain application, building or buildings, or other development.</p> <p>W. "Soil" means unaggregated or uncemented deposits of mineral and/or organic particles or fragments derived from the breakdown of massive rocks or decay of living matter.</p> <p>X. "Stand" means a homogeneous grouping of tree species or a group of trees that contain a large proportion of the same species.</p> <p>Y. "Wetland" means a wetland as defined and regulated in Chapter 17.83 BMC. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.84.030 Clearing, grading and fill permit requirements.</p> <p>A clearing, grading and fill permit is required for any project involving any of the following:</p> <p>A. Any clearing, filling, or excavation in a wetland, critical area or critical area buffer.</p> <p>B. Unless specifically exempted at BMC 17.84.040, fill and/or excavation totaling over 100 cubic yards. Quantities of fill and excavation are separately calculated and then added together, even if excavated material is used as fill on the same site.</p> <p>C. An excavation which is more than five feet in depth, or which creates a cut slope</p> | <p>Unless critical areas definition is modified to include wetlands, then a permit under this Chapter is not required for</p> | <p>Include wetlands in critical areas.</p> |

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| <p>greater than five feet in height and steeper than one and one-half units horizontal in one unit vertical (1.5:1). D. Over 8,000 square feet of clearing, as measured at the ground level. E. Any regrading or paving of an area used for storm water detention or as an existing drainage course. (Ord. 2554 § 3, 2003)</p> | <p>work in a wetland <u>buffer</u>.</p> | |
| <p>17.84.040 Exemptions from permit. A. The following activities are exempt from the requirements for a clearing, grading and fill permit: 1. Structural fill, including foundation and retaining wall preparation for structures requiring a building permit, where such work is specifically addressed within the permit. 2. Grading covered within an approved planned unit development, short plat, preliminary plat, shoreline substantial development permit, wetland or critical areas permit or public right-of-way excavation permit if specifically addressed within the document or permit. 3. Land clearing, grading, filling, sandbagging, diking, ditching, or similar work during or after periods of extreme weather or other emergency conditions which have created situations such as flooding or high fire danger that present an immediate danger to life or property. 4. Excavation and related filling for graves. 5. Clearing of an area measuring less than 8,000 square feet. 6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where regulated by the state; and provided further, that there is no impact on ground water or surface water quality, quantity or routing. 7. Exploratory excavations under the direction of soil engineers or engineering geologists. B. An exemption from a clearing, grading and fill permit does not exempt the person doing the work from meeting the requirement that sediment and other pollutants be prevented from entering the ground water system, drainage systems and streams, nor does it exempt the applicant from the permit requirements imposed by the Department of Natural Resources. (Ord. 2554 § 3, 2003)</p> | <p>Exemption Section does not state that exemptions do not apply to activities in critical areas or buffers and is not consistent with Section 17.84.030(A). Exemption (A)(2) should be expressly limited to cases where other approvals have fully addressed the requirements of this Chapter.</p> | <p>Modify first sentence to add “unless such activities are located in a critical area or critical area buffer.” Modify (A)(2) as noted (i.e. where the requirements of this Chapter have been fully addressed).</p> |
| <p>17.84.050 Mandatory standards. A. Unless otherwise stipulated, all land disturbance shall be undertaken in a manner that is consistent with the best management practices (BMPs) contained in the current edition of the Washington State Department of Ecology, Stormwater Management Manual for Western Washington. B. Clearing. 1. Where possible, maintain natural vegetation for erosion and sedimentation control and water quality and quantity control. a. Retain canopy cover; at project completion, the site shall have a vegetation canopy,</p> | <p>No major issues. How will canopy cover for replacement trees be calculated? It is unclear when Subsection (E) would apply.</p> | <p>Define how canopy cover for replacement trees will be calculated as part of determining compliance with Subsection (B)(1)(a), such as estimated canopy at a specified age. Clarify when Subsection (E)</p> |

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| <p>dominated by trees, which meets the following minimum requirements:</p> <ul style="list-style-type: none"> i. For sites with an existing canopy cover of 20 percent or greater of the site area, canopy cover shall be a minimum of 20 percent of the site area; ii. For sites with an existing canopy cover of less than 20 percent of the site area, the canopy cover shall be the same as the existing canopy cover; iii. To meet the requirements for canopy cover, or to otherwise mitigate the effects of vegetation removal, canopy cover may consist of any combination of existing trees and replacement trees. <p>b. In meeting the minimum requirements for canopy coverage, priority shall be given to retention of existing stands of significant evergreen trees, trees in landscape buffer areas, trees along the shoreline, and healthy mature trees.</p> <p>c. To maximize protection of existing trees, the clearing and grading proposal shall include sufficient protection measures to ensure viability of protected trees and other vegetation identified for retention and to protect any critical area and its buffer. Damaged or dead trees will be replaced.</p> <p>2. Soil Stabilization. All exposed and unworked soils shall be stabilized using a suitable best management practice contained in the current edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington.</p> <p>C. Grading.</p> <ul style="list-style-type: none"> 1. Grading shall not contribute to or create landslides, accelerated soil creep, or settlement of soils. 2. Natural land and water features, vegetation, drainage and other natural features of the site shall be reasonably preserved. 3. Grading shall not create or contribute to flooding, erosion, increased turbidity, or siltation of a watercourse or water body. 4. Protect adjacent property, including, but not limited to, public rights-of-way and drainage systems from damage. <p>D. Erosion and Sediment Control.</p> <ul style="list-style-type: none"> 1. Construction access shall be limited to one route, if practicable, and a construction access pad shall be used to minimize deposit of sediments on adjacent roadways. Sediment deposited on the paved right-of-way shall be removed in a manner that prevents it from entering the drainage, creating muddy streets or becoming a public hazard or nuisance. 2. Where potential impacts to soil stability, erosion or environmental damage have been identified, exposed and unworked soils shall be stabilized using BMPs as indicated in subsection A of this section. 3. Adjacent and downstream properties, storm drain inlets, and the downstream drainage shall be protected from sediment deposition using BMPs as indicated in | <p>What is reference to Chapter 17.82? Wording of (E)(4) is unclear.</p> | <p>would apply and how it relates to Chapter 17.82 requirements. Modify (E)(4) to clarify that these activities are "prohibited" unless</p> |
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subsection A of this section. If protection is inadequate and deposition occurs on adjoining property, public right-of-way or the drainage system, the permittee shall immediately remove the deposited sediment and restore the affected area to original conditions.

4. Water pumping devices shall be discharged where sediment and/or other pollutants will not enter the drainage system. Sediment ponds or traps shall be used for this purpose.

5. Downstream properties and waterways shall be protected from erosion and sedimentation during construction due to temporary increases in the volume, velocity, and peak flow rate of overland flow and runoff from the site.

6. The permittee must install temporary erosion and sedimentation control devices consistent with the BMP specifications as indicated in subsection A of this section prior to all other clearing, grading, filling or construction projects.

7. The permittee must remove all temporary erosion and sediment control devices within 30 days after final site stabilization or after the devices are no longer needed, on approval of the public works director. Before removing such devices, the permittee must remove trapped sediment or stabilize it on-site. Any soils disturbed during sediment removal must be permanently stabilized.

8. The permittee must complete the required permanent erosion control within seven days of completed grading unless the weather is unsuitable for transplanting. In that case, the permittee must maintain temporary erosion control until permanent restoration can be completed. The period between work completion and final planting shall not exceed one year without written authorization from the public works director.

E. Cutting and Filling Slopes. (See Chapter 17.82 BMC for critical areas.) The following are the minimum standards for cutting and filling slopes. These provisions may be waived by the public works director for minor grading permits:

1. Minimize clearing and grading on slopes 15 percent or greater, except where approved retaining walls are to be installed.
2. Filling should only occur where the ground surface has been prepared by removal of vegetation and other unsuitable materials or preparation of steps where natural slopes are steeper than five horizontal to one vertical (5:1). Fill slopes should not be constructed on natural slopes greater than two horizontal to one vertical (2:1).
3. Limit the maximum gradient of artificial slopes to no steeper than two horizontal to one vertical (2:1) unless a geotechnical engineering report and slope stability analysis is provided and shows acceptable safety factors.
4. Clearing, excavation, stockpiling or filling on any unstable or potentially unstable areas unless it is demonstrated to the public works director that the activity would not increase the risk of injury to persons or damage to adjacent property or natural

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| <p>resources.</p> <p>5. Provide evacuation of any ground water, subsurface, or surface water drainage encountered on a cut slope and discharge it at a location approved by the public works director. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.84.060 Permit application. An application for a clearing, grading and fill permit identifying the property and owner shall be submitted on a form provided by the city.</p> <p>A. Application Requirements for All Major and Minor Permits. All applications for major (more than an acre) or minor (8,000 square feet to one acre) clearing, or for major (500 cubic yards plus) or minor (100 to 500 cubic yards) grading and/or fill shall be accompanied by three sets of plans and specifications, including calculations. For grading and/or fill in steeply sloped areas, on unstable soils or in other critical areas, the public works director may require that the plans and specifications be prepared by a geologist or engineer who shall have his/her signature and stamp affixed to each set. The plans shall include the following information:</p> <p>1. An accurate plan of the entire site as it exists at the time of the application, which includes:</p> <ul style="list-style-type: none"> a. Delineation of all critical areas and wetlands with any required buffer located in or adjacent to the site as required by the critical areas ordinance; b. All property lines; c. Contours over the entire site at five-foot intervals. For sites with minimal slopes where five-foot contours would not be useful, contours shall be shown at two-foot intervals; d. The location of all existing drainage facilities, natural and manmade, as well as the location of all springs, wells and stream channels; e. The location of all structures and utilities; f. Date of plan preparation, north arrow, and adequate scale. <p>B. Additional Application Requirements for Major Permits Only. For major clearing, grading and fill permits, the following additional items shall be included in the application:</p> <p>1. Additional site plan items:</p> <ul style="list-style-type: none"> a. The date, basis and datum of the contours; b. A description of existing vegetation on the site designated by its common names, the amount of bare ground, and the amount of impervious material. A survey of significant trees may be required; c. Location and estimated capacity of any areas which impound surface water; d. Identification of, and mitigation measures for, on-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation. | <p>None.</p> | <p>Retain, possibly with some minor modifications for clarity.</p> |

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| <p>2. The proposed work plan, which details the following:</p> <ul style="list-style-type: none"> a. Sequence for clearing, grading, filling, drainage alteration, and other land-disturbing activities; b. On-site soil or earth material storage locations and sources of import materials, and location of the site where spoils will be disposed; c. Location of and schedule for installation and removal of all interim and permanent erosion and sediment control measures, including vegetative measures. <p>3. An accurate finished grading plan of the entire site as it would appear on completion of work covered by the permit, showing the following:</p> <ul style="list-style-type: none"> a. The finished contours achieved by grading at five-foot intervals. For sites with minimal slopes where five-foot contours would not be useful, contours shall be shown at two-foot intervals; b. The boundaries of all areas to remain undisturbed; c. Boundaries of all areas where surface water runoff will be retained, detained, or infiltrated; d. The method for discharging surface water off-site, including provisions required to control the velocity and direction of discharge to protect downstream riparian corridors and properties; e. Location and dimensions of buffer zones and other areas to be maintained or established; f. The location of building setback lines, and approximate limits of cuts and fills, including, but not limited to, foundations, retaining walls, and driveways; g. The location and description of proposed permanent erosion and sedimentation control devices or structures and entity responsible for maintenance. <p>4. The public works director may require additional information including but not limited to the following:</p> <ul style="list-style-type: none"> a. Hydrologic and hydraulic computations of expected storm runoff entering and leaving the site for pre- and post-development conditions; b. Engineering, geological and soils reports as needed for hydrology, hydraulics, and erosion control design; c. Erosion and sediment control plan and supporting calculations; d. A copy of the hydraulic permit application issued by the Washington State Department of Fisheries, if one is required. (Ord. 2554 § 3, 2003) | | |
| <p>17.84.070 Permit issuance.</p> <p>A. Issuance in Conjunction with Other Permits. Unless the proposed work is otherwise exempt from permit requirements, a clearing, grading and fill permit shall be issued in conjunction with the following permits or approvals:</p> <ul style="list-style-type: none"> 1. A valid building permit application. The clearing, grading and fill permit shall not be | <p>Unclear how this permit will be issued in relation to critical areas</p> | <p>Add critical areas permit as one of the permits under Issuance in Conjunction With Other Permits.</p> |

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| <p>issued until land use approval is received;</p> <p>2. An approved conditional use permit or planned unit development approval;</p> <p>3. A demolition permit;</p> <p>4. Completion of environmental (SEPA) review for surcharging a site or for environmental or toxic cleanup at a site;</p> <p>5. A right-of-way use permit.</p> <p>B. Issuance of Clearing, Grading and Fill Permits without Other Permits. A clearing, grading and fill permit may be issued without an accompanying permit if:</p> <p>1. The proposed clearing and grading is not related to a project for which one or more of the approvals listed in subsection A of this section is required, but is necessary for the maintenance of the property.</p> <p>2. Approval of the proposal will not pose a threat to, or be detrimental to, the public health, safety, and welfare, nor be materially detrimental to fish and wildlife habitat and/or water resources.</p> <p>3. The proper permits issued by the Department of Natural Resources for logging or resource extraction are submitted.</p> <p>C. Construction Easement or Right-of-Way Entry Requirements. If construction necessitates access, construction, or intrusion onto or across property not under the applicant's control, then the applicant must provide the city with a copy of a valid construction easement or right of entry before the permit can be issued. (Ord. 2554 § 3, 2003)</p> | <p>permit.</p> | |
| <p>17.84.080 Expiration of permits and applications.</p> <p>A. An application for a clearing, grading and fill permit will be canceled if an applicant fails, without reasonable justification, to respond to the city's written request for revisions or corrections within 14 days. The public works director may extend the response period beyond 14 days if the applicant provides and adheres to a reasonable schedule for submitting the full revisions.</p> <p>B. When a permit is ready to be issued, the applicant shall be notified and must pick up the permit within 60 days of notification or it shall be canceled.</p> <p>C. Clearing, grading and fill permits expire as follows:</p> <p>1. If a building permit is issued for the same site, the clearing, grading and fill permit shall automatically expire or be extended when the building permit expires or is extended.</p> <p>2. If a building permit is not issued for the same site, the clearing, grading and fill permit shall expire as follows:</p> <p>a. The permit shall expire if the authorized work is not begun within six months from the date of permit issuance, or if work is abandoned for over 180 days.</p> <p>b. If the authorized work is continually performed, the permit shall expire one year from</p> | <p>None.</p> | <p>Retain.</p> |

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| <p>the date of issuance unless a different time frame is specified on the permit or an extension is granted. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.84.090 Conditions of approval/project denial. A. The city may impose conditions on permit approval as needed to mitigate identified project impacts and shall deny permit applications that are inconsistent with the provisions of this chapter. In addition, the following shall be conditions of all permits: 1. Prior written permission from the public works director, for modification of any plan; 2. Maintenance of an up-to-date, approved copy of the plans on the site. B. For major clearing, grading and fill permits, the following additional conditions shall also apply: 1. Inspection of erosion construction control measures at least once a week during construction, and after each rain of 0.5 inches or more, and immediate repairs, when necessary; 2. Permission for the city to enter the site for purposes of inspecting compliance with the plans or for performing any work necessary to bring the site into compliance with the plans. (Ord. 2554 § 3, 2003)</p> | None. | Retain. |
| <p>17.84.100 Security. For those proposals where the city has identified potential impacts to soil stability, erosion or environmental damage, the city may require the applicant to furnish security in the form of a bond, assigned savings account, letter of credit, or other security which may be acceptable to the city. The amount of the security, to be determined by the city, shall be sufficient to reimburse the city if it should become necessary for the city to enter the property to correct hazardous conditions relating to soil stability, erosion, or environmental damage caused by failure to complete the work or improper action. (Ord. 2554 § 3, 2003)</p> | None. | Retain. |
| <p>17.84.110 Temporary restrictions. A. General. 1. Rainy season (generally defined as the months of November through April) construction generally will be approved for smaller-scale clearing and grading proposals that have limited shallow utility installation and are on sites with less than 15 percent slopes, predominant soils that have low runoff potential, and are not hydraulically connected to sediment/erosion-sensitive features. 2. Rainy season construction may be approved if adequate measures to control erosion/sedimentation and safeguard slope stability are proposed. If the permit was issued in the dry season (generally defined as the months of May through October), and work is allowed to continue in the rainy season, the city may require additional measures for erosion/sedimentation and/or slope stability. B. However, the city may prohibit clearing and grading during the rainy season; determinations shall be made on a site-specific basis and evaluation of the following:</p> | None. | Retain. |

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| <p>1. Average existing slope of the site; 2. Quantity of proposed cut and/or fill; 3. Classification of the predominant soils and their erosion and runoff potential; 4. Hydraulic connection of the site to features that are sensitive to the impacts of erosion; 5. Storm events and periods of heavy precipitation. C. If a clearing, grading and fill permit is issued for work during the rainy season, and the city subsequently issues a "stop work" order or correction notice for insufficient erosion and sedimentation control, the permit will be suspended until the dry season, or until the public works director determines that weather conditions are favorable and effective erosion and sedimentation control is in place. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.84.120 Maintenance. A. The permittee shall maintain all temporary and permanent erosion and sedimentation devices so that they function as intended until the site has been permanently stabilized, and the potential for on-site erosion has passed. B. The permittee shall submit a schedule for operation and maintenance of all construction-related BMPs if the project involves more than 8,000 square feet of clearing and/or more than 100 cubic yards of excavation and/or fill. C. Erosion control devices that are damaged or not working properly shall be returned to operating condition as directed by the field inspector or within 24 hours of receiving notice from the city. (Ord. 2554 § 3, 2003)</p> | <p>It is unclear when the maintenance schedule must be submitted (i.e. at application or upon project completion).</p> | <p>Clarify that maintenance schedule must be submitted with application [consistent with Section 17.84.060(B)(2)(c)] and updated as necessary throughout project and at project completion.</p> |
| <p>17.84.130 Project inspections. A. All projects which include clearing, grading, filling, or drainage shall be subject to inspection by the public works director, who shall be granted reasonable right of entry to the worksite by permittee. B. When required by the public works director, special inspection of the grading operations and special testing shall be performed by qualified professionals employed by the permittee. C. Each site must be inspected as necessary to ensure that required sediment control measures are installed and effectively maintained in compliance with the approved plan and permit requirements. Where applicable, the permittee must obtain inspection by the city at the following stages: 1. Following the installation of sediment control measures or practices and prior to any other land-disturbing activity; 2. During the construction of sediment basins or storm water management structures; 3. During rough grading, including hauling of imported or wasted materials; 4. Prior to the removal or modification of any sediment control measure or facility; 5. Upon completion of final grading, including the establishment of ground covers and</p> | <p>None.</p> | <p>Retain.</p> |

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| <p>planting, and installation of all landscaping.</p> <p>D. On approval by the public works director, the permittee may secure the services of a qualified engineer or consultant to inspect the construction of the facilities and provide the city with a fully documented certification that all construction is done in accordance with the provisions of an approved grading, erosion, and sedimentation control or other required plan, applicable rules, regulations, permit conditions, and specifications. If private inspection services are provided, the city shall be notified at the required inspection points and may make spot inspections. (Ord. 2554 § 3, 2003)</p> | | |
| <p>17.84.140 Violations.</p> <p>The following clearing, grading and/or fill actions shall be considered violations of this chapter:</p> <p>A. Clearing and/or grading not authorized under a clearing, grading and fill permit where such a permit is required by this chapter;</p> <p>B. Clearing and/or grading not in accordance with the plans, conditions, or other requirements in an approved clearing, grading and fill permit. (Ord. 2554 § 3, 2003)</p> | None. | Retain. |

| REGULATIONS | Issues | Recommendation |
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| CHAPTER 17.86 – FLOOD HAZARD REGULATIONS | None. | Retain. |

CITY OF BLAINE ENVIRONMENTAL POLICIES AND REGULATIONS CONSISTENCY REVIEW AND INTEGRATION STRATEGY

INTRODUCTION

This report has been prepared in conjunction with the City of Blaine's comprehensive update of its Shoreline Management Master Program, which has been funded in part through a grant from the Washington State Department of Ecology. As part of this effort the City has reviewed and analyzed existing environmental policies and regulations to identify inconsistencies, gaps, overlaps and other potential problems, and to identify recommended changes to these policies and regulations to ensure greater consistency and compliance with federal, state and local environmental mandates and requirements.

SUMMARY OF GAPS, OVERLAPS AND INCONSISTENCIES

Environmental policies for the City of Blaine are established in the City's comprehensive land use plan and in the shoreline management master program. Environmental regulations for the City are primarily found in Title 17 in the following Chapters.

- 17.81 – Shoreline Management Master Program
- 17.82 – Natural Resource Lands and Critical Areas Management
- 17.83 – Wetland Management
- 17.84 – Land Disturbance
- 17.86 – Flood Hazard Regulations

City of Blaine environmental policies and regulations have been compiled into a matrix that has been attached to this report. The matrix includes the text of each policy or regulation along with an identification of relevant issues and recommend changes. The findings related to policies contained in the comprehensive plan and in each of the above chapters of the Blaine Municipal Code have been summarized below.

Policies and regulations included in the Blaine shoreline management master program have not been included in this review because these are being reviewed and updated as a major component of the current shoreline update process. However, inconsistencies with shoreline provisions found in other policy statements and regulations will be identified through this review. Consideration of the policies, guidelines and other provisions set forth in the Resort Semiahmoo Master Development Plan have also not been included in this review.

Comprehensive Plan

The environmental policies included in the Blaine Comprehensive Plan are broad in scope and few in number. Except as noted below, these policies have been found to consistent both internally and with state statutes. Although these policies address the most important environmental issues, such as protection of scenic beauty, critical areas, water quality, cultural

resources, Drayton Harbor and vegetation conservation, there is significant opportunity to incorporate additional policies that address these issues in greater detail.

The City has referenced the 14th GMA planning goal, which relates to shoreline management, as follows:

GMA Planning Goal (14) Shorelines of Statewide Significance. Protect the ecosystem-wide processes of shorelines in accordance with the Shoreline Management Act and implementing guidelines, integrating those provisions into the Comprehensive Plan's goals, policies, and implementing actions.

As stated in the Blaine comprehensive plan, this goal incorrectly refers only to Shorelines of Statewide Significance; whereas, this goal should more appropriately address Shorelines of the State. This goal could be modified to read as follows:

(14) Shoreline Management. Protect the ecological functions and ecosystem-wide processes of shorelines of the state in accordance with the goals and policies of the Shoreline Management Act and implementing regulations, integrating those provisions into the Comprehensive Plan's goals, policies, and implementing actions.

Land Use policy 4.5 addresses watershed restoration and attempts to exempt certain fisheries enhancement projects from the substantial development permit requirements. This policy may have two problems. First, the state statutory reference (RCW .36.70A.395 could not be found, and second, allowance of such an exemption may not be consistent with exemptions established in the Shoreline Management Act.

Chapter 17.81 – Shoreline Management Master Program

The Code sections contained in Chapter 17.81 address three different topics: 1) adoption by reference of the Blaine Shoreline Management Master Program, 2) the intent that critical areas regulations should not limit the protection of shorelines, and 3) the establishment of administrative appeal requirements related to the shoreline management program. Generally, these provisions should be replaced when the updated shoreline program is adopted, including the incorporation of administrative appeal provisions. To eliminate the need for the protective intent of Section 17.81.020, both the critical area regulations and the shoreline regulations should be strengthened to provide the required level of environmental protection.

Chapter 17.82 – Natural Resource Lands and Critical Areas Management

Chapter 17.82 is the main City Code chapter that addresses critical areas, although Chapters 17.83 and 17.86 do address wetland management and frequently flooded areas respectively. This chapter has a number of provisions that need to be updated to provide the necessary protection of critical areas, primarily fish & wildlife habitat conservation areas. It appears that development adjacent to streams is intended to be regulated under Chapter 18.83 (along with wetlands), while development adjacent to fish and wildlife habitat is regulated under Chapter 17.82. This is a major problem. The City should consider integrating Chapters 17.82 and 17.83 into a unified critical areas ordinance (CAO). A consolidated CAO would eliminate confusion, provide for a unified and comprehensive purpose and applicability, and establish uniform requirements for critical areas review, where appropriate.

Chapter 17.82 currently states that its provisions only apply to development; however, the CAO needs to clarify that the regulations apply to all activities that have the potential to impact critical areas, not just those meeting the definition of development. Greater detail should be provided regarding the information to be included in a special study and when these studies may be waived by the Administrator. Also, the CAO should clarify that special studies need to be prepared by a qualified specialist, such as a professional wetland scientist or hydrogeologist.

Although the classification section pertaining to fish and wildlife habitat conservation areas is acceptable, the regulatory standards are insufficient to provide the necessary protections based on the best available science. Regulations need to be added to address special studies, standard buffers for various species and habitats, alteration of standard buffers through increasing, decreasing or averaging and mitigation requirements.

The section addressing frequently flooded areas is adequate. The cross-to the flood hazard regulations contained in Chapter 17.86 is appropriate.

The classification system for landslide hazards is adequate; however, the standards section does not make a logical connection back to the various classifications. This section should be modified to incorporate standards to the various classifications of hazards or the classification system could be simplified to include all slopes of 15% or greater. Also, a standard setback from the standards should include a standard setback from the top and toe of hazardous slopes.

Regarding erosion hazard areas, more detail should be added regarding specific soil types and locations where the regulations would apply. The seismic hazard section is adequate.

The development exceptions section only addresses three situations. This list could be expanded. At a minimum, maintenance of existing structures and improvements should be added as an exception. Permit requirements following emergency action should be clarified.

The following changes or additions to Chapter 17.82 should also be considered to eliminate gaps and provide for consistent review of proposed activities. A section on variances should be added that specifies the variance criteria that must be met. A section on reasonable use exceptions should also be added with additional criteria to help the City avoid possible takings claims. An integrated procedure section for critical areas review should be added to clarify procedures for proposals potentially impacting multiple types of critical areas. A section on habitats and species of local importance should be added and specific nearshore habitats could be considered for inclusion and protection. Provisions should be added for the field marking of critical area buffers prior to the beginning of land disturbance and the City should consider requiring developers to place critical areas and buffers into protective easements to be recorded with the County Auditor. These areas could also be required to be monumented or fenced. Finally, this Chapter does not include any definitions; therefore, either a definitions section should be added to this chapter or supplemental definitions should be added to the unified development code as necessary.

Chapter 17.83 – Wetland Management

Chapter 17.83 is generally superior to Chapter 17.82 in that the wetlands management chapter is more detailed and provides specific standards for review and approval of activities potentially impacting wetlands. That having been said, a number of recommended changes to this chapter have also been identified. Most notably, the regulation of streams should be eliminated from the wetlands management chapter and should be incorporated into a revised and integrated CAO chapter.

The authority section references Article 11 of the State Constitution; it should also reference the Growth Management Act, RCW 36.70A. The purpose section relates only to wetlands and this is inconsistent with the applicability section that indicates that the chapter also applies to streams and their buffers. The definitions section needs to be updated and supplemented to match updated regulations. Classification of wetlands and establishment of standard and stream buffers is not appropriate in the definitions section. These important details should be moved to the classifications and standards sections.

The applicability section exempts wetlands under 10,000 square feet in area. This type of exemption is not consistent with best available science. Providing a waiver of the chapter's procedural requirements when an Army Corps Individual Permit has been obtained may not be advisable given that in some cases local regulations may be more restrictive.

The GMA requires that wetlands be rated using the Department of Ecology wetland rating system rather than a local system such as currently in place in this chapter. The City may want to evaluate the success of the existing program that utilizes a list of City-approved wetland specialists and may want to shift to a system that accepts special studies from specialists meeting the City's qualifications, which could be established in this chapter.

The bonding section does not specify the required bonding percentage, such as 125% of the cost of all mitigation. In addition, the City Attorney should be consulted to determine if the levying of \$1,000 fines is lawful where no mitigation bond has been required. Finally, the use by right section should be modified or eliminated. In general, it makes sense to include an exemptions section; however, construction of a single-family residence should not be automatically allowed. In some cases it is most appropriate to authorize such a use either through approval of a variance or a reasonable use exception.

Section 17.83.130 duplicates Section 17.83.080. The requirement for regulated activities to obtain a wetland permit should be stated only once. Issuing permits that are valid for five years may not be appropriate. The City should consider issuing permits that are valid for a period of three years, which is consistent with the timeframe for a building permit. It should be clarified that the granting of an extension should require submission of a written request received prior to the expiration of the permit. The application requirements section may need to be expanded. At a minimum the application should be required to include any proposed mitigation.

There are a number of potential problems with the section that addresses requests for predetermination. First of all, this section inappropriately puts the burden on the City staff, where the burden should rest with the applicant. Second, the timeframe for making such a determination is too short. Finally, the City should double-check whether a fee has been

established in the fee schedule for such determinations. It is recommended that this section be delete4d. The CAO can reference the City's critical areas maps, but it should be made clear that it is the actual presence on the ground that determines whether or not a critical area is present. Also, the section addressing procedures should specify that the Administrator has the authority to establish conditions of approval that are necessary to reach a determination of compliance.

The section addressing standards for wetland permits covers too many different topics and should be separated into three or more sections, such as Standards, Buffers, Low-impact uses Buffer Reductions, Mitigation Sequence, and Public Benefit Criteria. As noted earlier, a single-family residence should not be allowed by right in a wetland buffer. This section states the standard buffers for the third time in this Chapter. Wetland categories are not based on Ecology Wetland Rating Manual. Standard buffers are not large enough to provide the necessary protection based on the best available science and do not provide for differential buffers based on intensity of use or habitat value for wildlife. Subsection (B)(9) addresses administrative appeals and is redundant and unnecessary. Finally, streams and stream buffers should not be included in this Chapter, and special studies addressing streams should be prepared by a qualified consultant, which is not necessarily a wetland specialist.

The wetland restoration and creation section should be revised to clarify what is required. Specific monitoring and reporting requirements should be included. Compensatory mitigation ratios should also be added to this section. These sections should also address enhancement of wetlands.

The non-conforming uses section should clarify that such uses may not be expanded without approval of the required permit. The variances section should clarify that the Planning Commission has the authority to establish conditions necessary to reach a determination of consistency.

Chapter 17.84 – Land Disturbance

The Land Disturbance chapter provides a good base for the protection of environmental resources. For the most part only relatively minor changes have been identified. The wording within the definition of "critical area" needs to be corrected, and the definition should include wetlands and/or reference the CAO. Unless critical areas definition is modified to include wetlands, then a permit under this Chapter is not required for work in a wetland buffer (based on language in the permit requirements section).

The exemptions section is inconsistent with the permit requirements section because the exemption section does not state that the exemptions do not apply to activities within a critical area or buffer – while the previous section specifically states that a permit is required in such areas (not subject to exemption). Exemption (A)(2) should be modified to clarify that the exemption only applies where the requirements off the Land Disturbance chapter have been fully addressed through some prior permitting process. This is important because it is not uncommon for applications for subdivisions and planned unit developments to address activities at a larger scale without working out all of the details related to grading. Therefore, in those cases, specific land disturbance and grading permit requirements – especially grading plan review – is

appropriate even though it was understood that grading would occur as part of the larger, approved project.

The mandatory standards section is generally fine. It is unclear how the calculations related to canopy cover will be calculated if these requirements are met using replacement trees. The wording of subsection 17.84.050(E)(4) is unclear and needs to be corrected that these activities are prohibited unless the specified conditions are met.

It is unclear how a grading permit will be issued in conjunction with a critical areas permit. All other provisions are adequate except the section that addresses maintenance. This section should be adjusted to clarify that the maintenance schedule should be submitted at the time of application and updated throughout the project and upon project completion.

Chapter 17.86 – Flood Hazard Regulations

The provisions set forth in Chapter 17.86 are generally consistent with the Department of Ecology model ordinance for the National Flood Insurance Program. No changes to this chapter have been identified.

RECOMMENDATIONS AND ACTION PLAN

Recommendations

This section consolidates the major recommendations identified in this report. The following modifications to the current CAO chapters are recommended:

- Amend GMA Planning Goal (as stated in the Blaine Comprehensive Plan) as follows: (14) Shoreline Management. Protect the ecological functions and ecosystem-wide processes of shorelines of the state in accordance with the goals and policies of the Shoreline Management Act and implementing regulations, integrating those provisions into the Comprehensive Plan's goals, policies, and implementing actions.
- Delete Land Use Goal 4.5 based on unidentified statutory reference and inconsistency with the Shoreline Management Act.
- Replace Chapter 17.81 – Shoreline Management Master Program with the shoreline regulations portion of the updated Blaine Shoreline Management Master Program. Strengthen the environmental protections provided in both the SMP and CAO and integrate the two programs.
- Incorporate administrative appeal provisions into the updated SMP regulations.
- Modify Chapter 17.82 to be the primary chapter of City Code that addresses all critical areas, including wetlands and streams. The purpose and applicability sections should make it clear that the chapter applies to all critical areas as defined under the GMA.
- The revised Chapter 17.82 could either reference the wetland management provisions contained in Chapter 17.83 or these could be incorporated into an updated Critical Areas chapter.
- Expand the applicability of Chapter 17.82 (Section .030) to address all actions that have the potential to adversely impact critical areas, including those activities that are below the permit threshold.

- Amend Section 17.82.040 to authorize the Administrator to require special studies for activities not included in a development proposal, but which have the potential to adversely impact critical areas. Modify to require that special studies be prepared by qualified specialist unless waived by the director.
- Amend Section 17.82.060 to require that special studies addressing aquifer recharge areas be prepared by a qualified specialist such as a hydrogeologist.
- Amend Section 17.82.070 to incorporate the full complement of requirements to protect fish and wildlife habitat conservation areas, including minimum standard buffers, provisions for buffer increasing, reducing and averaging, and mitigation.
- Refine Section 17.82.090 to address all areas classified as landslide hazards and match level of effort required with severity of hazard.
- Establish standard buffers from top or toe of slopes in landslide hazard areas.
- Amend Section 17.82.100 to provide greater detail regarding soil types and applicability of Section.
- If deemed appropriate, expand the list of development exceptions provided in Section 17.82.120.
- Add definitions to Chapter 17.82 or incorporate additional definitions into the unified development code.
- Amend Chapter 17.82 to address variances and variance criteria and ensure integrated review procedures.
- Add a Reasonable Use Exception section to Chapter 17.82 along with appropriate approval criteria.
- Add provisions to Chapter 17.82 to require field marking of required buffers. Consider adding requirement to place critical areas and buffers in conservation easement, recorded with Auditor and marked or fenced.
- Amend Chapter 17.82 to address habitats and species of local importance.
- Amend the Authority section of Chapter 17.83 (.020) to add reference to RCW 36.70A.
- In Chapter 17.83 under Definitions, delete specific buffer widths and wetland classifications from definitions of “Buffer” and “Wetland”. Update and supplement the Definitions section as necessary.
- Revise Section 17.83.050 to eliminate exemption for wetlands less than 10,000 square feet and to allow the Director to waive procedural requirements upon his determination.
- Amend Section 17.83.060 to adopt Ecology Wetland Rating System for Western Washington (2004) or most recent update.
- Evaluate whether having a list of qualified consultants is working. If so, retain. If not, then expand to accept studies from qualified specialists meeting the qualifications set forth in the chapter.
- Under Section 17.83.100, specify the required bond amount, such as 125% of the estimated cost of mitigation; and check with City Attorney regarding authority to exact fines for non-completion of work where a bond was not required.
- Under Section 17.83.120, delete use (D), which pertains to single-family residence, and address through granting of variance or reasonable use exception.
- Modify the permit expiration provisions set forth in Section 17.83.150 to allow three years for completion of permitted work consistent with the timing for a building permit.

Also, specify that permit extensions require receipt of a written request prior to the expiration of the permit.

- Review and revise the permit application requirements identified under Section 17.83.160 to include all necessary information including proposed mitigation.
- Delete the Request for Predetermination section based on improper shifting of the burden of proof and too short a timeframe for response. Include reference to critical areas or wetlands maps, but clarify that these are general in nature and that the actual presence on the ground determines applicability of the Chapter.
- Modify Section 17.83.180 to add a Subsection that allows the Director to establish conditions necessary to grant permit approval.
- Separate Section 17.83.210 into three or more Sections, such as: Standards, Buffers, Low-impact uses, Buffer Reductions, Mitigation Sequence, and Public Benefit Criteria. Delete single-family residence as being allowed in a wetland buffer. Eliminate repetition of standard buffers – retain here, but delete elsewhere.
- Add a section to adopt the Ecology Wetland Rating Manual. Increase standard buffers to be consistent with best available science and provide for differential buffers based on intensity of land use and habitat value for wildlife.
- Address streams separately and increase standard stream buffer(s) based on the best available science. Specify that special studies should be prepared by qualified consultant, such as a fish and wildlife biologist.
- Modify the wetland restoration and creation standards set forth in Section 17.83.220 to also address mitigation through wetland enhancement. Modify this section to specify monitoring and reporting requirements, such as monitoring reports due in following years 1, 2, 3, 5 and 10.
- Under Section 17.83.240, clarify that non-conforming uses cannot be enlarged or expanded unless such expansion is authorized through approval of a wetland permit.
- Modify definition of “critical area” in Section 17.84.020(G) to include wetlands.
- Clarify Section 17.84.030(A) to clarify that clearing, grading and fill permit is also required for activities within a wetland buffer.
- Under Section 17.84.040(A), modify the first sentence to add “unless such activities are located in a critical area or critical area buffer.”
- Modify Section 17.84.040(A)(2) to clarify that clearing, grading and fill requirements area only waived where the requirements of this Chapter have been fully addressed through some prior permitting process.
- Amend Section 17.84.050 to define how canopy cover for replacement trees will be calculated as part of determining compliance with Subsection (B)(1)(a). This could be accomplished by stating that canopy cover for replacement trees is based on the estimated canopy at a specified age.
- Modify wording in Subsection 17.84.050(E)(4) to clarify that these activities are “prohibited” unless
- Modify Section 17.84.070 to add critical areas permit as one of the permits under Issuance in Conjunction With Other Permits.
- Modify Section 17.84.120 to clarify that the maintenance schedule must be submitted with the application and updated throughout the project and upon project completion.

SMP/CAO Integration Strategy.

The following steps comprise the SMP/CAO integration strategy:

- Regulatory standards for all critical areas, including those within shoreline jurisdiction, should be incorporated into an updated CAO. The CAO should be expanded to include regulatory provisions to protect marine habitats and aquatic species.
- The SMP should refer to the CAO chapter or chapters, as appropriate, and it should be stated in the SMP that these chapters are included by reference in the SMP.
- Based on the above configuration of regulations, there would be a single set of critical area standards that would apply throughout the City.
- The only major drawback to this strategy would be when the City wants to make changes to any of the CAO chapters that have been adopted by reference. In such cases, the old provisions would continue to apply within shoreline jurisdiction until the SMP is formally updated, and the new CAO provisions would apply outside of shoreline jurisdiction. This could lead to confusion, but because of the limited opportunities to update the SMP, there is no way to avoid this scenario.

Action Plan

The following actions should be undertaken to complete the update of the CAO and the integration of the SMP and CAO:

- Prepare a draft CAO that incorporates the changes referenced in this report.
- Expand the CAO to address marine habitats and species.
- Distribute draft SMP and draft CAO together for review by state agencies and the public. Solicit public comments.
- Update the draft SMP and CAO based on the comments received.
- Pursue formal adoption of SMP and CAO.