6Chapter 16.20
RESOURCE LANDS AND ENVIRONMENTALLY SENSITIVE (CRITICAL) AREAS MANAGEMENT

Sections:

Commented [AP1]: The following sections have been updated to reflect Best Available Science (BAS), to incorporate suggestions from the 2018 City of Langley CAO draft amendments, or for clarity of understanding. Specific BAS recommendations or suggestions have been added as cross reference comments.

16.20.0804~~5~~ Geologically hazardous areas.

16.20.085 Wetlands

~~16.20.050 Wetlands and streams.~~

~~16.20.055 Wetlands and streams – Purpose, goal and designation criteria.~~

~~16.20.060 Wetlands – Measures to minimize impacts to wetlands.~~

~~16.20. Wetlands and streams – Buffers.~~

~~16.20.0 Wetlands and streams – Buffer width increases, averaging and reductions.~~

~~16.20.075 Wetlands and streams – Exemptions.~~

~~16.20.0 Wetlands and streams – Permitted uses, uses requiring alteration approval (including reasonable use provisions) – Exceptions.~~

~~16.20.085 Wetlands and streams – Land use standards.~~

~~16.20.090 Current use taxation of open space land.~~

~~16.20.095 Identification of resource lands and environmentally sensitive (critical) areas.~~

~~16.20.100 Bonds for restoration and mitigation activities.~~

16.20.090 Enforcement ~~Provisions of chapter – Apply to identified and unidentified sensitive lands.~~

16.20.010 Purpose.

The purpose of this chapter is to:

A. Comply with the Washington State Growth Management Act requirement that cities adopt regulations to designate and protect resource lands and ~~environmentally sensitive (critical)~~ critical area functions and values, and that these regulations incorporate best available science;

B. Protect the public health, safety, and welfare by preventing the adverse impacts of development on resource lands and critical ~~environmentally sensitive (critical)~~ areas;

C. Preserve and protect resource lands and ~~environmentally sensitive (critical)~~ critical areas by regulating development within and adjacent to them while also allowing for reasonable use of private property;

D. Protect members of the public and public resources from injury, loss of life, or property damage due to landslides, steep slope failures, erosions, seismic events, or flooding. (Ord. 861, 2005; Ord. 619, 1992)

E. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and fish and wildlife habitat conservation areas.

Commented [AP2]: Addition per 2018 City of Langley CAO draft amendment

16.20.015 Authority

A. As provided herein, the City of Langley Planning Director or his/her designee (hereafter referred to as "the Planning Official") is given the authority to interpret and apply, and the responsibility to enforce, this title to accomplish the stated purpose.

B. The Planning Official may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this title.

16.20.020 - Relationship to other regulations.

A. These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the City.

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

C. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any potential impacts of a development and conditions required pursuant to this chapter shall be considered in the SEPA review process.

D. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, shoreline substantial development permits, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

Commented [AP3]: Addition per 2018 City of Langley CAO draft amendment

E. All development occurring within the jurisdiction of the City of Langley Shoreline Master Program shall be regulated by the City of Langley Shoreline Master Program.

F. All development occurring outside of the jurisdiction of the City of Langley Shoreline Master Program shall be regulated by this chapter, including those development activities which may be outside of shoreline jurisdiction, but impact critical areas within shoreline jurisdiction.

Commented [AP4]: Addition for clarity of the relationship with the City of Langley SMP

16.20.025 Best available science.

A. Preparation of Critical Area Reports/Biological Assessments/Habitat Management Plans. Critical area reports prepared to determine whether "no net

Commented [AP5]: Gap Analysis Part 2 Table 2

loss" to a critical area will be achieved before alteration or mitigation to a critical area is undertaken shall rely on the "best available science" to protect the functions and values of critical area and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, where applicable.

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

C. -Absence of Valid Scientific Information. Where there is significant uncertainty about the risk to critical area function or permitting an alteration of or impact to the critical area, that cannot be resolved because of incomplete scientific information, the Planning Official shall take a "precautionary or a no-risk approach," that strictly limits development and land use activities until the uncertainty is sufficiently resolved.

Commented [AP6]: Revised previous section for clarity in alignment with the suggestions of the 2018 City of Langley CAO draft amendment.

~~A. Protection for Functions and Values and Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, and their habitat.~~

~~B. Best available science to be used must be consistent with criteria. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.~~

~~C. Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in~~

developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the planning official shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

1. Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

2. Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer reviewed to assure their reliability and validity;

3. Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;

4. Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods;

5. Context. The information is placed in proper context. The assumptions, analytical techniques, data and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

6. References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

D. Nonscientific Information. Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:

1. Anecdotal Information. One or more observations that are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking");

2. Nonexpert Opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are any grizzly bears in the area"); and

3. Hearsay. Information repeated from communication with others (for example, "at a lecture last week, Dr. Smith said there were no grizzly bears in that area").

E. Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area, leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the planning official shall:

1. Take a "precautionary or a no-risk approach" that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and

2. Require an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:

   a. Address funding for the research component of the adaptive management program;

   b. Change course based on the results and interpretation of new information that resolves uncertainties; and

16.20.030 Definitions

Commented [AP7]: Separate "Definitions" Section created per Gap Analysis Part 2 Section 6

"Alterations of a wetland" means the placement or erection of any solid material or structure; the discharge or disposal of any dredge material or waste, including filling, grading, channelization, removing, dredging, draining, extraction of any materials; the discharge or disposal of any dredge material or waste, including filling, grading; the removal or harvesting of trees or other vegetation; or the modification for use as a stormwater retention/detention facility.

"Anadromous fish" means those species that migrate up rivers from salt water to spawn in fresh water.

"Artificial wetlands" means a wetland or surface water system that was intentionally created from a non-wetland site through human activity and for a specific purpose. This includes stormwater detention ponds, bioswales, irrigation canals, wastewater treatment ponds, landscape amenities, stock ponds, and similar areas. Artificial wetlands or surface water systems do not include wetlands created as compensation for development impacts or wetlands that have inadvertently become established as a result of changing environmental conditions or land use.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year. It is referred to as the "100-year flood."

"Best management practices" means conservation practices and management measures identified by the Soil Conservation Service, Whidbey Island Conservation District or State Extension Offices that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins and sediment; and (2) minimize adverse impacts to surface water and ground water flow, circulation patterns, and to chemical, physical, and biological characteristics of wetlands and streams.

"Conservation easement" means a legal agreement a property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally

binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

"Creation" (or "establishment") means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland areas.

"Critical aquifer recharge areas" means areas with a critical recharge effect on aquifers used for potable water, including sole source aquifer recharge areas designated pursuant to the federal Safe Drinking Water Act, areas where an aquifer is a source of drinking water vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge (WAC 265-190-303(3)).

Commented [AP8]: Gap Analysis Part 2 Table 1 and Part 2 Section 6

"Critical areas" means wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydro periods, or some combination of these. Enhancements result in a change in some wetland functions, and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.

"Erosion hazard areas" means areas that are likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils and include coastal erosion areas.

Commented [AP9]: Gap Analysis Part 2 Table 4

"Fish and wildlife habitat conservation areas (FWHCA)" means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the

ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. In the City of Langley, FWHCA also include locally important and designated habitats and species (WAC 365-190-030(6)).

Commented [AP10]: Gap Analysis Part 2 Table 2

"Flood fringe" means that portion of the floodplain outside of the floodway which is covered by floodwaters during the base flood.

"Flood hazard areas" means those areas subject to inundation by the "base flood" as identified in the Federal

"Floodplain" means the total area subject to inundation by the base flood.

"Floodway" means the channel of the stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flow without any measurable increase in flood heights.

Commented [AP11]: Gap Analysis Part 2 Table 3; Relocated from Flood Hazard Area

"Habitat for a protected species" means the site where a protected species of flora or fauna lives and grows, including habitats for species subject to the International Migratory Bird Treaty and regionally rare habitats which are irreplaceable or highly sensitive to alteration. As used in this chapter, habitat is limited to areas which are critical to breeding, rearing and nesting. This chapter shall contain a list of protected habitats which shall be revised as new habitats warranting protection are recognized.

"Hydrophytic vegetation" means plant life growing in water or in a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (For one reference source see Wetland Plants of the Pacific Northwest, September 1984, U.S. Corps of Engineers.) The presence of hydrophytic vegetation shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

"Landslide Hazard Area" means ~~-~~areas that are potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas

susceptible because of any combination of bedrock, soil, slope (gradient), sloe aspect, structure, hydrology, or other factors.

"Mitigation" means sequencing taken to avoid, minimize or compensate for adverse critical area impacts using the sequential order of preference included in Section 16.20.085(H). ~~steps taken to avoid, minimize or compensate for adverse wetland or stream impacts.~~

"Monitoring" means evaluating the impacts of the development proposal on biologic, hydrologic, and geologic system and assessing the performance of required mitigation through the repetitive collection and analysis of data to understand and document changes in natural ecosystems functions and features. Monitoring includes gathering baseline data.

"Native wetland species" means wetland species which are indigenous to Island County and western Washington. Such species are identified in Flora of the Pacific Northwest (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).

"Nonnative wetland species" means wetland species which have been accidentally or purposefully introduced into Island County.

"Non wetlands" includes upland and lowland areas that are neither deep water aquatic habitats, wetlands, nor other special aquatic sites. They are seldom or never inundated, or are infrequently inundated, they have saturated soils for only brief periods during the growing season, and, if vegetated, they normally support a prevalence of vegetation typically adapted for life only in aerobic soil conditions.

"Protected species" means species of flora and fauna recognized by the federal government or the state of Washington as endangered, threatened, or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are unique in Island County and worthy of protection. This chapter shall contain a list of protected species which shall be revised as new species which warrant protection are recognized, or a species which has been listed no longer needs protection.

Commented [AP12]: Updated to reference mitigation sequencing criteria in compliance with ECY Publication No. 22-06-014

Commented [AP13]: Updated to be compliant with ECY Publication 22-06-014

"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland deemed worthy of long-term protection. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as protecting a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in fractions, and will be used for compensatory mitigation only in exceptional circumstances.

"Qualified professional" means a person with training and experience in the pertinent scientific discipline. With regards to Critical Areas, it means a person who is a qualified scientific expert in accordance with WAC 365-195-905. A qualified professional must be licensed and/or certified where such licensing or certification are required. When certification is not required the professional must have: (1) obtained a B.S., B.A., or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and (2) have at least five (5) years of related work experience performing wetland studies, biological site assessments, and/or habitat management plans including field delineations, written reports, mitigation plans, etc.

A qualified professional for a geological hazard is: (1) a practicing geotechnical engineer, qualified civil engineer, or certified engineering geologist; (2) with at least four (4) years of professional experience analyzing geologic, hydrologic, and ground water flow systems and slope stability, seismicity, faulting, and liquefaction; and (3) is licensed to practice in the state of Washington. When the proposed development or vegetation removal is in an area subject to coastal geomorphological processes, the professional shall have demonstrated experience in evaluating and providing technical recommendations related to sediment and sediment transport, and effects on property and shoreline stability.

Commented [AP14]: New definition per conversation w/ City of Langley.

"Reasonable use" means appropriate and fair use of property given the specific physical circumstances.

"Repair or maintenance" means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and

undamaged condition. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

"Restoration" means measures taken to restore an altered or damaged wetland or stream that is subject to the regulations of this chapter including:

1. Active steps taken to restore damaged regulated wetlands, streams, protected species habitat or their buffers to the functioning condition which existed prior to an unauthorized alteration; and

2. Actions performed to reestablish wetland and stream functional characteristics and processes which have been lost by alteration, past management activities, or catastrophic events within an area which no longer meets the definition of a wetland or stream.

Commented [AP15]: Updated to be compliant with ECY Publication 22-06-014

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

Commented [AP16]: Gap Analysis Part 2 Table 4

"Stream" means surface water contained within a defined bed or channel, whether permanent or intermittent. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition does not include ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used by salmonids or to convey streams naturally occurring prior to construction of such watercourses. Categories of streams are defined in Section 16.20.065.

"Tsunami Hazard Area" means coastal areas and large lake shoreline areas susceptible to flooding and inundation as a result of excessive wave action derived from seismic or other geologic events.

"Water dependent use" means a use or a portion of a use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float place facilities, and sewer outfalls.

"Waters of the State" means all waters defined as "surface waters of the state", all waters defined as "waters of the state" in RCW 90.48.020, and all waters of the United States" in 40 C.F.R. 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets. (WAC 173-226-030(26)).

Commented [AP17]: Gap Analysis Part 2 Table 3

"Wetland edge" means the upland limit of a wetland is designated as the boundary between land with predominantly wetland vegetation cover and land without such cover.

"Wetland functions" means the beneficial roles served by wetlands, including but not limited to water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, historical and archaeological value protection, aesthetic value and recreation.

"Wetland mitigation bank" means a site or suite of sites where resources are restored, created, enhanced, and/or preserved, for the purpose of providing compensatory mitigation for impacts. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Commented [AP18]: Ecology Publication No. 22-06-014

"Wetland vegetation" means hydrophytic vegetation, as defined above.

"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 non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after March 18,1992, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands shall include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. Categories of wetlands are defined in Section 16.20.080.

16.20.035 Critical area permit process and application requirements

A. Pre-Application Conference. All applicants are encouraged to meet with the City prior to submitting an application subject to the critical area provisions of this section. The purpose of this meeting shall be to discuss the requirements, process and procedures; to review the critical areas checklist and any conceptual plans prepared by the applicant; to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the City

B. Critical Area Report. If the Planning Official ~~planning official~~ determines that critical area or buffer impacts might occur as a result of the proposal, a critical area delineation and assessment report must be submitted to the City for review as part of the development application; the application will not be deemed complete without the critical area report. The report must be prepared in accordance with City permit application requirements and must incorporate best available science as defined in Section 16.20.025. The report shall analyze the extent, type, and function of the critical area or areas and buffers on any site where regulated activities are proposed. The report will be used by the City to determine the extent of the critical area and appropriate buffer requirements and to assist the City in determining appropriate mitigation if required. The critical areas report, which shall be available to the public, shall contain the following:

1. The name and contact information of the applicant, a description of the proposal and identification of the requested critical area action;

2. A copy of the site plan for the development proposal including a map to scale depicting topography; critical areas and their buffers; site features, including existing development; the proposed development; and any areas to be cleared;

3. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

4. Characterization of all critical areas, water bodies and buffers adjacent to the proposed project area;

5. A discussion of the performance standards applicable to the critical area and the requested critical area activity;

6. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize and mitigate impacts to critical areas;

7. Plans for adequate mitigation as needed to offset any impacts;

8. The dates, names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

9. A statement specifying the accuracy of the report and all assumptions made and relied upon;

10. Financial guarantees, as appropriate, to ensure compliance; and

11. Any additional information deemed necessary by the ~~planning official~~ Planning Official.

12. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

Commented [AP19]: ECY Publication 22-06-014

It is intended that the level of technical study and analysis in critical area reports be commensurate with the value or sensitivity of the particular critical area in question.

~~B.~~C. Professional Expertise. A ~~wetland specialist, geotechnical engineer, or other~~ qualified ~~professional as~~professional as mutually agreed upon by the City and the applicant, shall prepare all reports and studies required of the applicant by the City. The City or the applicant may retain a qualified professional to perform a peer review of required reports, studies and plans in circumstances contained within Section 16.20.035(F). All reports and studies (including peer review) required of the wgapplicant shall be prepared at the applicant's expense.

D. Review Process. This section is not intended to create a separate critical area permit process for development proposals. To the extent possible, the City shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals. (Ord.861, 2005; Ord. 619, 1992)

E. Conditions of approval. The Planning Official shall apply conditions to any permit or approval which authorizes development in a critical area or critical area buffer and may prescribe such conditions and safeguards, including timelines and procedural requirements, necessary to implement any substantive conditions attached to a permit or approval as necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter. In those instances where development is proposed in a critical area or critical area buffer and no critical area permit is required, such conditions, timelines, and procedural requirements may be attached to any other related permits or approvals.

Commented [AP20]: Included for clarity per 2018 City of Langley draft changes

F. Third Party Review of Critical Area Reports.

1. The Planning Official may require, at the applicant's expense, a third-party review of a critical area report by a qualified professional under contract with or employed by the City in any of the following circumstances:

   a. The project requires a critical area permit, or critical area reasonable use exception; or

   b. Third party review is specifically required by the provisions of this chapter

for the critical area(s) or critical area buffer(s) potentially being impacted; or

c. When the Planning Official determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter or other appropriate regulations.

2. The third-party peer reviewer shall evaluate the subject report for consistency with the applicable report requirements and review the validity of assumptions and conclusions. If necessary, the third-party peer reviewer shall provide written recommended revisions for the qualified professional to address or incorporate to demonstrate compliance with this Chapter prior to authorization of the subject permit.

G. Best Management Practices.

All allowed activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

16.20.040 Identification, classification, and rating of critical areas.

A. Critical Areas Maps. The general locations of many critical areas in Langley are displayed on the City of Langley's critical areas maps and GIS program (MapLangley) The maps are used to alert the public of the potential location of critical areas in Langley. As new environmental information related to critical areas becomes available, the City is authorized to make changes as necessary to the critical areas maps. These maps are intended to be a reference and do not provide a final critical areas designation and may not be inclusive of critical areas that might be identified through review and information.

Commented [AP21]: Addition per discussion with the City of Langley and to reflect criteria contained within the Geologically Hazardous Areas section

Commented [AP22]: Additional criteria for clarity

Commented [AP23]: Addition per 2018 City of Langley draft changes

Commented [AP24]: Additional section per 2018 City of Langley draft changes for mapping criteria.

Commented [AP25]: Gap Analysis Part 2 Table 2 - Adaptive Management

B. Actual Site Conditions. Regardless of whether a critical area is shown on the critical areas map, the actual presence or absence of the features defined in this code as critical areas will govern. Prior to acting on any development permit the City may require an applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the applicant's site based on the definitions of critical areas in this code.

C. Classification and Rating. To promote consistent application of the standards and requirements of this chapter, critical areas within the City will be rated or classified using best available science according to their characteristics, function and value, and/or their sensitivity to disturbance.

1. Classification of critical areas will be determined by the City using the following tools:
   a. Application of the criteria contained in these regulations;
   b. Consideration of the critical area reports submitted by qualified professionals in connection with applications subject to these regulations; and;
   c. Review of maps and other resources adopted pursuant to this chapter.
2. Rating categories will not change due to illegal modifications. If the development proposal site contains or is within a critical area suspected of illegal modifications the rating will be based on pre-modification conditions of the critical area. The qualified professional shall take a "precautionary or a no risk" approach when preparing the critical area report in compliance with Section 16.20.025(C). Abatement of the unauthorized modification will be required prior to authorization of the current development proposal being processed for the subject site.

Commented [AP26]: Added for clarity and consistency.

16.20.045 Exemptions.

The following activities are exempt from regulation under this chapter. The burden of proving the existence of an exemption is upon the party claiming the exemption. Prior confirmation of an exemption may be requested from the Planning Official. In case of any question as to whether a particular activity is exempt under the provisions of this section, the Planning Official's determination shall prevail. To be exempt from this chapter does not give permission to degrade a regulated habitat or ignore risks from natural hazards. Exempt activities shall comply with the intent of these standards, consider onsite alternatives that avoid or minimize potential impacts, and shall use reasonable methods (i.e., best management practices) to avoid potential impacts to riparian and critical wildlife habitat. However, provisions of this section are not exempt from the City of Langley Shoreline Master Program when applicable.

A. Drainage and Flood Control Facilities. Operation, maintenance and repair of dikes, ditches, reservoirs, settling basins and other structures and facilities which were created or developed as part of normal drainage or flood control activities on or prior to July 1st, 1990, except that this exemption does not extend to the permanent alteration of any regulated wetland;

B. Maintenance, operation and repair of existing roads, streets, utilities and associated structures undertaken pursuant to Public Works Director approved best management practices; provided, that activities shall not increase the impervious area and that disturbed areas are restored to their preexisting condition;

C. Normal maintenance and repair of residential or commercial structures; provided, that repair of any structures may not increase the previous floor area or impervious surface area, and subject to the requirements of Chapter 18.32, Nonconforming Uses, Structures, and Lots;

D. Emergency activities that are required due to landslides, floods, earthquakes, other acts of nature, or emergency utility repairs that are necessary to prevent an immediate threat to public health, safety or property and that require remedial or preventative action in a time frame too short to allow for compliance with the

Commented [AP27]: Generic section for all critical area regulations. Existing code relocated

Commented [CP28]: Exemptions for irrigation and artificial wetlands removed per 2018 staff comments

Commented [AP29]: Existing language from LMC 16.20.075, modified to remove subsection reference

Commented [AP30]: Addition for clarity of applicability with SMP

Commented [AP31]: Revised date per 2018 City of Langley CAO draft amendments

requirements of this chapter. After the emergency, the person or agency undertaking the action shall restore and/or mitigate any impacts to the habitat and buffer resulting from the emergency action in accordance with an approved habitat report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of emergency, and completed in a timely manner;

E. Enhancement of a wetland through the removal of non-native, invasive plant species. Removal shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments or mechanical methods. All removed plant material shall be taken away from the site and disposed of properly. Plants that are on the Washington State Noxious Weed Control Board list of noxious weeds should be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species to achieve natural densities is allowed and encouraged in conjunction with removal of invasive plants.

Commented [AP32]: ECY Publication 22-06-014

F. Removal of dead, dying or diseased vegetation, and removal of hazardous trees less than 12" diameter at breast height (dbh) where occupied structures are in immediate danger of damage, where such activities are determined by the City to have minimal impact to habitat and/or streams. The City may require verification by a licensed arborist of hazard qualification for trees prior to removal. If a hazard tree meets the criteria above, the subject tree removed from critical areas must be replaced with an appropriate native species. Hazard trees greater than 12" dbh are not exempt from this Chapter and shall adhere to the requirements of LMC 18.22.020. Additionally, any such activities undertaken within a designated critical area easement may require replanting per the requirements of the easement;

Commented [AC33]: CAO Gap Analysis - Section 2.4.1

G. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat;

H. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies and similar tests and investigations; provided, that any disturbance of the habitat shall be the minimum necessary to carry out the work or studies and that the disturbed area shall be restored in accordance with an approved habitat report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of the disturbance, and completed in a timely manner; and;

I. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching and hiking, that will not have a significant effect on the habitat area. (Ord. 861, 2005; Ord. 619, 1992).

16.20.050 Bonds for restoration and mitigation activities.

Commented [AP34]: Relocated existing section for clarity of application

A. Performance Bonds. Mitigation required pursuant to a development proposal must be completed prior to the City's granting of final approval of the development proposal. If the applicant demonstrates that seasonal requirements or other circumstances beyond its control prevent completion of the mitigation prior to final approval, the applicant may post a performance bond or other security instrument in a form and amount deemed acceptable by the Planning Official, which guarantees that all required mitigation measures will be completed no later than the time established by the department in accordance with this chapter.

B. Maintenance/Monitoring Bonds. The City shall require the applicant whose development proposal is subject to a mitigation plan to post a maintenance/monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by this chapter for a period up to three years. The duration of maintenance/monitoring obligations shall be established by the Planning Official after consideration of the nature of the proposed mitigation and likelihood and expense of correcting mitigation failures.

C. Bonds or other security instruments shall be in the form and amount approved by the Planning Official and shall remain in effect until the Planning Official determines in writing that performance and maintenance standards have been met. (Ord. 619, 1992)

16.20.055 Reasonable Use Exception

A. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this chapter. If an applicant can prove that strict application of the standards contained within Section 16.20.070 or 16.20.085 will deny all reasonable use, development as conditioned will be permitted if the applicant demonstrates all the following:

1. There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the wetlands or Fish and Wildlife Habitat Conservation Area (FWHCA); and

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

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

4. The inability of the applicant to derive all reasonable economic use of the property is not the result of actions by the applicant in subdividing the property, adjusting a boundary line or other action thereby creating the undevelopable condition after March 18, 1992; and

5. Mitigation sequencing per Section 16.20.085(H) has been applied and the proposal mitigates the impacts on the wetland to the maximum extent possible, while still allowing reasonable economic use of the lot.

6. A report shall accompany a reasonable use exception proposal which provides information on the function and value of the critical area, area proposed for alteration, impact of development on the critical area and buffer, what constitutes

Commented [AP35]: Existing language from LMC 16.20.070 relocated for clarity of application since wetland/FWHCA sections have been separated

Commented [AP36]: Addition to address PAB concern

Commented [CP37]: Why is this date different than date in 16.20.045.A above?

Commented [AP38R37]: This is existing code. Brigid recommended the previous change in the draft amendments. Update for consistency?

Commented [AP39R37]: Meredith to verify.

Commented [AP40]: Included per ECY Publication No. 22-06-014

a reasonable economic use of the property, steps taken to minimize the impact of the alteration, and other information as deemed necessary.

16.20.06025 Designated Resource~~ion and regulation of resource~~ Lands.

A. Designation of Forest, Agriculture, and Mineral Resource Lands. The City declares that there are no forest, agricultural or mineral resource lands of long-term commercial significance within the City limits of the City of Langley.

B. Regulation of Lands Adjacent to Resource Lands.

1. For permitted or conditional uses adjacent to lands classified agricultural or forest management by Island County or the City or a surface mining operation:

a. Setback standards for dwellings, structures and buildings, approved after the effective date of this chapter and adjacent to agriculturally zoned property, shall be a minimum of 50 feet unless a mutual covenant is established with adjoining landowners and recorded with the requirement that it may be modified where it is not feasible to accomplish and still allow reasonable use of the property.

b. A notation shall be placed on the face of any plat, short plat, PUD, conditional use permit, building permit or similar permit within 5300 feet of any resource lands and included in documents of conveyance and any recorded covenants stating that the parcel may be subject to noise, dust, smoke, and odors resulting from harvesting, planting, fertilization, and pest control and other activities associated with permitted agricultural, forest management and surface mining practices. The notations shall further state these practices, when performed in accordance with county, state and federal law, shall not be subject to legal action as a public nuisance.

Commented [AP41]: RCW 36.70A.060(b) - Resource Lands

2. For permitted or conditional uses adjacent to lands used for agricultural or forest management purposes or in open space agriculture or forest current use taxation, the notation set forth in subsection (B)(1)(b) of this section may be

imposed when found necessary to protect the agriculture or forest management use. (Amended during 2013 reformat; Ord. 861, 2005; Ord. 619, 1992)

16.20.06~~530~~ Critical Aquifer Recharge Areas ~~Designation and regulation of aquifer recharge areas.~~

A. Purpose. Through the Island County ground water management program, all of Island County has been designated a critical aquifer recharge area. The City has adopted limitations on the extent of impervious surface allowed with new development. These standards are set forth in Title 18, Zoning. (Ord. 861, 2005; Ord. 619, 1992)#

B. Exemptions. Exemptions to this chapter are listed in the provisions established in Section 16.20.045, Exempt activities.

Commented [AP42]: Added for applicability

C. Designation Criteria. The map designates areas as having a low, moderate, or high susceptibility to groundwater contamination as developed using best available science and as interpreted by the Island County health officer under the advice of the Island County Hydrogeologist. The map together with all explanatory details contained thereon, is hereby made part of this chapter. Susceptibility designations have been identified for Island County and are delineated on the Island County Critical Aquifer Recharge Area Map (as it currently exists or is hereafter amended).

Commented [AP43]: Gap Analysis Part 2 Table 1

D. Critical#Aquifer Recharge Protection Standards:

Commented [AP44]: Gap Analysis Part 2 Table 1

1. Regulated activities/facilities may be permitted in a critical aquifer recharge area only if the applicant can demonstrate that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

2. The proposed regulated activity must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Health, and the Island County Health Department.

3. Best management practices shall be required for all activities within the designated critical aquifer recharge area.

4. Based upon available information including that provided by the applicant pursuant to the requirements of this section, the Planning Official shall have discretion to impose conditions designed to prevent degradation of groundwater quality or quantity. Such conditions may include a hydrologic site evaluation, determination of background water quality, quantity, and groundwater levels prior to approval and development of groundwater quality and/or quantity management plans. All conditions shall be based on all known, available, and reasonable methods of prevention, control, and treatment.

5. A mitigation plan shall be required to address groundwater impacts identified in the hydrogeologic site evaluation, if such an evaluation is required. The Planning Official may require that the mitigation plan include monitoring, process controls, remediation, and discussion of alternatives.

6. Project approval shall be based on the conditions and/or mitigation plan required by the Planning Official.

7. The following activities shall be subject to the foregoing requirements of this section:

    a. Commercial, industrial, institutional, or other facilities or activities that include, but are not limited to: chemical storage tanks (other than liquified gas), automobile washers, chemical treatment storage and disposal, injection wells, oil and gas drilling, pesticide storage and use, sawmills, wastewater application to land surface, animal feedlots, below ground storage tanks, hazardous waste generators, junk and salvage yards, mining, recycling facilities, solid waste handling facilities, underground injection wells, and wood treatment facilities.
    b. Petroleum transmission facilities and/or petroleum storage tanks.

Commented [AP45]: Added for clarity

c. Those land and subsurface sewage disposal systems as outlined below:

i. Residential sewage disposal systems designed to serve more than two (2) residences on an off-site drainfield or sewage disposal systems from more than two (2) residences on a single parcel, with a total design flow less than 3,500 gallons per day. Adherence to Island County Health Department BMPs are considered adequate to prevent groundwater contamination in the low and moderate zones.

ii. Sewage disposal systems serving commercial and industrial projects, excluding home-based businesses or home occupations, with total design flows less than 3,500 gallons per day, at the health officer's discretion. Adherence to Island County Health Department BMPs are considered adequate to prevent groundwater contamination in the low and moderate zones.

iii. Any sewage disposal system with design flows of more than 3,500 gallons per day in any zone.

d. Surface mining operations requiring a permit from the State Department of Natural Resources.

e. Other projects or activities as determined by the Planning Official.

E. The Planning Official may include additional conditions of approval for activities within the delineated Wellhead Protection Area in compliance with the City of Langley Wellhead Protection Plan (June 2008).

Commented [AP46]: Gap Analysis Part 2 Table 1

16.20.07~~35~~ Fish and Wildlife Habitat Conservation Areas (FWHCA).

Commented [AP47]: Section A-F were added per Gap Analysis Part 2 Table 2

A. Purpose. The purposes of the fish and wildlife habitat conservation areas regulations are to:

1. Maintain fish and wildlife populations, especially populations of anadromous fish species, by protecting and conserving valuable fish and wildlife habitat and protecting the ecological processes that sustain these resources.
2. Protect valuable terrestrial habitats, natural streams and their associated riparian areas, marine shorelines, and the ecosystem processes on which these areas depend.
3. Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are avoided.
4. Maintain the natural geographic distribution, connectivity, and quality of fish and wildlife habitat.

B. Designation criteria. FWHCA are those areas identified as being of critical importance to the maintenance of certain fish and wildlife species. FWHCAs are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the City of Langley meeting these criteria are hereby designated critical areas and are subject to the provisions of this chapter. FWHCA shall include all of the following:

1. Areas with a primary association with endangered, threatened, and sensitive species.
2. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered.
3. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the State of Washington identified by the Washington State Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are

periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species).

4. Streams and waters of the state.

   Stream types shall be classified according to WAC 222-16-030. Stream classifications shall include the following:

   a. Type S streams are those streams inventoried as "shorelines of the state" under the Washington State Shoreline Management Act and the City of Langley Shoreline Master Program. Type S streams are regulated under the City of Langley Shoreline Master Program;
   b. Type F streams are those that are not Type S but still provide fish habitat;
   c. Type Np streams are perennial waters that do not contain fish habitat, including the intermittent dry portions below the uppermost point of the perennial flow; and;
   d. Type Ns streams are seasonal waters that do not contain fish habitat, but are physically connected by an above-ground channel system to Type S, F, or Np waters. This includes all segments of natural waters within the width of the defined channels.
   e. In the case that available information on stream typing is unclear, the Planning Official shall require that stream typing be performed by a qualified professional using a site visit, mapping, and all available information.

5. State natural area preserves, natural resource conservation areas, and state wildlife areas.
6. All areas designated by the Department of Natural Resources (DNR) through the Washington Natural Heritage Program (NHP) as high-quality terrestrial ecosystems and shown on the most recent NHP maps and data.

C. Habitats and species of local importance.

1. Habitats and species of local importance have the following characteristics:

a. Habitats and species of local importance have recreational, cultural, and/or economic value to citizens of Langley and Island County.
b. Habitats and species of local importance are not adequately protected, by other City, County, state, or federal policies, laws, regulations, or non-regulatory tools that prevent degradation of the habitat or species.
c. Habitats and species of local importance represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.
d. Habitats and species of local importance, without protection, would be diminished locally over the long term.

2. Habitats and species of local importance may also include, but are not limited to, Priority Habitat and Species (PHS) mapped and identified by the Washington Department of Fish and Wildlife (WDFW).

D. The following habitats and species that are listed under WAC 365-190-130 shall be regulated under the City of Langley Shoreline Master Program (except where upland development activities outside jurisdiction would impact these habitats and species):

1. Areas where endangered, threatened and sensitive marine species have a primary association;
2. Commercial and recreational shellfish areas;
3. Kelp and eelgrass beds; herring smelt and other forage fish spawning areas.

E. Regulations. All new development activities and uses are prohibited from ~~habitat conservation areas~~FWHCAs and their buffers except in accordance with this chapter unless within shoreline jurisdiction and hereby regulated by the City of Langley Shoreline Master Program (SMP). Alterations of FWHCAs or their buffers is

prohibited except as otherwise allowed by this chapter and may occur only if the proposed alteration of the habitat and any associated mitigation proposed does not degrade the functions and values of the habitat.

Commented [AP48]: Added for clarity

F. Exemptions. Exemptions to this chapter are listed in the provisions established in Section 16.20.045, Exempt activities.

Commented [AP49]: Added for clarity

G. Approvals and the Best Available Science. Any approval of alterations or impacts to an FWHCA area must be supported by the best available science as described in the required critical area report. In the event of a conflict between FWHCA mapping and the designation criteria outlined in this section, the designation criteria shall control.

Commented [AP50]: Gap Analysis Part 2 Table 2

H. Species. The following species are highly sensitive to disturbance or habitat alteration and, therefore, are designated as "species of local importance" in the City of Langley:

Commented [AP51]: Updated for clarity/consistency

Commented [AP52]: Embedded Appendix per City of Langley request

1. Bald eagle
2. Pileated woodpecker
3. Common loon
4. Great blue heron
5. Trumpeter swan
6. Vaux's swift
7. Snow goose
8. Short eared owl
9. River otter
10. Black crowned night heron
11. Brandt
12. Virginia rail
13. Bittern
14. Salmon
15. Smelt
16. Muskrat

17. Beaver
18. Brown creeper
19. Peregrine falcon
20. Northern sea lion
21. Osprey
22. Marbled murrelet
23. Migratory waterfowl (pintail, brant, mergansers)
24. Great horned owl
25. Cavity nesting waterfowl (golden eyes, woodducks, hooded merganser, harlequin duck)
26. Shellfish
27. Herring
28. Native residential fish
29. Red fox
30. Harbor seals
31. Goshawk.
32. Western Toad
33. Pacific Sand Lance

Commented [AP53]: Gap Analysis Part 2 Table 2

I. Habitat. The following habitats are considered highly sensitive to alteration, are regionally rare, and are "habitats of local importance" in the City of Langley:

Commented [AP54]: Updated for clarity/consistency

1. Eelgrass beds
2. Peat bogs
3. Mature forested wetlands
4. Riparian habitat with native fish populations or significant wildlife usage
5. Kelp beds
6. Estuaries/mud flats/rocky shores
7. Garry oak remnants
8. Freshwater ponds
9. Freshwater marshes
10. Perennial streams.

Commented [AP55]: Embedded Appendix per City of Langley request

J. Biological Site Assessment.

1. When a development proposal is located within 1,000 feet of a protected species, habitat, or an identified fish and wildlife habitat conservation area or its buffer, or when the applicant proposes to alter, decrease, or average a standard stream buffer, a biological site assessment (BSA) shall be required.

2. The requirement for a BSA may be waived by the Planning Official for activities listed in Section 16.20.045, Exemptions, and the following activities, provided no clearing of established native shrubs or trees is required:

a. Additions to a legally established, primary residence less than 300 square feet in size without changes to the existing septic capacity; or

b. New residential gardening and landscaping, including construction of ancillary structures (such as a greenhouse or tool shed) not to exceed 200 square feet in size; or

c. Installation of accessory solar energy generation equipment for residential solar energy production;

d. New agricultural activities with implementation of applicable best management practices if the proposed activity is at least 600 feet from the identified FWHCA.

3. Biological site assessment contents. A BSA shall be prepared by a qualified professional at the expense of the applicant. Unless modified by the Planning Official, a BSA shall include:

a. A site plan showing all critical areas and associated critical area buffers falling on or within 1,000 feet of the portion of the subject property proposed for development. The site plan shall also clearly show the location and extent of all proposed clearing, earthwork, grading, excavation, filling, structures, utilities, septic system components, wells, roads, parking areas, driveways and other development; and

b. Descriptions of all critical areas shown on the site plan, including areas which may act as wildlife corridors, ravines or steep slopes,

Commented [AP56]: New requirement per discussion w/ City of Langley

Commented [AP57]: New report requirements per discussion with the City of Langley

etc.; and

c. Description of the proposed development, including, but not limited to, quantity and spatial extent (area) of any proposed development, clearing, earthwork, grading, excavation, and filling, the location and dimensions of all proposed structures, utilities, septic system components, and wells; and

d. Analysis of impacts to the protected species, habitats, designated FWHCA, or buffers. A discussion of impacts to all critical areas and critical area buffers must be included; and

e. The spatial extent of impact to critical areas and their buffers shall be quantified; and

f. Regulatory summary, identifying other agencies with jurisdiction; and

g. Best management practices, including a discussion of on-going maintenance practices that will assure protection of all critical areas on-site after the project has been completed. If monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.

h. The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

4. If impacts are determined by a qualified professional in the BSA, a Habitat Management Plan shall be required to determine the appropriate buffer width for the proposed development based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant and subject to approval by the City. The report shall rely on best available science and may include mitigation measures.

Commented [AP58]: Consistent with previous requirements

K. Previously Undocumented Priority Species or Habitat Reports. If a protected species or habitat listed in Section 16.20.070(K) or Section 16.20.070(L) is observed in a location that is not previously subject to regulations in FWCHA, a report may be submitted to the City documenting the new location. The Planning Official shall investigate all reported sightings or

Commented [AP59]: Gap Analysis Part 2 Table 2

evidence of protected species in the vicinity of proposed development once a complete report is received prior to any land use approval.

a. Reports shall contain the following:

a. Date and time of observation
b. Name of individuals submitting report
c. Name of individuals who made the observation
d. Location observed
e. Species observed
f. Observation details, which details how species was sighted or heard, nature of observation, length of observation
g. Names of others present that also observed the species
h. Supporting documentation, including photographs, field notes or sound recording, if available

b. The Planning Official or designee may visit the location to verify observations

c. The Planning Official may consult with the WDFW, NOAA or USFWS, as appropriate

d. The Planning Official may require a BSA consistent with the requirements of Section 16.20.070(M) should evidence warrant further investigation.

e. Should the report be verified, the location will be included in the City's FWCHA maps.

L. Conveyance. Conveyance of a habitat and its buffer(s) identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organizations, or state or federal agency, is encouraged when such conveyance will ensure the long-term protection of the species and/or habitat.

Commented [AP60]: Existing language relocated

M. Standard Streams Buffers

1. Type S: Refer to the City of Langley Shoreline Master Program (SMP);

2. Type F: 100 feet on each side of the stream;

3. Type NP and Type NS: 50 feet on each side of the stream.

Noble Creek is classified as a Type NP stream. Brookhaven Creek is classified as a Type NP stream from the south edge of the pavement on Third Street north to Saratoga Passage. From the south edge of the pavement on Third Street south to the creek's source, Brookhaven Creek is classified as a Type F stream. Saratoga Creek is classified as a Type F stream. See Appendix X.

N. Measuring Buffers.

Buffers are measured from the stream's ordinary high water mark as identified in the field and surveyed or from the edge of the delineated wetland or stream. Buffers shall remain in a natural state except for projects which propose to enhance a buffer or are associated with an approved stream alteration. These buffers are subject to reduction only through the provisions of Section 16.20.055. (Ord. 861, 2005)

~~Regulations.~~

~~1. Management Plan. Where a protected species or protected habitat is located on a site of proposed development, the applicant shall prepare or cause to be prepared a management plan which will identify: a. The location of the habitat;~~

~~b. The primary buffer;~~

~~c. If necessary, the secondary buffer;~~

~~d. Conditions to be imposed during development of the property; and~~

~~e. Conditions to be imposed to protect and maintain the species and/or habitat.~~

Commented [AP61]: Gap Analysis Part 2 Table 2

Commented [AP62]: Appendix numbers will be updated since several have been embedded into this document.

Commented [AP63]: Existing language relocated

2. In preparing the management plan, the applicant shall consult with the Department of Fish and Wildlife, the Department of Natural Resources, the Department of Ecology and the Washington Natural Heritage Program.

3. The management plan shall be prepared at the cost of the applicant and shall be subject to the approval of the city planning official, who may approve, reject, or approve the plan with conditions. All development shall be consistent with the approved management plan. B. Buffers.

1. Known Habitats.

a. Where a protected species is located on a site of proposed development, all permitted or conditional uses shall maintain a primary buffer around the habitat for the identified species, and a secondary buffer if necessary to adequately protect the species. If the buffer area(s) extends to the adjacent property, the adjacent property owner shall be notified of the potential requirement to provide a buffer area on his/her property.

b. The primary buffer is the most critical area immediately around the habitat. The purpose of the secondary buffer is further to minimize the disturbance and protect the primary buffer.

c. The primary buffer may be modified when necessary to protect or enhance the habitat.

2. Potential Habitat.

a. Suspension of Development. All development activity shall be suspended, pending precise location of a habitat, where:

(1) A protected species has been sighted on property proposed for development and the sighting has been confirmed by the city planning official; or

(2) There is evidence of the use of the property as a habitat for a protected species.

c. Location of Habitat. The location of the habitat shall be determined pursuant to subsection (B)(1) of this section. If the habitat is located on the property, it is deemed a known habitat and the applicant shall comply with subsections (B)(1) and (2)(a) of this section.

d. Citizen Reports. The planning official shall investigate all reported sightings or evidence of protected species.

e. Conveyance. Conveyance of a habitat and its buffer(s) identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organizations, or state or federal agency, is encouraged when such conveyance will ensure the long-term protection of the species and/or habitat.

C. List of Protected Habitat and Species. Please refer to list in Appendix 1. (Ord. 861, 2005; Ord. 619, 1992)

16.20.07540 Frequently Flooded Areas Designation and regulation of flood hazard areas.

A. Definitions.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year. It is referred to as the "100-year flood."

"Flood hazard areas" means those areas subject to inundation by the "base flood" as identified in the Federal

Emergency Management Agency's flood insurance rate maps ("FIRMs") prepared for the National Flood Insurance Program. Copies of the city of Langley FIRMs may be reviewed at City Hall. A flood hazard area consists of the following components:

1. "Flood fringe" means that portion of the floodplain outside of the floodway which is covered by floodwaters during the base flood.

2. "Floodplain" means the total area subject to inundation by the base flood.

~~3. "Floodway" means the channel of the stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flow without any measurable increase in flood heights. B. Protected and Permitted Alterations.~~

A. Designation. Frequently flooded areas are areas that are subject to periodic inundation due to high groundwater or areas subject to tidal flooding that are subject to at least a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, lakes, wetlands, frequently flooded areas, closed depressions, floodways and contiguous floodplains areas landward two hundred feet from such floodways, and all wetlands and river deltas associated with streams, lake and tidal waters. Areas of the City subject to tidal inundation by the base flood elevation are identified in the Federal Emergency Management Agency's flood insurance rate maps ("FIRMs") prepared for the National Flood Insurance Program. Copies of the City of Langley FIRMs may be reviewed at City Hall or on the FEMA Flood Map Service. Frequently flooded areas under shoreline jurisdiction are also subject to the provisions of the City's Shoreline Master Program (Ord. 1080, dated October 18, 2021), Chapter 90.58 RCW (Shoreline Management Act), LMC 15.24, and LMC 16.24.

Commented [AP64]: Gap Analysis Part 2 Table 3

B. Exemptions. Exemptions to this chapter are listed in the provisions established in Section 16.20.045, Exempt activities.

Commented [AP65]: Added for clarity

C. Protected and Permitted Alterations

1. Development proposals on sites containing a flood hazard area shall conform to the conditions of this section. In addition, requirements for buffers, critical area tracts, building setback lines, permitted alterations, mitigation, and maintenance for a development proposal site on or adjacent to a flood hazard area shall be established in this chapter for the wetlands, streams, or other areas which form the constituent elements of the floodplain.

2. Development proposals shall not reduce the effective flood storage volume of the floodplain. Grading or other activity which would reduce the effective storage volume must be mitigated by creating compensatory storage on site or off site.

3. No development proposal, including permitted new construction or reconstruction, shall cause any increase in the base flood elevation.

4. Construction or placement of new residential or nonresidential structures in the floodway is prohibited.

5. Substantial improvements (value of improvement is 50 percent or greater than existing structure) of an existing structure located in a floodway must meet the requirements set out in WAC 173-158-070 as amended.

6. All elevated construction must be designed and certified by a professional structural engineer registered in the state of Washington and must be approved by the City prior to construction.

7. New residential and non-residential construction and substantial improvement in the flood fringe outside the floodway shall be elevated to the flood protection level. Portions below the lowest floor area shall provide for openings for floodwaters. Flood-proofing of a nonresidential structure (new or substantial improvement) to the flood protection elevation is allowed; provided, that flood-proofing is certified by a professional civil or structural engineer licensed in the state of Washington.

8. Construction of new and substantially reconstructed residential and nonresidential structures shall use materials and methods which are resistant to and minimize flood damage and shall flood-proof or elevate above the flood protection elevation all electrical, heating,

ventilation, plumbing, air conditioning equipment and other utility and service facilities.

9. Utilities.

a. All new and replacement utilities shall be flood-proofed to or elevated above the flood protection elevation.

b. Critical facilities may be allowed within the flood fringe of the floodplain only when no reasonable alternative is available. Critical facilities are those necessary to protect the public health, safety, and welfare, including but not limited to schools, hospitals, and police and fire stations. (Ord. 861, 2005; Ord. 619, 1992)

16.20.0805 Geologically hazardous areas.

A. Designation of Geologically Hazardous Areas.

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

1. Erosion hazard;

2. Landslide hazard;

3. Seismic hazard;

4. Other geological events including ~~tsunamis,~~ mass wasting, debris flow, rock falls, and differential settlement.

Commented [AP66]: Gap Analysis Part 2 Table 4, relocated under seismic.

B. Designation of Specific Hazard Areas.

1. Erosion Hazard Areas. Erosion Hazard Areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas (WAC 365-190-120 (5)). Erosion hazard areas may also include:

    a. Coastal erosion areas, such as beaches or marine bluffs;

    b. Areas susceptible to rapid stream incision and stream bank erosion;

    c. Areas located within one-quarter mile of an active fault as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or identified during site inspection.

This information can be found in the Washington State Coastal Zone Atlas available from the Department of Ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas. (WAC 365-190-120(5)).

Commented [AP67]: Gap Analysis Part 2 Table 4

~~1. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may] also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas. (WAC 365-190-120(5)).Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural~~

~~Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.~~

~~2.~~ 2. Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), sloe aspect, structure, hydrology, or other factors.

Example of these may include, but are not limited to, the following:

a. Areas of historic failures, such as:

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

Commented [AP68]: Gap Analysis Part 2 Table 4

~~a.~~ii. Those areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5); or

~~b.~~iii. Areas designated as quaternary slumps, earth flows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;

b. Areas with all three of the following characteristics:

i Aareas that encompass slopes steeper than fifteen (15) -percent~~percent;~~

ii Impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel); ~~with the hillside intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock,~~

~~b.~~iii and springs or ground water seepage;

Commented [AP69]: Consistent with Issaquah, will correct 15% slope issues in Langley CAO. Reformatted for clarity

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

d. Slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

e. Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

f. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action; or

g. Areas located in a canyon or an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding.~~;~~

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

Commented [AP70]: Relocated to Definition section per Gap Analysis Part 2 Table

3. Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, ~~or~~ surface faulting, or tsunami inundation. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

Commented [AP71]: Gap Analysis Part 2 Table 4

a. The magnitude of the earthquake;

b. The distance from the source of an earthquake;

c. The type of thickness of geologic materials at the surface; and

d. The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft saturated soils of low density, typically in association with a shallow ground water table.

~~4. Tsunami Hazard Areas. Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as a result of excessive wave action derived from seismic or other geologic events.~~

~~5.~~4. Other Hazard Areas. Geologically hazardous areas shall also include areas determined by the Planning Official ~~planning official~~ to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

C. Development Standards. All development activities and uses are prohibited in geologically hazardous areas and their buffers, except as provided for in this chapter, and only when it is demonstrated that the activity will not create undue risk to life, health, and safety.

~~1. Development proposals on sites containing steep slope areas shall meet the requirements of this section. =~~

D. Exemptions and Minor Activities. Exemptions are listed in the provisions established in Section 16.20.045, Exempt activities. Minor alterations or structures, including but not limited to benches and informational signs, may be allowed in the required buffer for geologically hazardous areas, and can be considered exempt from the subsection 16.20.080 (L), Alterations, based on the City review and acceptance of a geotechnical report prepared qualified professional that demonstrates no adverse impact will result from the activity and mitigation is provided, as appropriate. All other applicable codes, including compliance with the Shoreline Master Program, must be adhered to.

E. Report Requirements

Commented [AP72]: Gap Analysis Part 2 Table 4

Commented [AP73]: Added for clarity of understanding.

Commented [AP74]: Included per recommendation from City of Langley

Commented [AP75]: Section E-I added per Gap Analysis Part 2 Table 4

1. General geotechnical report. In the case of land disturbing activities proposed on a steep slope or for development of a structure within 50 feet of the top or the toe of a steep slope , not in a geological hazardous area, the Planning Official may require a general geotechnical report prepared by a qualified professional. A general geotechnical report shall include:
    a. An adequate description of the geology of the site including data regarding the nature, distribution, and strength of existing soils; and
    b. An opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geotechnical factors, including stability of slopes and potential impacts; and
    c. Conclusions and recommendations for grading procedures including cuts and placement of structural fills, when necessary; and
    d. Appropriate mitigation measures, which may include required building setbacks.
    e. The Planning Official may require the information outlined in the geotechnical engineering report (Section 16.20.080.E.2.) and/or mitigation plans (Section 16.20.080.F) if site conditions and/or proposed land disturbance are determined to warrant a detailed site evaluation.
2. Geotechnical engineering report for geologically hazardous areas. In the case of land disturbing activities proposed to be within 100' of an established ~~for a~~ geological hazardous area, a geotechnical engineering report prepared and sealed by a geotechnical engineer shall be submitted. The scope of a geotechnical report shall include the following where applicable:
    a. An assessment of the geologic and hydrogeologic conditions in the vicinity of the site. Description of types and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties must be included;
    b. Description of existing site topography including determination of height of slope, slope gradient, and preparation of a generalized cross section;
    c. Description of any areas mapped as unstable, landslides, erosion activity or other areas of unstable soils identified visually at the site;

Commented [AP76]: Consistent with Island County

d. Description of any watercourses, including drainage channels, ditches, springs and intermittent streams;
e. An estimate of slope stability and the effect construction and placement of structures will have on the stability of slopes. The minimum setbacks described above shall be used. The geotechnical engineer must concur with this setback or may establish an alternative setback based on the geology, bluff retreat rates, seismic activity and other considerations;
f. A description of the extent and type of vegetative cover to include tree attitude;
g. A detailed description of the project including any structural development, its relationship to geologic hazard(s) and its potential impact upon the hazard area, the subject property, and affected adjacent properties;
h. A description of type of construction including any unusual load intensities, public and private sewage disposal systems, fills and excavations including proposed angles of cuts and fills;
i. Specific recommendations and/or mitigation actions must be provided regarding proposed vegetation removal and replacement, erosion control, and locations and methods of surface and subsurface drainage.
j. The drainage recommendations shall be site specific to mitigate impacts and prevent erosion. Surface drainage shall not be directed across the face of geologically hazardous or landslides hazard area. If drainage must be discharged from the area into adjacent waters, it shall be collected above the hazard, secured, and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge. Installations within shoreline jurisdiction must be authorized by the City Shoreline Administrator and must be consistent with the Shoreline Management Act (SMA). If the drainage recommendations in the geotechnical engineering report are determined by the Planning Official to not be sufficient, a specific drainage plan prepared by a

licensed engineer may be required (see mitigation plans – Section 16.20.080.F).

k. The Planning Official may require a representative of the geotechnical engineer to perform special inspections to confirm that conditions encountered during construction are consistent with the assumptions of the geotechnical engineering report and construction conforms with the design and mitigation plans.

F. Mitigation plans. If the Planning Official determines that the site conditions and/or proposed development require additional mitigation details not provided in the geotechnical engineering report or general geotechnical report, mitigation plans or other submittals including but not limited to any of the following may be required:

1. Mitigation proposals that shall include:

a. Subsurface exploration and logs prepared under the supervision of the geotechnical engineer. Subsurface exploration may be required for proposed development within twenty-five (25) feet of the top or base of a bluff greater than ten (10) feet in height; for proposed infiltration of stormwater; unusual load intensities as determined by the geotechnical engineer; stormwater anchor blocks; or other design considerations that the Planning Official determines represent a risk from the geohazard;

b. A vegetation management and/or restoration plan and/or other means for maintaining long-term stability of slopes;

c. A temporary erosion and sedimentation control plan (TESC) prepared by a qualified professional.

d. A drainage plan prepared by a licensed civil engineer showing the collection, transport, treatment, discharge, and/or recycle of water.

e. All infiltration systems, such as stormwater detention and retention facilities, and curtain or french drains are prohibited in geologically hazardous areas and their buffers unless a geotechnical report indicates such facilities or systems will not adversely affect slope stability and the systems are designed by a licensed civil engineer. Such systems will

require subsurface exploration to confirm the suitability of subsurface conditions. Special inspection may be required during construction.

2. The mitigation plan must be approved by the Planning Official and be implemented as a condition of project approval;
3. Projects found to be in non-compliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this Chapter;
4. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.
5. The Planning Official may require project specific professional inspections to confirm that conditions encountered during construction are consistent with the design assumptions and construction conforms to the design and mitigation plans.

G. Critical Facilities Prohibited. Critical facilities may not be sited within geologically hazardous areas unless there is no other practical alternative.

H. International Building Code. All development must conform to the provisions of the currently adopted International Building Code as amended by the City of Langley .

I.~~a.~~ Buffers.

1. ~~(1)~~ A minimum buffer shall be established at a horizontal distance of 50 feet from the top or toe (as applicable) of the slope and along all sides of the designated geologically hazardous area ~~slopes 15 percent or steeper;~~ provided, that this requirement shall not apply to the north side of First Street in the downtown commercial area.
2. The buffer may be increased by the Planning Official based on the critical area report prepared by a qualified professional that indicates a greater buffer is necessary to protect the proposed development and/or adjacent properties.

3. The Planning Official may reduce the standard buffer up to 25% in areas other than along the marine shoreline ~~The width of the required buffer for steep slopes located in areas other than along the marine shoreline and not associated with another critical area may be reduced to 25 feet by the planning official~~ when a critical area report prepared by a qualified professional demonstrates that all of the following criteria are met:
   a. No feasible alternative to the buffer reduction exists;
   b. Modified or reduced buffers will provide protection to the proposed development and adjacent properties equal to that buffer;
   c. The development will not increase surface water discharge beyond pre-development conditions.
   d. The development will not decrease slope stability or adversely impact other critical areas.
   e. The report must make recommendations regarding mitigation measures to minimize impacts and resist erosion, including planting of vegetation or other measures.
   f. The Planning Official may require at the applicant's expense, a third-party peer review of the critical area report by a qualified professional under contract with or employed by the City in compliance with Section 16.20.035(F).
   g. Prior to permit issuance, the property owner must sign and record a notice on title, at the owner's sole expense, a covenant in a form acceptable to the City, which:
      i. Acknowledges and accepts the risks of development in the landslide hazard area;
      ii. Waives any rights to claims against the City;
      iii. Indemnifies and holds harmless the City against claims, losses, and damages; and
      iv. Informs subsequent owners of the property of the risks and the covenant.

~~based on:~~

Commented [AP77]: Revised per Gap Analysis Part 2 Table 4 for consistency with Alterations section.

Commented [AP78]: Added requirement. Confirmed w/ City of Langley to include

~~(A) A study and recommendation prepared by a professional engineer licensed by the state of~~

~~Washington with experience in geotechnical engineering; and~~

~~(B)~~4. The installation of appropriate slope protection measures. Existing native vegetation within the buffer area shall be maintained ~~and the buffer shall be extended beyond these limits as required to mitigate landslide and erosion hazards,~~ or as otherwise necessary to protect the public health, safety and welfare. See also following subsection (C)(1)(e) of this section, Removal or Introduction of Revegetation on Slopes.

~~(2) The city planning official may reduce the buffer 25 percent when an applicant demonstrates that:~~

~~(A) The reduction complies with the required findings for variances contained in Section 18.30.020; and~~

~~(B) A study prepared by a professional engineer licensed by the state of Washington with experience in geotechnical engineering, and demonstrating that a lesser buffer width and design and engineering solutions will meet the intent of this chapter and be consistent with general public health, safety and welfare.~~

J. Critical Area Tracts. Any continuous slope area and its buffers one acre or greater in size shall be placed in separate critical area tracts in development proposals.

K. Building Setback Lines. A building setback line will be established at a distance of 15 feet from the edge of the buffer. Development allowed in the building setback line is limited to landscaping (native plants) and uncovered decks, as long as the decks do not extend more than 10 feet into the building setback area and extend no more than 18 inches above existing grade, unless the Planning Official ~~city planning official~~ determines that topography or unusual site conditions warrant a variation.

L. Alterations.

Alterations to geologically hazardous areas or reduction in setbacks beyond 25% shall be processed as a variance application. Applications for a variance require notice of application in accordance with LMC 18.36.020 and review and approval from a Hearings Examiner following a public hearing. A variance request may only be granted when all the findings of LMC 18.30.020 have been made, in addition to demonstration compliance with the requirements of this section. The activity shall be allowed only as follows:

1. Any alterations proposed within shoreline jurisdiction shall meet the requirements of the City of Langley Shoreline Master Program, in addition to the requirements of this Section.
2. Alterations of an erosion or landslide hazard area and/or buffers may only occur for activities for which a critical area report that contains a hazards analysis is submitted which determines that:
    a. The activity will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
    b. The activity will not decrease slope stability on adjacent properties;
    c. Such alteration will not adversely impact other critical areas or pose a potential threat risk to life, health, and safety.
3. Alterations must be designed to meet the following basic requirements:
    a. The proposed alteration must not decrease the slope stability.
    b. Structures and improvements must be clustered to avoid geologically hazardous areas and other critical areas;

Commented [AP79]: Per discussion with City of Langley

Commented [AP80]: Gap Analysis Part 2 Table 4

c. Structures and improvements must minimize alterations to the natural contour of the slope, and foundations must be tiered where possible to conform to existing topography;

d. Structures and improvements must be located to preserve the most critical portion of the site and its natural landforms and vegetation;

e. The proposed development must not result in greater risk or a need for increased buffers on neighboring properties;

f. Development must be designed to minimize impervious lot coverage;

g. The Planning Official may accept an alternative design that deviates from one or more of these standards if a report by a qualified professional demonstrates that greater long-term slope stability can be achieved while meeting all other provisions of this title. The requirement for long-term slope stability must exclude designs that require regular and periodic maintenance to maintain their level of function.

4. Additional Requirements for Alteration of Geologically Hazardous Areas and Buffers. Prior to permit issuance, the property owner must sign and record a notice on title, at the owner's sole expense, a covenant in a form acceptable to the City, which:

a. Acknowledges and accepts the risks of development in the landslide hazard area;

b. Waives any rights to claims against the City;

c. Indemnifies and holds harmless the City against claims, losses, and damages; and

d. Informs subsequent owners of the property of the risks and the covenant

5. Alteration of a site containing a geologically hazardous area

Commented [AP81]: Added requirement. Confirmed w/ City of Langley to include

shall meet the following ~~additional~~ requirements in addition to the above steep-slope alteration requirements:

a. Except for the following, clearing on erosion hazards is allowed only from April 1st to November 1st:
    i. Up to 5,000 square feet may be cleared on any lot, subject to any other requirement for vegetation retention.
    ii. Timber harvest pursuant to a DNR approved forest practice permit or pursuant to a clearing and grading permit issued by the City may be allowed.

b. Only that clearing necessary to install temporary sedimentation and erosion control measures shall occur prior to clearing for roadways or utilities.

c. Clearing limits for roads, sewer, water and stormwater utilities, and temporary erosion control facilities shall be marked in the field and approved by the City engineer prior to any alteration of existing native vegetation.

d. Clearing for roads and utilities shall remain within construction limits which must be marked in the fields prior to commencement of the site work.

e. The authorized clearing for roads and utilities shall be the minimum necessary to accomplish project specific engineering designs and shall remain within approved rights-of-way.

f. Clearing of trees may occur in conjunction with clearing for roadways and utilities.

g. All trees and understory shall be retained on lots or parcels during clearing for roadways and utilities; provided, that understory damaged during approved clearing operations may be pruned.

h. Damage to vegetation retained during initial clearing activities shall be minimized by directional felling of trees to avoid critical areas and vegetation to be retained, and preparation and approval of a skidding plan aimed at minimizing damage to soil and understory vegetation.

i. Retained trees, understory, and stumps may subsequently be cleared only if such clearing is a specific element of residential, multifamily, or commercial structure site plan approval.

j. Hydro seeding and/or other erosion control methods as required in temporary erosion control plans shall be required.

k. All development proposals shall submit a temporary erosion and sediment control plan (TESC) consistent with this section and other adopted requirements prior to receiving approval. (Ord. 861, 2005; Ord. 820, 2002; Ord. 788, 2000; Ord. 733, 1997; Ord. 619, 1992)

Commented [AP82]: Gap Analysis Part 2 Table 4

~~b. Alterations. Alterations to steep slopes shall be allowed only a follows:~~

~~(1) Surface Water Management. Steep slopes may be used for approved surface water conveyance. Installation techniques shall minimize disturbance to the slope and vegetation.~~

~~(2) Trails. Construction of public and private trails may be allowed on steep slopes provided they receive site specific approval by the city, but in no case shall trails be constructed of concrete, asphalt or other impervious surface materials which would contribute to surface water runoff unless such construction is necessary for soil stabilization or soil erosion prevention.~~

(3) Utilities. Construction of public and private utility corridors may be allowed on steep slopes; provided, that a special study indicates that such alteration will not subject the area to risk of landslide or erosion.

(4) View Corridors. The city may allow the limited trimming and limbing of vegetation on steep slopes for creation/maintenance of views; provided, that the soils are not disturbed.

c. Removal or Introduction of Vegetation on Slopes. Unless otherwise specified, the following restrictions apply to vegetation removal or introduction on slope areas and their buffers:

(1) There shall be no removal of any vegetation from any steep slope area or buffer except for the limited plant removal necessary for surveying purposes and for the removal of hazardous trees determined to be unsafe by the city land use coordinator.

(2) On slopes which have been disturbed by human activity or infested by noxious weeds, replacement with native species or other appropriate vegetation may be allowed subject to approval of an enhancement plan by the city planning official.

2. Development proposals on sites containing landslide hazard area shall meet the following requirements:

a. Buffers. A minimum buffer of 50 feet shall be established from all edges of landslide hazard areas. Existing native vegetation within the buffer area shall be maintained, and the buffer shall be extended beyond these limits as required to mitigate steep slope and erosion hazards or as otherwise necessary to protect the public, health, welfare and safety;

b. Critical Area Tracts. Any landslide hazard area and buffer one acre or greater in size shall be placed in separate critical area tracts in the development proposal;

~~b.~~

16.20.0~~8550~~ Wetlands ~~and streams~~. ~~A. Definitions.~~

Commented [AP83]: Gap Analysis Part 2 Table 3

~~"Alterations of a wetland or stream" means the placement or erection of any solid material or structure; the discharge or disposal of any dredge material or waste, including filling, grading, channelization, removing, dredging, draining, extraction of any materials; the discharge or disposal of any dredge material or waste, including filling, grading; the removal or harvesting of trees or other vegetation; or the modification for use as a stormwater retention/detention facility.~~

~~"Anadromous fish" means those species that migrate up rivers from salt water to spawn in fresh water.~~

~~"Artificial wetlands" means a wetland or surface water system that was intentionally created from a non wetland site through human activity and for a specific purpose. This includes stormwater detention ponds, bioswales, irrigation canals, wastewater treatment ponds, landscape amenities, stock ponds, and similar areas. Artificial wetlands or surface water systems do not include wetlands created as compensation for development impacts or wetlands that have inadvertently become established as a result of changing environmental conditions or land use.~~

~~"Best management practices" means conservation practices and management measures identified by the Soil~~

~~Conservation Service, Whidbey Island Conservation District or State Extension Offices that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins and sediment; and (2) minimize adverse impacts to surface water and ground water flow, circulation patterns, and to chemical, physical, and biological characteristics of wetlands and streams.~~

~~"Conservation easement" means a legal agreement a property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally~~

~~binding on all present and future owners of the property, therefore, providing permanent or long-term protection.~~

~~"Creation" (or "establishment") means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydro period, create hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland areas.~~

~~"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydro periods, or some combination of these. Enhancements result in a change in some wetland functions, and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.~~

~~"Habitat for a protected species" means the site where a protected species of flora or fauna lives and grows, including habitats for species subject to the International Migratory Bird Treaty and regionally rare habitats which are irreplaceable or highly sensitive to alteration. As used in this chapter, habitat is limited to areas which are critical to breeding, rearing and nesting. This chapter shall contain a list of protected habitats which shall be revised as new habitats warranting protection are recognized.~~

~~"Hydrophytic vegetation" means plant life growing in water or in a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (For one reference source see Wetland Plants of the Pacific Northwest, September 1984, U.S. Corps of Engineers.) The presence of hydrophytic vegetation shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.~~

~~"Mitigation" means steps taken to avoid, minimize or compensate for adverse wetland or stream impacts.~~

~~Mitigation, in the following order of preference, is:~~

~~1. Avoiding the impact altogether by not taking a certain action or parts of an action;~~

~~2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~

~~3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;~~

~~4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;~~

~~5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments; and~~

~~6. Monitoring the impact and the compensation project and taking appropriate corrective measures.~~

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

~~"Native wetland species" means wetland species which are indigenous to Island County and western Washington. Such species are identified in Flora of the Pacific Northwest (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).~~

~~"Nonnative wetland species" means wetland species which have been accidentally or purposefully introduced into Island County.~~

~~"Non-wetlands" includes upland and lowland areas that are neither deep-water aquatic habitats, wetlands, nor other special aquatic sites. They are seldom or never inundated, or are infrequently inundated, they have saturated soils for only brief periods~~

~~during the growing season, and, if vegetated, they normally support a prevalence of vegetation typically adapted for life only in aerobic soil conditions.~~

~~"Protected species" means species of flora and fauna recognized by the federal government or the state of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are unique in Island County and worthy of protection. This chapter shall contain a list of protected species which shall be revised as new species which warrant protection are recognized, or a species which has been listed no longer needs protection.~~

~~"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland deemed worthy of long-term protection. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as protecting a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in fractions, and will be used for compensatory mitigation only in exceptional circumstances.~~

~~"Reasonable use" means appropriate and fair use of property given the specific physical circumstances.~~

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

~~"Restoration" means measures taken to restore an altered or damaged wetland or stream that is subject to the regulations of this chapter including:~~

2. Rehabilitation. Active steps taken to restore damaged regulated wetlands, streams, protected specieshabitatspecies habitat or their buffers to the functioning condition which existed prior to an unauthorized alteration; and

3. Reestablishment. Actions performed to reestablish wetland and stream functional characteristics and processes which have been lost by alteration, past management activities, or catastrophic events within an area which no longer meets the definition of a wetland or stream.

"Stream" means surface water contained within a defined bed or channel, whether permanent or intermittent. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year round. This definition does not include ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used by salmonids or to convey streams naturally occurring prior to construction of such watercourses. Categories of streams are defined in Section 16.20.055.

"Water dependent use" means a use or a portion of a use which requires direct contact with the water and cannot exist at a non water location due to the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float place facilities, and sewer outfalls.

"Wetland edge" means the upland limit of a wetland is designated as the boundary between land with predominantly wetland vegetation cover and land without such cover.

"Wetland functions" means the beneficial roles served by wetlands, including but not limited to water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, historical and archaeological value protection, aesthetic value and recreation.

~~"Wetland vegetation" means hydrophytic vegetation, as defined above.~~

~~"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 non wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after March 18,~~

~~1992, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands~~

~~shall include those artificial wetlands intentionally created from non wetland areas to mitigate the conversion of wetlands. Categories of wetlands are defined in Section 16.20.055.~~

~~B. Protected Species and Habitats. Please refer to list in Appendix 1.~~

~~C. Wetland and Streams as an Overlay Zone.~~

A. Wetlands have been initially identified in the City of Langley through site specific analyses conducted by private property owners, a wetlands inventory conducted through funding from Washington State Department of Ecology (1991), and by the City of Langley. This combined information serves to notify both the City and the property owner of the potential existence of a wetland or stream depending on the kind and extent of information available, sufficient to identify and clarify a wetland or stream. Otherwise, the process of identifying and classifying wetlands is fulfilled through a routine wetland determination or by analysis conducted by a qualified professional ~~wetland ecologist~~.

~~A.~~B. The Planning Official ~~planning official~~ shall make a preliminary determination of the presence of wetlands ~~or~~ based on readily available information such as critical areas maps or the soil survey or through a site visit. This determination is

final for ordinance implementation or enforcement. The determination may be challenged by the property owner through an inspection and report conducted/prepared by a qualified professional ~~wetlands ecologist~~ at the owner's expense.

~~B.~~C. In making any determination regarding a wetland, the text of this chapter is always controlling. Wetland delineations shall be determined by using the Washington State Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 14-06-029, October 2014, or as amended hereafter. ~~Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter.~~

Commented [AP84]: Gap Analysis Part 2 Table 5

D. Wetlands~~, streams~~ and their buffers shall be regulated in the City of Langley pursuant to the regulations contained in this chapter. An applicant should be aware that Sections 401, 402 and/or 404 of the federal Clean Water Act and other federal and state statutes may also apply.

~~C.~~ E. Purpose. The primary purpose of these regulations is to preserve wetlands and their buffers in a natural condition to the maximum extent feasible to protect the wetlands and riparian corridors for fish and wildlife habitat, protect property from flooding and erosion, and provide recreational opportunities and aesthetic value. It is also the goal that, in the short term, there be no net loss of the acreage or functional values of wetlands and streams in the City and that, in the long term, to improve the quality and functional values of wetland systems.

Commented [AP85]: Relocated existing text

~~D. Wetlands and Streams Environmentally Sensitive Areas. Wetlands and streams are declared to be "environmentally sensitive areas" pursuant to WAC 197-11-748 and WAC 197-11-908. (Ord. 861, 2005; Ord. 714, 1996; Ord. 619, 1992)~~

F. Wetland Designation Criteria. Wetlands shall be designated according to the criteria in this subsection and streams shall be designated according to the criteria in subsection (C) of this section. Wetlands shall be classified as Category I, II, III, or IV using the Washington State Department of Ecology's Wetland

Rating System for Western Washington, 2014, Ecology Publication No. 14-06-029, or as revised hereafter. As used in this section, the term "regulated wetlands" shall refer to Category I, II, III and IV wetlands, generally described as follows:

Category I. Highest quality wetlands; wetlands in coastal lagoons;

Category II. Wetlands with significant wetland functions such as water quality enhancement, wildlife habitat, ground water recharge, etc.;

Category III. Wetlands with a moderate level of functions;

Category IV. Wetlands having the lowest levels of functions and that are often heavily disturbed.

G. Developments permitted pursuant to this chapter that adversely impact or alter a critical area or its buffer shall include mitigation sufficient to maintain or replace critical areas functions and values. Mitigation shall ensure no loss of critical area functions or values. Any proposed development that cannot mitigate critical area impacts to ensure no net loss of ecological function as determined by the Planning Official shall be denied.

H. Mitigation Sequencing. When an impact to a critical area or critical area buffer is proposed, the applicant shall demonstrate that all reasonable efforts have been taken to mitigate impacts in the following prioritized order (consistent with WAC 197-11-768):

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

Commented [AP86]: Gap Analysis Part 2 Table 5

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitoring the impact and taking appropriate corrective measures.

I. Avoidance of Indirect Wetland Impacts. All proposed land uses adjacent to wetlands and their buffers shall comply with the following measures to the maximum extent practicable to avoid or reduce indirect wetland impacts:

1. Direct lights away from the wetland.
2. Locate activities that generate noise away from the wetland.
3. For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer buffer.
4. Route all new, untreated runoff away from the wetland while ensuring that the wetland is not dewatered.
5. Establish covenants limiting the use of pesticides within 150 feet of the wetland and applying integrated pest management to the balance of the site, limiting pesticide use to treatment of noxious weeds or insect infestations only after use of alternative nontoxic measures has failed.
6. Limit the use of nitrogen fertilizers.
7. Apply integrated pest management.
8. Retrofit stormwater detention and treatment for roads and existing adjacent development.
9. Prevent channelized flow or sheet flow from lawns that directly enter the buffer.
10. Use low intensity development (LID) techniques.
11. Infiltrate or treat, detain and disperse into the buffer new runoff from impervious surfaces and new lawns.
12. Plant dense vegetation to delineate the buffer edge and to discourage disturbance, using vegetation appropriate for the region.
13. Place wetland and its buffer in a separate tract or protect with a conservation easement.

Commented [AP87]: Addition for compliance with ECY Publication 22-06-014

Commented [AP88]: Additional criteria per ECY Publication No. 22-06-014

14. Use best management practices to control dust. (Ord. 861, 2005; Ord. 619, 1992)

J. General Provisions. The following general provisions shall apply to wetland or stream buffers:

1. The buffer width shall be measured perpendicular to the edge of the wetland or stream from the ordinary high water mark or the delineated wetland boundary;

2. No new lot shall be created that is wholly comprised of a wetland, stream and/or the associated buffers or that cannot be developed without violation or alteration of the wetland, stream and/or buffer unless a conservation easement encompassing the lot is established and recorded;

3. In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall comply with the buffer requirements unless there is a showing that there is no feasible option to alteration of the buffer;

4. The wetland or stream edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PUDs, together with any conservation easement(s) and appropriate covenants. The applicant shall be responsible for such delineation. Such delineation may be based on findings by the Planning Official or if the applicant disagrees with such findings, on the results of a study by a qualified professional;

5. Development within the buffer shall be limited to passive recreation such as trails, or scientific uses and fences or other barriers necessary to protect habitat and designed to minimize impediments to wildlife movement;

6. Conveyance of wetlands or streams identified as part of project review, to a land trust, the Audubon Society, the Nature Conservancy, the Trust for

Public Land or similar organization or governmental agency is encouraged when such conveyance will ensure the long-term protection of the wetlands or streams;

7. Wetlands and their buffers may be designated as open space and subject to current use taxation, thereby providing a tax incentive to the landowners to ensure the long-term protection of the aquatic system.

K. Wetland Buffer Width Requirements. The following undisturbed buffers shall be established adjacent to all wetlands and streams. These buffers are subject to increase or reduction only through the provisions of Section 16.20.050, Section 16.20.085(I), Section 16.20.085(J), or Section 16.20.085(K), where applicable.

8. Wetland Buffer Requirements.

Table 1. Wetland Buffer Requirements.

Commented [AP89]: Gap Analysis Part 2 Table 5, updated in compliance with ECY Publication 22-06-014. Option 2 preferred by City of Langley

Category of Wetland	Land Use with Low Impact[1]	Land Use with Moderate Impact[1]	Land Use with High Impact[1]
I	150	225	300
II	150	225	300
III	75	110	150
IV	75	40	50

[1]See Table 2 below for types of land uses that can result in low, moderate, and high levels of impacts to wetlands.

Table 2. Levels of Impacts from Proposed Land Use Types

Level of Impact from Proposed Land Use	Types of Land Use
High	• Commercial • Urban • Industrial • Institutional • Mixed-use developments • Residential (more than 1 unit/acre) • Roads: federal and state highways, including on-ramps and exits, state routes, and other roads associated with high-impact land uses • Railroads • Agriculture with high-intensity activities (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling, raising and maintaining animals, etc.) • Open/recreational space with high-intensity uses (golf courses, ball fields, etc.) • Solar farms (utility scale)
Moderate	• Residential (1 unit/acre or less) • Roads: Forest Service roads and roads associated with moderate impact land uses • Open/recreational space with moderate-intensity uses (parks with paved trails or playgrounds, biking, jogging, etc.) • Agriculture with moderate-intensity

	uses (orchards, hay fields, light or rotational grazing, etc.) • Utility corridor or right-of-way used by one or more utilities and including access/maintenance road • Wind farm
Low	• Natural resource lands (forestry/silviculture–cutting of trees only, not land clearing and removing stumps) • Open/recreational space with low-intensity uses (unpaved trails, hiking, birdwatching, etc.) • Utility corridor without a maintenance road and little or no vegetation management • Cell tower

L. Increased Buffer Width. The width of the wetland buffer may be increased over the required minimum upon a determination by the Planning Official that the wetland or stream is especially sensitive to disturbance or when development poses unusual impacts and the increased buffer is necessary to protect environmentally sensitive areas described below. Circumstances which may require wider buffers include but are not limited to:

1. When the wetland (or adjacent riparian corridor) is a critical habitat for threatened, endangered or sensitive species, serves a critical fish habitat or is used for spawning or rearing of fish; or receives a high score for habitat values when evaluated using the Washington State Wetland Rating System for Western Washington – Revised;

2. When a larger buffer is deemed necessary to maintain viable populations of existing species;

3. When the adjacent land is susceptible to severe erosion, and erosion controls will not effectively prevent adverse impacts;

4. When the adjacent land has minimal vegetation or slopes greater than 30 percent;

5. When the area acts as a critical recharge site in a special focus area defined by the groundwater management plan where recharge is limited and seawater intrusion is a problem;

6. When a trail, utility corridor, drainage improvement or water quality facility is proposed within the corridor;

7. When the buffer is used by species sensitive to disturbance; and

8. When the buffer is not vegetated with plants appropriate for the region.

M. Wetland Buffer Width Averaging. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the Planning Official determines that the proposed use would not adversely affect the valuable functions of the wetland, stream or their buffers and would be consistent with the land use standards and the purposes of this chapter. The Planning Official may permit buffer width averaging to allow for reasonable use of a parcel; provided, that the total area on the lot contained within the average buffer is not less than that required within the standard buffer.

Commented [AP90]: Added to reference reasonable use only. ECY Publication No. 22-06-014

1. The Planning Official may require buffer width averaging to provide protection to a particular portion of a wetland or stream that is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland or stream. The adjusted minimum buffer width shall not at any location within the buffer measure less than one half the standard requirement.

2. Buffer width averaging shall be allowed only where the applicant demonstrates through a report relying on best available science and prepared by a qualified specialist, that:

a. Averaging is necessary to avoid a hardship caused by circumstances to the property;

b. There is not a feasible alternative to the site design that could be accomplished without buffer averaging;

Commented [AP91]: ECY Publication No. 22-06-014

c. The buffer area contains variations in sensitivity due to existing physical characteristics or the buffer area varies in characteristics such as slope, soils, or vegetation; and it would benefit from a wider area in places and would not be adversely impacted by a narrower area in other places;

d. Lower intensity land uses would be located adjacent to areas where the width of the buffer area is reduced;

e. Buffer width averaging will not adversely impact functions of the riparian habitat;

f. The buffer width at its narrowest point is not reduced to less than either 75 percent of the standard width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is the more restrictive required buffer width.

Commented [AP92]: ECY Publication No. 22-06-014

g. The total area contained within the buffer area after averaging is no less than the required buffer prior to averaging;

h. The buffer will be enhanced consistent with the requirements of subsection (C)(1)(a) of this section, to improve its overall quality; and

i. The buffer area shall be protected through a Notice on Title. The applicant shall record a copy of the approved mitigation plan, along with the notice to title referencing the subject plan. The recorded notice shall describe the type

of critical areas found on the property and any restrictions or conditions imposed by the Planning Official.

Commented [AP93]: New requirement to update previous condition to be protected in legal perpetuity for clarity/enforcement.

N. Buffer Width Reductions. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the Planning Official determines that the proposed use would not adversely affect the valuable functions of the wetland or stream or their buffers, and would be consistent with the land use standards of this chapter and the purposes of this chapter. Where a legally established, nonconforming use of the buffer exists (such as a road or structure that lies within the width of buffer required for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of nonconformity (i.e., cause any increase in the impacts to the wetland from activities in the buffer). Buffer reductions may be permitted to allow reasonable use of the parcel subject to the following:

Commented [AP94]: Addition to reference reasonable use only

1. Outside steep slope areas, the Planning Official may allow wetland or stream buffer width reductions up to a maximum of 25 percent of the required buffer subject to the approval of a buffer enhancement plan or one or more of the other actions identified below:

a. Buffer Enhancement. Buffer enhancement includes measures to enhance the buffer, including but not limited to planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing riparian area adjacent to a stream where one currently does not exist to result in improved function of the riparian habitat. The enhancement plan shall be completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The enhancement plan shall be similar to a mitigation plan and shall include provisions for mitigation monitoring and contingency plans similar to the requirements of Section 16.20.085(P).

b. Fish barrier removal to restore accessibility to resident or anadromous fish;

c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;

d. Stream and/or retention/detention pond improvements:

i. Creation of a surface channel where a stream was previously culverted or piped; or

ii. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities; or

iii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels.

O. Buffer Maintenance. Except as otherwise specified in this Chapter, wetland buffers must be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive species is required for the duration of the mitigation bond.

Commented [AP95]: Addition per ECY Publication No. 22-06-014

P. Permitted Uses. The following uses are permitted subject to prior review by the Planning Official to determine that all conditions are satisfied prior to commencement of activity:

9. Fences. The construction/placement of fences in a wetland or surrounding buffers, is subject to the following conditions:

a. Fences shall be located only in the buffer; and

b. No motorized equipment shall be used during construction and maintenance; and

c. Only minimal disruption and removal of vegetation shall occur; and

d. Special fence design features may be required as necessary to protect wildlife habitat or other functions of the wetland and/or surrounding buffers;

Commented [AP96]: Summary of 1-4 per comments

10. Low-Impact Uses and Activities. Low-impact uses and activities which are consistent with wetlands, streams and their buffers may be permitted within the buffer depending on the sensitivity of the wetland or stream. Examples of uses and activities which may be allowed include unpaved pedestrian trails, viewing platforms, utility easements and corridors without access roads and with little to no vegetation management, low intensity open space, and the installation of necessary utilities. Necessary utilities include stormwater management facilities assuming said facility does not impact mature forest vegetation, is designed according to City standards and the discharge water meets state water quality standards, and there is no other feasible location for the facility. Uses permitted within the buffer shall be located in the outer portion of the buffer as far as possible from the stream or wetland. All altered areas shall be mitigated per Section 16.20.085(S). Dead and dying trees may be removed only with approval of the Planning Official.

Q. Public Agency and Utility Exceptions.

1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section. The public agency, utility or private applicant shall prepare an application and report from a qualified professional justifying the requested exception. Projects affecting Category I and II wetlands, Type S or F streams or otherwise requiring review and decision by the hearing examiner shall be decided by the hearing examiner. Projects affecting Category III and Category IV wetlands, and Type Np, or Ns streams shall be decided by the Planning Official.

2. Applications for a utility exception shall be reviewed based on the following criteria:

a. There is no other feasible and reasonable alternative to the proposed development with less impact on the wetland and/or stream and the associated buffer. A description of alternatives considered must be included in the exception requests; and

b. The proposal minimizes the impact on the wetland and/or stream in compliance with Section 16.20.085(H) and buffer and incorporates all reasonable mitigation measures as identified in Section 16.20.085(S); and

c. Construction techniques shall minimize both long- and short-term impacts to the wetland and/or stream and its buffer.

d. The compensatory mitigation must ensure no net loss of ecological function and values.

Commented [AP97]: ECY Publication 22-06-014

3. Except as provided above, these exceptions do not extend to dredging, to excavation (including peat mining) or to the filling of wetlands or their buffers. (Ord. 957 § 8, 2011; Ord. 861, 2005)

R. Regulatory Standards. These standards shall apply to all applications for permits and other approvals which may indirectly result in an alteration of a regulated wetland, stream or their buffers, unless modified by the Planning Official upon a determination that the anticipated alteration will preserve, improve and/or protect the wildlife habitat, natural drainage and/or other natural functions of the wetland and will be consistent with the purposes of this chapter without strict application of the standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The standards shall also apply to applications for approval to alter a regulated wetlands or their buffers.

1. Wetland buffers shall be shown on the development site plans or final plat maps along with the notation requirements.

2. Water Quantity and Quality. Uses permitted adjacent to wetlands and streams shall control stormwater runoff and protect the natural movement of water according to the following provisions:

a. All surface water entering wetlands shall be treated and controlled by a stormwater management system incorporating accepted best management practices or similarly effective measures approved by the Langley City engineer in order to assure water quality and control water volumes;

b. The velocity of stormwater runoff entering a wetland shall be limited to predevelopment levels;

Commented [AP98]: Gap Analysis Part 2 Table 5

c. Category I, II,III and IV wetlands shall not be modified to function as stormwater retention/detention sites;

d. Septic systems adjacent to wetlands must be properly sited and maintained to prevent water quality degradation.

4. Category I or II Wetlands. In wetlands rated Category I or II with no natural point of inflow (i.e., stream) any surface water directed towards the wetland as a result of an approved drainage plan shall filter through the water table or a drainfield to avoid erosion and excess nutrient inflow.

5. Human Access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:

a. No motorized vehicles shall be allowed within a wetland or its buffer, except when specifically approved by the Planning Official or as provided in this section and/or as the wetland may be traversed by a public or private roadway which existed before March 18, 1992;

b. Any trails within a wetland shall be constructed with minimum disruption to habitat.

6. Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forested areas of Puget Sound by undisturbed corridors.

S. Wetland Mitigation Standards. When a project involves wetland and/or buffer impacts, a mitigation plan prepared by a qualified wetland professional shall be required, meeting the following minimum standards:

1. Wetland Critical Area Report. A critical area report for wetlands shall accompany or be included in the compensatory mitigation plan and include the minimum parameters described in Section 16.20.035.B of this Chapter, Critical Area permit process and application requirements.
2. The mitigation report shall include a written plan and plan sheets that contain, at a minimum, the elements listed below, in accordance with Wetland Mitigation in Washington State–Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication #06-06-011b, or as revised).

    a. The written report shall be prepared by a qualified wetland professional and contain, at a minimum:

        i. The name and contact information of the applicant; the name, qualifications, and contact information of the primary author(s) of the compensatory mitigation plan; a description of the development proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and federal wetland-related permits required for the project; and a vicinity map for the project.

        ii. Description of how the development project has been designed to avoid, minimize, or reduce adverse impacts to wetlands.

iii. Description of the existing wetland and buffer areas proposed to be altered. Include acreage or square footage, water regime, vegetation, soils, functions, landscape position, and surrounding land uses. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on Section 16.20.035.B, Critical Area permit process and application requirements, of this Chapter.

iv. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions, including acreage or square footage of wetlands and uplands, water regime, sources of water, vegetation, soils, functions, landscape position, and surrounding land uses. Estimate future conditions in this location if the compensation actions are not undertaken.

v. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, established, or restored compensatory mitigation areas. Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.

vi. A description of the proposed actions for compensation of wetland and buffer areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and expected categories of wetlands.

vii. A description of the proposed mitigation construction activities and timing of activities.

viii. Performance standards (measurable standards for ten (10) years post installation) for wetland and buffer areas, a monitoring schedule, a maintenance schedule, and actions proposed by year.

ix. A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).

x. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation and oversight, maintenance at least twice per year for up to ten (10) years, annual monitoring field work and reporting, contingency actions for a maximum of the total required number of years for monitoring, and removal of all non-natural site implements (e.g., irrigation equipment, construction fencing, plant protectors, weed barrier fabric) by the end of the monitoring period.

b. The scaled plan sheets shall contain, at a minimum:

i. Mapped, ground-verified edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, and location of proposed wetland and/or buffer compensation actions.

ii. Existing topography, ground-verified, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed in the compensation area(s). Also include existing cross-sections (estimated one-foot intervals) of wetland areas on the development site that are proposed to be altered and of the proposed areas of wetland and buffer compensation.

iii. Conditions expected from the proposed actions on site, including future hydrogeomorphic classes, vegetation community types (e.g., Cowardin class), and future hydroperiods.

iv. Required wetland buffers for existing wetlands and proposed compensation areas. Also identify any zones where buffers are

proposed to be reduced or enlarged outside of the standards identified in this Chapter.

v. A planting plan for the compensation area, including all species by proposed community type and hydroperiod, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

Commented [AP99]: Mitigation plan criteria per ECY Publication No. 22-06-014

3. Monitoring Program and Contingency Plan. A monitoring program shall be included as part of the approved mitigation plan. The mitigation project shall be monitored for a minimum of five years (10 years if the goal is for a forested wetland system), to establish that the performance standards of the approved mitigation plan have been met. A longer monitoring period may be required by the City based on either the initial mitigation plan or a review of subsequent monitoring reports. A plan that complies with the requirements of this chapter may be required by the Planning Official to outline restorative measures to be taken should the mitigation fail or only partially succeed;

4. Bonding. A performance bond or other security in an amount to enable the City to carry out the mitigation plan should the applicant fail to do so shall be required;

5. The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;

6. Native vegetation shall be planted to replace lost habitat for a particular species;

7. Artificial resting, hiding and breeding sites to replace losses shall be constructed;

8. Aquatic substrate may be altered to produce an increase in fish, waterfowl and shorebird organisms to replace losses;

9. Silted gravels shall be cleaned in a manner that protects streamside vegetation and downstream sections of streams;

10. Dredge and/or fill of a wetland or stream or their buffers shall not be permitted unless:

    a. The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water dependent; and

    b. Mitigation areas will be provided which have greater value as a wetland or habitat than the area lost; and

    c. The amount dredged or filled is the minimum necessary to accomplish the proposed use; and

    d. Dredging is not solely for the purpose of obtaining fill; and

    e. Leachate from polluted dredge spoil will be treated and will not enter surface waters; and

    f. The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting;

11. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;

12. Cumulative impacts of the proposed development shall be considered. Thus, development shall not be considered a precedent allowing further development; and

13. Where possible, development should be located in the buffer rather than the wetland. (Ord.861, 2005; Ord. 619, 1992)

Table 3. WETLAND MITIGATION TYPE AND RATIO FOR PERMANENT IMPACTS

Wetland	**Mitigation Type and Ratio**			
Category	Reestablishment or Creation	Rehabilitation[1]	Preservation[1]	Enhancement[1]
Category I	4:1	8:1	16:1	16:1
Category II	3:1	6:1	12:1	12:1
Category III	2:1	4:1	8:1	8:1
Category IV	1.5:1	3:1	6:1	6:1

[1] Ratios for rehabilitation, preservation, and enhancement may be reduced when combined with 1:1 replacement through re-establishment or creation in compliance with Table 6B-2 in Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 2 (Ecology et al., 2021 or as revised).

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

15. Wetland Mitigation Banks. Credits from mitigation bank certified under WAC 173-200 may be used to compensate for wetland impacts within the approved service area provided the following is met:

a. The proposal would provide adequate compensation for the proposed impacts consistent with the wetland mitigation bank ratios specified in the certified mitigation bank instrument.
b. A bank use plan is submitted to be reviewed and approved by the Planning Official, including confirmation of credit availability.
c. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.

T. Subdivisions. The subdivision and/or short subdivision of land where wetlands

Commented [AP100]: Embedded Appendix per recommendation by City of Langley. Updated table to align with ECY Publication No. 22-06-014

Commented [AP101]: ECY Publication No. 22-06-014

Commented [AP102]: Addition per ECY 22-06-014

and/or associated buffers are present are subject to the following:

11. Land that is located wholly within a wetland and/or wetland buffer may not be subdivided.

12. Land that is located partially within a wetland and/or wetland buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

a. Located outside of the wetland and buffer; and

b. Meets the minimum lot size requirements of LMC Title 17, Subdivisions.

Commented [AP103]: ECY Publication No. 22-06-014, added 01/06/23 per City of Langley suggestion

~~**16.20.055 Wetlands and streams – Purpose, goal and designation criteria.**~~

~~A. The primary purpose of these regulations is to preserve wetlands, streams and their buffers in a natural condition to the maximum extent feasible in order to protect the wetlands, streams and riparian corridors for fish and wildlife habitat, protect property from flooding and erosion, and provide recreational opportunities and aesthetic value. It is also the goal that, in the short term, there be no net loss of the acreage or functional values of wetlands and streams in the city and that, in the long term, to improve the quality and functional values of wetland and stream systems. To realize these preservation goals, the city will use the following methods of impact mitigation in order of preference:~~

~~1. Avoiding the impact;~~

~~2. Minimizing the impact;~~

~~3. Compensating for the impact;~~

~~4. Enhancing the impacted wetland or stream.~~

~~B. Wetland Designation Criteria. Wetlands shall be designated according to the criteria in this subsection and streams shall be designated according to the criteria in subsection (C) of this section. Wetlands shall be classified as Category I, II, III, or IV using the Washington State Department of Ecology's Wetland Rating System for~~

Western Washington, 2004, Ecology Publication No. 04-06-025, or as revised hereafter. Wetland delineations shall be determined by using the Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter. As used in this section, the term "regulated wetlands" shall refer to Category I, II, III and IV wetlands, generally described as follows:

Category I. Highest quality wetlands; wetlands in coastal lagoons;

Category II. Wetlands with significant wetland functions such as water quality enhancement, wildlife habitat, ground water recharge, etc.;

Category III. Wetlands with a moderate level of functions;

Category IV. Wetlands having the lowest levels of functions and that are often heavily disturbed.

C. Stream Designation Criteria. Streams have been identified in the city and are shown on the comprehensive plan map contained in the city's adopted comprehensive plan. As used in this section, the term "regulated streams" shall refer to Type , 2, 3, 4, and 5 streams, generally described as follows:

Commented [AP104]: Gap Analysis Part 2 Table 5

Type 1. All waters, within their ordinary high water mark, as inventoried as "shorelines of the state."

Type 2. All waters not classified as Type 1, with 20 feet or more between each bank's high water mark and a gradient of less than four percent. Type 2 waters have high use and are important from a water quality standpoint for domestic use, public recreation, and fish and wildlife uses.

Type 3. Waters that have two or more feet between each bank's ordinary high water mark, and which have a moderate to slight use and are moderately important from a water quality standpoint for domestic use, public recreation, and fish and wildlife habitat. Segments of natural waters that are not classified as Type 1 or 2.

Type 4. All segments of natural waters within the width of defined channels that are perennial non_fish habitat streams. Type 4 includes the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

Type 5. All segments of natural waters within the width of the defined channels that are not Type 1, 2, 3, or 4 waters. These are seasonal, non_fish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 water. Type 5 waters must be physically connected by an above-ground channel stream to Type 1, 2, 3, or 4 waters. (Ord. 861, 2005)

16.20.060 Wetlands—Measures to minimize impacts to wetlands.

All proposed land uses adjacent to wetlands and their buffers shall comply with the following measures to the maximum extent practicable:

A. Direct lights away from the wetland.

B. Locate activities that generate noise away from the wetland.

C. Route all new untreated runoff away from the wetland while ensuring that the wetland is not dewatered.

D. Establish covenants limiting the use of pesticides within 150 feet of the wetland and applying integrated pest_management to the balance of the site, limiting pesticide use to treatment of noxious weeds or insect infestations only after use of alternative nontoxic measures has failed. E. Limit the use of nitrogen fertilizers.

F. Retrofit stormwater detention and treatment for roads and existing adjacent development.

G. Prevent channelized flow from lawns that directly enter the buffer.

H. Infiltrate or treat, detain and disperse into the buffer new runoff from impervious surfaces and new lawns.

I. Plant dense vegetation to delineate the buffer edge and to discourage disturbance, using vegetation appropriate for the region.

J. Use best management practices to control dust. (Ord. 861, 2005; Ord. 619, 1992)

16.20.065 Wetlands and streams – Buffers.

A. General Provisions. The following general provisions shall apply to wetland or stream buffers:

1. The buffer width shall be measured perpendicular to the edge of the wetland or stream from the ordinary high water mark or the delineated wetland boundary;

2. No new lot shall be created that is wholly comprised of a wetland, stream and/or the associated buffers or that cannot be developed without violation or alteration of the wetland, stream and/or buffer unless a conservation easement encompassing the lot is established and recorded;

3. In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall comply with the buffer requirements unless there is a showing that there is no feasible option to alteration of the buffer;

4. The wetland or stream edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PUDs, together with any conservation easement(s) and appropriate covenants. The applicant shall be responsible for such delineation. Such delineation may be based on findings by the planning official or if the applicant disagrees with such findings, on the results of a study by a biologist, plant ecologist or similarly qualified professional;

5. Development within the buffer shall be limited to passive recreation such as trails, or scientific uses and fences or other barriers necessary to protect habitat and designed to minimize impediments to wildlife movement;

6. Conveyance of wetlands or streams identified as part of project review, to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organization or governmental agency is encouraged when such conveyance will ensure the long-term protection of the wetlands or streams;

7. Streams, wetlands and their buffers may be designated as open space and subject to current use taxation, thereby providing a tax incentive to the landowners to ensure the long-term protection of the aquatic system.

B. Wetland Buffer Width Requirements. The following undisturbed buffers shall be established adjacent to all wetlands and streams. These buffers are subject to reduction only through the provisions of Section 16.20.0.

1. Wetland Buffer Requirements.

1. Category I Wetlands. Not less than 250 feet from the delineated wetland boundary.

2. Category II Wetlands. Not less than 150 feet from the delineated wetland boundary.

3. Category III Wetlands. Not less than 110 feet from the delineated wetland boundary.

a. Category IV Wetlands. Not less than 50 feet from the delineated wetland boundary.

Wetland Characteristic	Buffer (ft)
Category (Wetlands with a total score of 23 to 27 or higher (Western Washington Rating Form 2014)	
Natural Heritage Wetland	190
Bogs	190
Habitat Score of 8 to 9	225
Habitat Score of 7	150
Habitat Score of 5 to 6	100
Habitat Score of 3 to 4	75
Category II (Wetlands with a total score of 20 to 22 or higher (Western Washington Rating Form 2014))	
Habitat Score of 8 to 9	225
Habitat Score of 7	150
Habitat Score of 5 to 6	100
Habitat Score of 3 to 4	75
Category III (Wetlands with a total score of 16 to 19 or higher (Western Washington Rating Form 2014))	
Habitat Score of 7	110
Habitat Score of 5 to 6	75

Commented [AP105]: Gap Analysis Part 2 Table 5

2. Stream Buffer Requirements.

1. Type S1: 250 feet on each side of the stream;

2. Type F2: 250 feet on each side of the stream;

3. Type F3: 100 feet on each side of the stream;

4. Type NP4 and Type NS5: 50 feet on each side of the stream.

Noble Creek is classified as a Type NP4 stream. Brookhaven Creek is classified as a Type NP4 stream from the south edge of the pavement on Third Street north to Saratoga Passage. From the south edge of the pavement on Third Street south to the creek's source, Brookhaven Creek is classified as a Type F3 stream. Saratoga Creek is classified as a Type F3 stream. See Appendix 2.

Measuring Buffers. Buffers are measured from the wetland or stream's ordinary high water mark as identified in the field and surveyed or from the edge of the delineated wetland or stream. Buffers shall remain in a natural state except for projects which propose to enhance a buffer or are associated with an approved stream alteration. These buffers are subject to reduction only through the provisions of Section 16.20.070. (Ord. 861, 2005)

16.20.070 Wetlands and streams – Buffer width increases, averaging and reductions.

A. Increased Buffer Width. The width of the wetland or stream buffer may be increased over the required minimum upon a determination by the planning official that the wetland or stream is especially sensitive to disturbance or when development poses unusual impacts and the increased buffer is necessary to protect environmentally sensitive areas described below. Circumstances which may require wider buffers include but are not limited to:

1. When the wetland or stream (or adjacent riparian corridor) is a critical habitat for threatened, endangered or sensitive species, serves a critical fish habitat or is used for spawning or rearing of fish; or receives a high score for habitat values when evaluated using the Washington State Wetland Rating System for Western Washington – Revised;

2. When a larger buffer is deemed necessary to maintain viable populations of existing species; each side of the stream;

3. When the adjacent land is susceptible to severe erosion, and erosion controls will not effectively prevent adverse impacts;

4. When the adjacent land has minimal vegetation or slopes greater than 15 percent;

5. When the area acts as a critical recharge site in a special focus area defined by the ground water management plan where recharge is limited and seawater intrusion is a problem;

6. When a trail, utility corridor, drainage improvement or water quality facility is proposed within the corridor;

7. When the buffer is used by species sensitive to disturbance; and

8. When the buffer is not vegetated with plants appropriate for the region.

B. Wetland and Stream Buffer Width Averaging. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the planning official determines that the proposed use would not adversely affect the valuable functions of the wetland, stream or their buffers and would be consistent with the land use standards and the purposes of this chapter. The planning official may allow buffer width averaging; provided, that the total area on the lot contained within the average buffer is not less than that required within the standard buffer.

1. The planning official may require buffer width averaging in order to provide protection to a particular portion of a wetland or stream that is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland or stream. The adjusted minimum buffer width shall not at any location within the buffer measure less than one half the standard requirement.

2. Buffer width averaging shall be allowed only where the applicant demonstrates through a report relying on best available science and prepared by a qualified specialist, that:

a. Averaging is necessary to avoid a hardship caused by circumstances to the property;

b. The buffer area contains variations in sensitivity due to existing physical characteristics or the buffer area varies in characteristics such as slope, soils, or vegetation; and it would benefit from a wider area in places and would not be adversely impacted by a narrower area in other places;

c. Lower intensity land uses would be located adjacent to areas where the width of the buffer area is reduced;

d. Buffer width averaging will not adversely impact functions of the riparian habitat;

e. The total area contained within the buffer area after averaging is no less than the required buffer prior to averaging;

f. The buffer will be enhanced consistent with the requirements of subsection (C)(1)(a) of this section, to improve its overall quality; and

g. The buffer area will be legally protected in perpetuity.

3. Buffer width averaging within steep slope areas is not allowed.

C. Buffer Width Reductions. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the planning official determines that the proposed use would not adversely affect the valuable functions of the wetland or stream or their buffers, and would be consistent with the land use standards of this chapter and the purposes of this chapter. Where a legally established, nonconforming use of the buffer exists (such as a road or structure that lies within the width of buffer required for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of nonconformity (i.e., cause any increase in the impacts to the wetland from activities in the buffer). Buffer reductions may be allowed subject to the following:

1. Outside steep slope areas, the planning official may allow wetland or stream buffer width reductions up to a maximum of 25 percent of the required buffer subject to the approval of a buffer enhancement plan or one or more of the other actions identified below:

Buffer Enhancement. Buffer enhancement includes measures to enhance the buffer, including but not limited to planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing riparian area adjacent to a stream where one currently does not exist to result in improved function of the riparian habitat. The enhancement plan shall be completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The enhancement plan shall be similar to a mitigation plan and shall include provisions for mitigation monitoring and contingency plans similar to the requirements ofSection 16.20.085(B)(8);

a. Fish barrier removal to restore accessibility to resident or anadromous fish;

b. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;

c. Stream and/or retention/detention pond improvements:

i. Creation of a surface channel where a stream was previously culverted or piped; or

ii. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities; or

iii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels.

The planning official may authorize a modification of up to 50 percent of the buffer width to provide a reasonable buildable area for a single-family residence or accessory building on a lot legally established prior to March 18, 1992; provided, that for such legally established single-family residential lots under 5,000 square feet in size, wetland and stream buffers outside steep slope areas may be reduced by no more than25 percent. These guidelines will be applied in compliance with the reasonable use provisions of Section 16.20.080(B)(1)(d). (Ord. 861, 2005)

16.20.075 Wetlands and streams – Exemptions.

The following activities and/or wetlands are exempt from regulation under this chapter and the land use standard section of this code. The burden of proving the existence of an exemption is upon the party claiming the exemption. Prior confirmation of an exemption may be requested from the planning official. In case of any question as to whether a particular activity is exempt under the provisions of this section, the planning official's determination shall prevail. To be exempt from this chapter does not give permission to degrade a regulated habitat or ignore risks from natural hazards. Exempt activities shall comply with the intent of these standards, consider onsite alternatives that avoid or minimize potential impacts, and shall use reasonable methods (i.e., best management practices) to avoid potential impacts to riparian and critical wildlife habitat.

A. Drainage and Flood Control Facilities. Operation, maintenance and repair of dikes, ditches, reservoirs, settling basins and other structures and facilities which were created or developed as part of normal drainage or flood control activities on or prior to

March 18, 1992, except that this exemption does not extend to the permanent alteration of any regulated wetland;

B. Irrigation. Operation, maintenance and repair of ditches, reservoirs, ponds and other structures and facilities which were created or developed as part of normal irrigation activities on or prior to March 18, 1992;

C. Artificial Wetlands. All wetlands wherein wetland vegetation is being maintained only because of man-induced hydrology, and it can be determined that the wetland vegetation would no longer exist if the activity (for example, irrigation or pumping water) were to be terminated;

D. Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures undertaken pursuant to public works director approved best management practices; provided, that activities shall not increase the impervious area and that disturbed areas are restored to their preexisting condition;

E. Normal maintenance and repair of residential or commercial structures; provided, that reconstruction of any structures may not increase the previous floor area, and subject to the requirements of Chapter 18.32, Nonconforming Uses, Structures, and Lots;

F. Emergency activities that are required due to landslides, floods, earthquakes, other acts of nature, or emergency utility repairs that are necessary to prevent an immediate threat to public health, safety or property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. After the emergency, the person or agency undertaking the action shall restore and/or mitigate any impacts to the habitat and buffer resulting from the emergency action in accordance with an approved habitat report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of emergency, and completed in a timely manner;

G. Minor activities such as invasive plant management, removal of dead, dying or diseased vegetation, and removal of hazardous trees where adjacent properties are in

danger of damage, where such activities are determined by the city to have minimal impact to habitat and/or streams. Any such activities undertaken within a designated critical area easement may require replanting per the requirements of the easement;

H. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat;

I. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies and similar tests and investigations; provided, that any disturbance of the habitat shall be the minimum necessary to carry out the work or studies and that the disturbed area shall be restored in accordance with an approved habitat report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of the disturbance, and completed in a timely manner; and

J. Educational activities, scientific research and outdoor recreational activities, including but not limited to interpretive field trips, bird watching and hiking, that will not have a significant effect on the habitat area. (Ord. 861, 2005; Ord. 619, 1992)

16.20.080 Wetlands and streams – Permitted usesUses , uses requiring alteration approval (including reasonable use provisions) – Exceptions.

A. Permitted Uses.

1. All activities and uses shall be prohibited in wetlands and streams and their buffers except as expressly provided in this chapter (see subsections (A)(2) and (3) of this section). All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands and streams.

2. All wetlands and streams regulated by this chapter may be used in an emergency situation to provide water to meet fire flow requirements without permission from the city of Langley.

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3. A. Permitted Uses.The following uses are permitted subject to prior review by the planning official to determine that all conditions are satisfied prior to commencement of activity:

1. Fences. The construction/placement of fences in a wetland, stream or surrounding buffers, is subject to the following conditions:

a. Fences shall be located only in the buffer; and

b. No motorized equipment shall be used; and

c. Only minimal disruption and removal of vegetation shall occur; and

d. Special fence design features may be required as necessary to protect wildlife habitat or other functions of the wetland and/or surrounding buffers; and

e. A fence may be placed on or next to a property line in a wetland or stream buffer provided no building permit is required, no motorized equipment is used, only minimal disruption and removal of vegetation occurs, and wildlife passage is not interrupted or hindered.

2. Low Impact Uses and Activities. Low impact uses and activities which are consistent with wetlands, streams and their buffers may be permitted within the buffer depending on the sensitivity of the wetland or stream. Examples of uses and activities which may be allowed include pedestrian trails, viewing platforms, utility easements, and the installation of necessary utilities. Necessary utilities include stormwater management facilities assuming said facility does not impact mature forest vegetation, is designed according to ity standards and the discharge water meets state water quality standards, and there is no other feasible location for the facility. Uses permitted within the buffer shall be located in the outer portion of the buffer as far as possible from the stream or wetland. All altered areas shall be

mitigated per Section 16.20.085(B)(8). Dead and dying trees may be removed only with approval of the planning official.

B. Uses Requiring Alteration Approval.

1. Uses not specifically permitted pursuant to subsection (A) of this section that are permitted or conditionally allowed in the underlying zone may be allowed in a wetland, stream or in surrounding buffers only upon alteration approval by the planning official following submittal of a site plan, written description of the proposal, and environmental checklist and after having sought public comment per the procedures established in Section 18.36.020. The planning official shall apply such conditions to the approval as may be necessary to protect the wetland, stream and surrounding buffers and may require a report by a qualified wetland ecologist.

a. Alteration of Category I Wetlands, Type 1 Streams or Their Buffers.

(1) Alteration of a Category I wetland is prohibited. Alteration of a Category I buffer may be allowed only upon a determination by the planning official that:

(A) Substantial public benefit will occur through the alteration; and

(B) The public benefit accruing substantially outweighs the public loss occurring through the alteration of the wetland buffer; and

(C) There is no feasible onsite alternative to making the alteration that will have less impact; and

(D) All conditions for modifying a Category II wetland can be met.

(2) Alteration of Type 1 Streams or Their Buffers. Category I streams shall be preserved. The planning official may allow alteration only under the following circumstances:

(A) The alteration is solely to expand an existing water-dependent use and the alteration does not act to degrade the functions of the stream or the degradation can be fully mitigated; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots that have no other feasible means of access.

Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; or

(C) The alteration is an integral part of an approved fishery enhancement project and is the minimum alteration required by the project; and

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley Municipal Code.

b. Alteration of Category II and III Wetlands and Their Buffers, Type 2 and 3 Streams or Their Buffers.

(1) Alteration of a Category II or III wetland or its buffer may be allowed only by the planning official when it is determined that:

(A) The alteration is solely to expand an existing water-dependent use and does not act to degrade the functions of the wetland, or the degradation can be fully mitigated; or

(B) The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

(C) Alteration will preserve, improve or protect the functions; and

(D) Any and all alterations which will not preserve, improve or protect wetland functions will be addressed pursuant to a mitigation or restoration plan required as a condition to the approval of any alteration; and

(E) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley Municipal Code.

(2) Alteration of a Type 2 and 3 Stream or Its Buffer. Type 2 and 3 streams shall be preserved. The planning official may allow alteration only under the following circumstances:

(A) When the applicant can demonstrate that the alteration enhances the functional value of the stream in terms of water quality, erosion control, and fish and wildlife habitat; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; and

(C) No feasible and reasonable development alternative exists which does not alter or culvert the stream.

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley Municipal Code.

c. Alteration of a Category IV Wetland and Its Buffer and a Type 4 and 5 Stream and Its Buffer.

(1) The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

(2) Alteration will preserve, improve or protect the functions; and

(3) Any and all alterations which will not preserve, improve or protect wetland functions shall be addressed pursuant to a mitigation or restoration plan required as a condition to the approval of any alteration; and

(4) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley Municipal Code.

d. Reasonable Use Alterations. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this chapter. If an applicant can prove that strict application of the above standard will deny reasonable use, development as conditioned will be permitted if the applicant demonstrates all of the following:

(1) There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the wetlands; and

(2) The proposed development does not pose a threat to public health, safety and welfare on or off the subject property; and

(3) Any alterations permitted pursuant to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property, adjusting a boundary line or other action thereby creating the undevelopable condition after March 18, 1992; and

(5) The proposal mitigates the impacts on the wetland to the maximum extent possible, while still allowing reasonable economic use of the lot.

(6) A report shall accompany a reasonable use exception proposal which provides information on the function and value of the wetland, area proposed for alteration, impact of development on the wetland and buffer, what constitutes a reasonable economic use of the property, steps taken to minimize the impact of the alteration, and other information as deemed necessary.

2. Mitigation may be required as a condition to the approval of any alteration.

BC. Public Agency and Utility Exceptions.

1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section. The public agency, utility or private applicant shall prepare an application and report justifying the requested exception. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring

~~review and decision by the hearing examiner shall be decided by the hearing examiner. Projects affecting Category III and Category IV wetlands, and Type 3, 4, or 5 streams shall be decided by the planning official.~~

~~2. Applications for a utility exception shall be reviewed based on the following criteria:~~

~~a. There is no other feasible and reasonable alternative to the proposed development with less impact on the wetland and/or stream and the associated buffer. A description of alternatives considered must be included in the exception requests; and~~

~~b. The proposal minimizes the impact on the wetland and/or stream and buffer and incorporates all reasonable mitigation measures as identified in Section 16.20.085(B)(8); and~~

~~c. Construction techniques shall minimize both long- and short-term impacts to the wetland and/or stream and its buffer.~~

3. Except as provided above, these exceptions do not extend to dredging, to excavation (including peat mining) or to the filling of wetlands or their buffers. (Ord. 957 § 8, 2011; Ord. 861, 2005)

16.20.085 Wetlands and streams – Land use standards.

A. The land use standards contained in this section supplement the general land use regulations of this chapter and the specific development standards contained in other chapters of the Langley Municipal Code. B. Wetlands, Streams and Their Surrounding Buffers.

1. B. General Standards. These standards shall apply to all applications for permits and other approvals which may indirectly result in an alteration of a regulated wetland, stream or their buffers, unless modified by the planning director upon a determination that the anticipated alteration will preserve, improve and/or protect the wildlife habitat, natural drainage and/or other natural functions of the wetland or stream and will be consistent with the purposes of this chapter without strict application of the standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The standards shall also apply to applications for approval to alter a regulated wetland, stream or their buffers.

2. Wetland and stream buffers shall be shown on the development site plans or final plat maps along withthe notation requirements.

3. Water Quantity and Quality. Uses permitted adjacent to wetlands and streams shall control stormwater runoff and protect the natural movement of water according to the following provisions:

a. All surface water entering wetlands and streams shall be treated and controlled by a stormwater management system incorporating accepted best management practices or similarly effective measures approved by the Langley ity engineer in order to assure water quality and control water volumes;

b. The velocity of stormwater runoff entering a wetland shall be limited to predevelopment levels;

c. Water level fluctuations in wetlands or streams shall be minimized during spring breeding season

(February through June) through adequate stormwater controls;

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d. Category I, II and III wetlands shall not be modified to function as stormwater retention/detention sites;

e. Septic systems adjacent to wetlands or streams must be properly sited and maintained to prevent water quality degradation.

4. Category I or II Wetlands. In wetlands rated Category I or II with no natural point of inflow (i.e., stream) any surface water directed towards the wetland as a result of an approved drainage plan shall filter through the water table or a drainfield to avoid erosion and excess nutrient inflow.

5. Human Access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:

a. No motorized vehicles shall be allowed within a wetland or its buffer, except when specifically approved by the planning official or as provided in this section and/or as the wetland may be traversed by a public or private roadway which existed before March 18, 1992;

b. Any trails within a wetland shall be constructed with minimum disruption to habitat.

6. Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forested areas of Puget Sound by undisturbed corridors.

7. Alteration of a wetland, a stream or their buffers may be permitted only by approval by the city planningofficial unless otherwise authorized in this chapter. These standards shall be complied with to minimize wetland impacts if development is permitted. If the planning official determines that alteration is not likely to preserve, improve or protect the functions of the wetland, stream or their buffers, mitigation shall be required as a condition of approval.

8. The following conditions shall apply to all mitigation projects:

1. A written ecological assessment and maps of the wetlands to be lost or adversely altered shall be made, at the expense of the applicant, to determine the gross area of loss and the functions, habitat, and types, sizes and quantities of vegetation lost. The assessment shall include the following information: wetland delineation; existing acreage; vegetative flora; hydrophytic characteristics; soils and substrates conditions; topographical elevation;

2. A mitigation plan shall be prepared by a qualified person using Ecology's Guidelines for Developing

Freshwater Wetlands Mitigation Plans and Proposals, March 1994 (Ecology Publication No. 94-29) and

Guidance on Wetland Mitigation in Washington State, Part 2, Guidelines for Developing Wetland Mitigation Plans and Proposals, April 2004 (Ecology Publication No. 04-06-013b). The mitigation plan shall be funded by the applicant and approved by the planning official. In the event the construction of a new wetland is included as a part of that plan, the earth-moving, hydrology and vegetation planting requirements of the plan will be completed prior to the commencement of the proposed alteration. The planning official may call on state and other agencies to provide technical support in evaluating the plan. The mitigation plan shall include, but not be limited to, the following:

(1) Statement of Goals. Such statements shall include a discussion of the functions and values lost and those planned for replacement;

(2) Methods. Information discussing "what, where, when and how," i.e., acreage of mitigation, wetland habitat types to be enhanced, constructed/restored, location, dates for beginning and completing the project, types of vegetation; detailed construction plans (including grading and excavation requirements, planting implementation, and structures and measures to provide water); maintenance requirements; and maintaining schedule to ensure a successful project;

(3) Standards of Success. A qualitative and, to the extent possible, a quantitative description of what will be considered a successful, functioning wetland shall be provided;

c. Compensation Standards. Due to uncertainties in scientific knowledge and the need for expertise and monitoring, compensatory projects shall be as enduring as the wetland it replaces. Projects shall meet the following standards as well:

(1) Restored, created or enhanced wetland projects should be created on site and be of similar type if possible;

(2) Restored or created wetlands shall be equal to or of a higher quality or functional value thanthe wetland altered;

(3) Any proposed compensatory mitigation project shall restore or create equivalent or greaterareas of wetland than those altered to compensate for wetland losses. An increase in replacement acreage is required if uncertainties exist in the probable success of the proposed restoration or creation. The ratios as shown in Table 1, Appendix 2 apply to creation or restoration: The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

~~The planning official may modify these ratios (increase or decrease) based on the findings of a wetlands mitigation plan that addresses wetland functional values, probable success rate of the proposed restoration or creation, the anticipated elapsed time between the impact and the establishment of wetland functions at the mitigation site and other factors deemed pertinent by a qualified wetland specialist. In no case shall the replacement acreage be less than that which is altered. Preservation as mitigation and mitigation banking may also be considered by the planning official consistent with current State Department of Ecology guidance;~~

~~(4) Monitoring Program and Contingency Plan. A monitoring program shall be included as part of the approved mitigation plan. The mitigation project shall be monitored for a minimum of five years (10 years if the goal is for a forested wetland system), to establish that the performance standards of the approved mitigation plan have been met. A longer monitoring period may be required by the ity based on either the initial mitigation plan or a review of subsequent monitoring reports. A plan that complies with the requirements of this chapter may be required by the planning official to outline restorative measures to be taken should the mitigation fail or only partially succeed;~~

~~(5) Bonding. A performance bond or other security in an amount to enable the ity to carry out the mitigation plan should the applicant fail to do so shall be required;~~

~~(6) The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;~~

~~(7) Native vegetation shall be planted to replace lost habitat for a particular species;~~

(8) Artificial resting, hiding and breeding sites to replace losses shall be constructed;

(9) Aquatic substrate may be altered to produce an increase in fish, waterfowl and shorebird organisms to replace losses;

(10) Silted gravels shall be cleaned in a manner that protects streamside vegetation and downstream sections of streams;

(11) Dredge and/or fill of a wetland or stream or their buffers shall not be permitted unless:

a. The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water dependent; and

b. Mitigation areas will be provided which have greater value as a wetland or habitat than the area lost; and

c. The amount dredged or filled is the minimum necessary to accomplish the proposed use; and

d. Dredging is not solely for the purpose of obtaining fill; and

e. Leachate from polluted dredge spoil will be treated and will not enter surface waters; and

f. The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting;

3. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;

4. Cumulative impacts of the proposed development shall be considered. Thus, development shall not be considered a precedent allowing further development; and

Where possible, development should be located in the buffer rather than the wetland. (Ord.861, 2005; Ord. 619, 1992)

16.20.090 Current use taxation of open space land.

A. Public Benefit Rating System. RCW 84.34.037 establishes specific criteria to be used in determining the public benefit of applications for open space current use taxation status; and

B. Island County Open Space Policy. Island County has adopted open space policy and criteria for use inevaluatingin evaluating open space application; and

C. City of Langley Open Space Policy. The city of Langley concurs with the open space policy and criteriaadoptedcriteria adopted by Island County. (Ord. 861, 2005; Ord. 619, 1992)

16.20.095 Identification of resource lands and environmentally sensitive (critical) areas.

The location of known resource lands and environmentally sensitive (critical) areas are shown on a map available at the Langley City Hall. This map is for the purpose of identifying areas to which these regulations could apply but may not be totally inclusive of all such areas that might be identified through review and information. (Ord. 619, 1992)

16.20.100 Bonds for restoration and mitigation activities.

A. Performance Bonds. Mitigation required pursuant to a development proposal must be completed prior to the ity's granting of final approval of the development proposal. If the applicant demonstrates that seasonal requirements or other circumstances beyond its control prevent completion of the mitigation prior to final approval, the applicant may post a performance bond or other security instrument in a form and amount deemed acceptable by the city land use coordinator, which

~~guarantees that all required mitigation measures will be completed no later than the time established by the department in accordance with this chapter.~~

~~Maintenance/Monitoring Bonds. The ity shall require the applicant whose development proposal is subject to a mitigation plan to post a maintenance/monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by this chapter for a period up to three years. The duration ofmaintenance/monitoring obligations shall be established by the land use coordinator after consideration of the nature of the proposed mitigation and likelihood and expense of correcting mitigation failures.~~

~~B. Bonds or other security instruments shall be in the form and amount approved by the city land use coordinator and shall remain in effect until the land use coordinator determines in writing that performance and maintenance standards have been met. (Ord. 619, 1992)~~

Commented [AP108]: Relocated for clarity of application

16.20.090~~105~~ Enforcement ~~Provisions of chapter – Apply to identified and unidentified sensitive lands.~~

A. Penalty and Enforcement. Knowing or intentional violations of this chapter or any provision in this chapter shall be punishable by a fine of up to $1,000 of value or a jail sentence of up to 90 days or both such fine and jail time pursuant to Chapter 1.14. Any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to violation. The City shall stop work on any existing permits and halt the issuance of any or all future permits or approval for any activity which violates the provisions of this chapter until all penalties and restorations are made in full. Any required after-the-fact permit applications shall incur double the applicable permitting fees as a penalty for violating the provisions of this chapter.

B. Restorations. Restorations shall include but not be limited to the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such as the biological habitat values will be replaced to the

greatest extent possible. Studies by qualified consultants shall be conducted to determine the conditions which were likely to exist on the lot prior to the alteration. Emergency erosion control measures may be required. (Ord. 619, 1992)

The Langley Municipal Code is current through Ordinance 1096, passed September 16, 2022.

Disclaimer: The City Clerk's office has the official version of the Langley Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: https://www.langleywa.org/
City Telephone: (360) 221-4246

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