



EVERETT

WASHINGTON

Everett City Council Preliminary Agenda 6:30 p.m., Wednesday, April 1, 2026 City Council Chambers - 3002 Wetmore Ave

Roll Call

Pledge Of Allegiance

Land Acknowledgment

Mayor's Comments

Approval Of Minutes: March 25, 2026

Public Comment

Council Comments

Administration Update

City Attorney

CONSENT ITEMS:

(1) Adopt Resolution Authorizing Claims Against The City Of Everett In The Amount Of \$4,631,844.74 For The Period Ending March 14, 2026 Through March 20, 2026.

Documents:

[RES_CLAIMS PAYABLE 032026.PDF](#)

(2) Authorize The Mayor To Sign A Professional Service Agreement With Botesch, Nash & Hall Architects, P.S. To Provide Architectural And Engineering Services For The Everett Police Property Room Facility Tenant Improvement In An Amount Not To Exceed \$273,800.

Documents:

[EVERETT POLICE PROPERTY ROOM FACILITY TENANT IMPROVEMENT
PSA.PDF](#)

(3) Authorize The Request For Qualifications And Request For Proposals For General Contractor/Construction Manager For The WPCF Headworks Replacement Project.

Documents:

[WPCF HEADWORKS REPLACEMENT_RFQ_ZB_2026.04.01_CS.PDF](#)

PROPOSED ACTION ITEMS:

(4) CB 2603-15 -2nd Reading – Adopt An Ordinance Creating A Special Improvement Project Entitled “Evergreen Way Overlay” Fund 303, Program 139, To Accumulate All Costs For The Improvement. (3rd & Final Reading 4/08/26)

Documents:

[CB 2603-15.PDF](#)

(5) CB 2603-16 – 2nd Reading – Adopt An Ordinance Creating A Special Improvement Project Entitled “Dorn Avenue Drainage Improvements” Fund 336, Program 043, And Repealing Ordinance No. 4048-24. (3rd & Final Reading 4/08/26)

Documents:

[CB 2603-16.PDF](#)

(6) CB 2603-17 – 2nd Reading – Adopt An Ordinance Approving The Appropriations Of The 2026 Revised City Of Everett Budget And Amending Ordinance No. 4126-25. (3rd & Final Reading 4/8/26)

Documents:

[CB 2603-17.PDF](#)

(7) CB 2603-18 – 1st Reading - Adopt An Ordinance Creating A Special Improvement Project Entitled “North Broadway Pedestrian Bridge” Fund 303, Program 133, To Accumulate All Costs For The Improvement And Repealing Ordinance No. 4113-25. (3rd & Final Reading 4/15/26)

Documents:

[CB 2603-18.PDF](#)

BRIEFING & PROPOSED ACTION ITEM:

(8) CB 2603-19 – 1st Reading - Adopt The Attached Ordinance Enacting Updated Critical Areas Regulations. (3rd & Final Reading 4/15/26)

Documents:

[CB 2603-19.PDF](#)

ACTION ITEMS:

(9) CB 2603-14 – 3rd & Final Reading - Adopt An Ordinance Creating A Special Improvement Project Entitled “PGSF WMVD Storm And Combined Sewer Improvements” Fund 336, Program 037 And Repealing Ordinance No. 3967-23.

Documents:

[CB 2603-14.PDF](#)

(10) Authorize The Mayor To Sign The License Agreement With The Port Of Everett For City Use Of The Port Of Everett Norton Terminal Facility For PGSF Construction Access.

Documents:

[PORT OF EVERETT_PGSF WMVD STORM AND COMBINED](#)

SEWER_LICENSE AGREEMENT.PDF

BRIEFING:

(11) Approve The Resolution Concerning 2026 Annual Action Plan And Authorize The Mayor To Execute The 2026 Grant Agreement With HUD And Associated Supporting Subrecipient Agreements.

Documents:

[2026 CDBG HOME AHTF FUNDING RESOLUTION.PDF](#)

Executive Session

Adjourn

PARTICIPATION IN REMOTE COUNCIL MEETINGS

- Participate remotely via Zoom by registering to speak at everettwa.gov/speakerform. You must register no later than 30 minutes prior to the meeting. You may contact the Council office at 425.257.8703 or aely@everettwa.gov and identify the topic you wish to address.
- Provide written public comments by email to Council@everettwa.gov or mail to 2930 Wetmore Avenue, Suite 9A, Everett, WA 98201. Emailing comments 24 hours prior to the meeting will ensure your comment is distributed to councilmembers and appropriate staff.
- Persons seeking to comment on non-agenda items may be asked to submit the comments in writing if the comment does not address an issue of broad public interest.

AGENDAS, BROADCAST AND RECORDINGS

- The Council agendas and meeting recordings can be found, in their entirety, at everettwa.gov/citycouncil.
- Watch live meetings and recordings at [YouTube.com/EverettCity](https://www.youtube.com/everettcity).

CONTACT THE COUNCIL

If you do not wish to participate in the meeting, we provide these other methods of contacting your elected officials: Email the Council at Council@everettwa.gov or call the Council offices at 425.257.8703.

The City of Everett does not discriminate on the basis of disability in the admission or access to, or treatment in, its programs or activities. Requests for assistance or accommodations can be arranged by contacting the Everett City Council Office at 425.257.8703. For additional information, please visit our website at <https://www.everettwa.gov/3129/American-Disabilities-Act-ADA-and-Title->

RESOLUTION NO. _____

Be it Resolved by the City Council of the City of Everett:

Whereas the claims payable by checks against the City of Everett for the period March 14, 2026 through March 20, 2026, having been audited and approved by the proper officers, have been paid and the disbursements made by the same, against the proper funds in payment thereof, as follows:

<u>Fund</u>	<u>Department</u>	<u>Amount</u>	<u>Fund</u>	<u>Department</u>	<u>Amount</u>
002	General Funds	7,332.13	101	Parks & Recreation	9,982.22
003	Legal	154,671.74	110	Library	6,161.25
005	Municipal Court	2,917.60	112	Municipal Arts	44,201.35
007	Human Resources	8.40	114	Conference Center	2,400.00
009	Misc Financial Funds	12,184.41	120	Public Works - Streets	25,432.58
010	Finance	134.00	130	Develop & Const Permit Fees	88.00
015	Information Technology	4.20	146	Property Management	12,050.74
018	Communications, Mktg & Engag	2,000.00	152	Cum Res/Library	113.20
021	Planning & Community Dev	434.96	153	Emergency Med Svc	87.49
024	Public Works-Engineering	6,690.20	155	Capital Reserve Fund	60,673.00
026	Animal Shelter	165.00	156	Criminal Justice	58,340.24
031	Police	1,342.08	162	Capital Projects Reserve	9,572.00
032	Fire	(33.68)	197	CHIP Loan Program	17,910.59
038	Facilities Maintenance	108.72	303	Public Works Impr. Projects	1,472,881.21
	TOTAL GENERAL FUND	\$ 187,959.76	336	Water & Sewer Sys Improv Project	1,950,389.76
			342	City Facilities Const.	23,741.66
			354	Parks Capital Const.	20,256.35
			401	Public Works-Utilities	562,707.33
			402	Solid Waste Utility	2,258.63
			425	Public Works-Transit	43,268.82
			430	Everpark Garage	381.64
			440	Golf	29,131.98
			501	MVD - Trans Services	52,488.36
			503	Self-Insurance	8,762.00
			505	Computer Reserve	14,506.80
			508	Health Benefits Reserve	1,218.69
			637	Police Pension	6,047.99
			638	Fire Pension	8,207.10
			670	Custodial Funds	624.00
			TOTAL CLAIMS		4,631,844.74

Councilperson introducing Resolution

Passed and approved this _____ day of _____, 2026

Council President _____

Project title:

A Professional Service Agreement with Botesch, Nash & Hall Architects, P.S. to Provide Architectural and Engineering Services for the Everett Police Property Room Facility Tenant Improvement in an Amount Not to Exceed \$273,800

Council Bill #**Agenda dates requested:**

Briefing
 Proposed action
 Consent 4/01/26
 Action
 Ordinance
 Public hearing
 Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Professional Services Agreement

Department(s) involved:

Parks and Facilities
 Police

Contact person:

Kimberly Moore

Phone number:

425-257-8305

Email:

kmoore@everettwa.gov

Initialed by:

KBM

Department head

Administration

Council President

Project: Everett Police Property Room Facility Tenant Improvement

Partner/Supplier: Botesch, Nash & Hall Architects, P.S.

Location: 3310 Paine Avenue

Preceding action: None

Fund: Fund 342, Program 056

Fiscal summary statement:

The proposed Professional Service Agreement with Botesch, Nash & Hall Architects, P.S. is for architectural and engineering services for the newly acquired police property room facility remodel/renovation project. The source of funds is Fund CIP-1. The estimated design and engineering services cost is not to exceed \$273,800.

Project summary statement:

Architectural & Engineering consultant services includes the preparation of architectural and engineering drawings suitable for a newly acquired certified Everett Police Property Room Facility located at 3310 Paine Avenue, Everett, WA 98201.

The scope of service includes meeting with and programming the needs of the City and the Police Department staff, prepare schematic plans, prepare for and attend the pre-permit application meeting with City, prepare design development drawings, prepare 60% and 90% cost estimates, prepare permit/construction documents, prepare the City permit application, and provide construction administration for a 12,500 square foot 2-story building remodel/renovation.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign a Professional Service Agreement with Botesch, Nash & Hall Architects, P.S. to provide architectural and engineering services for the Everett Police Property Room Facility Tenant Improvement in an amount not to exceed \$273,800.



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is effective as of the date of last signature below and is between the City of Everett, a Washington municipal corporation (*the “City”*), and the Service Provider identified in the Basic Provisions below (“**Service Provider**”). This Agreement is for the purpose of the Service Provider providing services to the City as set forth in the Agreement. This Agreement includes and incorporates the Basic Provisions, the attached General Provisions, the attached scope of work (Exhibit A), and the attached method of compensation (Exhibit B).

BASIC PROVISIONS	
Service Provider	Botesch, Nash & Hall Architects, P.S.
	2727 Oakes Avenue, Suite 100 Everett, WA 98201
	Info@bnharch.com
City Project Manager	Ruben Sanchez
	City of Everett – Parks & Facilities 802 E. Mukilteo Blvd., #100 Everett, WA 98203
	rsanchez@everettwa.gov
Brief Summary of Scope of Work	Provide design and engineering services for the Everett Police property room facility tenant improvement.
Completion Date	December 31, 2027
Maximum Compensation Amount	\$273,800

BASIC PROVISIONS	
Service Provider Insurance Contact Information	Shiplely & Pease Insurance
	206-519-5371
	stan@shiplelyins.com
State Retirement Systems (must answer both questions)	<p>Does Service Provider have 25 or more employees?</p> <p style="text-align: center;">Answer: No</p> <p>If Service Provider has less than 25 employees, did any Service Provider Personnel who will work under this Professional Services Agreement retire under a DRS retirement system?</p> <p style="text-align: center;">Answer: No</p> <p>“DRS retirement system” refers to any of the following Public Employers’ Retirement System (PERS), School Employees’ Retirement System (SERS), Teachers’ Retirement System (TRS), and Law Enforcement Officers and Fire Fighters plan (LEOFF).</p> <p>“Service Provider Personnel” includes Service Provider employees and owners (such as shareholders, partners or members). If Service Provider is a sole proprietor, then “Service Provider Personnel” refers to the sole proprietor.</p>
Willful Wage Violation Certification	<p>By signing this Agreement, the Service Provider certifies that, within the five-year period immediately preceding the date of Service Provider’s signature, the Service Provider has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW. This certification covers any entity, however organized, that is substantially identical to Service Provider. Submission of an untrue certification by Service Provider is a material breach and cause for Agreement termination.</p>

END OF BASIC PROVISIONS

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement, which includes and incorporates the above Basic Provisions, the attached General Provisions, the attached scope of work (Exhibit A), and the attached method of compensation (Exhibit B).

**CITY OF EVERETT
WASHINGTON**

ANDREW M. HALL

Cassie Franklin, Mayor

Signature: _____

Name of Signer: Andrew M. Hall

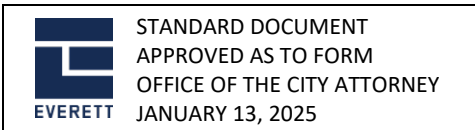
Signer's Email Address: andy@bnharch.com

Title of Signer: President

Date

ATTEST

Office of the City Clerk



ATTACHMENT
PROFESSIONAL SERVICES AGREEMENT
(GENERAL PROVISIONS v.1.13.25)

1. **Engagement of Service Provider.** The City hereby agrees to engage Service Provider, and Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the Scope of Work attached as Exhibit A. The Scope of Work so identified is hereafter referred to as “Work”. Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If Service Provider’s proposal or other document generated by Service Provider is incorporated or attached as an exhibit or part of any exhibit to this Agreement or in any amendment or task or work order pursuant to this Agreement, then such proposal or document is part of this Agreement solely to the extent that it describes the Work, the Work schedule, and the amounts or rates to be paid for such Work, and Service Provider expressly agrees that no terms or conditions from such proposal or document are incorporated or included into this Agreement. In the event of difference or conflict between parts of this Agreement, Service Provider shall be bound by whichever is more stringent on Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider’s design shall be reasonably accurate, adequate and suitable for its intended purpose.
2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Any reuse by the City of these reports, drawings, plans, specifications and intangible property for purposes other than in connection with the Work is at the sole risk of the City. To the extent the Work includes material subject to copyright, Service Provider agrees that the Work is done as a “Work For Hire” as that term is defined under U.S. copyright law, and that as a result, the City shall own all copyrights in the Work. To the extent that the Work includes material subject to proprietary right protection but does not qualify as a “Work For Hire” under applicable law, Service Provider hereby assigns to the City all right, title and interest in and to the Work, including all copyrights, patents, trade secrets, and other proprietary rights therein (including renewals thereof). To the maximum extent permitted by law, Service Provider waives all moral rights in the Work. Notwithstanding the foregoing, Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of mutual execution of this Agreement and the Work shall be completed by Completion Date stated in the Basic Provisions.
4. **Compensation.**
 - A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.
 - B. Service Provider shall be paid such amounts and in such manner as described in Exhibit B.
 - C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. “Eligible Expenses” means those expenses as set forth in an exhibit to this Agreement or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. An expense shall not be reimbursed if: (1) the expense is not

- identified as an Eligible Expense; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified as an Eligible Expense; or (3) the expense was not approved in writing by an authorized City representative prior to Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for Service Provider.
- D. Total compensation, including all services and expenses, shall not exceed the Maximum Compensation Amount in the Basic Provisions.
- E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.
5. **Method of Payment.**
- A. To obtain payment, Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.
- B. All requests for payment should be sent to the City Project Manager Address in the Basic Provisions or to an address designated by the City Project Manager in writing.
6. **Submission of Reports and Other Documents.** Service Provider shall submit all reports and other documents as and when specified in the Scope of Work. This information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.
7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date"). The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by email, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The City does not by this Section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, and without limitation of or prejudice to any other available remedy or recourse, the City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.
8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of Service Provider to be performed hereunder. Such changes, including any increase or decrease in the

scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.
10. **Indemnification.** Except as otherwise provided in this Section, Service Provider hereby agrees to defend and indemnify and save harmless the City from any and all Claims arising out of, in connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. Service Provider is obligated to defend and indemnify and save harmless the City pursuant to this Section whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. Service Provider's duty to defend and indemnify and save harmless pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Service Provider. Service Provider's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then Service Provider's obligations under this Section shall be only to the extent of Service Provider's negligence. Solely and expressly for the purpose of its duties to indemnify and defend and save harmless the City, Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages or infringement or misappropriation of any patent, copyright, trade secret, or other proprietary right. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify and save harmless the City to the extent and on the same terms and conditions as Service Provider pursuant to this Section. The provisions of this Section shall survive the termination of this Agreement.
11. **Insurance.**
 - A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the policies of insurance as set forth in this Section with companies authorized to do business in the State of Washington, which are rated at least "A-" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.
 1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless Service Provider covers such employees.

2. Commercial General Liability (CGL) Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
 3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
 4. Professional Errors and Omissions Insurance in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. Such coverage may be written on a claims made basis.
- B. The above CGL and auto liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Service Provider to furnish the required insurance during the term of this Agreement.
 - C. Upon written request by the City, the insurer or its agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.
 - D. The Description of Operations on the Certificate of Insurance must substantially read as follows: "The above commercial general and auto liability policies are primary as to the City of Everett; have the City of Everett, its officers, employees, agents, and volunteers as additional insureds; and contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City of Everett."
 - E. Prior to Service Provider performing any Work, Service Provider shall provide the City or the City's designee with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City or the City's designee with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees, agents and volunteers as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City or the City's designee of any certificate showing less coverage than required is not a waiver of Service Provider's obligations to fulfill the requirements of this Section. No statement on a third-party website (such as a Trustlayer) that a requirement is "waived" or "overridden" is a waiver of Service Provider's obligations to fulfill the requirements of this Section.
 - F. If the Professional Errors and Omissions Insurance is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy.
 - G. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide

the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

H. In case of the breach of any provision of this Section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

12. **Risk of Loss.** Service Provider shall be solely responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be solely responsible for any loss of or damage to Service Provider's materials, tools, or other articles used or held for use in connection with the work.

13. **Independent Contractor.**

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

- (1) Service Provider is free from control or direction over the performance of the service; and
- (2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and
- (3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and
- (4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and
- (5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and
- (6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of only Service Provider and not employees of the City.

Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of such employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work.

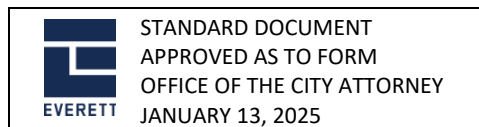
- D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of such act, and rules and regulations that are or may be promulgated in connection therewith.
 - E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefor, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.
14. **Employment/Conflict of Interest.** Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Further, it is recognized that Service Provider may or will be performing professional services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with Service Provider's ability to perform the Work. Service Provider agrees to resolve any such conflicts of interest in favor of the City.
15. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
16. **City of Everett Business License.** Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.
17. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.
18. **Compliance with Federal, State and Local Laws/Prevailing Wages.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder. If any Work by Service Provider or a subcontractor is subject to prevailing wages under chapter 39.12 RCW, all wages to

workers, laborers, or mechanics employed in the performance of such work shall be not less than prevailing wages under chapter 39.12 RCW. State of Washington prevailing wage rates published by the Washington State Department of Labor and Industries (L&I) are obtainable from the L&I website address: <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>, and the effective prevailing wage date is the same date as the date of last signature on this Agreement. A copy of the applicable prevailing wage rates are also available for viewing at Owner's office located at City of Everett Public Works, 3200 Cedar St, Everett, WA, and the City will mail a hard copy of the prevailing wage rates upon written request.

19. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section.
20. **Compliance with Grant/Loan Terms and Conditions.** Service Provider shall comply with any and all terms, conditions, terms and requirements of any federal, state or other agency grant or loan that wholly or partially funds Service Provider's work hereunder. If the grant or loan requires that the agency be a third-party beneficiary to this Agreement, then the agency is a third party beneficiary to this Agreement.
21. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, or national origin or other circumstance prohibited by applicable federal, state, or local law or ordinance. Service Provider shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.
22. **Waiver.** Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
23. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein. The title of this Agreement and the headings used in this Agreement, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
24. **Modification of Agreement.** This Agreement may only be modified as provided in Section 8, or by a writing explicitly identified as a modification or amendment of this Agreement that is signed by authorized representatives of the City and Service Provider.

25. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
26. **Notices.**
- A. Notices to the City shall be sent to the City Project Manager address in the Basic Provisions.
 - B. Notices to Service Provider shall be sent to its address in the Basic Provisions.
27. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.
28. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
29. **City Marks.** Service Provider will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
30. **No Personal Liability.** No officer, agent or employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
31. **Federal Debarment.** Service Provider shall immediately notify the City of any suspension or debarment or other action that excludes Service Provider or any Service Provider subcontractor from participation in Federal contracting. Service Provider shall verify all subcontractors that are intended and/or used by Service Provider for performance of Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.epls.gov/eplsearch.do>. Service Provider shall keep proof of such verification within Service Provider records.
32. **Signature/Counterparts.** This Agreement and any amendment thereto may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature of either party on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.
33. **Standard Document.** This General Provisions document is a standard City form document. No changes by Service Provider are authorized to the General Provisions. Notwithstanding anything to the contrary in this Agreement, in the event that Service Provider makes unauthorized changes to the General Provisions, such changes are deemed to have never been made and the contract between the City and Service Provider is deemed to be the unchanged standard City form General Provisions in version stated below, regardless of whether the City signs this Agreement in a form that may contain the unauthorized changes.

**END OF GENERAL PROVISIONS
(v.1.13.25)**



**EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
(SCOPE OF WORK -- ATTACHED)**

SCOPE OF WORK

The scope of service includes the preparation of architectural and engineering drawings suitable for a certified Everett Police Property Room Facility located at 3310 Paine Avenue, Everett, WA 98201. Scope include meeting with and programming the needs of the City and the Police Department Staff, prepare schematic plans, prepare for and attend the pre-permit application meeting with City, prepare Design Development drawings, prepare 60% and 90% cost estimates, prepare Permit/Construction documents, prepare the City permit application, and provide Construction Administration for a 12,500 square foot 2-story Building Remodel/Renovation.

Part I

As-Bilt Floor Plans and Site Plans

- Structural engineer to review existing structural conditions.
- Electrical engineer to verify existing conditions.
- Mechanical engineer to review existing HVAC systems and equipment.
- Architect to measure existing conditions and draft the as-built conditions.

Part II

Programming

- Pre-Design meetings with clients to confirm program for each space.

Part III

1. Schematic Design

- Create Schematic plans.
- Schematic design meeting with Client.
- Schematic design review meeting with Client to review client feedback on Schematic plans.
- Revise and develop floor plans, sections, and exterior elevations.
- Pre-permit - Application meeting with the City.

2. Design Development

- Design Development coordination with owner.
- Finalize design plans.
- Develop floor plans, sections, exterior elevations, initial interior elevations, and initial specifications.

- Coordination with the Structural, Mechanical, Electrical, and Security Consultants.
 - Coordination with the Planning and Building Departments for proposed project.
 - Coordinate with Contractor for initial estimating and bid review meetings.
3. Professional Cost Estimation Services
- Provide 60% document and 90% document completion professionally prepared cost estimates.
4. Construction Drawings
- Cover sheet.
 - Site plan.
 - Demolition plans - first floor, second floor, and roof.
 - Demolition reflected ceiling plans - first floor, second floor, and roof.
 - Proposed floor plans - first floor, second floor, and roof.
 - Proposed reflected ceiling plans - first floor, second floor, and roof.
 - Egress plan and occupancy calculations.
 - Building life safety systems.
 - Equipment plans and schedule (equipment list provided by Client).
 - Door and Room finish schedules.
 - West exterior elevation.
 - Coordination with the Structural, Mechanical, Electrical, and Security Consultants.
 - Interior elevations of built-ins, kitchen/break room, bathrooms, etc. (finishes to be selected by Client).
 - Miscellaneous architectural details.
 - Specifications.
 - Created as part of this contract. The finishes are to be selected by the Client. An outline specifications to be provided by the architect. (Note: Client to provide a comprehensive list of finishes to the architect.)
 - See Parts VII, VIII, IX, and X below for partial Structural, Mechanical, Electrical, and Security requested items from the Client.

Part V

Bid Phase Assistance

- Permit review meeting with Client

- Health Department application prepared and submitted by Owner (if required)
- Coordinate with Planning and Building department for permit documents and permit intake requirements
- Permit application
- Building department corrections as necessary

Part V

Bid Phase Assistance

- Assist with contractor RFI's, substitution request, etc.
- Assist with Pre-bid addenda preparation

Part VII

Structural Drawings

Structural Calculations.

Part VIII

Mechanical Drawings

- Added HVAC/refrigeration.
- Energy Code Calculations.

Part IX

Electrical Drawings

- New Lighting
- New Power Requirements.
- Energy Code Calculations.
- Backup power generator

Part X

Security Drawings

- 1. Evidence Room Requirements

Part XI

Property Room Certification Requirements (confirm with client)

- Walk-in cooler - with alarmed thermostat (preferably with back-up generator).
- Walk-in freezer - with alarmed thermostat (preferably with back-up generator.)
- Separate alarmed spaces for drugs, guns, and money.
- Climate controlled to maintain temperature (heat and cooling).
- Monitored security and fire alarm system.
- Security cameras.
- Separate evidence processing area for patrol with pass-through evidence lockers.
- Small lobby for the public with passthrough room. Bullet resistant glass/walls.
- Drying rooms with negative air pressure system.
- Drug room also needs negative air pressure system.
- Secure area to store our evidence disposal dumpsters.

Total proposed fees for preparing As-Built drawings - Permit/Construction Documents (Design) and for Construction Administration (CA) are as follows:

- Proposed Fee - Design
 - Architect - \$87,800.00
 - Structural - \$4,250.00
 - Mechanical - \$34,000.00
 - Electrical - \$33,000.00
 - Security - \$14,850.00
 - Cost Estimator - \$7,000.00
 - SUBTOTAL= \$180,900.00 - Lump Sum Fee
- Proposed Hourly Not to Exceed Fee - CA
 - Architect - \$43,200.00
 - Structural - \$0.00
 - Mechanical - \$6,500.00
 - Electrical - \$7,300.00

- Security - \$11,000.00 (This would be for 2 trips to the site from their office in Tennessee)
- Cost Estimator - \$0.00
- SUBTOTAL = \$68,000.00 - Hourly Not to Exceed Fee

DESIGN CONTINGENCY FEE (IF REQUIRED)

Additional Services that may be needed based upon any issues that surface during the design and construction of the project as approved Only In Writing and signed by the authorized City representative:

TOTAL CONTINGENCY FEE \$ 24,900.00

TOTAL FEE \$ 273,800.00

**EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT**

SELECT ONE OF THE FOLLOWING METHODS OF COMPENSATION, EACH OF WHICH IS SUBJECT TO THE MAXIMUM COMPENSATION AMOUNT

HOURLY RATE. The City shall pay Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified below for staff performing the Work.

Name	Title	Rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate

If there are more staff than rows in the table above, then those staff names, titles, and rates shall be provided in the Scope of Work.

PROGRESS PAYMENTS. The City shall pay Service Provider the following amounts upon the completion of the following tasks.

Task	Amount Paid on Task Completion
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount

If there are more tasks than rows in the table above, then those tasks and payment amounts shall be provided in the Scope of Work.

LUMP SUM. The City shall pay Service Provider \$ enter amount upon the completion of the Work.

METHOD CONTAINED IN SCOPE OF WORK. The City shall pay Service Provider as set forth in the Scope of Work.

METHOD CONTAINED IN ATTACHED PAGE(S). The City shall pay Service Provider as set forth in the spreadsheets or other documents attached to this Exhibit B.

Project title: Request for Qualifications (RFQ) and Request for Proposals (RFP) for General Contractor/Construction Manager (GC/CM) for the WPCF Headworks Replacement Project

Council Bill #

Agenda dates requested:

Briefing
Proposed action
Consent 04/01/26
Action
Ordinance
Public hearing
Yes No

Budget amendment:
Yes No

PowerPoint presentation:
Yes No

Attachments:

Department(s) involved:
Public Works

Contact person:
Jeff Marrs

Phone number:
425-257-8967

Email:
jmarrs@everettwa.gov

Initialed by:
RLS

Department head

Administration

Council President

Consideration: Request for GC/CM Qualifications and Proposals

Project: WPCF Headworks Replacement

Partner/Supplier: None

Location: Water Pollution Control Facility

Preceding action: Plans & Systems Ordinance ([03/05/25](#)), Design Professional Services Agreement ([10/22/25](#))

Fund: Fund 336 – Water & Sewer System Improvements Fund

Fiscal summary statement: Project funding is provided by Fund 336 – Water & Sewer System Improvements Fund. Programmed available funding for project design is \$10,000,000. The budget for General Contractor/Construction Manager (GC/CM) design and construction services will be developed with the GC/CM contractor selected during the Request for Qualifications (RFQ) and Request for Proposals (RFP) process. At that point, Public Works will bring a Plans and Systems ordinance to City Council for consideration.

Project summary statement: Public Works seeks authorization to advertise an RFQ and RFP for GC/CM contractors for the WPCF Headworks Replacement project.

The headworks structure at the Water Pollution Control Facility (WPCF) is a key piece of wastewater treatment infrastructure. It was constructed in 1983-1984 and has been upgraded and repaired many times since. The headworks structure needs complete replacement due to ongoing and increasing internal structural degradation and process equipment deterioration. Risks of replacement delay include City personnel injury, catastrophic process equipment failure, and costly short-term or emergency repairs.

State law allows a public agency to use GC/CM project delivery when the project meets the requirements found in RCW 39.10.340 and the agency proposing its use is approved by the Capital Projects Advisory Review Board (CPARB). The project meets the RCW requirements and the City has been approved by CPARB. The City has previously used alternative delivery processes for large, multi-phased projects in order to expedite design and construction. The first step is the RFQ, where interested and qualified GC/CM contractors submit their qualifications for City consideration. After evaluating the submittals, the City will short-list up to three firms. Next, the City will issue the RFP to the short-listed firms. The City will then select the highest scoring proposal to award the GC/CM contract, which will be a future Council action.

Recommendation (exact action requested of Council): Authorize the Request for Qualifications and Request for Proposals for General Contractor/Construction Manager for the WPCF Headworks Replacement Project.

Project title: An Ordinance creating a special improvement project entitled “Evergreen Way Overlay” Fund 303, Program 139, to accumulate all costs for the improvement.

Council Bill #

CB 2603-15

Agenda dates requested:

Briefing
 1st Reading 03/25/26
 Proposed action 04/01/26
 Consent
 Action 04/08/26
 Ordinance X
 Public hearing
 Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Proposed Ordinance

Department(s) involved:

Public Works, Admin

Contact person:

Tom Hood

Phone number:

(425) 257-8809

Email:

thood@everettwa.gov

Initialed by:*RLS*

Department head

Administration

Council President

Project: Evergreen Way Overlay**Partner/Supplier:** WA State Department of Transportation (WSDOT)**Location:** Casino Rd to Madison St**Preceding action:** N/A**Fund:** Fund 303 – Public Works Improvement Projects**Fiscal summary statement:**

The City was awarded a federal National Highway System (NHS) grant through WSDOT totaling \$3,561,000 for the construction phase of the project. Federal funds are available at 100% and no local match is required.

This ordinance will provide funding authorization for the design and construction phases of the project. This includes \$400,000 in local funds necessary for the design phase. The programmed available funding for the project is \$3,961,000. The funding sources for this project will be as follows:

Federal Grant - NHS	\$3,561,000
Fund 119 – Street Improvements	<u>400,000</u>
Total Funds	\$3,961,000

Project summary statement:

The Evergreen Way Overlay project includes grinding, hot-mix-asphalt (HMA) overlay, pavement markings, traffic induction loops, upgrades to signal equipment and curb ramps, and associated utility adjustments between Casino Rd and Madison St.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled “Evergreen Way Overlay” Fund 303, Program 139, to accumulate all costs for the improvement.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled “Evergreen Way Overlay” Fund 303, Program 139, to accumulate all costs for the improvement.

WHEREAS,

- A.** The City of Everett is committed to a planned street preservation program; and
- B.** The City of Everett has identified the need and obtained funds to construct certain preservation improvements to arterial street segments.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project is hereby established as Fund 303, Program 139, entitled “Evergreen Way Overlay” to accumulate all costs for the improvement. Authorization is hereby given to accumulate costs and distribute payments for the improvement project.

Section 2. Authorization is hereby granted for the “Public Works Director” or “City Engineer” under direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the actions authorized in this ordinance.

Section 3. The sum of \$3,961,000 is hereby appropriated to Fund 303, Program 139, “Evergreen Way Overlay” as follows:

A.	Estimated Project Costs	\$3,961,000
B.	Source of Funds	
	Federal Grant – NHS	3,561,000
	Fund 119 – Street Improvements	<u>400,000</u>
	Total Funds	\$3,961,000

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause, or

phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Cassie Franklin, Mayor

ATTEST:

Marista Jorve, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

Project title: An Ordinance creating a special improvement project entitled "Dorn Avenue Drainage Improvements" Fund 336, Program 043, and repealing Ordinance No. 4048-24.

Council Bill #

CB 2603-16

Agenda dates requested:

Briefing
 1st Reading 03/25/26
 Proposed action 04/01/26
 Consent
 Action 04/08/26
 Ordinance X
 Public hearing
 Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Proposed Ordinance

Department(s) involved:

Public Works, Admin

Contact person:

Tom Hood

Phone number:

(425) 257-8809

Email:

THood@everettwa.gov

Initialed by:*RLS*

Department head

Administration

Council President

Project: Dorn Avenue Drainage Improvements

Partner/Supplier: N/A

Location: Dorn Avenue

Preceding action: [Ordinance 4048-24, approved on 10/23/24](#)

Fund: 336-Water & Sewer System Improvements Fund

Fiscal summary statement:

Ordinance 4048-24 authorized an appropriation of \$900,000 for the design phase of the project.

Additional funding in the amount of \$6,000,000 is required for the construction phase of the project. This new ordinance is necessary to program the additional funds needed for full completion of the project.

This Ordinance will repeal Ordinance 4048-24, and authorizes the following appropriations to be programmed:

Design Phase (previously programmed)	\$ 900,000
Construction Phase (newly programmed)	<u>6,000,000</u>
Total Project Costs	\$6,900,000

The total programmed available funding for design and construction of the project increased by \$6,00,000 and is now \$6,900,000.

The funding sources for this project will be as follows:

Fund 401 - Water and Sewer Utility	<u>\$6,900,000</u>
Total source of funds	\$6,900,000

Project summary statement:

This project will address persistent flooding on Evergreen Way in the vicinity of the intersection with Holly Drive. Work will consist of efforts to replace and improve the storm drain system.

This project contains the work issues identified in the Surface Water Comprehensive Plan (SWCP) NC-7. A study performed by Otak Inc. identified improvements to address flooding issues on Dorn Avenue.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a special improvement project entitled "Dorn Avenue Drainage Improvements" Fund 336, Program 043, and repealing Ordinance No. 4048-24.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled “Dorn Avenue Drainage Improvements” Fund 336, Program 043, and repealing Ordinance No. 4048-24.

WHEREAS,

- A.** The City of Everett is committed to a planned stormwater system infrastructure maintenance improvement and replacement program.
- B.** The City of Everett has identified the need and obtained funds to construct new facilities to increase capacity and reduce maintenance demands.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project is hereby established as Fund 336, Program 043, entitled “Dorn Avenue Drainage Improvements” to accumulate all costs for the improvement. Authorization is hereby given to accumulate costs and distribute payments for the improvement project. Ordinance No. 4048-24 is hereby repealed.

Section 2. Authorization is hereby granted for the “Public Works Director” or “City Engineer” under the direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the actions authorized in this ordinance.

Section 3. The sum of \$6,900,000 is hereby appropriated to Fund 336, Program 043, “Dorn Avenue Drainage Improvements” as follows:

A. Estimated Project Design & Construction Costs	\$6,900,000
B. Source of Funds	
Fund 401 – Water/Sewer Utility Fund	\$6,900,000

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause, or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Cassie Franklin, Mayor

ATTEST:

Sharon Fuller, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____



City Council Agenda Item Cover Sheet

Project title: An Ordinance approving the appropriations of the 2026 revised City of Everett Budget and amending Ordinance No. 4126-25.

Council Bill # *interoffice use*

CB 2603-17

Agenda dates requested:

Briefing	3/25/26	
Proposed action	4/1/26	
Action	4/8/26	
Ordinance		X
Public hearing		
Yes	X	No

Budget amendment:

X Yes No

PowerPoint presentation:

X Yes No

Attachments:

Ordinance

Department(s) involved:

Finance

Contact person:

Mike Bailey

Phone number:

Email:

m Bailey@everettwa.gov

Initialed by:

MB

Department head

Administration

Council President

Project: 2026 Budget Amendment #1

Partner/Supplier: NA

Location: NA

Preceding action: Ordinance No. 4126-25

Fund: Multiple

Fiscal summary statement:

The proposed Ordinance amends the City of Everett 2026 Operating Budget, increasing General Government budgeted expenditures by \$1,064,153 and increasing Non-General Government budgeted expenses by \$6,412,317 for a total of \$7,476,470.

Project summary statement:

This budget amendment revises the 2026 budget to appropriate funding for financial activities that will occur this year.

Recommendation (exact action requested of Council):

Adopt an Ordinance approving the appropriations of the 2026 revised City of Everett Budget and amending Ordinance No. 4126-25.



ORDINANCE NO. _____

An ORDINANCE approving the appropriations of the 2026 revised City of Everett Budget and amending Ordinance No. 4126-25.

WHEREAS,

The City Council has reviewed the amended budget appropriations and information which was made available; and approves the appropriation of local, state, and federal funds and the increase or decrease from previously approved programs within the 2026 Budget.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Ordinance No. 4126-25 is hereby amended by the amendments shown on Attachment A, which is incorporated by reference. The amendments shall be made to the 2026 Budget with a total increased expenditure appropriation of \$7,476,470.

	<u>Expenditures</u>
2026 Original Budget	\$ 612,755,455
Budget Amendment #1	7,476,470
Project funding previously approved	5,038,272
2026 Amended Budget	<u>\$ 625,270,197</u>

Section 2. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 3. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 4. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other

matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Cassie Franklin, Mayor

ATTEST:

Marista Jorve, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

**2026
Budget Adjustments
Tally Sheet**

Department		Code	Rev	Exp	FB	
GGR-1	Non-Departmental	Human Needs Grants	009R		37,593	(37,593)

This reappropriation proposes to carry forward unspent 2025 Human Needs grant award funds into the 2026 allocation. A total of \$37,593 will be allocated under professional services for subrecipient agreements.

Increase professional services - Non-Departmental	009	5000199410		37,593	
Funding Source- Fund balance	009	5980000490			37,593

Department		Code	Rev	Exp	FB	
GGR-2	Police	Skydio Drones	031R		8,774	
GGR-2	Non-Departmental	Skydio Drones	009R			(8,774)

In 2025, the Everett Police Department issued a purchase order for two Skydio Drones. Due to market conditions and supply chain delays, the order was not received and paid in full as expected. This reappropriation request seeks to carry forward \$8,774 unspent to 2026 expenditure budget.

Increase M&O expenditures - Police	031	5400004350		8,774	
Funding Source- Fund balance	009	5980000490			8,774

Department		Code	Rev	Exp	FB	
GGR-3	Parks & Community Services	Tree Power Program Grant	101R	11,108	11,108	
GGR-3	Non-Departmental	Tree Power Program Grant	009R			(11,108)
GGR-3	General Fund	Tree Power Program Grant	002R	(11,108)		

In 2025, the Parks & Community Services department received \$11,108 from PUD No.1 of Snohomish County for Tree Power Program. The City will purchase, plant and maintain tree at a site located at 400 Slevers Duecy Blvd. This reappropriation carries forward the unspent grant funds to be used in 2026.

Increase M&O expenditures - Parks & Community Services	101	552100000480		11,108	
Increase property tax distribution - Parks & Community Services	101	3111010010			11,108
Reduce property tax distribution - General Fund	002	3111002000		11,108	
Funding Source- Fund balance	009	5980000490			11,108

Department		Code	Rev	Exp	FB	
GGR-4	Street Improvements	Overlay and Street Projects	119R	696,058	696,058	
GGR-4	Non-Departmental	Overlay and Street Projects	009R			(696,058)
GGR-4	General Fund	Overlay and Street Projects	002R	(696,058)		

This reappropriation proposes to carry forward the remaining Street Improvement funds into the 2026 budget for upcoming street improvement projects. The source of these funds is an allocated share of the motor vehicle fuel tax from Washington State and car tab fees. These funds are used for various initiatives, including arterial street projects, sidewalk replacements, parking improvements, non-motorized improvements, traffic signal projects, capital project grant matching funds, and the overlay program.

Increase M&O expenditures - Street Improvement Fund	119	5524000953650		696,058	
Increase property tax distribution - Street Improvement Fund	119	3111010000			696,058
Reduce property tax distribution - General Fund	002	3111002000		696,058	
Funding Source- Fund balance	009	5980000490			696,058

**2026
Budget Adjustments
Tally Sheet**

Department		Code	Rev	Exp	FB	
GGA-1	General Fund	OPD Social Services Grant	002A	60,620		
GGA-1	Legal	OPD Social Services Grant	003A		60,620	
<p>The City was awarded \$90,930 social services grant from the Washington State Office of Public Defense for public defense improvements and new expenses in calendar years 2026 through June 2027. Distribution: \$60,620.00 in 2026 to pay Everett Law Association, and \$30,310.00 will be used in the first half of 2027.</p>						
Increase state grant revenues - General Fund		002	3341120003			60,620
Increase M&O expenditures - Legal		003	5250000410	60,620		

Department		Code	Rev	Exp	FB	
GGA-2	CPED	Annexation study	021A		200,000	
GGA-2	Non-Departmental	Annexation study	009A			(200,000)
<p>The amendment requests budget authority for the Planning department to seek professional consulting service for potential annexation study.</p>						
Increase professional services expenditures - CPED		021	multiple	200,000		
Funding Source- Fund balance		009	5980000490			200,000

Department		Code	Rev	Exp	FB	
GGA-3	CPED	South Everett and DEA planning	021A		50,000	
GGA-3	Non-Departmental	South Everett and DEA planning	009A			(50,000)
<p>The planning department requests \$50,000 for professional services to support outreach and community engagement for the upcoming Casino Road neighborhood and Downtown Everett Association Planning Process plan work in 2026 and 2027. The neighborhood plan is called out in the comprehensive plan's list of actions for the first five years: <i>Action UF-3: Prepare subarea plans for Community Hubs and define Neighborhood Nodes</i>. Professional services will extend the city's capacity for meaningful, coordinated, and inclusive engagement, consistent with the comprehensive plan's Engagement, Administration, and Implementation element.</p>						
Increase professional services expenditures - CPED		021	multiple	50,000		
Funding Source- Fund balance		009	5980000490			50,000

**2026
Budget Adjustments
Tally Sheet**

Department		Code	Rev	Exp	FB	
NGR-1	Vehicle and Equipment Repl.	Vehicle Replacements	126R		205,000	(205,000)
<p>This reappropriation proposes to carry forward funds for vehicles scheduled for replacement in 2025, but not received by December 31, 2025. Fire: \$ 40,000 for replacing a 2010 Ford Escape Hybrid Park: - \$ 125,000 for replacing a 2009 Ford F-550 hook lift truck - \$ 40,000 for replacing a 2013 Toro 3280-D Ride-on Mower</p>						
Increase vehicle expenditures - Fire		126	5200032640	40,000		
Increase vehicle expenditures - Parks and Community Services		126	5200101640	165,000		
Funding Source- Fund balance		126	3080000000			205,000

Department		Code	Rev	Exp	FB	
NGR-2	Cumulative Reserve for Library	Library purchase and profession service	152R		40,834	(40,834)
<p>This reappropriation will carry forward unspent funds from the Library's 2025 budget to the 2026 expenditure budget for items and services ordered in 2025 but not paid in full until 2026. The funds will be allocated as follows: -- \$ 26,431 for library supplies -- \$ 14,403 for The Whole Mind Strategy agreement</p>						
Increase M&O expenditures - Cumulative Reserve for Library Fund		152	5710000350	26,431		
Increase M&O expenditures - Cumulative Reserve for Library Fund		152	5710000410	14,403		
Funding Source- Fund balance		152	3080000000			40,834

Department		Code	Rev	Exp	FB	
NGR-3	General Gov't Special Projects	Local COVID Recovery Program	155R		4,800,420	(4,800,420)
<p>The City established the COVID Relief Program in 2023. The source of funding was resources made available in the General Fund by using Local Covid Relief funding to pay a portion of the 2023 Police and Fire labor costs. The programs submitted for reappropriation (below) were approved by Council Resolution or supplier contracts.</p>						
Prg 110 Pallet Shelters		155	5325110410	1,352,402		
Prg 130 CHART 2.0		155	5325130410	537,660		
Prg 160 MHP Fire/Library		155	5325160550	361,501		
Prg 190 Property Room Relocation		155	5325190550	234,425		
Prg 230 Digital Permit Accelerator		155	5325230550	68,670		
Prg 240 South Everett Business & Economic Development		155	5325240410	58,417		
Prg 300 City Council Allocations		155	multiple	473,921		
Prg 310 Grant Admin Support		155	5325310550	66,475		
Prg 320 Council of Neighborhoods		155	5325401410	100,000		
Prg 330 Housing Hope Childcare		155	5325330410	1,000,000		
Prg 360 Chamber of Commerce		155	5325360550	250,500		
Clean Everett Day Allocation		155	5325120410	10,000		
Downtown Storefront Project (Council Approved 12/3/2025)		155	5325380410	25,000		
FIFA World Cup Fan Zone Program		155	5325370410	261,449		
Funding Source- Fund balance		155	3080000325			4,800,420

**2026
Budget Adjustments
Tally Sheet**

Department		Code	Rev	Exp	FB
NGA-1	General Gov't Special Projects	155A	333,000	333,000	

The City was awarded a \$500,000 grant from the Washington State Health Care Authority (HCA) for the Street Medicine Team Pilot Program. This program is a component of the Emergency Mobile Opioid Team in Everett (EMOTE) program. In 2025, the grant agreement was amended to increase award amount to \$1,216,000 and also extend the period of performance to 6/30/2027. The grant funds will support a portion of labor cost for the Program Manager and establish a subrecipient relationship with a community partner for the delivery of services to reduce health disparities and to improve health outcomes among the unhoused population. This amendment proposes to increase the 2026 budget authority of the fund to reflect the change. The amended grant agreement was approved by Council on August 13, 2025.

Increase grant revenue - General Government Special Projects	155	3340690420		333,000
Increase transfers out - General Government Special Projects	155	5420000550	25,000	
Increase M&O expenditures - General Government Special Projects	155	5420000410	308,000	

Department		Code	Rev	Exp	FB
NGA-2	General Gov't Special Projects	155A	1,033,063	1,033,063	

The Council previously authorized the Mayor to accept and execute the \$4,000,000 Chemical Dependency and Mental Health (CDMH) Interlocal Agreement with Snohomish County. This Agreement aims to establish a housing facility within the City of Everett to provide short-term housing for individuals who are unhoused, along with coordination and access to substance use and mental health treatment services. The period of performance for the agreement is from 10/24/24 to 12/31/26. The City will act as a pass-through for the funds, providing a forgivable loan of \$2,966,937 in 2024 and a grant of \$1,033,063 in 2026 to the Everett Gospel Mission.

Increase revenue - General Government Special Projects	155	3370070410		1,033,063
Increase M&O expenditures - General Government Special Projects	155	5410000410	1,033,063	

2026 BUDGET ADJUSTMENTS for Budget Amendment # 1

General Government Reappropriations

<u>Fund</u>	<u>Description</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Fund Balance</u>
GGR-1 Non-Departmental	Human Needs Grants	-	37,593	(37,593)
GGR-2 Police	Skydio Drones	-	8,774	(8,774)
GGR-3 Parks & Community Services	Tree Power Program Grant	-	11,108	(11,108)
GGR-4 Street Improvements	Overlay and Street Projects	-	696,058	(696,058)
Total General Government Reappropriations		\$ -	\$ 753,533	\$ (753,533)

General Government Amendments

<u>Fund</u>	<u>Description</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Fund Balance</u>
GGA-1 General Fund	OPD Social Services Grant	60,620	-	60,620
GGA-1 Legal	OPD Social Services Grant	-	60,620	(60,620)
GGA-2 CPED	Annexation study	-	200,000	(200,000)
GGA-3 CPED	South Everett and DEA planning	-	50,000	(50,000)
Total General Government Amendments		\$ 60,620	\$ 310,620	\$ (250,000)

Non-General Government Reappropriations

<u>Fund</u>	<u>Description</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Fund Balance</u>
NGR-1 Vehicle and Equipment Repl.	Vehicle Replacements	-	205,000	(205,000)
NGR-2 Cumulative Reserve for Library	Library purchase and profession service	-	40,834	(40,834)
NGR-3 General Gov't Special Projects	Local COVID Recovery Program	-	4,800,420	(4,800,420)
Total Non-General Government Reappropriations		\$ -	\$ 5,046,254	\$ (5,046,254)

Non-General Government Amendments

<u>Fund</u>	<u>Description</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Fund Balance</u>
NGA-1 General Gov't Special Projects	WA HCA Grant	333,000	333,000	-
NGA-2 General Gov't Special Projects	Snohomish County Interlocal Agreement	1,033,063	1,033,063	-
Total Non-General Government Amendments		\$ 1,366,063	\$ 1,366,063	\$ -
TOTAL General and Non-General Gov't. Amendments		\$ 1,426,683	\$ 7,476,470	\$ (6,049,787)

Project title: An Ordinance creating a special improvement project entitled “North Broadway Pedestrian Bridge” Fund 303, Program 133, to accumulate all costs for the improvement and repealing Ordinance No. 4113-25.

Council Bill #

CB 2603-18

Agenda dates requested:

Briefing
 1st Reading 04/01/26
 Proposed action 04/08/26
 Consent
 Action 04/15/26
 Ordinance X
 Public hearing
 Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Proposed Ordinance

Department(s) involved:

Public Works, Admin

Contact person:

Tom Hood

Phone number:

(425) 257-8809

Email:

thood@everettwa.gov

Initialed by:*RLS*

Department head

Administration

Council President

Project: North Broadway Pedestrian Bridge

Partner/Supplier: WA State Department of Transportation (WSDOT)

Location: North Broadway north of 10th street

Preceding action: [Ordinance No. 4113-25, approved on 9/24/25](#)

Fund: Fund 303 – Public Works Improvement Projects

Fiscal summary statement:

The City was awarded a Move Ahead Washington (MAWA) grant, supported through the Washington’s Climate Commitment Act, totaling \$12,900,000. Proceeds from the grant become available at each biennium. This \$12,900,000 grant fully funds design and partially funds construction of the project.

Ordinance No. 4113-25 authorized an appropriation of \$2,500,050 of available proceeds for the design phase of the project. An additional \$2,399,950 in grant proceeds has since become available. This new ordinance is necessary to program the additional awarded funds.

This Ordinance will repeal Ordinance 4113-25, and authorizes the following appropriations to be programmed:

Design Phase (previously programmed)	\$ 2,500,050
Design & Construction Phase (newly programmed)	<u>2,399,950</u>
Total Programmed	\$ 4,900,000

The funding source for this project will be as follows:

MAWA Grant	<u>\$ 4,900,000</u>
Total Funds	\$ 4,900,000

The department will bring a subsequent ordinance that will include additional funding for Council consideration when the remainder of the grant becomes available.

Project summary statement:

The City is partnering with Everett Community College (EvCC), and serving as the Certification Acceptance (CA) agency for the project.

This project will build a pedestrian bridge over North Broadway that will connect EvCC and Washington State University Everett (WSU Everett). This bridge will enhance safety by decreasing the number of pedestrians crossing North Broadway and allow for crossings to occur without interacting with traffic, serving as a critical link between campus facilities.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled “North Broadway Pedestrian Bridge” Fund 303, Program 133, to accumulate all costs for the improvement and repealing Ordinance No. 4113-25.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled “North Broadway Pedestrian Bridge” Fund 303, Program 133, to accumulate all costs for the improvement and repealing Ordinance No. 4113-25.

WHEREAS,

- A. The City of Everett is committed to a comprehensive bridge construction, maintenance, and safety program.
- B. The City of Everett has identified the need and obtained funds to construct a bridge at North Broadway, connecting Everett Community College and Washington State University - Everett.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project is hereby established as Fund 303, Program 133, entitled “North Broadway Pedestrian Bridge” to accumulate all costs for the improvement. Authorization is hereby given to accumulate costs and distribute payments for the improvement project.

Section 2. Authorization is hereby granted for the “Public Works Director” or “City Engineer” under direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the actions authorized in this ordinance.

Section 3. The sum of \$4,900,000 is hereby appropriated to Fund 303, Program 133, “North Broadway Pedestrian Bridge” as follows:

A.	Design & Partial Construction Costs	\$4,900,000
B.	Source of Funds	
	Move Ahead Washington Grant	<u>4,900,000</u>
	Total Funds	\$4,900,000

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause, or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Cassie Franklin, Mayor

ATTEST:

Marista Jorve, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____



City Council Agenda Item Cover Sheet

Project title: Critical Area Regulations Periodic Update

Council Bill # *interoffice use*

CB 2603-19

Agenda dates requested:

Briefing 4/01/26
Proposed action 4/08/26
Public Hearing &
Action 4/15/26
Ordinance: Yes

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Proposed Ordinance
Staff Memo

Department(s) involved:

Planning

Contact person:

Yorik Stevens-Wajda

Phone number:

425-257-8725

Email:

ystevens@everettwa.gov

Initialed by:

YSW

Department head

Administration

Council President

Project: Critical Area Regulations Periodic Update

Partner/Supplier: NA

Location: Citywide

Preceding action: NA

Fund: NA

Fiscal summary statement:

None

Project summary statement:

The city is updating its critical area regulations, primarily contained in Chapter [19.37](#) EMC, consistent with state law requirements (RCW [36.70A](#)). The planning commission recommends approval of the code amendments included in the proposed ordinance attached to this memo.

See attached staff memorandum for more information.

Recommendation (exact action requested of Council):

Adopt the attached Ordinance enacting updated critical areas regulations.

ORDINANCE NO. _____

**An ORDINANCE Adopting Periodic Update to the City of Everett’s Critical Area Regulations,
AMENDING EMC Chapters 19.04 and 19.37.**

WHEREAS,

- A.** The City of Everett is updating its critical area regulations under Chapter 36.70A of the Revised Code of Washington and Chapter 365-190 of the Washington Administrative Code; and
- B.** The amendments contained in this resolution maintain consistency with the Growth Management Act and are consistent with its planning goals; and
- C.** The amendments contained in this resolution are consistent with and supportive of goals, policies, and implementation strategies in the Everett Comprehensive Plan, including:
 - 1. Policy UF-41 Protect and connect the area’s network of habitat areas and wildlife corridors, streams, parks, and tree canopy.
 - 2. Policy UF-46 Designate, classify, and regulate protection of the following types of critical areas, consistent with state law and state agency rules: fish and wildlife habitat conservation areas, wetlands, frequently flooded areas, and geologically hazardous areas.
 - 3. Policy UF-47 Incorporate Everett’s environmental assets as important resources and components of the City’s infrastructure systems. Utilize the multiple benefits of the City’s ecosystem services, including economic impacts, pollutant reduction potential, carbon sequestration and the reduction of stormwater runoff.
 - 4. Policy UF-48 Ensure that the city achieves no-net-loss of ecological functions over time and strive for net ecological gain.
 - 5. Policy UF-49 Preserve, enhance, and connect a network of habitat areas and corridors, creeks, shorelines, parks, and tree canopies. Where possible, provide for public access in critical areas and their buffers when these activities provide valuable educational or recreational opportunity and can be designed in a manner that results in no net loss of functions and values.
 - 6. Policy UF-50 Use the best available science for managing critical areas and natural resources and allow for updates to code as new information becomes available.

- D.** The Planning Commission reviewed the amendments contained in this resolution, including holding briefings on September 16, 2025, October 7, 2025, November 4, 2025, November 18, 2025, January 6, 2026, and February 17, 2026, and public hearings on November 18, 2025, and February 17, 2026; and
- E.** The Planning Commission considered the factors in EMC 15.03.300(C) in reviewing the proposed development regulation text amendments in this ordinance; and
- F.** The Planning Commission recommends, via Planning Commission Resolution 25-03, approval of the amendments contained in this ordinance, finding that the proposed amendments are consistent with the Everett comprehensive plan, bear a substantial relation to public health, safety and welfare, and promote the best long-term interests of the Everett community.
- G.** After the Planning Commission completed its work, city staff amended the proposal, at EMC 19.37.530, to reduce the maximum invasive species coverage in a vegetated buffer from 20% to 10%; and
- H.** The city's responsible official issued a Determination of Non-Significance under the State Environmental Policy Act on March 23, 2026; and
- I.** Notice of the proposed development regulation amendments was sent to the Washington State Department of Commerce on November 3, 2025, and a letter of receipt was provided the next day; and
- J.** Notice of updates to the proposal was sent to the Washington State Department of Commerce on March 20, 2026, and a letter of receipt was provided the same day; and
- K.** The amended development regulations contained in this ordinance maintain consistency with the GMA and are consistent with the GMA planning goals; and
- L.** The amended development regulations contained in this ordinance are consistent with and supportive of the Everett Comprehensive Plan; and
- M.** The development regulations amendments contained in this ordinance were prepared following the procedural requirements in RCW 36.70A and WAC 365-196; and
- N.** The development regulations amendments contained in this ordinance were prepared following the procedural requirements in EMC 15.02.095; and
- O.** The City Council considered the factors in EMC 15.03.300 in reviewing the proposed development regulations amendment in this ordinance and based approval, in part, on the following findings:
 - 1. The proposed development regulation amendments are consistent with the Everett comprehensive plan;
 - 2. The proposed development regulation amendments bear a substantial relation to public health, safety or welfare;

3. The proposed development regulation amendments promote the best long-term interests of the Everett community

P. On _____, the Everett City Council held a public hearing, after proper notice, and considered public comment and the entire record related to the amendments contained in this ordinance.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 19.04.110 is hereby amended as follows, with strikeout text deleted and underlined text added.

19.04.110, CRITICAL AREAS DEFINITIONS

This section defines specific terms to be applied where used in Chapter 19.37 EMC.

“Agricultural activities, existing and ongoing” means those activities conducted on lands defined in RCW 84-34-020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conservation program.

“Alteration” means any human-induced action which impacts the existing condition of a critical area. Alterations include but are not limited to grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; grazing domestic animals; paving, construction, application of gravel; modifying for surface water management purposes; compaction; excavation or any other human activity that impacts the existing vegetation, hydrology, wildlife or wildlife habitat of the critical area or its buffer. Alteration does not include walking, passive recreation, fishing or other similar activities.

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

“Best Management Practices (BMPs)” are conservation practices or systems of practices and management measures that:

- a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- d) Provide standards for proper use of chemical herbicides within critical areas.

“Biological assessment” is an evaluation of the potential effects of a proposed action on listed and proposed species and designated and proposed critical habitat and determination whether any such species or habitat is likely to be adversely affected by the action.

“Biologist” means a person who has earned a degree in biological sciences from a college or university, with practical experience that includes at least two years’ expertise in matters involving wetlands biology or stream ecology in the Pacific Northwest.

“Bog” See *Wetlands with special characteristics*

“Buffer” or “Buffer area” means those areas, typically vegetated, adjacent to wetlands or other aquatic resources that can reduce impacts from adjacent land uses through various physical, chemical, and/or biological processes.

“Buffer management” means an activity proposed by a public agency, public utility, or private entity, and approved by the planning director, within a buffer required by this title, that is proposed to:

- A. Reduce or eliminate a verified public safety hazard;
- B. Maintain or enhance wildlife habitat diversity; or
- C. Maintain or enhance the fishery or other functions of stream, wetland, or terrestrial ecosystems.

“Carbon sequestration” means the process of capturing and storing atmospheric carbon dioxide through biologic, chemical, geologic, or physical processes.

“Compensatory mitigation” means the restoration (re-establishment or rehabilitation), establishment(creation), enhancement and/or in certain circumstances preservation of wetlands, streams, or critical areas for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

“Compensatory mitigation, in-kind” means the replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

“Compensatory mitigation, off-site” means the replacement of wetlands away from the site on which a critical area has been impacted.

“Compensatory mitigation, on-site” means the replacement of wetlands on or adjacent to the site on which a critical area has been impacted by a regulated activity.

“Compensatory mitigation, out-of-kind” means the replacement of wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

“Cowardin classification” means the classification system for wetlands developed in 1979 by the U.S. Fish and Wildlife Service and updated in 2013 that classifies wetlands based on water flow, substrate types, vegetation types, and dominant plant species.

“Creation” in the context of wetland mitigation means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland that did not previously exist at an upland site. Creation results in a gain in wetland area and functions. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

“Credit-Debit Method” means a tool to provide applicants and regulators a way to determine whether actions taken to mitigate an impact to wetlands will adequately replace the functions and values lost. It is based on the Washington State Wetland Rating System.

“Critical area” means geologically hazardous areas, wetlands, lakes, ponds, streams, frequently flooded (flood hazard) areas, fish and wildlife habitat conservation areas, and critical aquifer recharge areas, as defined in Chapter 36.70A RCW and this title.

“Critical area protective covenant” means a covenant granted for the protection of a critical area and its buffer through the maintenance of the natural environment. The covenant prohibits alteration of the area unless approved by the city consistent with this Title and must be duly recorded on appropriate documents of title and filed with the Snohomish County auditor.

“Critical area tract” means a legally created, nonbuilding lot containing a critical area which is subject to a critical area protective covenant and which shall be duly recorded on the appropriate documents of title and filed with the Snohomish County auditor.

“Critical aquifer recharge areas” means those areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

“Critical habitat” means the term defined and used in the Endangered Species Act. It is specific geographic areas that contain features essential to the conservation of an endangered or threatened species and may require special management and protection. Critical habitat may also include areas that are not currently occupied by the species but are needed for its recovery.

“Culvert” means a water crossing structure that spans through a water course.

“Cumulative impacts” means the combined, incremental effects of human activity on critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

“Development” means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of pilings; or any project of a temporary or permanent nature that modifies

structures, land, wetlands, buffers, or shorelines and that does not fall within the allowable exemptions or exceptions contained in the City of Everett Municipal Code..

"Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

"Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

"Emergencies" mean those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland, stream, or buffer to heighten, intensify, or improve specific functions. Enhancement results in the gain of selected functions but may also lead to a decline in other functions. Enhancement does not result in a gain in wetland or buffer.

"Erosion hazard areas" means those areas of the city with slopes of twenty-five percent and greater in Qva and Qal geologic units; exposed slopes of greater than twenty-five percent in other geologic units; and drainage areas which receive stormwater discharge. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils.

"Establishment" See *Creation*

"Fish habitat" or "habitat that supports fish life" means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.

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

- A. Areas where endangered, threatened, and sensitive species have a primary association;
- B. Habitats and species of local importance, as determined locally;
- C. Commercial and recreational shellfish areas;
- D. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

E. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

F. Waters of the state, as defined in RCW 90.48.020;

G. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

H. State natural area preserves, natural resource conservation areas, and state wildlife areas

I. Significant biological areas listed by the city

Fish and wildlife habitat conservation areas do not include irrigation delivery systems, irrigation infrastructure, irrigation canals or drainage ditches within the boundaries or maintained by a port or irrigation district or company.

“Frequently flooded areas” means those lands in the floodplain which have at least a one percent or greater chance of flooding in any given year, or are within areas that flood due to high groundwater. These areas can include: streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface. “Functions and values”. See “Ecosystem Functions” and “Ecosystem Values” “Geologically hazardous areas” means areas susceptible to erosion, landslide, seismically induced soil failure, or other geological events as defined in Chapter 36.70A RCW and this chapter that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

“Geologist” means a person who is licensed in the state of Washington under the provisions of Chapter 18.220 RCW and Chapter 308-15 WAC, and who has at least one year of practical experience in the Pacific Northwest.

“Habitat assessment” means a written report based on a site investigation process to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat potentially affected by a development proposal, and containing an assessment of the potential impacts of the proposal on any regulated species or habitat subject to these regulations.

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

“Habitats and species of local importance” means those significant biological areas identified by the City; and priority habitats and species identified by the Washington State Department of Fish and Wildlife; and high quality ecological communities and systems and rare plants listed by the Washington State Department of Natural Resources.

“Hazard tree” means any tree that poses a threat to public safety, or poses an imminent risk of damage to private property. “Hazard tree” includes any tree that, under normal environmental conditions or in windstorms common to the Pacific Northwest, is likely to cause damage to a structure with frequent human use, including residential structures, a place of employment or

public assembly, and other similar places, or damage to an approved public road or utility facility.

“Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

“In-lieu fee (ILF) program” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the sponsor collects funds from individuals and/or entities required to conduct compensatory mitigation under a wetland regulatory program. The sponsor uses the funds pooled from multiple permittees to create one or more mitigation sites under the authority of the agreement to satisfy the permittees’ required mitigation.

“Lake” means a natural or artificially created permanent body of water with an average depth of six feet or greater and an area larger than twenty acres, as measured at the ordinary high water mark.

“Landslide” means episodic downslope movement of a mass of soil or rock that includes but is not limited to rock falls, slumps, mudflows, earth flows, and avalanches.

“Landslide hazard areas” means those areas of the city subject to a risk of landslide based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors.

“Low impact development (LID)” means a stormwater and land-use management strategy that tries to mimic natural hydrologic conditions by emphasizing the following techniques: conservation, use of on-site natural features, site planning, and distributed stormwater best management practices (BMPs) integrated into a project design.

“Mitigation sequence” means a prescribed order of steps taken to reduce the impacts of activities on wetlands, fish and wildlife habitat conservation areas, and buffers. As defined in WAC 197-11-768, mitigation means:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the action;

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

F. Monitoring the impact and taking remedial action when necessary.

“Monitoring” means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural systems and features, and including gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of such systems, and assessing the performance of required mitigation measures.

“Native vegetation” means vegetation on a site or plant species which are indigenous to the area in question; or if the site has been cleared, species of a size and type that were on the site on the effective date of this title or reasonably could have been expected to have been found on the site at the time it was cleared.

“Non-federally regulated wetland” means a wetland that is not jurisdictional under the federal Clean Water Act. Sometimes referred to as “isolated wetlands,” these wetlands remain regulated under state and local laws and rules, whether or not they are protected by federal law.

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

“Ordinary high water mark” means the mark that will be found by examining the channel bed and banks of a stream, lake or pond and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all years of normal rainfall, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. In any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

“Plant associations of infrequent occurrence” means one or more plant species on a landform type which, because of the rarity of the habitat or the species involved or both, or for other botanical or environmental reasons, do not occur frequently in Everett or Snohomish County.

“Pond” means an area permanently inundated by water in excess of six feet deep and less than twenty acres and larger than two thousand five hundred square feet in area as measured at the ordinary high water mark.

“Preservation” means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms (such as recording conservation easements and providing structural protection like fences and signs). Preservation does not result in a gain of wetland area and functions (but may result in a gain in functions over the long term).

“Priority area” means known limiting habitats (e.g., breeding areas) or areas that support a relatively high number of individuals (e.g., regular concentrations) identified in WDFW’s Priority Habitats and Species List.

“Priority habitats” mean, as defined by WDFW, habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs).

“Priority species” mean, as defined by WDFW, State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.

“Project area” means all areas proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

“Protected area” means those lands that lie within the outermost boundary of the total area comprised by the floodway, the riparian habitat zone (as defined by FEMA’s 2013 Model Ordinance for Puget Sound) and the channel migration zone.

“Qualified professional” means ~~a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director.~~ a person with experience and training in the applicable field who possesses a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, engineering, fisheries, ecology, resource management, or related field, and who has at least two additional years of full-time, related work experience. A qualified professional for wetland delineations will also have completed additional wetland-specific training programs and/or have professional certificates or certifications. A qualified professional for geologic assessments or reports means an engineer or geologist licensed in the state of Washington, including: a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or at minimum of five years of experience evaluating geologically hazardous areas.

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function, but does not result in a gain in wetland acres.

“Reasonable use” or “reasonable economic use” means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

“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 natural feature, including:

- (a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

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

“Salmonid” means a member of the fish family Salmonidae. In the city these include Chinook, coho, chum, sockeye and pink salmon; cutthroat, brook, brown, rainbow and steelhead trout; and Dolly Varden, kokanee and char.

“Seismic hazard areas” means those areas of the city subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, debris flows, lahars, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table.

“Service area” means The geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

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

- A. Plant associations of infrequent occurrence;
- B. Those areas listed in the 1981 SEPA Resource Inventory as significant biological areas, which are:
 - 1. Maulsby Swamp;
 - 2. Kasch Park (Bomarc) Bog;
 - 3. Simpson Lee site Category I wetlands;

4. Narbeck Swamp;

5. Jetty Island.

“Species, listed” means any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 220-610-110 or current “Priority Habitat and Species List,” Washington Department of Fish and Wildlife).

“Steep slopes” means any ground that rises ten feet or more for every twenty-five feet of horizontal distance, thus having a grade of forty percent or steeper. A slope is delineated by establishing its toe and top:

1. “Toe” of a steep slope is the lowermost limit of the area where the ground surface rises ten feet or more vertically within a horizontal distance of twenty-five feet.
2. “Top” of a steep slope is a distinct, sharp break in slope which separates slopes inclined at less than forty percent from slopes equal to or greater than forty percent. Where no distinct break in slope exists, the top of the steep slope shall be the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

“Stream” means those areas where naturally occurring surface waters flow sufficiently to produce a defined channel or bed which demonstrates evidence of the passage of water including, but not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. A “defined channel or bed” means a watercourse that is scoured by water or contains deposits of mineral alluvium. The channel or bed need not contain water during the entire year. Streams do not include watercourses which were created entirely by artificial means, such as irrigation ditches, canals, roadside ditches or storm or surface water run-off features, unless the artificially created watercourse contains salmonids or conveys a stream that was naturally occurring prior to the construction of the artificially created watercourse.

“Stream channel bottom” means the submerged portion of the stream cross-section which is totally an aquatic environment. The channel bottom may be seasonally dry.

“Stream, Type F” means those streams defined in WAC 122-16-030, Water Typing System, as Type F water.

“Stream, Type Np” means those streams defined in WAC 122-16-030, Water Typing System, as Type Np water.

“Stream, Type Ns” means those streams defined in WAC 122-16-030, Water Typing System, as Type Ns water.

“Stream, Type S” means those streams defined in WAC 122-16-030, Water Typing System, as Type S water.

“Temporal loss” means the time lag between the loss of wetland functions caused by the permitted or unpermitted impacts and the replacement of wetland functions at the compensatory mitigation site the time lag between the loss of aquatic resource functions

caused by the permitted or unpermitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site, as defined in the 2008 Federal Mitigation Rule. Higher compensation ratios may be required to compensate for temporal loss. When the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the permitting agencies may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

“Thermal refugia” means sites within a landscape that are relatively protected from temperature extremes and warming trends.

“Unavoidable impacts” mean adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

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“Unstable soils” means soils which by their physical nature are not suitable to support buildings, roads, utilities or other manmade development related improvements, or which have the potential for slope failure, erosion, or subsidence. Unstable soils include, but are not limited to, those areas defined as landslide hazard areas, erosion hazard areas, and seismic hazard areas, or other soils which have been determined by the public works director or the building official to be unsuitable for building foundations or structural support.

“Watershed approach” means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of wetlands in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of wetland functions and services caused by authorized activities. The watershed approach may involve consideration of landscape scale, historic and potential wetland conditions, past and projected wetland impacts in the watershed, and terrestrial connections between wetlands when determining compensatory mitigation requirements.

“Wetland delineation” means the method used to establish the existence (location) and physical limits (size) of a wetland for purposes of federal, state, and local regulations.

“Wetland, estuarine” *See Wetlands with special characteristics* “Wetland mitigation bank” or “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.

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; patches are less than 100 feet from each other; and areas delineated as wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water.

“Wetland” or “Wetlands” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

“Wetlands, forested” See *Wetlands with special characteristics*.

“Wetlands, riparian” means those wetlands that generally occur within a riparian corridor that is contiguous to or has a surface hydrologic connection with a stream. Wetlands formed by hillside seeps that are not hydrologically affected by water in a nearby stream are not riparian wetlands. However, wetlands on a hillside may be riparian wetlands if adjacent to a stream that flows down the hillside.

“Wetlands with special characteristics” mean bogs, estuarine wetlands, forested wetlands, interdunal wetlands, wetlands in coastal lagoons, and Wetlands of High Conservation Value. Detailed information about these individual wetland types is found in the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication #23-06-009), or as revised.

Section 2. Chapter 19.37 EMC, set forth in exhibit A attached hereto, is hereby repealed.

Section 3. Title 19 EMC is amended by the addition of the chapter 19.37 EMC as set forth in exhibit B, attached hereto:

Section 4. The city clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references and ordinance numbering.

Section 5. The city council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the city council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. This ordinance shall take effect June 1, 2026.

Cassie Franklin, Mayor

ATTEST:

City Clerk

EXHIBIT A

CHAPTER 19.37 CRITICAL AREAS

19.37.010 USER GUIDE.

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, marine waters, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or its buffer unless such alteration complies with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in EMC 19.37.050.

19.37.020 PURPOSE.

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

- A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;
- B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;
- C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:
 - 1. Unnecessary maintenance and replacement of public facilities,
 - 2. Publicly funded mitigation of avoidable impacts,
 - 3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
 - 4. Degradation of the natural environment;

Exhibit B

- E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;
- F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;
- G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals;
- H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 19.43 EMC, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city; and
- I. Providing for the maintenance and enhancement of views, solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

19.37.030 APPLICABILITY.

- A. This chapter establishes regulations for the protection of critical areas and applies to all lands, all land uses and development activity, and all structures or facilities, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. For development proposals on properties within shoreline jurisdiction, the shoreline master program applies in addition to the regulations contained in this chapter. No alteration of a critical area may occur until the city has issued all approvals required by this chapter. By way of example and not limitation, no development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.
- B. In addition to the requirements of this chapter, the applicant shall obtain all necessary state, federal and other local permits.

19.37.040 CRITICAL AREA FEATURES.

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

- A. Areas of special flood hazard (if located in a designated floodplain, also see Chapter 19.30 EMC);
- B. Wetlands;
- C. The following geologically hazardous areas:
 - 1. Erosion hazard areas;
 - 2. Landslide hazard areas;
 - 3. Seismic (liquefaction) hazard areas;

D. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes, marine waters, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas as defined in this title;

E. Ground water discharge areas, such as springs and seeps.

19.37.050 EXEMPTIONS—EXCEPTIONS—MODIFICATIONS.

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

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

A. *Exemptions.* The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the expense of the property owner.

1. Exempted Actions.

a. Emergencies that threaten the public health, safety and welfare, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer.

b. Existing and ongoing agricultural activity occurring prior to and since January 3, 1990; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of January 3, 1990. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas.

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

d. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes prior to and since January 3, 1990.

Exhibit B

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

f. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand or encroach further into the critical area, does not significantly impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

(1) Normal, routine, and emergency maintenance or repair of existing utility structures or rights-of-way, including vegetation management;

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

(A) Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances;

(B) Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less;

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

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

h. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. Disturbed areas shall be immediately restored.

i. Conservation measures intended to preserve soil, water, vegetation, fish and other wildlife and their associated habitat that do not involve adversely impacting functions of the critical area.

j. Routine maintenance of existing landscaping and fencing including removal of invasive vegetation, that does not involve grading, excavation or filling.

k. Modification to existing structures. Legally constructed structures and improvements in existence on January 13, 1990, that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, expanded or replaced; provided, that the

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new construction or related activity does not further alter or increase the impact to the critical area or buffer as a result of the proposed modification. For structures that are damaged or destroyed as a result of flood, fire or act of nature, restoration work shall be initiated by the applicant within one year of the date of damage or destruction, as evidenced by issuance of a valid building permit. The work authorized by such permit must be completed within the term of the permits issued by the city, which includes any written extensions. Expansions and additions shall not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions within the critical area or buffer shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code.

B. *Exceptions.* All exceptions must be approved by the city through the review process listed in EMC Title 15 prior to the exception applying. The following are exceptions to the requirements of this chapter; however, the exceptions listed in this section still require compliance with the other requirements of this chapter, except as allowed by the exception. The exception may not be exempted from other state or federal regulations or permit requirements. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the allowed development shall be restored, rehabilitated, or replaced at the expense of the property owner.

1. New accessory structures up to one hundred square feet, including storage buildings and garden sheds. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures may be placed within the outer fifty percent of a legally altered critical area buffer. The one-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas. Only one such exception per site or property is allowed.
2. New accessory structures between one hundred one square feet and two hundred square feet. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures and additions to existing structures up to two hundred square feet may be permitted within the improved portion of the buffer as follows:
 - a. The two-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas;
 - b. The new structure or addition shall be placed within the outer fifty percent of a legally altered critical area;
 - c. The new structure or addition maintains a minimum setback of ten feet from the critical area;
 - d. A minimum of one square foot of legally altered buffer area is restored for every one square foot of new structure;
 - e. A critical area covenant is recorded;

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- f. A habitat assessment is completed if within an F stream buffer;
- g. A fence and critical area sign are provided to protect the newly established buffer area; and
- h. Only one exception per site or property is allowed.

3. *Wetland Exception.* The following wetlands may be excepted from compliance with the wetland preservation and protection goals in this chapter. Mitigation must be provided for any approved impacts per EMC 19.37.120.

a. All isolated category IV wetlands less than four thousand square feet that meet all of the following criteria:

- (1) Are not associated with riparian areas or their buffers;
- (2) Are not associated with shorelines of the state or their associated buffers;
- (3) Are not part of a wetland mosaic;
- (4) Do not score five or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology);
- (5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

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

4. The following actions may be required to provide a habitat assessment or biological assessment under EMC 19.37.190, Fish and wildlife habitat conservation areas. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures. The city may approve, or approve with modifications, such a request only when the following findings are made:

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

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- c. The proposal mitigates impacts on the critical areas;
 - d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
 - e. The proposal is consistent with other applicable regulations and standards.
5. *Docks*. This section does not apply to areas under jurisdiction of the shoreline master program.
- a. Repair and maintenance of an existing legally established dock are permitted; provided, that all of the following criteria are met:
 - (1) There is no expansion in overwater coverage;
 - (2) There is no increase in the size and number of pilings;
 - (3) There is no use of toxic materials, such as creosote, CCA and other treated wood products;
 - (4) There is no new spanning of water between three and thirteen feet deep; and
 - (5) There is no new increase in the use of materials creating shade.
 - b. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions. Piers and docks shall be located, designed and constructed so as to cause minimum interference with public use of the water surface and shoreline; to mitigate the impacts to ecological function and critical areas; to avoid or minimize impacts to views; and to cause no undue harm to adjacent properties.
 - c. New docks shall be a maximum of four feet in width and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating which provides at least fifty percent of open surface area. Piles, floats or other parts of the structure that come in direct contact with the water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited.
 - d. Only one dock shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such dock shall be shared between all lots in the short subdivision or subdivision.
 - e. Covered overwater moorage, either fixed or floating, shall be prohibited.
 - f. No dock may be located within fifteen feet of an interior lot line, unless shared with the owner of the adjacent lot, in which case no setback is required.
 - g. No single-family lot shall have more than one dock.

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h. No dock shall exceed four feet in width, twenty-five feet in length or five feet in height above the ordinary high water mark on the landward side.

6. *Reasonable Use Exception.* This section does not apply to areas within jurisdiction of the shoreline master program.

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

- (1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and
- (2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and
- (3) Any alterations permitted subject 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 or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of the ordinance codified in this chapter; and
- (5) The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

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

- (1) The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;
- (2) A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;
- (3) An analysis of the minimum development necessary to achieve "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;
- (4) An analysis of the impact that the development described in this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;
- (5) An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of

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whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether pre-project mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the city's stormwater management regulations;

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

(7) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

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

(9) A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible;

(10) Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

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

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

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

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(3) If a reasonable economic use of a lot cannot exist by means of either subsection (B)(6)(c)(1) or (2) of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection (B)(6)(c)(1) or (2) of this section, or in lieu of them. For purposes of this section, “transfer of development rights (TDR)” means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

(A) *Single-Family Zones.* The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to a single-family zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

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

(ii) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the receiving site in a single-family zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be single-family dwellings.

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

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

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

19.37.060 PERMITTED USES AND ACTIVITIES.

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

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

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

a. The activity does not significantly impact a Type F stream, a category I wetland, or a fish and wildlife habitat conservation area and complies with other provisions of this chapter; and

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

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

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

2. Buffer management, as defined in this title, when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted:

a. *Pruning*. Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.

(1) A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:

(A) The applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.

(B) The applicant, in lieu of the above and an application fee as determined by the planning director, shall:

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- (i) Submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;
- (ii) Submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;
- (iii) Sign a declaration stating that they have read and understand, and will comply with, the applicable city regulations;
- (iv) Submit photos of the trees that were pruned after the work is completed.

(C) The city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements.

(D) The city shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with city regulations.

(2) Pruning must adhere to the standards in ANSI A300, 2008 Edition, or as subsequently amended.

(3) Pruning shall not result in the removal of more than thirty-three percent of the tree's crown.

(4) Pruning shall not include topping of trees unless underneath power lines.

(5) Pruning activity shall not result in any soils disturbance on the site.

(6) A tree that is an active nest site for a species of local or state importance or provides critical habitat such as an eagle perch, or other listed threatened or endangered species, shall not be pruned.

(7) Topping trees or pruning trees in excess of thirty-three percent is considered a nonhazardous tree removal activity and therefore must comply with subsection B.3.c of this section.

(8) Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond thirty-three percent of the tree's original crown.

b. *Hazard tree removal with replanting.* The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area

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and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

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

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

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

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

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

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

(7) The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of this chapter prior to final approvals for a development proposal.

c. *Nonhazardous tree removal with replanting.* Except as allowed under subsection B.2 of this section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of ten percent of all nonhazardous trees within the outer half of a critical area buffer to be removed. Removal of nonhazardous trees must comply with the following requirements:

(1) Proposals to remove nonhazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the planning director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or

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wetland and an area where future cutting will not be necessary. A minimum of three, three- to five-gallon native trees of different varieties must be planted for every tree to be removed unless it would create an overcrowded situation in which case the planning director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of two gallons or if bareroot an equivalent size. The planning director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the planning director. Only trees greater than a six-inch caliper within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch caliper.

- (2) Tree removal is limited to once every five years.
- (3) A tree that is an active nest site for a species of local importance or provides critical habitat such as an eagle perch shall not be cut.
- (4) If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.
- (5) If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the planning director. A geologically hazardous covenant must be recorded prior to tree cutting.
- (6) Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of twenty-five percent of cut trees shall be left as snags approximately twenty feet tall unless within striking distance of structures, yards, or trails.
- (7) Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.
- (8) Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a critical areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.
- (9) A survey may be required if trees are to be removed near any lot line.
- (10) *Forest Practices*. Where applicable, applications for tree removal shall also include a city of Everett timber harvest application and include an estimate of the number of board feet to be cut.

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(11) Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.

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

(1) Invasive and noxious weeds identified in a list adopted by the city or county;

(2) English ivy (*Hedera helix*);

(3) Himalayan blackberry (*Rubus armeniacus*) and evergreen blackberry (*Rubus laciniatus*);

(4) Scotch broom (*Cytisus scoparius*).

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

a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer twenty-five percent of the buffer, except for areas which provide for public viewpoints of the critical area or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded. The width of trails shall be the minimum necessary, and should not exceed five feet, unless trails are provided for shoreline public access, in which case maximum trail width shall be eight feet. The trails should be one hundred percent porous to the maximum extent feasible. The proposal must comply with EMC 19.37.190.

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

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

d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

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

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

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- a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.
- b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.
- c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Aboveground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.
- d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.
- e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.
- f. All site development plans must incorporate low impact stormwater management techniques where site conditions allow as required by the city's stormwater management regulations.
- g. For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System.

19.37.070 CRITICAL AREA REPORTS—GENERAL.

- A. *Supporting Information.* All land uses and developments proposed on or adjacent to critical areas and their buffers shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by experts with demonstrated qualifications in the area of concern, who shall prepare the studies in accordance with the requirements of this chapter to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies and/or conduct site evaluations which are outside the range of staff expertise. The planning director is authorized to develop and maintain a detailed list of required study contents.
- B. *When a Critical Area Report Is Required.* A critical area report is required when a proposed development is located on a site with a documented or suspected critical area, or within three hundred feet of a documented critical area on an adjacent parcel (or two hundred feet from an active

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geologically hazardous area). The city may waive the requirement for a critical area report in the following circumstances on a case-by-case basis:

1. The critical area was previously documented by a study and the city has determined the proposed development would meet the minimum required buffer for the critical area and the project would not impact the critical area; or
2. There is existing legally established development located between the critical area and the proposed development site and any required buffers on the site would be ineffective.

Table 37.1: Critical Area Reports—Summary

Document/Report Type	When Required	Notes:
Geological Assessment Letter	Potential geologically hazardous area exists on or within 200 feet of the proposed project area	Reconnaissance study
Geological Report	An active geologically hazardous area exists on or within 200 feet of the proposed project area	Detailed study
Critical Area Delineation Report	Wetland, stream or lake on site or within 300 feet	Identifies and maps critical areas and buffers
Wetland or Stream Mitigation Plan	Alteration or fill of wetlands, streams or buffers	Includes monitoring and contingency elements
Biological Assessment for Threatened Species	Development within 200 feet of Type F stream	For federally listed threatened or endangered species
Biological Assessment for Threatened Species	Development within “protected area” or “special flood hazard area”	Per biological opinion by NMFS for development within 100-year floodplain. See EMC 19.37.190.
Biological Evaluation	Typically not required by the city, but may be required by state or federal agencies	Generic term for other types of analysis

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Document/Report Type	When Required	Notes:
Habitat Assessment	Potential impacts on regulated threatened/endangered species	Can apply to either terrestrial or aquatic habitat. See EMC 19.37.190.
Habitat Management Plan	Provided with a habitat assessment when a development is proposed on or adjacent to a “habitat of primary association” for fish and wildlife habitat conservation area	See EMC 19.37.190
Monitoring Report	After completion of enhancement or mitigation work within critical areas and/or buffers	Provided post-development

19.37.073 CRITICAL AREA REPORTS—PROFESSIONAL QUALIFICATIONS AND REPORT CONTENT.

A. General Requirements for All Critical Area Reports.

1. *Preparation by a Qualified Professional.* A critical area report shall be prepared by a qualified professional who is a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director. The qualifications of the professional who prepared the plan shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. When a geological assessment is required, the report shall be prepared by a licensed geologist or geotechnical engineer. The director shall have the authority to hire an outside consultant at the applicant’s expense to review plans when the city has concerns about the accuracy or completeness of the plan.

2. *Report Content.* The written report (and the accompanying plan sheets) shall contain all of the following information, at a minimum:

- a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; and a description of the proposal;
- b. Tax parcel numbers of the subject property;
- c. Documentation of any fieldwork performed on the site, including delineations, function assessments, baseline hydrologic data, date and time of site evaluation, etc.;

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- d. Identification and characterization of all critical areas and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within three hundred feet of the project boundaries using the best available information;
- e. The wetland or stream rating as defined in this chapter, as applicable;
- f. A description of the proposed actions including an estimation of acreages of impacts to critical areas and buffers based on the field delineation;
- g. An assessment of the probable cumulative impacts to the critical areas and buffers resulting from the proposed development;
- h. A description of reasonable efforts made to apply mitigation sequencing provisions per EMC 19.37.085 to avoid, minimize, and mitigate impacts to critical areas pursuant to the mitigation sequencing provisions of this chapter;
- i. A description of measures taken to protect and enhance existing habitat connections with other natural areas;
- j. Site maps and site plans depicting delineated critical areas and buffers, impacts of the proposal on critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the director;
- k. Dimensions of all buffers and distances between critical areas and existing and proposed structures and lot lines.

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

1. A field investigation and geological assessment shall be completed to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.
 - a. The geological assessment shall be submitted in the form of a geotechnical letter when the geologist or geotechnical engineer finds that no active geological hazard area exists on or within two hundred feet of the site. The geotechnical letter shall meet the minimum required content listed in this section and shall be in the format established by the director.
 - b. The geological assessment shall be submitted in the form of a geotechnical report when the geologist or geotechnical engineer finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements established by the director pursuant to this section.
2. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.

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3. A geological assessment shall include the following minimum information and analysis:
 - a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in EMC 19.37.080(A), Designation.
 - b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off site.
 - c. Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.
 - d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.
 - e. The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.

C. *Additional Critical Area Report Content for Wetlands.* A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland and stream reports, or a professional who demonstrates expertise in wetland science, stream ecology, or fish and wildlife biology to the satisfaction of the planning director.

1. Wetland shall be rated according to the categories defined by the Washington State Department of Ecology Washington State Rating System for Western Washington 2014 Update, or as revised (Ecology Publication No. 14-06-029).
2. Hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and, to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

D. *Additional Critical Area Report Content for Biological Assessments (BA).* Refer to requirements for habitat assessment in subsection E of this section.

E. *Additional Critical Area Report Content for Habitat Assessment and Habitat Management Plans (HMP).*

1. *Habitat Assessment.* All habitat assessments required by this chapter shall include the following elements in addition to the general requirements for all critical area reports listed in this section:
 - a. A detailed description of the vegetation on and adjacent to the site.
 - b. Identification and a detailed description of any critical fish or wildlife species or habitats, including listed threatened or endangered species, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.
 - c. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.
 - d. An assessment of the project's direct and indirect potential impacts and cumulative impacts on the subject habitat, including water quality impacts.
 - e. A discussion of potential mitigation measures that would avoid or minimize temporary and permanent impacts, proposed mitigation measures, contingency measures, and monitoring plans.
 - f. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.
 - g. Developments in the floodplain must show the one-hundred-year flood elevation contour, the floodway boundary, and the protected area boundary on the site plan.
2. *Habitat Management Plan.* The director may require that all or a portion of the following be included in a habitat management plan:
 - a. A map drawn to scale or survey showing the following information:
 - (1) All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with the requirements of this chapter;
 - (2) The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within a distance of the subject property that may impact an affected species or habitat; and

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

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

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

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

(2) Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness.

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

19.37.075 WETLANDS, STREAMS AND LAKES—MITIGATION PLANS—REQUIRED CONTENT.

A. Wetland and buffer impact mitigation plans shall:

1. Include a baseline study that quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation. This could involve assessing functions using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended;
2. Specify how functions will be preserved or replaced;
3. Specify how impacts will be avoided, minimized or compensated for;
4. Assess the potential changes in wetland hydroperiod from the proposed project and identify how the project design will mitigate adverse impacts to the wetland hydroperiod;

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5. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;
6. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
7. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
8. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and
9. Include provisions for an assurance device as provided by Chapter 19.40 to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

B. Stream, lake and buffer impact mitigation plans shall:

1. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;
2. Specify how functions will be replaced;
3. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
4. Where buffer enhancement is proposed, include an analysis of the ability of the buffer to protect water quality, as outlined in the Update on Wetland Buffers: The State of the Science, Final Report, October 2013, Washington State Department of Ecology Publication No. 13-06-11, or as amended;
5. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
6. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
7. Include provisions for an assurance device as provided by Chapter 19.40 EMC to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation

is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

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

19.37.076 CRITICAL AREA REPORTS—ALTERNATIVE BEST AVAILABLE SCIENCE ANALYSIS.

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

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

19.37.080 GEOLOGICALLY HAZARDOUS AREAS.

A. *Designation.* The following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

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

- (1) Very high/severe: slopes greater than fifteen percent in the Qtb, Qw, and Qls geologic units; and slopes greater than fifteen percent with uncontrolled fill.
- (2) High: slopes greater than forty percent in all other geologic units (not Qtb, Qw, and Qls or uncontrolled fill).

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

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

(2) Slopes of twenty-five percent to forty percent in all other geologic units.

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

(1) Slopes greater than fifteen percent; and

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

(3) Springs, ground water seepage, or saturated soils.

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

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

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

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

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

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

2. Seismic/liquefaction hazard areas:

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

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

3. Erosion hazard areas:

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

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

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

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

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

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

B. *Geologically Hazardous Slope Setbacks and Slope Protection.*

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

2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 19.18 of the International Building Code (IBC), or as the IBC is updated and amended.

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 19.18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

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

- (1) The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.
- (2) The area has a severe risk of slope failure or downslope stormwater drainage impacts.
- (3) The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.

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

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

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

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;
2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;
3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;
5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;
6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and

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

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

1. The city shall require:

a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by EMC 19.37.220;

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

2. The city may require:

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

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

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

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

1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under EMC 19.37.050. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.

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

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

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

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- a. Accept the geological assessment; or
 - b. Reject the geological assessment and require revisions or additional information.
2. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title 15, Local Project Review Procedures.
 3. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.

19.37.085 WETLAND AND STREAM PRESERVATION AND PROTECTION GOALS—MITIGATION SEQUENCING.

A. *Preservation and Protection Goals.* It is the short-term goal of this chapter that there be no net loss of the functions and values of all critical areas regulated by this chapter. An additional goal is no net loss of wetland acreage. The long-term goal is a net gain in functions and values. To realize critical area preservation goals, the city will require the following methods of impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;
2. Minimize impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impact;
3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;
4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;
5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;
6. Monitor the impact and take appropriate corrective measures.

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

19.37.090 WETLAND DESIGNATION, DELINEATION, MAPPING AND RATING—LAKES.

A. *Wetland Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter.

B. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and

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may be updated as new wetlands are identified. The exact location of a wetland boundary shall be determined through field investigation by a qualified professional applying the approved federal wetland delineation manual and applicable regional supplements methods and procedures.

C. Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington 2014 Update, or as revised (Ecology Publication No. 14-06-029). Wetlands, as defined by this chapter, shall be classified as category I, category II, category III, or category IV.

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

- a. Bogs;
- b. Mature forested wetlands larger than one acre;
- c. Wetlands that perform a very high level of function as evidenced by a score of twenty-three points or more on the Wetland Rating Form—Western Washington.

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

- a. Wetlands that do not meet the criteria of category I wetlands;
- b. A wetland identified by the State Department of Natural Resources as containing “sensitive” plant species;
- c. Wetlands with high functions and values as indicated by a score of twenty to twenty-two points on the Wetland Rating System Form—Western Washington.

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

- a. Wetlands that score sixteen to nineteen points on the Wetland Rating Form—Western Washington.

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

- a. All wetlands that score nine to fifteen points on the Wetland Rating Form—Western Washington.

19.37.100 WETLAND CRITICAL AREA REPORT CRITERIA.

Repealed by Ord. 3676-19.

19.37.110 STANDARD WETLAND BUFFER WIDTH REQUIREMENTS.

A. Standard Buffer Width.

1. The following buffer widths listed in Tables 37.2 and 37.3 apply to all wetlands within the city of Everett. Buffer widths have been established in accordance with the best available science. Buffers are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06029, or as revised and approved by Ecology).

When feasible, a relatively undisturbed vegetated corridor at least one hundred feet wide must be protected between the wetland and any nearby priority habitat. Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If there is a presence of a nearby priority habitat and if the wetland has a habitat function score of six or more, a one-hundred-foot-wide relatively undisturbed, vegetated corridor must be provided between the wetland and other priority habitats if there is a corridor available to provide. If a corridor is available and is not set aside into an easement or tract, the buffers listed in Table 37.2 apply.

User instructions: Use the following two tables to determine wetland buffers. Table 37.2 includes the standard buffers without utilizing the general mitigation measures described below. The reduced buffers in Table 37.3 apply to projects when the applicant elects to incorporate all general mitigation measures. If priority habitat is not present, use Table 37.3.

Table 37.2: Standard Wetland Buffers without General Mitigation Measures

CRITICAL AREA	BUFFER WIDTHS (feet)		
WETLAND CATEGORY	HABITAT FUNCTION SCORES		
	3-5	6-7	8-9
I	100	150	300
Based on total score or forested			
I	250	300	
Bogs			
I	200		
Estuarine			
II	100	150	300
Based on total score			
II	150		
Estuarine			
III	80	150	300
IV	50		

Table 37.3: Reduced Wetland Buffers When General Mitigation Measures Are Applied

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75	110	225
I	Bogs	190	225	
II	All except estuarine	75	110	225
II	Estuarine	110		
III		60	110	225
IV		40		

2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer vegetation shall be enhanced or restored to the width required by this section. The vegetation shall include native plant communities that are appropriate for the Puget Lowland ecoregion or with a plant community that provides similar functions.

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

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular wetland; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;
2. When the wetland is used by salmonids, plant and/or animal species proposed or listed by the federal government or state as endangered, threatened, rare, candidate, sensitive or monitored; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees, and the increased buffer is necessary to protect such habitat;
3. When a habitat assessment or habitat management plan is required by EMC 19.37.190 and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;
4. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by EMC 19.37.080;
5. When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

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

C. *General Mitigation Measures.* Implementation of all of the following general mitigation measures allows use of the reduced wetland buffers listed in Table 37.3:

1. Direct lights away from the wetland.
2. Locate activity that generates noise away from the wetland.
3. Route all new, untreated runoff away from the wetland while ensuring wetland is not dewatered.
4. Establish covenants limiting use of pesticides within one hundred fifty feet of the wetland.
5. Apply integrated pest management.
6. Retrofit stormwater detention and treatment for roads and existing adjacent development.
7. Prevent channelized flow from lawns that directly enters the buffer.
8. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.
9. Use privacy fencing; plant dense vegetation to delineated buffer edge and discourage disturbance using vegetation appropriate for the ecoregion; place the wetland and its buffer in a separate tract.
10. Use best management practices to control dust.

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

19.37.120 WETLAND ALTERATION THRESHOLDS AND COMPENSATION.

A. *Wetland Preservation/Alteration Thresholds.*

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

- a. Where alteration is allowed pursuant to EMC 19.37.050; or
- b. The alteration is to allow a public park or public recreational use; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

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

- a. Where alteration is allowed pursuant to EMC 19.37.050; or
- b. Where impacts cannot be avoided, and the applicant demonstrates through a mitigation sequencing analysis that reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer are not feasible and will not accomplish the basic purpose of the project;

3. *Category I, II, III, and IV Wetlands in the Silver Lake Watershed.* When alteration of wetlands in the Silver Lake Watershed is allowed in subsections A.1 and A.2 of this section, the applicant must also demonstrate to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if the water quality functions of the wetland will not be degraded. Any such proposed activities shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures;

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

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

1. Each activity/use shall be designed so as to minimize overall wetland or buffer alteration to the greatest extent possible.
2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
3. A mitigation plan shall be prepared in accordance with subsection C of this section.
4. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.
5. *Wetland Compensation Ratios.* In approving alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section apply to creation, restoration, and enhancement which is in-kind (within the same hydrogeomorphic (HGM) class), on or adjacent to the site, timed prior to or concurrent with alteration, and has a high probability of success. The city may accept or recommend compensation which is off site and/or out-of-kind, if the applicant can demonstrate that on-site compensation is infeasible due to constraints such as parcel size or wetland type or that a wetland of a different type or location is justified based on

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regional needs or functions. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.4 shall be used, except as otherwise provided below in this subsection.

Table 37.4: Standard Wetland Compensation Ratios

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only ¹	Reestablishment or Creation (R/C) and Rehabilitation (RH) ¹	Reestablishment or Creation (R/C) and Enhancement (E) ¹	Enhancement Only ¹
All category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine	Case-by-case	Case-by-case	Case-by-case
All other category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Bog	Not considered possible ²	6:1 Rehabilitation of a bog	R/C Not considered possible ²	R/C Not considered possible ²	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine	Case-by-case	Case-by-case	Case-by-case

NOTE: Preservation is discussed in the following section.

Creation = The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevation that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment results in a gain in wetland acres.

Reestablishment = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging

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Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only ¹	Reestablishment or Creation (R/C) and Rehabilitation (RH) ¹	Reestablishment or Creation (R/C) and Enhancement (E) ¹	Enhancement Only ¹
ditches, or breaking drain tiles. Activities could also involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland. Reestablishment results in a gain in wetland acres.					
Rehabilitation = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic function of a degraded wetland. Activities could involve breaching a dike or reconnecting wetland to a floodplain or returning tidal influence to a wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.					
Enhancement = The manipulation of the physical, chemical or biological characteristics of a wetland site to heighten, intensify or improve functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying the site elevation or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.					

¹ These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

² Bogs are considered irreplaceable wetlands because they perform some special functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensation is proposed.

a. *Increased Mitigation Ratios.* The city may increase the ratios under any one of the following circumstances:

- (1) Uncertainty as to the probable success of the proposed restoration or creation;
- (2) Significant period of time between destruction and replication of wetland functions;
- (3) The proposed mitigation will result in a lower category wetland or projected losses in functions relative to the wetland being impacted;
- (4) The relocation is off site or the replacement is with out-of-kind compensation;
- (5) The wetland has been illegally filled or altered.

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b. *Decreased Mitigation Ratios.* The city may decrease these ratios under the following circumstances:

- (1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success.
- (2) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions will provide significantly greater functions than the wetland being impacted.
- (3) The mitigation actions are conducted in advance of the impact and have been shown to be successful.

c. In lieu of the ratios described above, mitigation ratios may be calculated in one of the following ways:

- (1) Using the method in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended.
- (2) For properties designated “urban mixed-use industrial” in the city’s shoreline master program, the applicant shall use the Snohomish Estuary Wetland Integration Plan (SEWIP, 1997) and Salmon Overlay (2001) for projects that include wetland compensation. Per Table 37.4, mitigation ratios for estuarine wetlands shall be determined on a case-by-case basis.

d. In no case shall the mitigation acreage be less than that which is altered.

6. When wetland compensation is allowed, the city may require that the wetland compensation be completed and functioning prior to allowing the existing wetland to be filled or altered. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered.
7. The city may limit certain development activities near a wetland to specific months in order to minimize impacts on wetland functions.
8. The city may apply additional conditions or restrictions or require specific construction techniques in order to minimize impacts on wetland functions.
9. Wetland compensation shall not occur in areas having high-quality terrestrial habitat.
10. When wetland compensation is allowed, mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas.
11. When wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site, except where mitigation banking is used to purchase

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buffer credits. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.

12. *In-Lieu Fee Mitigation.* In-lieu fee (ILF) mitigation is a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a program sponsor to satisfy compensatory mitigation requirements for unavoidable impacts to wetlands and other aquatic resources. Per federal rule, sponsorship of ILF programs is limited to governmental, tribal, or nonprofit natural resource management entities. Similar to a wetland mitigation bank, an ILF program sells credits to permittees whose unavoidable impacts occur within a specified geographic area (service area). When credits are purchased from the ILF program, the permittee's obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The sponsor is then required to implement mitigation within a specified time frame, working with regulatory agencies to make sure impacts are fully mitigated. ILF programs are approved by the U.S. Army Corps of Engineers and the Washington State Department of Ecology. The city may allow compensation for unavoidable impacts to wetlands through contribution to an approved ILF program.

C. *Wetland and Buffer Mitigation Plans.* When wetland or buffer alteration or buffer reduction is permitted by this chapter, a mitigation plan shall be required to describe the methods the applicant will use to minimize impacts to wetland functions. A detailed mitigation plan shall be approved by the city prior to any development activity occurring on a lot upon which wetland or wetland buffer alteration, restoration, creation or enhancement is proposed. See EMC 19.37.075 for required wetland mitigation plan content.

19.37.125 WETLAND MITIGATION BANKS.

A. Wetland mitigation banks are sites where wetlands are restored, created, enhanced, or, in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. Banks typically involve the consolidation of many small wetland mitigation projects into a larger, potentially more ecologically valuable site. Such consolidation encourages greater diversity of habitat and wetland functions. It also helps create more sustainable systems. Banks provide a greater likelihood of success over permittee-responsible mitigation projects, since the banks are up and running before unavoidable damage occurs to a wetland(s) at another site.

1. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland, a wetland of lesser size or functional value than the wetland being altered, or where the mitigation bank site substantially increases wetland functions in the watershed within which it is located. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have a higher wetland function rating than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in EMC 19.37.120.B.5 as a guide. The amount of credit will be dependent upon the functions of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in EMC Title 15, Local Project

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Review Procedures, may allow wetland mitigation banking under any of the following circumstances:

- a. When alteration is allowed pursuant to the “reasonable use” exception as provided in EMC 19.37.050(B)(6);
 - b. When alteration is allowed for a water-dependent or water-related use;
 - c. When on-site or off-site mitigation in the immediate vicinity of the project is not reasonable;
 - d. When the wetland being altered is of a lower quality and has lesser functions than the wetland which is being used for the mitigation banking.
2. Wetland mitigation banks may be approved under the provisions of Chapter 173-700 WAC. For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland bank may be approved for use as compensation for unavoidable impacts to wetlands when:
- a. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts.
 - b. The proposed use of credits is consistent with the terms and conditions of the bank’s certification.
 - c. Replacement ratios for projects using bank credits shall be consistent with the terms and conditions of the bank’s certification.
 - a. d. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank’s certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

19.37.130 AREAS OF SPECIAL FLOOD HAZARD.

Areas of special flood hazard shall be governed by the provisions of Chapter 19.30.

19.37.140 FISH AND WILDLIFE HABITAT CONSERVATION AREAS DESIGNATION AND MAPPING.

Repealed by Ord. 3676-19.

19.37.150 LAKES, PONDS, AND CREATED PONDS.

Repealed by Ord. 3676-19.

19.37.160 STREAMS AND LAKES.

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

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

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

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

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

c. Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of salmonid fish use, as determined in consultation with the Washington State Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;

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

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

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

(1) Merrill and Ring Creek south of Merrill Creek Parkway;

(2) Edgewater Creek;

(3) Narbeck Creek;

(4) Forgotten Creek.

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

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

B. *Lakes.* Silver Lake shall be protected as required by the shoreline master program. All other lakes shall be subject to the regulations in this chapter.

19.37.170 STANDARD STREAM AND LAKE BUFFER REQUIREMENTS.

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

1. Buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature.
2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer width shall be increased as required by this section.
3. Except as otherwise provided by EMC 19.37.050, the following minimum buffers of native vegetation shall apply to streams based upon stream classification:

Table 37.5: Stream Buffers

Stream Classification (Type)	Standard Buffer	
	Standard Buffer: Intact Native Vegetation	Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	100 feet	150 feet
Type F	100 feet	150 feet

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Stream Classification (Type)		
	Standard Buffer: Intact Native Vegetation	Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type Np	50 feet	75 feet
Type Ns	50 feet	75 feet

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

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular stream; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;
2. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and recognized tribal nations;
3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees;
4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;
5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

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

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1. The planning director shall only allow a buffer width reduction when the proposal includes a critical area and buffer enhancement plan that improves the functions of the buffer and the critical area.
2. A mitigation/enhancement plan shall be prepared in accordance with this chapter.
3. If a limited portion of the buffer has been previously legally altered and meets the criteria in this section, a buffer width reduction may be approved for that portion of the required buffer only.
4. The following criteria shall be used to determine when a required buffer is degraded and substantial legal alterations are present:
 - a. The required buffer area has been graded or substantially altered and has not been substantially revegetated (i.e., the buffer is covered with gravel, impervious surface, mowed lawn, or is vegetated with primarily invasive species such as reed canary grass, Himalayan blackberry, purple loosestrife, or other nonnative invasive species covering more than seventy-five percent of the buffer area).
 - b. Substantial clearing of the buffer was authorized and substantial revegetation with native species has not occurred.
 - c. A buffer that has been logged in the past but that has been revegetated with an overstory of willow, cottonwood, alder, evergreen, or mixed evergreen/deciduous overstory, and an understory shrub layer of noninvasive species does not constitute substantial alteration.

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

E. *Lake Buffers*. Lakes have the following buffers of native vegetation:

- a. Lakes used by salmonids: one hundred feet;
- b. Lakes with no salmonid use: fifty feet.

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

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

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

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1. Vegetative plantings of native or preferred wildlife food species;
2. Construction of nesting islands or installation of nesting boxes;
3. Removal of pollutant sources or fish movement blockages; or
4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

19.37.180 STREAM ALTERATION THRESHOLDS AND COMPENSATION.

A. Stream Preservation/Alteration Thresholds.

1. *Type S Streams.* All Type S streams shall be regulated by the city of Everett shoreline master program.
2. *Type F Streams.* All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:
 - a. Where alteration is allowed pursuant to EMC 19.37.050;
 - b. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;
 - c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.
3. *Type Np and Type Ns Streams.*
 - a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by EMC 19.37.050; or
 - b. The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, allow alteration or relocation of Type Np and Ns streams under the following conditions:
 - (1) Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;
 - (2) The equivalent base flood storage volume shall be maintained;

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- (3) There shall be no impact to local ground water;
- (4) There shall be no increase in water velocity;
- (5) There is no interbasin transfer of water;
- (6) The relocation shall occur on site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;
- (7) The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. *Watershed Management Plans.* The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by EMC 19.37.050, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

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

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.
2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
3. A mitigation plan shall be prepared in accordance with this section.
4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.
5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as

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compensation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.

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

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

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

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

C. *Voluntary Daylighting of Streams in Pipes and Culverts.*

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

a. The plan is prepared by a qualified professional;

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

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

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

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

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

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

d. Building heights may be increased.

19.37.185 BUFFER WIDTH AVERAGING FOR WETLANDS, LAKES AND STREAMS.

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

19.37.190 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

A. All areas meeting the definition of fish and wildlife habitat conservation areas are subject to the regulations in this chapter.

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

C. Other mapping sources include the Washington State Department of Fish and Wildlife priority habitat and species maps.

D. *Goals and Additional Requirements.* If a development or redevelopment is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this title, the applicant shall provide a habitat assessment. In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required. The biological assessment shall be prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation produced by FEMA Region 10, April 2011, or as amended. The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

If the habitat assessment/biological assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP) as described in subsection G of this section, prepared by a wildlife biologist for evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives

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and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

1. *Distance for Habitats of Primary Association.*

a. *Salmonids and Steelhead.* When development is proposed within the distances specified below, a habitat assessment shall be required.

- (1) Within two hundred fifty feet of the Snohomish River or its estuary;
- (2) Within two hundred feet of a Type F stream including but not limited to North Creek or Swamp Creek together with tributaries with direct confluence to those streams and the associated wetlands, and marine shorelines;
- (3) Within one hundred fifty feet of Lake Chaplain;
- (4) Within two hundred twenty-five feet of a Type Np or Ns stream with unstable slopes within the special flood hazard area;
- (5) Within one hundred fifty feet of a Type Np or Ns stream without unstable slopes within the special flood hazard area; or
- (6) Within the special flood hazard area.

b. *Other Species.* If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or HMP.

c. *Continuous Vegetative Corridors Linking Watersheds and Significant Biological Areas.* If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds or a significant biological area, a habitat assessment is required.

E. The following actions are exempt from other requirements of this chapter, but may require preparation of a habitat assessment or biological assessment when conducted within a fish and wildlife habitat conservation area:

1. EMC 19.37.060(B)(1), minor utility construction projects.
2. EMC 19.37.060(B)(4), trails with impervious surfaces.
3. Any development application that involves ESA Section 7 consultation with federal agencies is required to follow that process to determine impacts to endangered species and mitigation requirements rather than the procedure described herein. However, the application must demonstrate compliance with all applicable city regulations, and must submit a copy of the biological assessment provided to federal agencies as part of the city's permit process.
4. Maintenance of critical public infrastructure.

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F. *Habitat Assessment.*

1. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.
2. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.
3. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in subsection B of this section and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.
4. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in subsection B of this section or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.
5. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in subsection B of this section or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, an HMP shall be prepared. The HMP must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.
6. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of an HMP.
7. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.
8. The department shall review the habitat assessment and either:
 - a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or
 - b. Require preparation of an HMP if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

G. *Habitat Management Plan.*

1. *HMP Submittal and Review Process.* The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant

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habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for by this chapter.

2. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.
3. The HMP shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.
4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the HMP. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

H. *Compensation for Impacts within the One-Hundred-Year Floodplain.*

1. Compensation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.
2. The mitigation plan shall stipulate avoidance and conservation measures, as are needed to ensure that there is no net adverse effect during any phase of the project. Outside the floodway or riparian habitat zone, the mitigation plan shall include such avoidance, minimization, restoration, conservation or compensation measures to mitigate all impacts.
3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended.
4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:
 - a. Assignment (purchase) of equivalent mitigation credits from an established mitigation bank within the estuary;
 - b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;
 - c. Creation or restoration of off-channel refuge habitat;

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- d. Restoration of fish habitat where it has been previously eliminated or degraded;
 - e. Enhancement of existing habitat to improve functions and values;
 - f. Buffer enhancement in riparian habitat areas;
 - g. Replacement of the habitat functions and values that are impacted by development.
5. Also in accordance with RPA-3.A.3.b, where conditions permit, the city shall require development within the one-hundred-year floodplain to use low impact development (LID) methods consistent with the city's stormwater management regulations, to minimize or avoid stormwater effects.
6. All development proposals shall protect, enhance, or restore habitat to the maximum extent practicable, either on site or off site.
7. When development occurs in floodplain areas, the portion of the site not elevated above the one-hundred-year flood elevation shall be designed to create floodplain refugia and prevent stranding of aquatic species during flood events to the maximum extent practicable.
8. Restoration of fish habitat either on site or off site is allowed in order to mitigate for habitat impacts caused by development within the floodplain. Restoration and mitigation for impacts may occur in areas which flood more frequently than the area proposed for development (e.g., tidal restoration project that provides greater habitat benefits to juvenile salmonids).
9. The city shall have the authority to require changes in the design of a development if necessary to avoid, minimize or mitigate impacts to endangered species or habitat for such species.

19.37.200 GROUND WATER DISCHARGE AREAS—SEEPS AND SPRINGS.

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

19.37.210 LOT AREA—LOT COVERAGE—PERMITTED NUMBER OF DWELLING UNITS IN MULTIPLE-FAMILY DEVELOPMENTS.

Repealed by Ord. 3676-19.

19.37.220 CRITICAL AREA PROTECTIVE REQUIREMENTS—SETBACKS FROM BUFFERS—FENCING—SIGNS—COVENANTS.

A. *General Requirements.* Storage of building materials, junk and other items is not permitted within critical areas or buffers. All construction staging areas must be shown on approved plans and located outside of critical areas and buffers.

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B. *Setbacks from Buffers.* To maintain the integrity of the buffer, principal buildings shall be set back a minimum of ten feet from the edges of all critical area buffer boundaries. All other structures and improvements shall maintain a setback of five feet from the edge of the buffer.

C. *Fencing and Other Protection Mechanisms.* Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas.

D. *Signs.* The city may require the applicant to provide informational signs in conspicuous locations on the fence or near the wetland to identify the wetland as a critical area and the importance of maintaining it in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 19.36.

E. *Protection of Significant Trees within Buffers (Heritage Trees and Evergreens at Least Eight-Inch Diameter at Breast Height).* If trees are identified on the outer edge of the buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.
2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.
7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

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

1. Utility and road projects in public rights-of-way.

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2. Utility and road projects on private easements where the proponent does not own the land.
3. Any development within the special flood hazard area will require a notice on title that the property contains land within the riparian habitat zone and/or special flood hazard area.

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

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

19.37.230 APPEALS.

Repealed by Ord. 3676-19.

19.37.240 ASSURANCE DEVICES.

The city shall require performance or maintenance assurance devices in accordance with Chapter 19.40 to ensure compliance with this chapter and adequate protection and maintenance of critical areas.

19.37.250 PREVIOUSLY ALTERED CRITICAL AREAS.

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

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

B. *Unauthorized Alterations.*

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1. Critical areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas which were illegally altered shall be considered critical areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title 15, Local Project Review Procedures.
2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered critical area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functions or a higher quality critical area than possible in the area which has been previously altered.
3. Any illegal alteration of a critical area that occurred prior to the effective date of the ordinance codified in this chapter which is not proposed for development as allowed by this chapter shall be restored as provided by this section.

19.37.260 ENFORCEMENT—RESTORATION PLANS.

- A. Any person, firm, corporation, or association or any agent thereof who violates any provision of this chapter shall be subject to the enforcement provisions of Chapter 1.20 EMC and this title.
- B. *Restoration of Impacts Required.* Any unauthorized impacts on a critical area feature or buffer will require restoration of the affected area to an equivalent or improved condition prior to the violation occurring. A restoration plan must be consistent with the requirements of this chapter and a public works permit may be required by the city. If an equivalent or improved condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the portion of the critical area that cannot be restored, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture. In addition to the authority of the city's code enforcement officer to impose penalties pursuant to Chapter 1.20 EMC, the code enforcement officer may impose the fine described in this section as applicable.
- C. Restoration plans shall include, but not be limited to, the replacement of all improperly removed vegetation with approved species such that the biological and habitat values will be replaced to an equivalent or improved condition, improper fill removed and slope stabilized. Studies by a qualified expert shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.
- D. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.
- E. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.

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F. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

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CHAPTER 19.37 CRITICAL AREAS

INTRODUCTION

19.37.010 USER GUIDE

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, marine waters, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or its buffer unless such alteration complies with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in EMC 19.37.050.

19.37.020 PURPOSE AND GOALS

It is the short-term goal of this chapter that there be no net loss of the functions and values of all critical areas regulated by this chapter. An additional goal is no net loss of wetland acreage. The long-term goal is a net gain in functions and values.

The purpose of this chapter is to designate, classify and protect the critical areas in and the functions and values of critical areas the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

- A. Preserving, protecting, and restoring critical areas and their ecological functions and values by regulating development within such areas and their buffers;
- B. Mitigating unavoidable adverse impacts to critical areas by regulating alterations in and adjacent to critical areas;
- C. Protecting the public from personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:
 1. Unnecessary maintenance and replacement of public facilities,
 2. Publicly funded mitigation of avoidable impacts,

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3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
 4. Degradation of the natural environment;
- E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;
- F. Alerting appraisers, assessors, builders, developers, owners, real estate agents, potential buyers or lessees, and other members of the public to the presence of critical areas and the respective development limitations of such areas;
- G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals;
- H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 19.43 EMC, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city; and
- I. Providing for the maintenance and enhancement of solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

19.37.030 APPLICABILITY

- A. This chapter establishes regulations for the protection of critical areas and applies to all lands, all land uses and development activity, and all structures or facilities, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. No alteration of a critical area may occur until the city has issued all approvals required by this chapter. By way of example and not limitation, no development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.
- B. For development proposals on properties within shoreline jurisdiction, the shoreline master program applies in addition to the regulations contained in this chapter.
- C. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical area applies.
- D. In addition to the requirements of this chapter, the applicant shall obtain all necessary state, federal and other local permits.

19.37.040 PROTECTION OF CRITICAL AREAS

- A. On all lots containing or within three hundred feet of critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

1. Areas of special flood hazard (if located in a designated floodplain, also see Chapter 19.30 EMC);

2. Wetlands;
3. The following geologically hazardous areas:
 - a. Erosion hazard areas;
 - b. Landslide hazard areas;
 - c. Seismic (liquefaction) hazard areas;
4. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes, marine waters, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas as defined in this title;
5. Ground water discharge areas, such as springs and seeps.

B. All actions must be designed and constructed in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.

19.37.045 GROUND WATER DISCHARGE AREAS—SEEPS AND SPRINGS

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to critical areas, as applicable.

19.37.050 EXEMPTIONS AND EXCEPTIONS

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

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

The burden of proof is on the applicant to provide sufficient evidence to the city the activity meets the precise description of the exemption or exception.

A. *Exemptions.* The following are exemptions to the provisions of this chapter due to having no environmental impact, being temporary in nature, or are an emergency; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. An exemption does not give permission to degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed

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immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

1. *Exempted Actions.*

a. Emergency actions, which are activities necessary to prevent an immediate threat to the public health, safety or welfare or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency with the least possible impact to the critical area and/or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas shall be minimized and mitigated within one year of the end of the emergency.

b. Existing and ongoing agricultural activity occurring prior to and since January 13, 1990; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of January 13, 1990. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas.

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

d. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes prior to and since January 13, 1990.

e. Normal and routine maintenance of entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter.

f. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand the footprint of the facility or encroach further into the critical area, does not impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

- (1) Normal, routine, and emergency maintenance or repair of existing, legally established public or private utility structures or rights-of-way, including vegetation management;

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

(A) Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances;

(B) Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less;

(C) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not alter the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be altered. Trenching is not allowed by this provision.

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

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

h. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities including educational research activities that do not result in altering the structure or functions of the critical area. Disturbed areas shall be immediately restored.

i. Conservation measures intended to preserve soil, water, vegetation, fish and other wildlife and their associated habitat that do not involve adversely impacting the structure or functions of the critical area.

j. Routine maintenance of existing, legally-established landscaping and fencing including removal of invasive vegetation, that does not involve grading, excavation or filling.

k. Modification to existing structures. Legally constructed structures and improvements in existence on January 13, 1990, that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, or replaced; provided, that the new construction or related activity does not further alter or increase the impact to the critical area or buffer as a result of the proposed modification. For structures that are damaged or destroyed as a result of flood, fire or act of nature, restoration work shall be initiated by the applicant within one year of the date of damage or destruction, as

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evidenced by issuance of a valid building permit. The work authorized by such permit must be completed within the term of the permits issued by the city, which includes any written extensions.

B. *Exceptions.* All exceptions must be approved by the city through the review process listed in EMC Title 15 prior to the exception applying. The following activities include exceptions to certain requirements of this chapter; however, unless otherwise noted the exceptions listed in this section still require compliance with the other requirements of this chapter, except as allowed by the exception. The exception may not be exempted from other state or federal regulations or permit requirements. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner.

1. New accessory structures up to two hundred square feet. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures and additions to existing structures up to two hundred square feet may be permitted within the improved portion of the buffer as follows:

- a. The two-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas;
- b. The new structure or addition shall be placed within the outer fifty percent of a legally altered critical area buffer;
- c. The new structure or addition maintains a minimum setback of ten feet from the critical area;
- d. A minimum of one square foot of legally altered buffer area is restored for every one square foot of new structures, lawns and associated improvements;
- e. A critical area covenant is recorded;
- f. A habitat assessment is completed as required by this chapter;
- g. A fence and critical area signage are provided to identify and protect the newly established buffer area;
- h. Only one such exception per site or property is allowed; and
- i. A critical area report may be required.

2. Expansion. For a legally established structure, the expansion or replacement, including any expansion of a legally established accessory structure allowed does not increase the footprint of the structure and all other structures by more than one thousand square feet, provided the following:

- a. The location of the expansion has the least adverse impact on the critical area;

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- b. To the maximum extent practical, the expansion or replacement is not located closer to the critical area and is located on the side of the structure opposite the critical area;
- c. Mitigation for project impacts is provided; and
- d. The structure was not established as the result of variance, buffer averaging, buffer reduction, or reasonable use exception; Expansions and additions shall not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions within the critical area or buffer shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code.

3. *Wetland Exception.* Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of the mitigation sequence of EMC 19.37.100 in accordance with the following provisions, and they may be filled if the impacts are fully mitigated based on the remaining actions in the mitigation sequence. Impacts should be mitigated through the purchase of credits from a mitigation bank or in-lieu fee program, if available, consistent with the terms and conditions of the bank or program. In order to verify whether the following criteria are met, it is essential that a critical area report for wetlands meeting the requirements of this chapter be submitted. It is the applicant's responsibility to provide a determination by a qualified professional whether the wetland is a non-federally regulated wetland.

- a. All category IV, non-federally regulated wetlands less than four thousand square feet that meet all of the following criteria:
 - (1) Are not associated with riparian areas or their buffers;
 - (2) Are not associated with shorelines of the state or their associated buffers;
 - (3) Are not part of a wetland mosaic;
 - (4) Do not score six or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication No. 23-06-009, or as revised and approved by Ecology); and
 - (5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, and do not contain federally listed species or their critical habitat.
- b. Category IV, non-federally regulated wetlands less than one thousand square feet that meet all of the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

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4. The following actions may be required to provide a habitat assessment or biological assessment under EMC 19.37.520, FWHCAS – Critical Area Report Additional Requirements. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures. The city may approve, or approve with modifications, such a request only when the following findings are made:

- a. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements or maintenance;
- b. There is no other reasonable alternative to the proposed development with less impact on the critical area;
- c. The proposal mitigates impacts on the critical areas;
- d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
- e. The proposal is consistent with other applicable regulations and standards.

5. *Docks*. This section does not apply to areas under jurisdiction of the shoreline master program.

- a. Repair and maintenance of an existing legally established dock are permitted; provided, that all of the following criteria are met:
 - (1) There is no expansion in overwater coverage;
 - (2) There is no increase in the size and number of pilings;
 - (3) There is no use of toxic materials, such as creosote, CCA and other treated wood products;
 - (4) There is no new spanning of water between three and thirteen feet deep; and
 - (5) There is no new increase in the use of materials creating shade.
- b. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions. Piers and docks shall be located, designed and constructed so as to cause minimum interference with public use of the water surface and shoreline; to mitigate the impacts to ecological function and critical areas; to avoid or minimize impacts to views; and to cause no undue harm to adjacent properties.

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- c. New docks shall be a maximum of four feet in width and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating which provides at least fifty percent of open surface area. Piles, floats or other parts of the structure that come in direct contact with the water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited.
- d. Only one dock shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such dock shall be shared between all lots in the short subdivision or subdivision.
- e. Covered overwater moorage, either fixed or floating, shall be prohibited.
- f. No dock may be located within fifteen feet of an interior lot line, unless shared with the owner of the adjacent lot, in which case no setback is required.
- g. No residential lot shall have more than one dock.
- h. No dock shall exceed four feet in width, twenty-five feet in length or five feet in height above the ordinary high water mark on the landward side.

6. *Reasonable Use Exception.* This section does not apply to areas within jurisdiction of the shoreline master program.

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

- (1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and
- (2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and
- (3) Any alterations permitted subject 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 or adjusting a boundary line, thereby creating the undevelopable condition after January 13, 1990; and
- (5) The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

b. *Reasonable Use Decision Process.* Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the submittal shall

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include the following information which will be used to evaluate the criteria for reasonable use exception:

- (1) The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;
- (2) A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;
- (3) An analysis of the minimum development necessary to achieve “reasonable economic use” of the lot, including a narrative which includes a factual basis for this determination;
- (4) An analysis of the impact that the development described in this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;
- (5) An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether pre-project mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the city’s stormwater management regulations;
- (6) A design of the proposal so that the amount of development proposed as “reasonable economic use” will have the least impact practicable on the critical areas;
- (7) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;
- (8) A description of any modifications needed for the required front, side and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the critical areas;
- (9) A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible;
- (10) Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

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

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

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

(3) If a reasonable economic use of a lot cannot exist by means of either subsection (B)(6)(c)(1) or (2) of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection (B)(6)(c)(1) or (2) of this section, or in lieu of them. For purposes of this section, “transfer of development rights (TDR)” means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

(A) *Neighborhood Residential Zones.* The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to a neighborhood residential or neighborhood residential-constrained zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

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

(ii) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the

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

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

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

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

19.37.060 PERMITTED AND ALLOWED USES AND ACTIVITIES

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations. The permitted and allowed uses listed in this section may not be exempted from other state or federal regulations or permit requirements and may not degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer of the activity shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

B. The following uses/activities are permitted in critical areas and their buffers subject to the review process listed in EMC Title 15:

1. Minor utility construction projects. The placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility that disturbs less than one hundred square feet of critical area and buffer, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and buffers, subject to the following conditions:

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- a. The activity does not impact a Type F stream or a category I wetland and complies with other provisions of this chapter; and
 - b. The activity is designed and implemented in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.
2. Buffer management, as defined in this title, when approved by the planning director and all agencies with jurisdiction.
3. Select vegetation removal activities. The following vegetation removal activities are permitted:
- a. *Pruning*. Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.
 - (1) A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:
 - (A) The applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.
 - (B) The applicant, in lieu of the above and an application fee as determined by the planning director, shall:
 - (i) Submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;
 - (ii) Submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;
 - (iii) Sign a declaration stating that they have read and understand, and will comply with, the applicable city regulations;
 - (iv) Submit photos of the trees that were pruned after the work is completed.
 - (C) The city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements.
 - (D) The city shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with city regulations.

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- (2) Pruning must adhere to the ANSI A300 Tree Care Standards
- (3) Pruning shall not result in the removal of more than thirty-three percent of the tree's crown.
- (4) Pruning shall not include topping of trees unless underneath power lines.
- (5) Pruning activity shall not result in any soils disturbance on the site.
- (6) A tree that is an active nest site for a species of local or state importance or provides critical habitat such as an eagle perch, or other listed threatened or endangered species, shall not be pruned.
- (7) Topping trees or pruning trees in excess of thirty-three percent is considered a nonhazardous tree removal activity and therefore must comply with subsection B.3.c of this section.
- (8) Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond thirty-three percent of the tree's original crown.

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

- (1) The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, a tree risk assessment and recommendation from a certified arborist, registered landscape architect or professional forester that:
 - i. Identifies the trees proposed to be removed
 - ii. Concludes the tree condition constitutes a hazard to life or property
 - iii. Assesses the feasibility of snag retention
 - iv. Evaluates if trees to be removed provides priority habitat
 - v. Provides location and species of replacement trees
- (2) Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.
- (3) Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two native trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan within one year of removal.
- (4) If a tree to be removed provides priority habitat, including eagle nests, a qualified professional shall be consulted to determine timing and methods of removal that will minimize impacts. The qualified professional's report shall be

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circulated to agencies with expertise for review and comment prior to approval by the director.

(5) If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property, including recommendations for replanting and other measures to avoid adverse impacts to slope stability.

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

(7) The city may require that a hazard tree assessment or tree risk assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of this chapter prior to final approvals for a development proposal.

c. *Nonhazardous tree removal with replanting.* Except as allowed under subsection B.2 of this section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of ten percent of all nonhazardous trees within the outer half of a critical area buffer to be removed. Removal of nonhazardous trees must comply with the following requirements:

(1) Proposals to remove nonhazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the planning director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or wetland and an area where future cutting will not be necessary. A minimum of three, three- to five-gallon native trees of different varieties must be planted for every tree to be removed unless it would create an overcrowded situation in which case the planning director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of two gallons or if bareroot an equivalent size. The planning director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the planning director. Only trees greater than a six-inch diameter at breast height within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch diameter at breast height.

(2) Tree removal is limited to once every five years.

(3) A tree that is an active nest site for a species of local importance including bald eagles, or provides critical habitat, shall not be cut.

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(4) If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.

(5) If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the planning director. A geologically hazardous covenant must be recorded prior to tree cutting.

(6) Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of twenty-five percent of cut trees shall be left as snags approximately twenty feet tall unless within striking distance of structures, yards, or trails.

(7) Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.

(8) Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a critical areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.

(9) A survey may be required if trees are to be removed near any lot line.

(10) *Forest Practices*. Where applicable, applications for tree removal shall also include a city of Everett timber harvest application and include an estimate of the number of board feet to be cut.

(11) Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.

d. *Weed Removal*. The removal of Class A, B, and C noxious weeds on the Washington State Noxious Weed List in conjunction with a mitigation plan or buffer management plan approved by the director. Unless otherwise specified in an approved mitigation or buffer management plan, weed removal is limited to hand weeding with light equipment that will not compact soil. 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 required in conjunction with removal of invasive plants.

4. *Public and private pedestrian paths and trails*. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and designed in accordance with an approved critical area report:

a. The trail or path shall not be permitted when critical area functions will be substantially degraded, shall be designed to minimize impacts to the critical area and its buffer.

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- b. The trail or path shall be located on the outer twenty-five percent of the buffer, except for areas which provide for public viewpoints of the critical area or educational opportunities, and which are designed to minimize the footprint of the trail/path within the critical area or its buffer.
 - c. Stream crossings shall avoid adverse impacts to water quality or flow.
 - d. The width of trails shall be the minimum necessary. Critical area and buffer widths shall be increased, where possible, equal to the width of the trail corridor including disturbed areas.
 - e. The proposal must comply with the report requirements of this chapter.
 - f. The trail surface shall meet all other requirements including all applicable water quality standards. The trails should be one hundred percent porous to the maximum extent feasible. Raised boardwalks with non-treated pilings are allowed.
 - g. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
 - h. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.
5. *Stormwater facilities.* Stormwater facilities and conveyance systems may be allowed in stream and wetland buffers, provided no other location is feasible, the location of such facilities will not degrade the functions or values of the critical area, and subject to the following criteria:
- a. Stormwater ponds and vaults are not permitted in wetland or stream buffers.
 - b. Stormwater low-impact development and vegetative flow paths from level spreaders may be allowed in the outer 25 percent of the stream and wetland buffers only if the applicant demonstrates that no feasible alternative on-site location exists and the project would not adversely affect the stream flow or the function or values of the wetland, stream, and associated buffer. The following may be required:
 - i. Vegetated stormwater Low Impact Development Best Management Practices such as dispersion, infiltration, or constructed wetlands planted with appropriate native vegetation and trees are allowed without buffer averaging requirements;
 - ii. All requirements of the City's currently adopted Stormwater Management Manual are met;
 - iii. The facilities are not located in a fish and wildlife habitat conservation area, wetland, or associated buffer used by species listed as endangered or threatened by the State or Federal government or containing critical or outstanding actual habitat of those species, and considers alternative construction timing to minimize impacts in areas with heron rookeries or raptor nesting trees; and

iv. Stormwater Low Impact Development Best Management Practices construction and maintenance protects the stream and stream buffer and is aligned to avoid cutting trees greater than 12 inches in diameter at breast height, when practical

c. For Type Np and Ns streams and category III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. Additional analysis demonstrating a proposed significant increase in wetland and/or stream function as measured by the Western Washington Wetland Rating System is required to be prepared by a qualified professional and submitted for review prior to authorization.

19.37.070 GENERAL PROVISIONS FOR NONCONFORMING STRUCTURES AND IMPROVEMENTS IN CRITICAL AREAS AND BUFFERS

The following establishes provisions for nonconforming structures and improvements located within critical areas or their buffers within Everett's jurisdiction. In a critical areas context, nonconforming structures and improvements are those legally established structures and improvements which met all local, state, and federal regulations in effect at the time of construction but would otherwise require additional critical area review and approval under current requirements.

A. General Provisions

1. Nonconforming structures and improvements may remain, be maintained, repaired, and replaced in accordance with this chapter.
2. Nonconforming structures and improvements may be expanded only as permitted by EMC 19.37.050.
3. Lawns and nonnative vegetation may be maintained, but not expanded, within buffers or critical areas.
4. All activities or developments using the provisions of this section shall demonstrate how the proposal follows mitigation sequencing in EMC 19.37.100, and shall describe the proposed use of any applicable best management practices.
5. Except for upper floor expansions not increasing a development footprint, the provisions of subsections (C) and (D) of this section may each be used one time for the subject property and may be used in combination. Any development application utilizing these provisions shall clearly document how the proposal meets these provisions.

B. Maintenance and Repair of Nonconforming Structures

1. A nonconforming structure may be maintained, repaired, or internally modified provided that the work does not increase the structure footprint or impervious area.

C. Reconstruction of Existing Nonconforming Structures

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1. An existing nonconforming structure may be reconstructed as repair, reconstruction, or due to destruction or damage to any extent by fire or other casualty not intentionally caused by the owner; provided, that: there is no expansion of the existing footprint or increase of impervious area, including decks, patios or other improvements; there is no expansion of exterior walls; there is no increase in the nonconformity; and reconstruction is built on the existing foundation.
2. For a nonconforming structure destroyed or damaged to any extent by fire or other casualty not intentionally caused by the owner, a structure may be reconstructed on the existing foundation, or a new foundation may be built in the same location or further from the critical area.
3. In case of casualty damage or destruction, the following is required:
 - a. A complete building permit application shall be properly filed within one (1) year of such fire or other casualty or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
 - b. Rebuilding of the nonconforming structure shall be substantially complete within four (4) years of the date of the damage or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
 - c. Documentation showing the date of the damage, the location, and dimensions of the damaged structure, and cause of the damage shall be submitted to the planning department for review and confirmation.
 - d. If a nonconforming structure which has no permanent foundation is destroyed and the foundation's location cannot be verified by the planning department, then any new construction shall comply with the requirements of this chapter, excluding this section.

D. Expansion of Nonconforming Structures

1. An expansion of a nonconforming structure that increases the footprint, impervious area, or size of the structure, including new upper floors, is permitted if the expansion or any other change to the structure is outside of the critical area, critical area buffer, and any associated setbacks.
2. Additional upper floors may be added to a nonconforming structure above the ground floor if they do not encroach into the critical area, its buffer, or any associated setback any further than the exterior walls of the existing nonconforming structure.
3. Nonconforming structures and improvements may be expanded within critical areas or buffers only as permitted by EMC 19.37.050.

ARTICLE I. CRITICAL AREA REVIEW PROCEDURES

19.37.100 MITIGATION SEQUENCING

A. To realize critical area preservation goals, the city will require applicants demonstrate application of mitigation sequencing in accordance with WAC 197-11-768:

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

19.37.110 CRITICAL AREA REPORTS—GENERAL

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

B. *When a Critical Area Report Is Required.* A critical area report is required when a proposed development is located within three hundred feet of a documented or suspected critical area (or two hundred feet from a potential geologically hazardous area). The city may waive the requirement for a critical area report in the following circumstances on a case-by-case basis:

1. The critical area was previously documented by a study and the city has determined the proposed development would not impact the critical area(s) or associated buffers; or
2. There is existing legally established development located between the critical area and the proposed development site and any required buffers on the site would be ineffective.

Table 37.1: Critical Area Reports—Summary

Document/Report Type	When Required	Notes:
Geological Assessment Letter	Potential geologically hazardous area exists on or within 200 feet of the proposed project area	Reconnaissance study; see EMC 19.37.220

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Document/Report Type	When Required	Notes:
Geological Report	An active geologically hazardous area exists on or within 200 feet of the proposed project area	Detailed study; see EMC 19.37.220
Critical Area Delineation Report	Wetland, stream or lake on site or within 300 feet	Identifies and maps critical areas and buffers
Wetland or Stream Mitigation Plan	Alteration or fill of wetlands, streams or buffers	Includes monitoring and contingency elements
Biological Assessment for Threatened or Endangered Species	Development within “protected area” or “special flood hazard area”	Per biological opinion by NMFS for development within 100-year floodplain. See EMC 19.37.520
Habitat Assessment	Potential impacts on regulated threatened/endangered species	Can apply to either terrestrial or aquatic habitat. See EMC 19.37.520.
Habitat Management Plan	Provided with a habitat assessment when a development is proposed on or adjacent to a “habitat of primary association” for fish and wildlife habitat conservation area	See EMC 19.37.520
Monitoring Report	After completion of enhancement or mitigation work within critical areas and/or buffers	Provided post-development

19.37.120 CRITICAL AREA REPORTS—PROFESSIONAL QUALIFICATIONS AND GENERAL REPORT CONTENT

A. General Requirements for All Critical Area Reports.

1. *Preparation by a Qualified Professional.* A critical area report shall be prepared by a qualified professional . The qualifications of the qualified professional who prepared the report shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. The director shall have the authority to hire an outside consultant at the applicant’s expense to review plans when the city has concerns about the accuracy or completeness of the report or plan.

2. *Report Content.* The written report (and the accompanying plan sheets and map figures) shall contain all of the following information, at a minimum:

- a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the critical area report;
- b. A description of the proposal and proposal location including tax parcel numbers of the subject property;
- c. Documentation of any fieldwork performed on the site, including delineation worksheets, figures, function assessments, soil logs, baseline hydrologic data, date and time of site evaluation, etc.;

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- d. Identification, characterization, and if applicable wetland rating of all critical areas, water bodies, shorelines, and buffers on or within 300 feet of the proposed project area, including a description of all methodology with references;
- e. A statement specifying the accuracy of the report and all assumptions made and relied upon;
- f. A description of the proposed actions including an estimation of acreages of impacts to critical areas and buffers based on the field delineation;
- g. An assessment of the probable direct, indirect, and cumulative impacts to the critical areas and buffers resulting from the proposed development, including short-term and long-term impacts to critical area functions and values within and adjacent to the site;
- h. A narrative and supporting information describing how the applicable steps of the mitigation sequence of EMC 19.37.100 are proposed to be applied;
- i. A description of measures taken to protect and enhance existing habitat connections with other natural areas;
- j. Scaled drawings of all critical areas and buffers within 300 feet of the proposal, areas of impact to critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the planning director;
- k. Dimensions of all buffers and distances between critical areas and existing and proposed structures and lot lines.

19.37.130 CRITICAL AREA REPORTS—ALTERNATIVE BEST AVAILABLE SCIENCE ANALYSIS

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

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

19.37.140 SETBACKS, FENCING, SIGNS, AND OTHER PROTECTIVE MEASURES

A. *General Requirements.* Storage of building materials, junk and other items is not permitted within critical areas or buffers. All construction staging areas must be shown on approved plans and be located outside of critical areas and buffers.

B. *Setbacks from Buffers.* To maintain the integrity of the buffer, principal buildings shall be set back a minimum of ten feet from the edges of all critical area buffer boundaries. All other structures and improvements shall maintain a setback of five feet from the edge of the buffer.

C. *Fencing and Other Protection Mechanisms.* Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife movement.

D. *Signs.* The city may require the applicant to provide informational signs in conspicuous locations approximately 50 feet apart on a fence marking the buffer to identify the importance of maintaining the critical area and buffer in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 19.36.

E. *Protection of Significant Trees within Buffers (Evergreens at Least Eight-Inch Diameter at Breast Height).* If ~~Heritage Trees~~ and evergreen trees at least eight-inch diameter at breast height are identified on the outer edge of the buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.
2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

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

19.37.150 CONSTRUCTION PLAN REVIEW

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

B. The planning director may require construction monitoring by a qualified professional during alteration activities within or adjacent to critical areas or buffers to ensure approved design recommendations are implemented. When such services are deemed necessary by the planning director, they shall be at the applicant's expense.

19.37.160 ASSURANCE DEVICES

The city shall require performance or maintenance assurance devices in accordance with Chapter 19.40 to ensure compliance with this chapter and adequate protection and maintenance of critical areas and buffers.

19.37.170 TITLE NOTIFICATION

A notice on real property title is required as a condition of permit issuance or project approval when a permit or development application is submitted for development on any property containing critical areas or buffers. The purpose is to inform subsequent purchasers of real property of their existence.

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

1. Utility and road projects in public rights-of-way.
2. Utility and road projects on private easements where the proponent does not own the land.
3. Any development within the special flood hazard area will require a notice on title that the property contains land within the riparian habitat zone and/or special flood hazard area.

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

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

19.37.180 UNAUTHORIZED CRITICAL AREA ALTERATIONS

A. Unauthorized Alterations.

1. Critical areas and associated buffers regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas and buffers which were illegally altered shall be considered critical areas and buffers and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area or buffer that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title 15, Local Project Review Procedures.
2. . Any illegal alteration of a critical area or buffer which is not proposed for development as allowed by this chapter shall be restored to a condition which is equivalent or superior to its prior natural condition to the extent that such condition can be determined.
3. Legal alterations are those alterations to critical areas and buffers that were in conducted in accordance with all local, state, and federal regulations in effect at the time of the alteration.

19.37.190 ENFORCEMENT—RESTORATION PLANS

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

B. *Restoration of Impacts Required.* Any unauthorized impacts on a critical area feature or buffer will require restoration of the affected area to an equivalent or improved condition prior to the violation occurring. A restoration plan must be consistent with the requirements of this chapter and a public works permit may be required by the city. If an equivalent or improved condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the portion of the critical area that cannot be restored, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture. In addition to the authority of the city's code enforcement officer to impose penalties pursuant to Chapter 1.20 EMC, the code enforcement officer may impose the fine described in this section as applicable.

C. Restoration plans shall include, but not be limited to, the replacement of all improperly removed vegetation with approved species such that the biological and habitat values will be replaced to an equivalent or improved condition, improper fill removed and slope stabilized. Studies by a qualified professional shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

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

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

F. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

ARTICLE II. GEOLOGICALLY HAZARDOUS AREAS

19.37.200 GEOLOGICALLY HAZARDOUS AREAS – DESCRIPTION AND PURPOSE

A. In accordance with WAC 365-190-120, geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, tsunami, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

B. The purposes of geologic hazard area regulations is to avoid and minimize potential impacts to life and property from geologic hazards, conserve soil resources, avoid and minimize impacts of erosion and landslide hazards on wetlands and important wildlife habitats and species not caused by natural geologic processes, and minimize damage to property and structures due to landslides, seismic hazards, or other naturally occurring events. This purpose shall be accomplished through appropriate levels of study and analysis, application of sound engineering principles, and regulation or limitation of land uses, including maintenance of existing vegetation, regulation of clearing and grading activities, and control of stormwater. Elimination of all risk from geologically hazardous areas is not feasible to achieve, but the purpose of this article is to reduce this risk to acceptable levels.

19.37.210 GEOLOGICALLY HAZARDOUS AREAS – DESIGNATION AND MAPPING

A. *Designation.* The following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

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

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

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

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

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

(2) Slopes of twenty-five percent to forty percent in all other geologic units.

c. Those areas mapped by the Washington Geological Survey as identified in “Landslide inventory of portions of Snohomish County, Washington: Washington Geological Survey Report of Investigations” (Mickelson, et al., 2022) and per landslide maps maintained by Washington Department of Natural Resources.

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

(1) Slopes greater than fifteen percent; and

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

(3) Springs, ground water seepage, or saturated soils.

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

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

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

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

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

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

2. Seismic/liquefaction hazard areas:

a. Those areas mapped as seismic/liquefaction hazards per the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous

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Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science.

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

3. Erosion hazard areas:

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

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

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

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

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

4. Tsunami hazard areas:

a. Tsunami hazard areas include coastal areas and shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal wave action generated by seismic events or other geologic events. Suspected tsunami hazard areas are indicated on the Tsunami Hazard Areas maps maintained by the Washington Department of Natural Resources.

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

B. Mapping. The approximate location and extent of potential geologically hazardous areas are shown on maps maintained by the City of Everett and the Washington State Department of Natural Resources, as referenced in the designation descriptions, above. These maps are meant to serve as a guide for applicants, owners, and plan reviewers. However, they do not provide a conclusive or definitive indication of geologically hazardous area presence or extent. This article does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of the City of Everett or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

19.37.220 GEOLOGICALLY HAZARDOUS AREAS – CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS

A. *Minimum Standards for Geological Assessments.* A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity. In addition to the general critical area report requirements in EMC 19.37.100 and EMC 19.37.120, the following additional report requirements apply when assessing geologically hazardous areas.

1. A field investigation and geological assessment shall be prepared, stamped, and signed by a qualified professional to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.
 - a. The geological assessment shall be submitted in the form of a Geological Assessment Letter when the qualified professional finds that no active geological hazard area exists on or within two hundred feet of the site. The Geological Assessment Letter shall meet the minimum required content listed in this chapter but may be abbreviated in form.
 - b. The geological assessment shall be submitted in the form of a Geotechnical Report when the qualified professional finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements pursuant to this chapter.
2. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.
3. A geological assessment shall include the following minimum information and analysis:
 - a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in EMC 19.37.210.
 - b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off site.
 - c. Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.
 - d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments or geotechnical

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investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.

e. A statement that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale for such conclusions based on geologic conditions and interpretations specific to the project.

f. If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not increased, and recommendations are consistent with this article; For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities;

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

B. Geological Assessment Review

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

- a. Accept the geological assessment; or
- b. Reject the geological assessment and require revisions or additional information.

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

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

19.37.230 GEOLOGICALLY HAZARDOUS AREAS – DEVELOPMENT STANDARDS

A. Geologically Hazardous Slope Setbacks and Slope Protection.

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

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

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

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

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

(2) The area has a severe risk of slope failure or downslope stormwater drainage impacts.

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

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

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

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

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

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

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3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation, demonstrating the degree of the alteration is limited to the minimum needed to accomplish the project purpose;
5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;
6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and
8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.

C. *Additional Requirements.* As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by this chapter:

1. The city shall require:
 - a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by EMC 19.37. 170;
 - b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.
2. The city may require:
 - a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;
 - b. Vegetation and other soil-stabilizing structures or materials be retained or provided;
 - c. Long-term maintenance of slopes and on-site drainage systems.

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

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1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under EMC 19.37.050. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.
2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on site or off site, shall be prohibited.

ARTICLE III. WETLANDS

19.37.300 WETLANDS - DESCRIPTION AND PURPOSE

A. Wetlands are defined using the Washington State definition of wetlands established under RCW 36.70A.030(48) and as defined in EMC 19.04.110.

B. The purpose of this chapter's wetland regulations are to:

1. Recognize and protect the beneficial functions performed by wetlands, including those physical, biological, chemical, and geologic interactions within wetlands and the surrounding landscape, including buffers. These functions are often grouped into three main categories – water quality improvement functions, hydrologic functions, and habitat functions and may include but are not limited to:
 - a. The uptake, removal, transformation, and cycling of nutrients, sediment, and toxicants;
 - b. Floodflow alteration, surface water storage, reduction of peak flows, groundwater recharge, decreasing downstream erosion, and energy dissipation of flows;
 - c. Supporting food webs and providing several habitat niches and features for wildlife breeding, nesting, and rearing, and providing thermal refugia.
2. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values and of wetlands throughout the city.
3. Establish review procedures for development proposals in and adjacent to wetlands.
 - a. Compliance with the provisions of this chapter does not necessarily constitute compliance with other federal, state, and local regulations and permit requirements. Applicants are responsible for complying with these requirements.

19.37.310 WETLANDS – DELINEATION, MAPPING, AND RATING

A. *Wetland Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)). All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to

the provisions of this chapter. A wetland delineation shall be performed by a qualified professional experienced in wetland science. Wetland delineations are valid for five years, after such date, the city shall determine whether a revision or additional assessment is necessary.

B. *Wetland Mapping.* A wetland delineation shall result in a wetland boundary clearly marked in the field and an accurate ground-verified map of the boundaries. This map should be created using either a professional survey or using an equivalent method such as Global Positioning System (GPS) with sub-meter accuracy. The map shall also include an indication of where wetlands extend off site. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified.

C. *Wetland Rating.* Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington 2014 Update Version 2.0, or as revised (Ecology Publication No. 23-06-009). Wetland ratings are valid for five years; after such date the city shall determine whether a revision or additional rating is necessary.

D. *Illegal Modifications of Wetlands.* Wetland rating categories shall not change due to illegal modifications made to the wetland.

19.37.320 WETLANDS - CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS.

A. *Additional Critical Area Report Content for Wetlands.* A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland and stream reports, or a professional who demonstrates expertise in wetland science, stream ecology, or fish and wildlife biology to the satisfaction of the planning director.

1. Wetlands shall be rated according to the categories defined by the Washington State Department of Ecology Washington State Rating System for Western Washington 2014 Update, Version 2.0 or as revised (Ecology Publication No. 23-06-029).

2. Hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and, to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

B. Wetland and buffer impact mitigation plans shall be prepared consistent with the guidance in Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans (Ecology Publication #06-06-011b, or as revised). The report shall include a written plan and plan sheets that contain, at a minimum, the elements listed below.

1. 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 description of how the development project has been designed in accordance with mitigation sequencing provisions.

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2. A baseline study that describes and quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation. Include acreage or square footage of the existing wetland and buffer areas to be altered, landscape position, and surrounding land uses. Include a description of existing versus proposed water regimes, vegetation, soils, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating. This assessment could involve assessing functions using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended;
3. A 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 compensatory mitigation actions are not undertaken.
4. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;
5. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies. Specify proposed mitigation actions, if applicable, and include written specifications and descriptions of the mitigation proposed, such as:
 - a. The proposed construction sequence, timing, and duration;
 - b. Grading and excavation details;
 - c. Erosion and sediment control features;
 - d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - e. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.; 6. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

7. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful;
8. Include provisions for an assurance device as provided by Chapter 19.40 to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This

guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

9. Include provisions for the protection of the mitigation site. The wetland mitigation area and any associated buffer shall be protected by a legal mechanism such as a critical area tract or critical area covenant. The planning director may approve another legal and administrative mechanism if it is determined to be adequate to protect the site. 10. Scaled plan sheets shall contain, at a minimum:

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

b. 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.

19.37.330 WETLANDS - BUFFER WIDTH REQUIREMENTS

A. Wetland Buffer Widths.

1. The following buffer widths listed in Tables 37.2 and 37.3 apply to all wetlands within the city of Everett. Buffer widths have been established in accordance with the best available science. Buffers are based on the category of wetland and the habitat score as determined under EMC 19.37.310. Wetland buffers shall be measured perpendicular from the wetland boundary as delineated and marked in the field.

2. Wetland buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.330(F).

2. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

3 The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer and habitat corridor vegetation may require enhancement or restoration per the following:

a. Applicability of Vegetative Buffer Standard. If the on-site buffer does not ~~contain~~ include a relatively intact native ~~vegetated~~-vegetative community, the buffer shall be enhanced or restored to contain a native vegetation community when either:

i. The total new net impervious area on the entire subject property exceeds 2,000 square feet; or

ii. The value of the new construction or alteration occurring within a two-year period is equal to or greater than fifty percent of the assessed value of the existing improvements; or

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iii. More than 25% of the buffer on the subject site is covered with non-native and/or invasive vegetation.

b. Vegetative Buffer Standard. The following vegetative buffer standards shall be met when the proposal meets the applicability requirements:

i. An average 80 percent aerial cover of native vegetation, composed of trees, shrubs, and ground cover with at least 20 percent tree cover and 20 percent shrub cover, with no more than 10 percent cover of invasive species

c. Vegetative Buffer Alternative. Applicants can choose not to comply with the vegetative buffer standards by complying with the following requirements:

- i. Increase wetland buffer widths by 33% within entire buffer; and
- ii. Remove all unpermitted structures and improvements within the buffer.

User instructions: Use the following two tables to determine wetland buffers. Table 37.2 includes the standard wetland buffers without providing impact minimization measures and habitat corridors as described below. The reduced buffers in Table 37.3 apply to projects when the applicant elects to incorporate impact minimization measures in Table 37.4 and a habitat corridor.

Table 37.2: Standard Wetland Buffer Width Requirements for Applicants not Providing a Habitat Corridor or Implementing Impact Minimization Measures

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	100	150	300
	Bogs	250		300
	Estuarine	200		
II	All except estuarine	100	150	300
	Estuarine	150		
III		80	150	300
IV		50		

Table 37.3: Reduced Wetland Buffers When Impact Minimization Measures are Implemented and a Habitat Corridor is Provided

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5 (Habitat Corridor Not Required)	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75	110	225
I	Bogs	190		225
I	Estuarine	150		
II	All except estuarine	75	110	225
II	Estuarine	110		
III		60	110	225
IV		40		

4. *Habitat Corridors.* When feasible, wetlands that score six points or more for habitat function can use the buffers in Table 37.3 provided all of the below criteria are met. Presence or absence of a nearby habitat corridor must be confirmed by a qualified professional. For wetlands that are unable to provide habitat corridors or that score five or fewer habitat points, only the measures in Table 37.4 are required.

- a. A relatively undisturbed vegetation corridor at least 100 feet wide is protected between the wetland and:
 - i. A legally protected, relatively undisturbed and vegetated area (e.g. Priority Habitats, compensatory mitigation sites, wildlife areas/refuges, county and state parks where they have management plans with identified areas designated as Natural, Natural Forest, or Natural Area Preserve), or
 - ii. An area that is the site of a Watershed Project, identified within, and fully consistent with, a Watershed Plan as defined by RCW 89-08-460, or
 - iii. An area where development is prohibited according to the provisions of the City’s Shoreline Master Program, or
 - iv. An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with WDFW.
- b. The corridor is permanently protected for the entire distance between the wetland and the shoreline or legally protected area by a conservation easement, deed restriction, or other legal site protection mechanisms.
- c. Presence or absence of the shoreline or Priority Habitat must be confirmed by a qualified professional and the planning director.

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- d. The measures in Table 37.4 are implemented, as applicable, to minimize impacts of the adjacent land uses.

B. *Increased Wetland Buffer Width.* Buffer widths stated in subsection A of this section shall be increased:

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular wetland; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;
2. When the wetland is used by a state or federally listed plant or animal species under WAC 220-610-010, 50 CFR 17-11, 50 CFR 17-12, or other state or federal regulations; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting trees, and the increased buffer is necessary to protect such habitat;
3. When a habitat assessment or habitat management plan is required by EMC 19.37. 110 and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;
4. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by EMC 19.37. 230;
5. When the wetland buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or
6. When the city finds, based upon a site-specific critical area analysis, that impacts to a wetland or other critical area from a proposed development can only be mitigated by a greater buffer width.

C. *Impact Minimization Measures.*

Developments that produce the listed disturbances and are requesting reduced wetland buffers per Table 37.3 are required to address the disturbance through the use of applicable minimization measures. This is not a complete list of measures, nor is every example measure required. Though not every measure is required, all effort should be made to implement as many measures as possible. Regulatory staff should determine, in coordination with the applicant, which measures are applicable and practicable. The critical areas report shall address how each impact minimization measure is being provided.

Table 37.4 – Impact Minimization Measures

Example of Disturbance	Activities and Uses that Cause Disturbances	Examples of Impact Minimization Measures
Light	<ul style="list-style-type: none"> • Parking lots • Commercial/Industrial uses • Residential uses 	<ul style="list-style-type: none"> • Direct lights away from wetlands and buffers

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	<ul style="list-style-type: none"> • Recreation (e.g. athletic fields) • Agricultural buildings 	<ul style="list-style-type: none"> • Only use lighting when and where necessary for public safety • Motion-activated lighting • Use of full-cut off shields • Dim light to lowest acceptable intensity • Warmer lighting temperatures (<3000K)
Noise	<ul style="list-style-type: none"> • Commercial/Industrial uses • Residential uses • Recreation (e.g. athletic fields) • Agriculture 	<ul style="list-style-type: none"> • Locate noise-generating activity away from wetlands and buffers • Construct fencing and/or install dense landscape screening between noise sources and critical area
Toxic Runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Commercial/Industrial uses • Residential uses • Application of pesticides • Landscaping • Agriculture 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetlands and buffers while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetlands • Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)
Stormwater Runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Commercial/Industrial uses • Residential uses • Recreation • Landscaping/lawns • Other impermeable surfaces, compacted soils, etc. 	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent developments • Prevent channelized or sheet flow from lawns that directly enter buffers • Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns • Retain native vegetation elsewhere in the property
Pets and Human Disturbance	<ul style="list-style-type: none"> • Residential uses • Recreation 	<ul style="list-style-type: none"> • Install privacy fencing • Plant dense native vegetation to delineate buffer edge and to discourage disturbance • Place wetlands and buffers in a separate tract • Install signage along wetland buffer edge
Dust	<ul style="list-style-type: none"> • Tilled Fields • Roads 	<ul style="list-style-type: none"> • Use Best Management Practices to control dust

D. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement

E. *Functionally Disconnected Buffer Areas*. Buffers may exclude areas that are functionally and effectively disconnected from a wetland by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37. 340 WETLANDS - BUFFER WIDTH AVERAGING

The city may allow wetland buffer width averaging when all of the following are met:

- A. No feasible alternatives to the site design could be accomplished without buffer averaging.
- B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging
- C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional.
- D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

19.37. 350 WETLANDS - COMPENSATORY MITIGATION

A. *Mitigation Sequencing*. Before being authorized to impact any wetland or its buffer, an applicant must demonstrate that they have implemented mitigation sequencing in the order presented in EMC 19.37.100.

B. *Requirements for Compensatory Mitigation*. Allowed wetland and wetland buffer compensation shall be subject to the following requirements:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans—Version 1 (Ecology Publication #06-06-011b, or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach [Western Washington (Ecology Publication #09-06-32).
2. Mitigation ratios for wetland impacts shall be consistent with the Standard Wetland Compensatory Mitigation Ratios presented in this section.
3. 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.

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4. Mitigation requirements may be determined using the Credit-Debit Method described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication #10-06-011)

5. Plantings used in mitigation actions shall be native species appropriate to the ecoregion.

6. The following areas within a proposed compensation site shall not contribute to satisfying the requirements for compensatory mitigation:

a. Easements for utility corridors, stormwater facilities, rights-of-way, and streams conveyed underground

b. Driveways

c. Roads

d. Any paved or graveled areas intended to convey vehicle or foot traffic.

7. **Buffers on Wetland Mitigation Sites.** All wetland mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. All required buffers for the wetland mitigation site shall be located on the subject site, except where wetland mitigation banking is used to purchase buffer credits. Buffers shall be based on the expected or target category of the proposed wetland mitigation site and the expected level of impact from the adjacent land use. Buffers need to be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, paved areas, and mowed or developed areas will not be considered buffers or included in buffer area calculations when assessing whether adequate compensatory mitigation buffers have been provided. Properties adjacent to or abutting wetland mitigation sites shall not be responsible for providing any additional buffer requirements.

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

9. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

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

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within a watershed through an existing watershed plan or a local or regional study that characterizes watershed processes; or

Exhibit B

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

D. Preference of Mitigation Actions. Mitigation for wetland and buffer impacts shall rely on a method listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this Section.

1. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former or degraded wetland. Restoration is divided into two categories:

a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions. Example activities could include removing fill, plugging ditches, or breaking drain tiles to restore a wetland hydroperiod, which in turn will lead to restoring wetland biotic communities and environmental processes.

b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland area. The area already meets wetland criteria, but hydrological processes have been altered. Rehabilitation involves restoring historic hydrologic processes. Example activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland where a wetland did not previously exist at an upland site. Establishment results in a gain in wetland area and functions. An example activity could involve excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils by intercepting groundwater, and in turn supports the growth of hydrophytic plant species.

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

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that establishment of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

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iv. The proposed wetland would not be established at the cost of another high-functioning habitat (i.e., ecologically important uplands).

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

a. The planning director determines that the proposed preservation is the best mitigation option;

b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

c. The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:

i. Category I or II wetland rating

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

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

iv. Provides biological and/or hydrological connectivity to other habitats.

v. Priority sites identified in an adopted watershed plan.

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

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

4. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific wetland function(s). Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in the gain of selected wetland function(s) but may also lead to a decline in other wetland function(s). Enhancement does not result in a gain in wetland area. Enhancement activities could include planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods in existing wetlands.

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Applicants proposing to enhance wetlands and/or associated buffers shall demonstrate how the proposed enhancement will increase the wetland and/or buffer functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

5. Alternative Types of Mitigation/Resource Tradeoffs. The planning director may approve alternative mitigation proposals that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals shall provide an equivalent or better level of ecological functions and values than would be provided by standard mitigation approaches. Alternative mitigation approaches shall comply with all reporting, monitoring, and performance measures of this Section including adherence to mitigation sequencing. The city may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. The planning director will consider the following for approval of an alternative mitigation proposal:

- a. Clear identification of how an alternative approach will achieve equal or better ecological benefit.
- b. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach in Western Washington (Ecology Publication #09-06-32), or as revised].
- c. All impacts are identified, evaluated, and mitigated.
- d. Methods to demonstrate ecological success are clear and measurable.

E. Location of Compensatory Mitigation. Permittee-responsible compensatory mitigation actions shall be conducted using a watershed approach and shall generally occur within the same sub-drainage basin. However, when the applicant can demonstrate that a mitigation site in a different sub-drainage basin is ecologically preferable, it ~~should~~ may be used. Compensatory mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas. The following criteria will be evaluated when determining whether on-site or off-site compensatory mitigation is ecologically preferable. When considering the location of mitigation, preference ~~should~~ may be given to using programmatic approaches, such as a mitigation bank or an in-lieu fee program after evaluating the following criteria.

1. No reasonable opportunities exist on site or within the sub-drainage basin or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capability of the site to compensate for the impacts. Considerations should include anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic class(es) of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. On-site mitigation would require elimination of high-quality upland habitat;
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions compared to the altered wetland.

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4. Off-site locations shall be in the same sub-drainage basin unless:

- a. Watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify locating mitigation at another site;
- b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
- c. Fees are paid to an approved ILF program to compensate for the impacts.

5. The design for the compensatory mitigation project needs to be appropriate for its position in the landscape. Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

F. Timing of Compensatory Mitigation. Compensatory mitigation projects should be completed prior to activities that will impact wetlands. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered. Otherwise, compensatory mitigation shall be completed immediately following wetland impacts and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The planning director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties. For example, a project delay that creates conflicts with other regulatory requirements (fisheries, wildlife, stormwater, etc.) or installing plants should be delayed until the dormant season to ensure greater survival of installed materials. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the delay shall include a written justification that documents the environmental constraints that preclude timely implementation of the compensatory mitigation plan. The justification will be verified by the city who will issue a formal decision.

G. Wetland Compensatory mitigation Ratios. In approving alteration of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensatory mitigation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section are based on wetland category, function, special characteristics, risk, and temporal loss. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.4 shall be used, except as otherwise provided below in this subsection.

Table 37. 5: Standard Wetland Compensatory Mitigation Ratios

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only ¹	Reestablishment or Creation (R/C) plus Rehabilitation (RH) ¹	Reestablishment or Creation (R/C) plus Enhancement (E) ¹	Reestablishment or Creation (R/C) plus Preservation (P) ¹	Enhancement Only ¹
All category IV	1.5:1	3:1	1:1 R/C plus 1:1 RH	1:1 R/C plus 2:1 E	1:1 R/C plus 2:1 P	6:1
All category III	2:1	4:1	1:1 R/C plus 2:1 RH	1:1 R/C plus 4:1 E	1:1 R/C plus 4:1 P	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case
All other category II	3:1	6:1	1:1 R/C plus 4:1 RH	1:1 R/C plus 8:1 E	1:1 R/C plus 8:1 P	12:1
Category I Forested	6:1	12:1	1:1 R/C plus 10:1 RH	1:1 R/C plus 20:1 E	1:1 R/C plus 20:1 P	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C plus 6:1 RH	1:1 R/C plus 12:1 E	1:1 R/C plus 12:1 P	16:1
Category I Bog	Not considered possible ²	6:1 Rehabilitation of a bog	R/C Not considered possible ²	R/C Not considered possible ²	R/C Not considered possible ²	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case

¹ These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

² Bogs are considered irreplaceable wetlands because they perform some special functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensatory mitigation is proposed.

- a. As an alternative to the mitigation ratios described above, the planning director may allow mitigation based one of the following ways:

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i. Using the Credit-Debit Method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication # 10-06-011), or as amended.

ii. For properties designated “urban mixed-use industrial” in the city’s shoreline master program, the applicant shall use the Snohomish Estuary Wetland Integration Plan (SEWIP, 1997) and Salmon Overlay (2001) for projects that include wetland compensatory mitigation. Per Table 37.4, mitigation ratios for estuarine wetlands shall be determined on a case-by-case basis.

b. In no case shall the mitigation acreage be less than that which is altered.

19.37.360 WETLANDS - APPROACHES TO COMPENSATORY MITIGATION

A. *Wetland mitigation banks.* For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument when all of the following are met:

1. The director determines that the wetland mitigation bank provides appropriate compensatory mitigation for the authorized impacts.
2. The proposed use of credits is consistent with the terms and conditions of the mitigation bank instrument.
3. Mitigation ratios are consistent with the mitigation bank instrument.

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

1. The planning director determines that it would provide appropriate compensation for the proposed impacts.
2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
3. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the applicant’s qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.
4. The impacts are located within the service area specified in the approved in-lieu fee instrument.

C. *Permittee-responsible, advance mitigation.* Advance mitigation is a form of permittee-responsible mitigation implemented before a permitted impact takes place. It is designed to compensate for impacts expected to occur in the future. The applicant proposing the advance mitigation is the only one who can use the credits generated. Credits cannot be sold or transferred to another applicant. Advance mitigation proposals should be developed in accordance with state and federal rules and guidance on advance mitigation (Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation, Ecology

Publication #12-06-015, and Chapter 4.2 of Wetland Mitigation in Washington State—Part 1: Policies and Guidance—Version 2, Ecology Publication #21-06-003, or as revised).

D. Permittee-responsible, concurrent mitigation. Concurrent mitigation is a form of permittee-responsible mitigation implemented at the same time permitted impacts are occurring. The permittee is responsible for implementation and success of the compensation. Concurrent mitigation may occur at the site of the permitted impacts or at an off-site location, usually within the same watershed. Permittee-responsible, concurrent mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that the proposed approach is ecologically preferable to use of a bank or in-lieu fee program, consistent with the criteria in this Section.

ARTICLE IV. FREQUENTLY FLOODED AREAS

19.37.400 AREAS OF SPECIAL FLOOD HAZARD

Areas of special flood hazard shall be governed by the provisions of Chapter 19.30.

ARTICLE V. FISH AND WILDLIFE HABITAT CONSERVATION AREAS

19.37.500 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - DESCRIPTION AND PURPOSE

A. All areas meeting the definition of fish and wildlife habitat conservation areas are subject to the regulations in this chapter. The intent of the management of these areas is to ensure sufficient habitat quality, quantity, and connectivity for species within their natural geographic distribution in order to support viable populations over the long term and to prevent isolated subpopulations.

Fish and wildlife habitat conservation areas are ecosystems composed of unique interacting systems of soils, geology, topography, and plant and animal communities. They consist of land-based areas and aquatic areas. Wildlife habitat provides opportunities for food, cover, nesting, breeding, and movement for fish and wildlife within the City; maintains and promotes diversity of species and habitat within the City; helps to maintain air and water quality; controls erosion; serves as areas for recreation, education and scientific study, and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

Riparian corridors are essential for wild fish populations. Healthy riparian zones are dynamic ecosystems that perform various functions that form salmonid habitat. Some of the major functions include producing and delivering large and small woody debris to shorelines and stream channels; shoreline protection and habitat formation; removing sediments and dissolved chemicals from water; moderating water temperature; providing thermal refugia; providing habitat for terrestrial animals; and providing proper nutrient sources for aquatic life. Additionally, aquatic areas and their associated buffers store and convey stormwater and floodwater; recharge groundwater; and serve as areas for recreation, education and scientific study and aesthetic appreciation. B. The following actions are exempt from other requirements of this chapter, but may require preparation of a habitat assessment or biological assessment when conducted within a fish and wildlife habitat conservation area, and must result in no net loss of ecological functions and values:

1. EMC 19.37.060(B)(1), Minor utility construction projects.
2. EMC 19.37.060(B)(4), Public and private pedestrian paths and trails

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3. Any development application that involves ESA Section 7 consultation with federal agencies is required to follow that process to determine impacts to endangered species and mitigation requirements rather than the procedure described herein. However, the application must demonstrate compliance with all applicable city regulations, and must submit a copy of the biological assessment provided to federal agencies as part of the city's permit process.

4. Maintenance of critical public infrastructure.

19.37.510 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - DESIGNATION AND MAPPING

A. Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

1. Areas where endangered, threatened, and sensitive species have a primary association;
 - a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
 - b. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington State Department of Fish and Wildlife that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status
2. Habitats and species of local importance, as determined locally;
 - a. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife and included on its current Priority Habitats and Species List, as amended.
3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

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5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

a. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

6. Waters of the state;

a. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, ~~as classified in WAC 222-16-030.~~

7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

8. State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.

9. Significant biological areas listed by the city.

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

C. Other mapping sources include the Washington State Department of Fish and Wildlife priority habitat and species maps.

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

1. *Type S Water.* Those streams and waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, including periodically inundated areas of associated wetlands.

2. *Type F Water.* Those segments of natural waters including periodically inundated areas of their associated wetlands, not classified as Type S Waters, which have a fish, wildlife, or human use; which in any case contain fish habitat or are described by one of the following seven categories:

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- a. Waters within lakes, ponds, or impoundments having a surface of 0.5 acre or greater at seasonal low water;
- b. Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than four percent;
- c. Waters which are off-channel habitat. These are areas important for rearing and survival of fish and include riverine ponds, wall-based channels, and stream associated wetlands. The area must be connected to Type F or Type S Water and accessible to fish during some portion of the year.
 - i. For channelized streams, the edge of off-channel habitat is determined based on the outer edge of inundation of the stream at the bankfull elevation flow.
 - ii. For nonchannelized streams, including stream associated wetlands, off-channel habitat is the outer edge of the area periodically inundated at the ordinary high water line.
- d. Waters used by fish. Where fish use has not been determined:
 - i. Waters having any of the following characteristics are presumed to have fish use:
 - A. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient of 16 percent or less;
 - B. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size, based on hydrographic boundaries;
 - C. Ponds or impoundments having a surface area of less than one acre at seasonal low water and having an outlet to a fish stream;
 - D. Ponds or impoundments having a surface area of 0.5 acre or greater at seasonal low water;
 - E. Waters within the anadromous fish floor, see WAC 222-16-0301.
 - ii. The planning director may waive or modify the characteristics in (d)(i) of this subsection based on a report prepared by a qualified professional where:
 - A. Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;
 - B. Snowmelt streams with short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1st; or

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C. Sufficient information about a geomorphic region is available to support a departure from the characteristics in (d)(i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes, and interested parties.

e. Waters diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where the department determines the diversion is a valid appropriation of water. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

f. Waters diverted for use by a federal, state, tribal or private fish hatchery. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water classification if the department determines after a landowner-requested interdisciplinary team assessment that:

i. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

ii. The additional harvest within the riparian management zone meets the requirements of the water type classification that would apply in the absence of the hatchery;

g. Waters within a federal, state, local governmental entity, or private campground having more than 10 camping units. These are waters that enter a campground at the boundary of the park lands available for public use and come within 100 feet of a camping unit, trail or other park improvement;

3. *Type Np Water.* Those segments of natural waters within the bankfull width of perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. *Type Ns Water.* Those segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from a Type Np Water. Type Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

5. For purposes of this section:

a. "Residential unit" means a home, apartment, condominium unit or mobile home, serving as the principal place of residence.

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- b. "Camping unit" means an area intended and used for:
 - i. Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or
 - ii. A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.
- c. "Public accommodation facility" means a business establishment licensed to serve the public, such as a restaurant, tavern, motel or hotel.
- d. "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.
- e. "Seasonal low water" means the conditions of the seven-day, two-year low water situation, as measured or estimated by accepted hydrologic techniques.
- f. "Bankfull width" for defined channels means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. See the Washington Department of Natural Resources board manual section 23.
- g. "Intermittent" means those segments of streams that normally go dry.

E. *Lakes*. Silver Lake shall be protected as required by the shoreline master program. All other lakes shall be subject to the regulations in this chapter.

19.37.520 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS

In addition to the general critical area report requirements in EMC 19.37.110 and EMC 19.37.120, the following additional report requirements apply when a proposal is within or near a fish and wildlife habitat conservation area:

A. *Goals and Additional Requirements*. If a development or redevelopment is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this title, the applicant shall provide a habitat assessment. In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required. The biological assessment shall be prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation produced by FEMA Region 10, April 2011, or as amended. The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

If the habitat assessment/biological assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP) as described in this article, prepared by a wildlife biologist for

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evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

1. *Distance for Habitats of Primary Association.*

a. *Salmonids and Steelhead.* When development is proposed within the distances specified below, a habitat assessment shall be required.

(1) Within two hundred fifty feet of the Snohomish River or its estuary;

(2) Within two hundred feet of a Type S or Type F stream or water including but not limited to North Creek or Swamp Creek together with tributaries with direct confluence to those streams and the associated wetlands, and marine shorelines;

(3) Within one hundred fifty feet of Lake Chaplain;

(4) Within two hundred twenty-five feet of a Type Np or Ns stream with unstable slopes within the special flood hazard area;

(5) Within one hundred fifty feet of a Type Np or Ns stream without unstable slopes within the special flood hazard area; or

(6) Within the special flood hazard area.

b. *Other Species.* If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or HMP.

c. *Continuous Vegetative Corridors Linking Watersheds and Significant Biological Areas.* If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds or a significant biological area, a habitat assessment is required.

B. *Habitat Assessment.*

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

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

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3. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in this title and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.
4. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in this title or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.
5. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in this title or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, an habitat management plan shall be prepared. The habitat management plan must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.
6. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of an HMP.
7. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.
8. The department shall review the habitat assessment and either:
 - a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or
 - b. Require preparation of an habitat management plan if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

C. *Habitat Management Plan.*

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

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2. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.
3. The habitat management plan shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.
4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the habitat management plan. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

D. *Compensatory mitigation for Impacts within the One-Hundred-Year Floodplain.*

1. Compensatory mitigation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.
2. The mitigation plan shall stipulate avoidance and conservation measures, as are needed to ensure that there is no net adverse effect during any phase of the project. Outside the floodway or riparian habitat zone, the mitigation plan shall include such avoidance, minimization, restoration, conservation or compensatory mitigation measures to mitigate all impacts.
3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended.
4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:
 - a. Assignment (purchase) of equivalent mitigation credits from an established mitigation bank within the estuary;
 - b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;
 - c. Creation or restoration of off-channel refuge habitat;
 - d. Restoration of fish habitat where it has been previously eliminated or degraded;
 - e. Enhancement of existing habitat to improve functions and values;
 - f. Buffer enhancement in riparian habitat areas;

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- g. Replacement of the habitat functions and values that are impacted by development.
5. Also in accordance with RPA-3.A.3.b, where conditions permit, the city shall require development within the one-hundred-year floodplain to use low impact development (LID) methods consistent with the city's stormwater management regulations, to minimize or avoid stormwater effects.
6. All development proposals shall follow the mitigation sequence of EMC 19.37.100 to achieve no net loss of ecological functions and values.
7. When development occurs in floodplain areas, the portion of the site not elevated above the one-hundred-year flood elevation shall be designed to create floodplain refugia and prevent stranding of aquatic species during flood events to the maximum extent practicable.
8. Restoration of fish habitat either on site or off site is allowed in order to mitigate for habitat impacts caused by development within the floodplain. Restoration and mitigation for impacts may occur in areas which flood more frequently than the area proposed for development (e.g., tidal restoration project that provides greater habitat benefits to juvenile salmonids).
9. The city shall have the authority to require changes in the design of a development if necessary to avoid, minimize or mitigate impacts to endangered species or habitat for such species.

D. Additional Critical Area Report Content for Biological Assessments (BA). Biological Assessments must conform with 2010 FEMA Region X Regional Guidance - Floodplain Habitat Assessment and Mitigation. Refer to the requirements for habitat assessments in this subsection.

E. Additional Critical Area Report Content for Habitat Assessment and Habitat Management Plans (HMP).

1. *Habitat Assessment.* All habitat assessments required by this chapter shall include the following elements in addition to the general requirements for all critical area reports listed in this section:
 - a. A detailed description of the vegetation on and adjacent to the site.
 - b. Identification and a detailed description of any critical fish or wildlife species or habitats, including listed threatened or endangered species, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.
 - c. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.

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

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

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

g. Developments in the floodplain must show the one-hundred-year flood elevation contour, the floodway boundary, and the protected area boundary on the site plan.

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

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

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

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

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

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

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

(1) Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; habitat management plan

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conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

(2) Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness, for a minimum of five years.

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

F. *Stream, Lake, and Buffer Mitigation Plans.* Stream, lake and buffer mitigation plans shall:

- a. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;
- b. Specify how functions will be replaced;
- c. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
- d. Where buffer enhancement is proposed, include an analysis of the ability of the buffer to protect water quality, as outlined in the Update on Wetland Buffers: The State of the Science, Final Report, October 2013, Washington State Department of Ecology Publication No. 13-06-11, or as amended;
- e. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
- f. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
- g. Include provisions for an assurance device as provided by Chapter 19.40 EMC to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

19.37.530 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – STREAM AND LAKE BUFFER REQUIREMENTS

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

1. Buffers shall be measured from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the ordinary high water mark shall be determined so as to include the entire stream feature.
2. Stream buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

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3. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

4. The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing stream buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the standard buffer width shall be restored or increased as required by this section unless otherwise provided.

5. Except as otherwise provided by EMC 19.37.050, the following buffers of native vegetation shall apply to streams based upon stream classification:

Table 37.5: Stream Buffers

Stream Classification (Type)	Standard Buffer	Increased Buffer
	Intact Native Vegetation	Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	100 feet	150 feet
Type F	100 feet	150 feet
Type Np	100 feet	125 feet
Type Ns	100 feet	125 feet

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

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular stream; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;
2. The stream reach affected by the development proposal serves as critical habitat for listed species as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and recognized tribal nations;
3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting or lookout trees;
4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

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

C. *Standard Stream Buffer Width Application with Enhancement.* The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, apply the standard stream buffer width when the existing buffer is unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria.

1. The planning director shall only allow standard buffer width application to streams when the proposal includes a critical area and buffer enhancement plan that improves the functions of the buffer and the critical area in accordance with this chapter.

2. *Vegetative Buffer Standard.* The following vegetative buffer standards shall be met when applying the standard buffer to streams with vegetative enhancement:

- a. An average 80 percent aerial cover of native vegetation, composed of trees, shrubs, and ground cover with at least 20 percent tree cover and 20 percent shrub cover; and
- b. No more than 10 percent cover of invasive species.

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

E. *Lake Buffers.* Lakes have the following buffers:

- a. Lakes used by salmonids: one hundred feet;
- b. Lakes with no salmonid use: one hundred feet.
- c. Lake buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

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

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

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

1. Vegetative plantings of native or preferred wildlife food species;
2. Construction of nesting islands or installation of nesting boxes;
3. Removal of pollutant sources, hard armoring, or fish movement blockages; or

4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

H. *Functionally Disconnected Buffer Areas*. Buffers may exclude areas that are functionally and effectively disconnected from a stream or lake by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37.540 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – BUFFER WIDTH AVERAGING FOR LAKES AND STREAMS

The city may allow buffer width averaging for lakes and streams when all of the following are met:

- A. No feasible alternatives to the site design could be accomplished without buffer averaging;
- B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging;
- C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional; and
- D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point.

19.37.550 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – STREAM ALTERATION THRESHOLDS AND COMPENSATORY MITIGATION

A. *Stream Preservation/Alteration Thresholds*.

1. *Type S Streams*. All Type S streams shall be regulated by the city of Everett shoreline master program.
2. *Type F Streams*. All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:
 - a. Where alteration is allowed pursuant to EMC 19.37.050;
 - b. *Stream Crossings*. Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for

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the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;

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

3. *Type Np and Type Ns Streams.*

a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by EMC 19.37.050; or

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

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

(2) The equivalent base flood storage volume shall be maintained;

(3) There shall be no impact to local ground water;

(4) There shall be no increase in water velocity;

(5) There is no interbasin transfer of water;

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

(7) The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. *Watershed Management Plans.* The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow

Exhibit B

for stream alteration or relocation, except when allowed by EMC 19.37.050, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

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

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.
2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
3. A mitigation plan shall be prepared in accordance with this section.
4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.
5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensatory mitigation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.
6. When stream system relocation or compensatory mitigation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.
7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.
8. The city may apply additional conditions or restrictions, or require specific construction techniques, in order to minimize impacts to stream systems and their buffers.
9. Stream compensatory mitigation shall not occur in areas having high-quality terrestrial habitat.

C. *Voluntary Daylighting of Streams in Pipes and Culverts.*

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection C.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:
 - a. The plan is prepared by a qualified professional;
 - b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the

Exhibit B

existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

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

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

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

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

c. The stream and adjacent buffer area may count toward open space requirements of EMC 19.09.050.

d. Building heights may be increased.

e. Buffers widths and other development standards of this chapter may be reduced or modified as necessary to encourage enhancement of fish and wildlife conservation area functions and values.

STAFF MEMORANDUM

TO: Everett City Council
FROM: Yorik Stevens-Wajda, Planning Director
DATE: March 20, 2026
SUBJECT: Critical Areas Regulations Periodic Update

The city is updating its critical area regulations, primarily contained in Chapter [19.37](#) EMC, consistent with [state law requirements](#) (RCW [36.70A](#)). The planning commission recommends approval of the code amendments included in the proposed ordinance attached to this memo.

BACKGROUND

The Growth Management Act (GMA) of Washington State (RCW [36.70A](#)) requires local jurisdictions to designate and protect critical areas and to periodically review and update those regulations. See the [Department of Commerce Critical Areas Protection Program](#) for handbooks and other guidance documents.

Critical areas present in Everett that are subject to regulation include: **wetlands**; **streams** and other fish and wildlife habitat conservation areas; **frequently flooded areas**; and **geologically hazardous areas** (RCW [36.70A.030\(12\)](#)). The city maintains [critical area maps](#) and the [Map Everett online map viewer](#) to share information on where known critical areas exist in the city.

The City of Everett regulates critical areas under Everett Municipal Code (EMC) Chapters [19.30](#) (flood damage prevention) and [19.37](#) (critical areas) and provides definitions of these areas and key concepts in EMC [19.04](#). The city's first critical area regulations were adopted in 1991 (Ord. [1838-91](#)), with major updates in 2006 ([2909-06](#)) and 2019 (Ord. [3676-19](#)).

The Growth Management Act requires "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Per WAC [365-195-925\(3\)](#), these include:

...measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species.

A [Best Available Science \(BAS\) summary report](#) was completed in 2025 and provides a review of current best available science documents as prepared by qualified scientific experts and defined in WAC [365-195](#). The report documents scientific sources that will be used as the basis for revising the city's



development regulations. These sources were also used for comprehensive plan elements relating to critical areas.

SUMMARY OF PROPOSED UPDATES

The primary goals of the critical area regulations update are to address items identified in the recently-adopted comprehensive plan, the [Best Available Science Summary Report](#), updated Department of Ecology guidance ([Wetland Guidance for Critical Areas Ordinance Updates, October 2022](#)), updated Department of Fish & Wildlife guidance regarding stream buffers ([Volume 1: Science Synthesis and Management Implications \(Quinn et al. 2020\)](#) and [Volume 2: Management Recommendations \(Rentz et al. 2020\)](#)), [comments](#) from agencies and stakeholders, and to address staff recommended edits for clarity and consistency with the above.

Chapter 19.37 EMC Re-Organization

This major update presented an important opportunity to clarify and simplify code and reorganize Chapter 19.37 EMC into separate articles containing regulations and requirements for each type of critical area. The reorganization is intended to help with common issues encountered in development review, including missing submittal requirements, and will more closely match other local jurisdictions' critical area regulation structures.

See [Exhibit A to the November 4, 2025 Staff Memo](#) to the Planning Commission for a detailed guide to the reorganization. Because of the reorganization, track changes for Chapter 19.37 EMC is not possible in the ordinance itself and the chapter is presented instead as a complete repeal and replacement using exhibits to the ordinance. To help the reader follow the changes in track changes format, see Exhibit B to this memo, which presents the same code amendments proposed in the ordinance in track changes format and also highlights reorganizations in two ways:

- In the example below, a section on critical area reports is proposed for relocation in its entirety from 19.37.076 to 19.37.130.

26	and tot times.
27	19.37.076.130 Critical Area Reports—Alternative Best Available Science
28	Analysis:
29	The planning director may, using the review process described in EMC Title 15 Local Project Review Procedures

- In the example below, existing subsection EMC 19.37.075(C) regarding construction plans is proposed for relocation into a new section 19.37.150 as subsection (A).

37	protection will be provided.
38	19.37.150 Construction Plan Review
39	075(C). A. Construction Plans. Construction plans necessary to implement requirements of the detailed mitigation plan
40	shall be provided prior to issuance of construction permits. Plans shall include the proposed construction sequencing

Critical Areas Definitions (EMC 19.04.110)

This section of Chapter 19.04 EMC (definitions) defines specific terms to be applied and used in Chapter 19.37 EMC (Critical Areas). Definitions were added, removed, and revised to align with standardized definitions found in agency guidance documents and to best reflect terms used in Chapter 19.37.

Introduction (EMC 19.37.010-.060)

- Clarify exemptions, including emergency actions and drilling for utilities underneath critical areas.
- Exemptions and exceptions revised to clarify that no net loss of critical area functions and values may occur a result of the exemption or exception.



- Exemption for new accessory structures revised to one, up to 200 sq. ft., with one sq. ft. of legally altered buffer area restored for every one square foot of new structures, lawns and associated improvements.
- Relocate “expansions and additions to existing structures...” to exceptions rather than exemptions.
- Clarify exceptions including reporting requirements, “wetland exceptions” language, and reasonable use exception evaluation.
- Hazard Tree Removal: provide more information regarding tree risk assessment reports.
- Weed Removal: reference the Washington State Noxious Weed list. Add that removal is limited to hand tools and light equipment only unless otherwise approved.
- Worked with Surface Water Management staff to update and refine language around stormwater facilities and projects
- Remove 5’ and 8’ width limits for trails in critical areas and buffers, which conflicts with aspects of the city’s shoreline public access plan. These limits are to be reviewed when updating the critical area provisions of the city’s Shoreline Master Program.

Article I. Critical Area Review Procedures (EMC 19.37.100-.190)

- Refine and add clarifying language to several sections
- Relocate several sections to this Article for visibility
- Update critical area report requirements to require *narrative and supporting information describing how the applicable steps of the mitigation sequence of EMC 19.37.100 are proposed to be applied*
- Update 19.37.180 to address only unauthorized critical area alterations. Prior legal authorizations are addressed elsewhere in the chapter, including subsections on functionally disconnected buffers and vegetative buffer standards.

Article II. Geologically Hazardous Areas (EMC 19.37.200-.230)

- Add description and purpose section
- Add references to areas mapped by the Washington Geological Survey
- Add tsunami hazard areas to list of geologically hazardous areas
- Add more clarity to information to be included in geological assessments
- Relocate several sections of existing code language

Article III. Wetlands (EMC 19.37.300-.360)

- Add description and purpose section
- Update references to current federal wetland delineation manual, regional supplement, and wetland rating system
- Add delineation qualifications and mapping methods
- Remove definitions of wetland categories. Instead refer to the Washington State Wetland Rating System
- Relocate several sections including report requirements, mitigation plan content, buffer averaging
- Add text from Ecology guidance document for mitigation plan content and scaled map sheet content



- Modify and expand upon existing text in EMC 19.37.110(A)(2) to provide clarity when a vegetated buffer is required to be enhanced and how a native vegetated community is evaluated.
- Limit invasive species in a vegetated buffer to 10% aerial coverage
- Reformat and rename the wetland buffer width tables and minimization measures for consistency with the other tables in the section and to more closely align with Ecology’s preferred Buffer Option 1 and to correct an existing error (the row for estuarine wetlands is missing from the reduced buffer table)

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75-100	110-150	225-300
	Bogs	190-250	225-300	
	Estuarine	75 150-200	110 150-200	225 150-200
II	All except estuarine	75-100	110-150	225-300
	Estuarine	110-150		
III		60-80	110-150	225-300
IV		40-50		

- Add section for clarity on functionally disconnected buffer areas
- Add sections regarding compensatory mitigation per Ecology draft language, interagency guidance, and Ecology comments
- Add “timing of compensatory mitigation” to reduce temporal loss in functions and to reduce impacts to existing fisheries, wildlife, and flora
- Revise wetland compensatory mitigation table content to match Ecology’s tables
- Remove definitions of wetland mitigation banks and in-lieu fee programs. Refer to their state certification, instead
- Add sections for permittee-responsible mitigation per Ecology draft language

Article IV. Frequently Flooded Areas

- *This article refers to EMC 19.30. Staff will be reviewing this chapter for consistency with development regulations and best available science*

Article V. Fish and Wildlife Habitat Conservation Areas (Streams)

- Add description and purpose section.
- Add definition of fish and wildlife habitat conservation areas required for designation per WAC
- Relocate several sections regarding mapping, goals and requirements, and report requirements
- Increase type N stream buffers from 50’ to 100’ where intact vegetation will be maintained or planted and from 75’ to 115’ where native vegetation will remain limited.

Stream Classification (Type)	Standard Buffer	Increased Buffer
	Intact Native Vegetation	Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	100 feet	150 feet



Stream Classification (Type)	Standard Buffer	Increased Buffer
	Intact Native Vegetation	Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type F	100 feet	150 feet
Type Np	50 <u>100</u> feet	75 <u>115</u> feet
Type Ns	50 <u>100</u> feet	75 <u>115</u> feet

- Change and clarify stream buffer reduction with enhancement to the application of a standard stream buffer with enhancement, using same vegetative buffer standards as in the wetland section
- Stream typing system updated
 - Drop categorical statement that certain streams are not Type F
 - Refer to WAC 222-16-03 for stream typing
- Allowing for buffer widths resulting from daylighting a piped stream to be reduced as part of daylighting a stream

REVIEW CRITERIA

Criteria for amending the development regulations (unified development code) include:

- a. The proposed amendment is consistent with the applicable provisions of the Everett comprehensive plan; and
- b. The proposed amendment bears a substantial relation to public health, safety or welfare; and
- c. The proposed amendment promotes the best long-term interests of the Everett community.

STATE ENVIRONMENTAL POLICY ACT

Staff have prepared an [environmental checklist](#) and have issued a [Determination of Non-Significance \(DNS\)](#) under the [State Environmental Policy Act](#).

PUBLIC PARTICIPATION

The outreach and public participation strategy for this work included:

- Maintaining a [project website](#) with regular status updates, a project library with planning commission documents, state agency guidance documents, and public comments received
- Public hearings in front of the planning commission (February 17, 2026) and city council (anticipated April 15, 2026); notices of public hearings provided to the planning public notice mailing list, neighborhood leaders list, SEPA mailing list, a mailing list of key organizations and interested parties, and the Everett Daily Herald.
- Formal state agency notice of intent to adopt in November 2025 (October 31, 2025 review draft) and March 2026 (March 20, 2026 proposed ordinance).

EXHIBITS

EXHIBIT A: Critical Areas-Related Comprehensive Plan Goals and Policies

EXHIBIT B: Proposed Amendments in Strikethrough Format



EXHIBIT A: CRITICAL AREAS-RELATED COMPREHENSIVE PLAN POLICIES

The Everett 2044 Comprehensive Plan is available at everettwa.gov/442/Comprehensive-Plan

Urban Form Element

- UF-4 Implement compact urban form development, sustainable building development practices, green infrastructure, low impact development, and active transportation systems to reduce greenhouse gas emissions, reduce natural hazard risks and impacts, and improve resilience to the effects of climate change.
- UF-41 Protect and connect the area's network of habitat areas and wildlife corridors, streams, parks, and tree canopy.
- UF-45 Collaborate with the Tulalip Tribes to protect significant shorelines and waters integral to tribal cultural practices and treaty resources.
- UF-46 Designate, classify, and regulate protection of the following types of critical areas, consistent with state law and state agency rules: fish and wildlife habitat conservation areas, wetlands, frequently flooded areas, and geologically hazardous areas.
- UF-47 Incorporate Everett's environmental assets as important resources and components of the City's infrastructure systems. Utilize the multiple benefits of the City's ecosystem services, including economic impacts, pollutant reduction potential, carbon sequestration and the reduction of stormwater runoff.
- UF-48 Ensure that the city achieves no-net-loss of ecological functions over time and strive for net ecological gain.
- UF-49 Preserve, enhance, and connect a network of habitat areas and corridors, creeks, shorelines, parks, and tree canopies. Where possible, provide for public access in critical areas and their buffers when these activities provide valuable educational or recreational opportunity and can be designed in a manner that results in no net loss of functions and values.
- UF-50 Use the best available science for managing critical areas and natural resources and allow for updates to code as new information becomes available.
- UF-51 Evaluate a program to retrofit existing roads with water quality and quantity stormwater system improvements to minimize pollution from roadway runoff to natural drainage systems and the waters of Puget Sound.
- UF-52 Maintain, and regularly update when new information becomes available, critical area maps providing general information regarding the location and classification of critical areas in the city.
- UF-53 Development proposals that may impact critical areas or their buffers must include a critical area analysis, report, and impact mitigation plan, prepared by a qualified professional.
- UF-54 Adopt building codes, construction standards, zoning requirements, inspection, monitoring, and enforcement procedures to protect life, property and critical areas functions and values.
- UF-55 Maintain a policy and regulatory approach that encourages net ecological gain and mandates an overall no net loss in functions, values, or area for aquatic resource critical areas.
- UF-56 Prohibit alteration of Category I wetlands; discourage alteration of Category II wetlands; and where wetland impacts are unavoidable, require that impacted functions and values be



Exhibit A

replaced and compensated for, ideally within the same watershed or sub-drainage basin by using a watershed approach.

- UF-57 Remove non-native invasive plants and noxious weeds from critical areas and associated buffers on City owned and maintained property and encourage removal on private property; revegetate with native species.
- UF-58 Require preparation of biological assessments to assess potential impacts of development on species listed as endangered or threatened and require preparation and implementation of a habitat management plan when development proposals would result in adverse impacts to fish, and wildlife habitat conservation areas.
- UF-59 Strictly limit the crossing of streams with streets or utilities.
- UF-60 Prohibit creating new fish passage barriers and provide incentives to remove existing artificial barriers. Removal of barriers should consider multi-benefit redesigns, such as facilitating pedestrian and wildlife passage.
- UF-60 Encourage removal of fish barriers to fisheries habitat of watercourses when abutting properties are developed.
- UF-61 Consider correcting the highest priority fish passage barriers to improve the conservation of Endangered Species Act-listed and non-listed salmonid and residential fish populations.
- UF-62 Protect riparian areas and ecosystems to reduce water temperatures and contribute to salmon recovery goals by protecting riparian areas, increasing shading, improving soil stability, adding large wood and nutrients to increase food for fish.
- UF-63 Restore riparian areas that lack vegetation or are dominated by invasive species to increase the diversity and complexity of native vegetative cover (a mix of native evergreen and deciduous trees, understory shrubs, groundcover).
- UF-64 Require appropriate replacement and/or snag retention when trees in critical areas and buffers are permitted for removal. Keep wood debris in critical areas and buffers.
- UF-65 Maximize retention of healthy tree cover and native vegetation. Encourage restoration, replacement, and enhancement of unhealthy trees and disturbed vegetation.
- UF-66 Piped stream segments should be daylighted during redevelopment where scientific analysis demonstrates that substantial habitat function can be restored.
- UF-67 Use the most current FEMA flood hazard modeling and maps as a basis for the city's flood control regulations and coordinate with the Tulalip Tribes as needed.
- UF-68 Require that development avoid and minimize adverse impacts to existing natural resources, critical areas, and shorelines by following codes and requirements prior to considering mitigation to compensate for project impacts.
- UF-69 Maintain effective construction management standards to be applied both during and after development that will prevent erosion, sedimentation, siltation, and damage to downhill and downstream properties.
- UF-70 Coordinate transportation and stormwater system planning in areas with unimproved or substandard rights of way to improve water quality, prevent localized flooding, enhance pedestrian safety and enhance neighborhood livability.



Exhibit A

- UF-71 Track and evaluate trends in watershed and environmental health using current and historical data and information to guide improvements in the effectiveness of City plans, regulations, and infrastructure investments.
- UF-72 Constrain development in areas with limited access to reduce risk from hazards.
- UF-73 Require geotechnical analysis for land use activities proposed within or adjacent to landslide, seismic and erosion hazards to determine the extent of hazard, potential impacts, and necessary mitigation measures to eliminate significant hazards. Prohibit or strictly limit development in areas where significant hazard cannot be avoided.
- UF-74 Develop hazard mitigation plans that reduce exposure of Everett's citizens to future disasters or hazards (e.g., flooding, earthquakes, winds).

Design and Development Element

- DD-66 Reduce the negative impacts of light pollution by encouraging lighting design and practices that reduce the negative impacts of light pollution, including sky glow, glare, energy waste, impacts to public safety, disruption of ecosystems, and hazards to wildlife.
- DD-67 Encourage development approaches that will enhance the ability of people, wildlife, natural systems, and property to withstand and recover from a natural disaster or other major disturbance

Housing Element

- HO-48 Minimize all resident's exposure to both natural and manmade environmental hazards and ensure that the city's housing policies and regulations do not perpetuate historical patterns of environmental racism.

Transportation Element

- TR-44 Promote street and trail alignments and designs that respond to topography and natural features, and protect streams, wildlife habitat, and native trees.

Parks and Recreation Element

- PA-28: Manage parklands to protect the functions and values of ecosystems, protect wildlife corridor, and to be compatible with adjacent land uses.

Climate Change Element

- CC-17 Promote the retention of significant trees during proposed development review with an emphasis on preserving trees in and near riparian areas.
- CC-24 Collaborate with the Tulalip tribe on the development and implementation of programs that protect, enhance, and restore ecosystems to support tribal sovereign and treaty rights and conserve culturally significant consumptive and non-consumptive resources including first foods, medicinal plants, and materials that could be adversely impacted by climate change.
- CC-25 When reviewing proposed developments, consider ecosystem services and climate mitigation functions provided by critical areas.



EXHIBIT B: PROPOSED AMENDMENTS IN STRIKETHROUGH FORMAT



Everett Critical Area Regulations
Periodic Update

MARCH 20, 2026

everettwa.gov/3354/2025-Critical-Area-Ordinance-Update



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CHAPTER 19.04 DEFINITIONS

19.04.110, Critical areas definitions

This section defines specific terms to be applied where used in Chapter 19.37 EMC.

“Agricultural activities, existing and ongoing” means those activities conducted on lands defined in RCW 84-34-020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conservation program.

“Alteration” means any human-induced action which impacts the existing condition of a critical area. Alterations include but are not limited to grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; grazing domestic animals; paving, construction, application of gravel; modifying for surface water management purposes; compaction; excavation or any other human activity that impacts the existing vegetation, hydrology, wildlife or wildlife habitat of the critical area or its buffer. Alteration does not include walking, passive recreation, fishing or other similar activities.

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

“Best Management Practices (BMPs)” are conservation practices or systems of practices and management measures that:

- a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- d) Provide standards for proper use of chemical herbicides within critical areas.

“Biological assessment” is an evaluation of the potential effects of a proposed action on listed and proposed species and designated and proposed critical habitat and determination whether any such species or habitat is likely to be adversely affected by the action.

“Biologist” means a person who has earned a degree in biological sciences from a college or university, with practical experience that includes at least two years’ expertise in matters involving wetlands biology or stream ecology in the Pacific Northwest.

“Bog” See *Wetlands with special characteristics*



Exhibit B

“Buffer” or “Buffer area” means those areas, typically vegetated, adjacent to wetlands or other aquatic resources that can reduce impacts from adjacent land uses through various physical, chemical, and/or biological processes.

“Buffer management” means an activity proposed by a public agency, public utility, or private entity, and approved by the planning director, within a buffer required by this title, that is proposed to:

- A. Reduce or eliminate a verified public safety hazard;
- B. Maintain or enhance wildlife habitat diversity; or
- C. Maintain or enhance the fishery or other functions of stream, wetland, or terrestrial ecosystems.

“Carbon sequestration” means the process of capturing and storing atmospheric carbon dioxide through biologic, chemical, geologic, or physical processes.

“Compensatory mitigation” means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement and/or in certain circumstances preservation of wetlands, streams, or critical areas for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

“Compensatory mitigation, in-kind” means the replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

“Compensatory mitigation, off-site” means the replacement of wetlands away from the site on which a critical area has been impacted.

“Compensatory mitigation, on-site” means the replacement of wetlands on or adjacent to the site on which a critical area has been impacted by a regulated activity.

“Compensatory mitigation, out-of-kind” means the replacement of wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

“Cowardin classification” means the classification system for wetlands developed in 1979 by the U.S. Fish and Wildlife Service and updated in 2013 that classifies wetlands based on water flow, substrate types, vegetation types, and dominant plant species.

“Creation” in the context of wetland mitigation means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland that did not previously exist at an upland site. Creation results in a gain in wetland area and functions. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

“Credit-Debit Method” means a tool to provide applicants and regulators a way to determine whether actions taken to mitigate an impact to wetlands will adequately replace the functions and values lost. It is based on the Washington State Wetland Rating System.

“Critical area” means geologically hazardous areas, wetlands, lakes, ponds, streams, frequently flooded (flood hazard) areas, fish and wildlife habitat conservation areas, and critical aquifer recharge areas, as defined in Chapter 36.70A RCW and this title.

“Critical area protective covenant” means a covenant granted for the protection of a critical area and its buffer through the maintenance of the natural environment. The covenant prohibits alteration of the area unless approved by the city consistent with this Title and must be duly recorded on appropriate documents of title and filed with the Snohomish County auditor.



Exhibit B

“Critical area tract” means a legally created, nonbuilding lot containing a critical area which is subject to a critical area protective covenant and which shall be duly recorded on the appropriate documents of title and filed with the Snohomish County auditor.

“Critical aquifer recharge areas” means those areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

“Critical habitat” means the term defined and used in the Endangered Species Act. It is specific geographic areas that contain features essential to the conservation of an endangered or threatened species and may require special management and protection. Critical habitat may also include areas that are not currently occupied by the species but are needed for its recovery.

“Culvert” means a water crossing structure that spans through a water course.

“Cumulative impacts” means the combined, incremental effects of human activity on critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

“Development” means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of pilings; or any project of a temporary or permanent nature that modifies structures, land, wetlands, buffers, or shorelines and that does not fall within the allowable exemptions or exceptions contained in the City of Everett Municipal Code..

"Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

"Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

“Emergencies” mean those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations.

“Enhancement” means the manipulation of the physical, chemical, or biological characteristics of a wetland, stream, or buffer to heighten, intensify, or improve specific functions. Enhancement results in the gain of selected functions but may also lead to a decline in other functions. Enhancement does not result in a gain in wetland or buffer.

“Erosion hazard areas” means those areas of the city with slopes of twenty-five percent and greater in Qva and Qal geologic units; exposed slopes of greater than twenty-five percent in other geologic units; and drainage areas which receive stormwater discharge. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils.

“Establishment” See *Creation*



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"Fish habitat" or "habitat that supports fish life" means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.

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

- A. Areas where endangered, threatened, and sensitive species have a primary association;
- B. Habitats and species of local importance, as determined locally;
- C. Commercial and recreational shellfish areas;
- D. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;
- E. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
- F. Waters of the state, as defined in RCW 90.48.020;
- G. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- H. State natural area preserves, natural resource conservation areas, and state wildlife areas
- I. Significant biological areas listed by the city

Fish and wildlife habitat conservation areas do not include irrigation delivery systems, irrigation infrastructure, irrigation canals or drainage ditches within the boundaries or maintained by a port or irrigation district or company.

"Frequently flooded areas" means those lands in the floodplain which have at least a one percent or greater chance of flooding in any given year, or are within areas that flood due to high groundwater. These areas can include: streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface. "Functions and values". See "Ecosystem Functions" and "Ecosystem Values" "Geologically hazardous areas" means areas susceptible to erosion, landslide, seismically induced soil failure, or other geological events as defined in Chapter 36.70A RCW and this chapter that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

"Geologist" means a person who is licensed in the state of Washington under the provisions of Chapter 18.220 RCW and Chapter 308-15 WAC, and who has at least one year of practical experience in the Pacific Northwest.

"Habitat assessment" means a written report based on a site investigation process to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat potentially affected by a development proposal, and containing an assessment of the potential impacts of the proposal on any regulated species or habitat subject to these regulations.

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



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“Habitats and species of local importance” means those significant biological areas identified by the City; and priority habitats and species identified by the Washington State Department of Fish and Wildlife; and high quality ecological communities and systems and rare plants listed by the Washington State Department of Natural Resources.

“Hazard tree” means any tree that poses a threat to public safety, or poses an imminent risk of damage to private property. “Hazard tree” includes any tree that, under normal environmental conditions or in windstorms common to the Pacific Northwest, is likely to cause damage to a structure with frequent human use, including residential structures, a place of employment or public assembly, and other similar places, or damage to an approved public road or utility facility.

“Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

“In-lieu fee (ILF) program” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the sponsor collects funds from individuals and/or entities required to conduct compensatory mitigation under a wetland regulatory program. The sponsor uses the funds pooled from multiple permittees to create one or more mitigation sites under the authority of the agreement to satisfy the permittees’ required mitigation.

“Lake” means a natural or artificially created permanent body of water with an average depth of six feet or greater and an area larger than twenty acres, as measured at the ordinary high water mark.

“Landslide” means episodic downslope movement of a mass of soil or rock that includes but is not limited to rock falls, slumps, mudflows, earth flows, and avalanches.

“Landslide hazard areas” means those areas of the city subject to a risk of landslide based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors.

“Low impact development (LID)” means a stormwater and land-use management strategy that tries to mimic natural hydrologic conditions by emphasizing the following techniques: conservation, use of on-site natural features, site planning, and distributed stormwater best management practices (BMPs) integrated into a project design.

“Mitigation sequence” means a prescribed order of steps taken to reduce the impacts of activities on wetlands, fish and wildlife habitat conservation areas, and buffers. As defined in WAC 197-11-768, mitigation means:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the action;



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

F. Monitoring the impact and taking remedial action when necessary.

“Monitoring” means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural systems and features, and including gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of such systems, and assessing the performance of required mitigation measures.

“Native vegetation” means vegetation on a site or plant species which are indigenous to the area in question; or if the site has been cleared, species of a size and type that were on the site on the effective date of this title or reasonably could have been expected to have been found on the site at the time it was cleared.

“Non-federally regulated wetland” means a wetland that is not jurisdictional under the federal Clean Water Act. Sometimes referred to as “isolated wetlands,” these wetlands remain regulated under state and local laws and rules, whether or not they are protected by federal law.

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

“Ordinary high water mark” means the mark that will be found by examining the channel bed and banks of a stream, lake or pond and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all years of normal rainfall, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. In any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

“Plant associations of infrequent occurrence” means one or more plant species on a landform type which, because of the rarity of the habitat or the species involved or both, or for other botanical or environmental reasons, do not occur frequently in Everett or Snohomish County.

“Pond” means an area permanently inundated by water in excess of six feet deep and less than twenty acres and larger than two thousand five hundred square feet in area as measured at the ordinary high water mark.

“Preservation” means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms (such as recording conservation easements and providing structural protection like fences and signs). Preservation does not result in a gain of wetland area and functions (but may result in a gain in functions over the long term).

“Priority area” means known limiting habitats (e.g., breeding areas) or areas that support a relatively high number of individuals (e.g., regular concentrations) identified in WDFW’s Priority Habitats and Species List.

“Priority habitats” mean, as defined by WDFW, habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type (e.g.,



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shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs).

“Priority species” mean, as defined by WDFW, State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.

“Project area” means all areas proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

“Protected area” means those lands that lie within the outermost boundary of the total area comprised by the floodway, the riparian habitat zone (as defined by FEMA’s 2013 Model Ordinance for Puget Sound) and the channel migration zone.

“Qualified professional” means ~~a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director.~~ a person with experience and training in the applicable field who possesses a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, engineering, fisheries, ecology, resource management, or related field, and who has at least two additional years of full-time, related work experience. A qualified professional for wetland delineations will also have completed additional wetland-specific training programs and/or have professional certificates or certifications. A qualified professional for geologic assessments or reports means an engineer or geologist licensed in the state of Washington, including: a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or at minimum of five years of experience evaluating geologically hazardous areas.

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function, but does not result in a gain in wetland acres.

“Reasonable use” or “reasonable economic use” means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

“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 natural feature, including:

- (a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.



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

“Salmonid” means a member of the fish family Salmonidae. In the city these include Chinook, coho, chum, sockeye and pink salmon; cutthroat, brook, brown, rainbow and steelhead trout; and Dolly Varden, kokanee and char.

“Seismic hazard areas” means those areas of the city subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, debris flows, lahars, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table.

“Service area” means The geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

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

- A. Plant associations of infrequent occurrence;
- B. Those areas listed in the 1981 SEPA Resource Inventory as significant biological areas, which are:
 1. Maulsby Swamp;
 2. Kasch Park (Bomarc) Bog;
 3. Simpson Lee site Category I wetlands;
 4. Narbeck Swamp;
 5. Jetty Island.

“Species, listed” means any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 220-610-110 or current “Priority Habitat and Species List,” Washington Department of Fish and Wildlife).

“Steep slopes” means any ground that rises ten feet or more for every twenty-five feet of horizontal distance, thus having a grade of forty percent or steeper. A slope is delineated by establishing its toe and top:

1. “Toe” of a steep slope is the lowermost limit of the area where the ground surface rises ten feet or more vertically within a horizontal distance of twenty-five feet.
2. “Top” of a steep slope is a distinct, sharp break in slope which separates slopes inclined at less than forty percent from slopes equal to or greater than forty percent. Where no distinct break in slope exists, the top of the steep slope shall be the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

“Stream” means those areas where naturally occurring surface waters flow sufficiently to produce a defined channel or bed which demonstrates evidence of the passage of water including, but not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. A “defined channel or bed” means a watercourse that is scoured by water or contains deposits of mineral alluvium. The channel or bed need not contain water during the entire year. Streams do not include watercourses which were created entirely by artificial means, such as irrigation ditches, canals, roadside ditches or



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storm or surface water run-off features, unless the artificially created watercourse contains salmonids or conveys a stream that was naturally occurring prior to the construction of the artificially created watercourse.

“Stream channel bottom” means the submerged portion of the stream cross-section which is totally an aquatic environment. The channel bottom may be seasonally dry.

“Stream, Type F” means those streams defined in WAC 122-16-030, Water Typing System, as Type F water.

“Stream, Type Np” means those streams defined in WAC 122-16-030, Water Typing System, as Type Np water.

“Stream, Type Ns” means those streams defined in WAC 122-16-030, Water Typing System, as Type Ns water.

“Stream, Type S” means those streams defined in WAC 122-16-030, Water Typing System, as Type S water.

“Temporal loss” means ~~the time lag between the loss of wetland functions caused by the permitted or unpermitted impacts and the replacement of wetland functions at the compensatory mitigation site~~ the time lag between the loss of aquatic resource functions caused by the permitted or unpermitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site, as defined in the 2008 Federal Mitigation Rule. Higher compensation ratios may be required to compensate for temporal loss. When the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the permitting agencies may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

“Thermal refugia” means sites within a landscape that are relatively protected from temperature extremes and warming trends.

“Unavoidable impacts” mean adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

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“Unstable soils” means soils which by their physical nature are not suitable to support buildings, roads, utilities or other manmade development related improvements, or which have the potential for slope failure, erosion, or subsidence. Unstable soils include, but are not limited to, those areas defined as landslide hazard areas, erosion hazard areas, and seismic hazard areas, or other soils which have been determined by the public works director or the building official to be unsuitable for building foundations or structural support.

“Watershed approach” means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of wetlands in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of wetland functions and services caused by authorized activities. The watershed approach may involve consideration of landscape scale, historic and potential wetland conditions, past and projected wetland impacts in the watershed, and terrestrial connections between wetlands when determining compensatory mitigation requirements.



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“Wetland delineation” means the method used to establish the existence (location) and physical limits (size) of a wetland for purposes of federal, state, and local regulations.

“Wetland, estuarine” *See Wetlands with special characteristics* “Wetland mitigation bank” or “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.

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; patches are less than 100 feet from each other; and areas delineated as wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water.

“Wetland” or “Wetlands” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

“Wetlands, forested” *See Wetlands with special characteristics.*

“Wetlands, riparian” means those wetlands that generally occur within a riparian corridor that is contiguous to or has a surface hydrologic connection with a stream. Wetlands formed by hillside seeps that are not hydrologically affected by water in a nearby stream are not riparian wetlands. However, wetlands on a hillside may be riparian wetlands if adjacent to a stream that flows down the hillside.

“Wetlands with special characteristics” mean bogs, estuarine wetlands, forested wetlands, interdunal wetlands, wetlands in coastal lagoons, and Wetlands of High Conservation Value. Detailed information about these individual wetland types is found in the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication #23-06-009), or as revised.

CHAPTER 19.37 CRITICAL AREAS

Introduction

19.37.010 User guide

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



modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in EMC 19.37.050.

19.37.020 Purpose and Goals

It is the short-term goal of this chapter that there be no net loss of the functions and values of all critical areas regulated by this chapter. An additional goal is no net loss of wetland acreage. The long-term goal is a net gain in functions and values.

The purpose of this chapter is to designate, classify and protect the critical areas in and the functions and values of critical areas the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

- A. Preserving, protecting, and restoring critical areas and their ecological functions and values by regulating development within such areas and their buffers;
- B. Mitigating unavoidable adverse impacts to critical areas by regulating alterations in and adjacent to critical areas;
- C. Protecting the public from personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:
 - 1. Unnecessary maintenance and replacement of public facilities,
 - 2. Publicly funded mitigation of avoidable impacts,
 - 3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
 - 4. Degradation of the natural environment;
- E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;
- F. Alerting appraisers, assessors, builders, developers, owners, real estate agents, potential buyers or lessees, and other members of the public to the presence of critical areas and the respective development limitations of such areas;
- G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals;
- H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 19.43 EMC, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city; and
- I. Providing for the maintenance and enhancement of solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

19.37.030 Applicability

A. This chapter establishes regulations for the protection of critical areas and applies to all lands, all land uses and development activity, and all structures or facilities, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes



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and requirements of this chapter. No alteration of a critical area may occur until the city has issued all approvals required by this chapter. By way of example and not limitation, no development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.

B. For development proposals on properties within shoreline jurisdiction, the shoreline master program applies in addition to the regulations contained in this chapter.

C. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical area applies.

D. In addition to the requirements of this chapter, the applicant shall obtain all necessary state, federal and other local permits.

19.37.040 Protection of Critical Areas

A. On all lots containing or within three hundred feet of critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

1. Areas of special flood hazard (if located in a designated floodplain, also see Chapter 19.30 EMC);
2. Wetlands;
3. The following geologically hazardous areas:
 - a. Erosion hazard areas;
 - b. Landslide hazard areas;
 - c. Seismic (liquefaction) hazard areas;
4. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes, marine waters, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas as defined in this title;
5. Ground water discharge areas, such as springs and seeps.

B. All actions must be designed and constructed in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.

19.37.045 Ground Water Discharge Areas—Seeps and Springs

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to critical areas, as applicable.

19.37.050 Exemptions and Exceptions

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



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

The burden of proof is on the applicant to provide sufficient evidence to the city the activity meets the precise description of the exemption or exception.

A. *Exemptions.* The following are exemptions to the provisions of this chapter due to having no environmental impact, being temporary in nature, or are an emergency; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. An exemption does not give permission to degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

1. *Exempted Actions.*

- a. Emergency actions, which are activities necessary to prevent an immediate threat to the public health, safety or welfare or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency with the least possible impact to the critical area and/or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas shall be minimized and mitigated within one year of the end of the emergency.
- b. Existing and ongoing agricultural activity occurring prior to and since January 13, 1990; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of January 13, 1990. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas.
- c. Normal and routine maintenance of legally constructed irrigation and drainage ditches; provided, that this exemption shall not apply to any ditches used by fish.
- d. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes prior to and since January 13, 1990.
- e. Normal and routine maintenance of entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter.



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f. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand the footprint of the facility or encroach further into the critical area, does not impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

(1) Normal, routine, and emergency maintenance or repair of existing, legally established public or private utility structures or rights-of-way, including vegetation management;

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

(A) Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances;

(B) Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less;

(C) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not alter the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be altered. Trenching is not allowed by this provision.

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

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

h. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities including educational research activities that do not result in altering the structure or functions of the critical area. Disturbed areas shall be immediately restored.

i. Conservation measures intended to preserve soil, water, vegetation, fish and other wildlife and their associated habitat that do not involve adversely impacting the structure or functions of the critical area.

j. Routine maintenance of existing, legally-established landscaping and fencing including removal of invasive vegetation, that does not involve grading, excavation or filling.



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k. Modification to existing structures. Legally constructed structures and improvements in existence on January 13, 1990, that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, or replaced; provided, that the new construction or related activity does not further alter or increase the impact to the critical area or buffer as a result of the proposed modification. For structures that are damaged or destroyed as a result of flood, fire or act of nature, restoration work shall be initiated by the applicant within one year of the date of damage or destruction, as evidenced by issuance of a valid building permit. The work authorized by such permit must be completed within the term of the permits issued by the city, which includes any written extensions.

B. *Exceptions.* All exceptions must be approved by the city through the review process listed in EMC Title 15 prior to the exception applying. The following activities include exceptions to certain requirements of this chapter; however, unless otherwise noted the exceptions listed in this section still require compliance with the other requirements of this chapter, except as allowed by the exception. The exception may not be exempted from other state or federal regulations or permit requirements. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner.

1. New accessory structures up to two hundred square feet. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures and additions to existing structures up to two hundred square feet may be permitted within the improved portion of the buffer as follows:

- a. The two-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas;
- b. The new structure or addition shall be placed within the outer fifty percent of a legally altered critical area buffer;
- c. The new structure or addition maintains a minimum setback of ten feet from the critical area;
- d. A minimum of one square foot of legally altered buffer area is restored for every one square foot of new structures, lawns and associated improvements;
- e. A critical area covenant is recorded;
- f. A habitat assessment is completed as required by this chapter;
- g. A fence and critical area signage are provided to identify and protect the newly established buffer area;
- h. Only one such exception per site or property is allowed; and
- i. A critical area report may be required.

2. Expansion. For a legally established structure, the expansion or replacement, including any expansion of a legally established accessory structure allowed does not increase the footprint of the structure and all other structures by more than one thousand square feet, provided the following:

- a. The location of the expansion has the least adverse impact on the critical area;



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- b. To the maximum extent practical, the expansion or replacement is not located closer to the critical area and is located on the side of the structure opposite the critical area;
- c. Mitigation for project impacts is provided; and
- d. The structure was not established as the result of variance, buffer averaging, buffer reduction, or reasonable use exception; Expansions and additions shall not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions within the critical area or buffer shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code.

3. *Wetland Exception.* Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of the mitigation sequence of EMC 19.37.100 in accordance with the following provisions, and they may be filled if the impacts are fully mitigated based on the remaining actions in the mitigation sequence. Impacts should be mitigated through the purchase of credits from a mitigation bank or in-lieu fee program, if available, consistent with the terms and conditions of the bank or program. In order to verify whether the following criteria are met, it is essential that a critical area report for wetlands meeting the requirements of this chapter be submitted. It is the applicant's responsibility to provide a determination by a qualified professional whether the wetland is a non-federally regulated wetland.

a. All category IV, non-federally regulated wetlands less than four thousand square feet that meet all of the following criteria:

- (1) Are not associated with riparian areas or their buffers;
- (2) Are not associated with shorelines of the state or their associated buffers;
- (3) Are not part of a wetland mosaic;
- (4) Do not score six or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication No. 23-06-009, or as revised and approved by Ecology); and
- (5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, and do not contain federally listed species or their critical habitat.

b. Category IV, non-federally regulated wetlands less than one thousand square feet that meet all of the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

4. The following actions may be required to provide a habitat assessment or biological assessment under EMC 19.37.520, FWHCAS – Critical Area Report Additional Requirements. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage,



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electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures. The city may approve, or approve with modifications, such a request only when the following findings are made:

- a. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements or maintenance;
- b. There is no other reasonable alternative to the proposed development with less impact on the critical area;
- c. The proposal mitigates impacts on the critical areas;
- d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
- e. The proposal is consistent with other applicable regulations and standards.

5. *Docks*. This section does not apply to areas under jurisdiction of the shoreline master program.

- a. Repair and maintenance of an existing legally established dock are permitted; provided, that all of the following criteria are met:
 - (1) There is no expansion in overwater coverage;
 - (2) There is no increase in the size and number of pilings;
 - (3) There is no use of toxic materials, such as creosote, CCA and other treated wood products;
 - (4) There is no new spanning of water between three and thirteen feet deep; and
 - (5) There is no new increase in the use of materials creating shade.
- b. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions. Piers and docks shall be located, designed and constructed so as to cause minimum interference with public use of the water surface and shoreline; to mitigate the impacts to ecological function and critical areas; to avoid or minimize impacts to views; and to cause no undue harm to adjacent properties.
- c. New docks shall be a maximum of four feet in width and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating which provides at least fifty percent of open surface area. Piles, floats or other parts of the structure that come in direct contact with the water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited.
- d. Only one dock shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such dock shall be shared between all lots in the short subdivision or subdivision.
- e. Covered overwater moorage, either fixed or floating, shall be prohibited.



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- f. No dock may be located within fifteen feet of an interior lot line, unless shared with the owner of the adjacent lot, in which case no setback is required.
- g. No residential lot shall have more than one dock.
- h. No dock shall exceed four feet in width, twenty-five feet in length or five feet in height above the ordinary high water mark on the landward side.

6. *Reasonable Use Exception.* This section does not apply to areas within jurisdiction of the shoreline master program.

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

- (1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and
- (2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and
- (3) Any alterations permitted subject 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 or adjusting a boundary line, thereby creating the undevelopable condition after January 13, 1990; and
- (5) The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

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

- (1) The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;
- (2) A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;
- (3) An analysis of the minimum development necessary to achieve "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;
- (4) An analysis of the impact that the development described in this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;
- (5) An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project



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implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether pre-project mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the city's stormwater management regulations;

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

(7) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

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

(9) A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible;

(10) Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

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

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

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

(3) If a reasonable economic use of a lot cannot exist by means of either subsection (B)(6)(c)(1) or (2) of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection (B)(6)(c)(1) or (2) of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the



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city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

(A) *Neighborhood Residential Zones.* The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to a neighborhood residential or neighborhood residential-constrained zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

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

(ii) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the receiving site in a Neighborhood Residential zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be one-unit dwellings.

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

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

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

19.37.060 Permitted and Allowed Uses and Activities

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



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chapter and other city, state, and federal regulations. The permitted and allowed uses listed in this section may not be exempted from other state or federal regulations or permit requirements and may not degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer of the activity shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

B. The following uses/activities are permitted in critical areas and their buffers subject to the review process listed in EMC Title 15:

1. Minor utility construction projects. The placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility that disturbs less than one hundred square feet of critical area and buffer, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and buffers, subject to the following conditions:

- a. The activity does not impact a Type F stream or a category I wetland and complies with other provisions of this chapter; and
- b. The activity is designed and implemented in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.

2. Buffer management, as defined in this title, when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted:

a. *Pruning*. Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.

(1) A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:

(A) The applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.

(B) The applicant, in lieu of the above and an application fee as determined by the planning director, shall:

(i) Submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;

(ii) Submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;

(iii) Sign a declaration stating that they have read and understand, and will comply with, the applicable city regulations;



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(iv) Submit photos of the trees that were pruned after the work is completed.

(C) The city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements.

(D) The city shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with city regulations.

(2) Pruning must adhere to the ANSI A300 Tree Care Standards

(3) Pruning shall not result in the removal of more than thirty-three percent of the tree's crown.

(4) Pruning shall not include topping of trees unless underneath power lines.

(5) Pruning activity shall not result in any soils disturbance on the site.

(6) A tree that is an active nest site for a species of local or state importance or provides critical habitat such as an eagle perch, or other listed threatened or endangered species, shall not be pruned.

(7) Topping trees or pruning trees in excess of thirty-three percent is considered a nonhazardous tree removal activity and therefore must comply with subsection B.3.c of this section.

(8) Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond thirty-three percent of the tree's original crown.

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

(1) The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, a tree risk assessment and recommendation from a certified arborist, registered landscape architect or professional forester that :

i. Identifies the trees proposed to be removed

ii. Concludes the tree condition constitutes a hazard to life or property

iii. Assesses the feasibility of snag retention

iv. Evaluates if trees to be removed provides priority habitat

v. Provides location and species of replacement trees

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

(3) Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two native trees for



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every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan within one year of removal.

(4) If a tree to be removed provides priority habitat, including eagle nests, a qualified professional shall be consulted to determine timing and methods of removal that will minimize impacts. The qualified professional's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.

(5) If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property, including recommendations for replanting and other measures to avoid adverse impacts to slope stability.

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

(7) The city may require that a hazard tree assessment or tree risk assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of this chapter prior to final approvals for a development proposal.

c. *Nonhazardous tree removal with replanting.* Except as allowed under subsection B.2 of this section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of ten percent of all nonhazardous trees within the outer half of a critical area buffer to be removed. Removal of nonhazardous trees must comply with the following requirements:

(1) Proposals to remove nonhazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the planning director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or wetland and an area where future cutting will not be necessary. A minimum of three, three- to five-gallon native trees of different varieties must be planted for every tree to be removed unless it would create an overcrowded situation in which case the planning director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of two gallons or if bareroot an equivalent size. The planning director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the planning director. Only trees greater than a six-inch diameter at breast height within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch diameter at breast height.

(2) Tree removal is limited to once every five years.



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- (3) A tree that is an active nest site for a species of local importance including bald eagles, or provides critical habitat, shall not be cut.
- (4) If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.
- (5) If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the planning director. A geologically hazardous covenant must be recorded prior to tree cutting.
- (6) Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of twenty-five percent of cut trees shall be left as snags approximately twenty feet tall unless within striking distance of structures, yards, or trails.
- (7) Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.
- (8) Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a critical areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.
- (9) A survey may be required if trees are to be removed near any lot line.
- (10) *Forest Practices*. Where applicable, applications for tree removal shall also include a city of Everett timber harvest application and include an estimate of the number of board feet to be cut.
- (11) Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.

d. *Weed Removal*. The removal of Class A, B, and C noxious weeds on the Washington State Noxious Weed List in conjunction with a mitigation plan or buffer management plan approved by the director. Unless otherwise specified in an approved mitigation or buffer management plan, weed removal is limited to hand weeding with light equipment that will not compact soil. 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 required in conjunction with removal of invasive plants. .

4. *Public and private pedestrian paths and trails*. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and designed in accordance with an approved critical area report:

- a. The trail or path shall not be permitted when critical area functions will be substantially degraded, shall be designed to minimize impacts to the critical area and its buffer.



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b. The trail or path shall be located on the outer twenty-five percent of the buffer, except for areas which provide for public viewpoints of the critical area or educational opportunities, and which are designed to minimize the footprint of the trail/path within the critical area or its buffer.

c. Stream crossings shall avoid adverse impacts to water quality or flow .

d. The width of trails shall be the minimum necessary. Critical area and buffer widths shall be increased, where possible, equal to the width of the trail corridor including disturbed areas.

e. The proposal must comply with the report requirements of this chapter.

f. The trail surface shall meet all other requirements including all applicable water quality standards. The trails should be one hundred percent porous to the maximum extent feasible. Raised boardwalks with non-treated pilings are allowed.

g. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

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

5. *Stormwater facilities.* Stormwater facilities and conveyance systems may be allowed in stream and wetland buffers, provided no other location is feasible, the location of such facilities will not degrade the functions or values of the critical area, and subject to the following criteria:

a. Stormwater ponds and vaults are not permitted in wetland or stream buffers.

b. Stormwater low-impact development and vegetative flow paths from level spreaders may be allowed in the outer 25 percent of the stream and wetland buffers only if the applicant demonstrates that no feasible alternative on-site location exists and the project would not adversely affect the stream flow or the function or values of the wetland, stream, and associated buffer. The following may be required:

i. Vegetated stormwater Low Impact Development Best Management Practices such as dispersion, infiltration, or constructed wetlands planted with appropriate native vegetation and trees are allowed without buffer averaging requirements;

ii. All requirements of the City's currently adopted Stormwater Management Manual are met;

iii. The facilities are not located in a fish and wildlife habitat conservation area, wetland, or associated buffer used by species listed as endangered or threatened by the State or Federal government or containing critical or outstanding actual habitat of those species, and considers alternative construction timing to minimize impacts in areas with heron rookeries or raptor nesting trees; and

iv. Stormwater Low Impact Development Best Management Practices construction and maintenance protects the stream and stream buffer and is aligned to avoid cutting trees greater than 12 inches in diameter at breast height, when practical

c. For Type Np and Ns streams and category III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates



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that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. Additional analysis demonstrating a proposed significant increase in wetland and/or stream function as measured by the Western Washington Wetland Rating System is required to be prepared by a qualified professional and submitted for review prior to authorization.

19.37.070 General Provisions for Nonconforming Structures and Improvements in Critical Areas and Buffers

The following establishes provisions for nonconforming structures and improvements located within critical areas or their buffers within Everett's jurisdiction. In a critical areas context, nonconforming structures and improvements are those legally established structures and improvements which met all local, state, and federal regulations in effect at the time of construction but would otherwise require additional critical area review and approval under current requirements.

A. General Provisions

1. Nonconforming structures and improvements may remain, be maintained, repaired, and replaced in accordance with this chapter.
2. Nonconforming structures and improvements may be expanded only as permitted by EMC 19.37.050.
3. Lawns and nonnative vegetation may be maintained, but not expanded, within buffers or critical areas.
4. All activities or developments using the provisions of this section shall demonstrate how the proposal follows mitigation sequencing in EMC 19.37.100, and shall describe the proposed use of any applicable best management practices.
5. Except for upper floor expansions not increasing a development footprint, the provisions of subsections (C) and (D) of this section may each be used one time for the subject property and may be used in combination. Any development application utilizing these provisions shall clearly document how the proposal meets these provisions.

B. Maintenance and Repair of Nonconforming Structures

1. A nonconforming structure may be maintained, repaired, or internally modified provided that the work does not increase the structure footprint or impervious area.

C. Reconstruction of Existing Nonconforming Structures

1. An existing nonconforming structure may be reconstructed as repair, reconstruction, or due to destruction or damage to any extent by fire or other casualty not intentionally caused by the owner; provided, that: there is no expansion of the existing footprint or increase of impervious area, including decks, patios or other improvements; there is no expansion of exterior walls; there is no increase in the nonconformity; and reconstruction is built on the existing foundation.
2. For a nonconforming structure destroyed or damaged to any extent by fire or other casualty not intentionally caused by the owner, a structure may be reconstructed on the existing



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foundation, or a new foundation may be built in the same location or further from the critical area.

3. In case of casualty damage or destruction, the following is required:

- a. A complete building permit application shall be properly filed within one (1) year of such fire or other casualty or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
- b. Rebuilding of the nonconforming structure shall be substantially complete within four (4) years of the date of the damage or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
- c. Documentation showing the date of the damage, the location, and dimensions of the damaged structure, and cause of the damage shall be submitted to the planning department for review and confirmation.
- d. If a nonconforming structure which has no permanent foundation is destroyed and the foundation's location cannot be verified by the planning department, then any new construction shall comply with the requirements of this chapter, excluding this section.

D. Expansion of Nonconforming Structures

1. An expansion of a nonconforming structure that increases the footprint, impervious area, or size of the structure, including new upper floors, is permitted if the expansion or any other change to the structure is outside of the critical area, critical area buffer, and any associated setbacks.
2. Additional upper floors may be added to a nonconforming structure above the ground floor if they do not encroach into the critical area, its buffer, or any associated setback any further than the exterior walls of the existing nonconforming structure.
3. Nonconforming structures and improvements may be expanded within critical areas or buffers only as permitted by EMC 19.37.050.

ARTICLE I. CRITICAL AREA REVIEW PROCEDURES

19.37.100 Mitigation Sequencing

A. .To realize critical area preservation goals, the city will require applicants demonstrate application of mitigation sequencing in accordance with WAC 197-11-768:

1. Avoid impact altogether by not taking a certain action or parts of an action;
2. Minimize impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impact;
3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the actions;



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5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;
6. Monitor the impact and take appropriate corrective measures.

19.37.110 Critical Area Reports—General

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

B. *When a Critical Area Report Is Required.* A critical area report is required when a proposed development is located within three hundred feet of a documented or suspected critical area (or two hundred feet from a potential geologically hazardous area). The city may waive the requirement for a critical area report in the following circumstances on a case-by-case basis:

1. The critical area was previously documented by a study and the city has determined the proposed development would not impact the critical area(s) or associated buffers; or
2. There is existing legally established development located between the critical area and the proposed development site and any required buffers on the site would be ineffective.

Table 37.1: Critical Area Reports—Summary

Document/Report Type	When Required	Notes:
Geological Assessment Letter	Potential geologically hazardous area exists on or within 200 feet of the proposed project area	Reconnaissance study; see EMC 19.37.220
Geological Report	An active geologically hazardous area exists on or within 200 feet of the proposed project area	Detailed study; see EMC 19.37.220
Critical Area Delineation Report	Wetland, stream or lake on site or within 300 feet	Identifies and maps critical areas and buffers
Wetland or Stream Mitigation Plan	Alteration or fill of wetlands, streams or buffers	Includes monitoring and contingency elements
Biological Assessment for Threatened or Endangered Species	Development within “protected area” or “special flood hazard area”	Per biological opinion by NMFS for development within 100-year floodplain. See EMC 19.37.520
Habitat Assessment	Potential impacts on regulated threatened/endangered species	Can apply to either terrestrial or aquatic habitat. See EMC 19.37.520.
Habitat Management Plan	Provided with a habitat assessment when a development is proposed on or adjacent	See EMC 19.37.520



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Document/Report Type	When Required	Notes:
	to a “habitat of primary association” for fish and wildlife habitat conservation area	
Monitoring Report	After completion of enhancement or mitigation work within critical areas and/or buffers	Provided post-development

19.37.120 Critical Area Reports—Professional Qualifications and General Report Content

A. *General Requirements for All Critical Area Reports.*

1. *Preparation by a Qualified Professional.* A critical area report shall be prepared by a qualified professional . The qualifications of the qualified professional who prepared the report shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. The director shall have the authority to hire an outside consultant at the applicant’s expense to review plans when the city has concerns about the accuracy or completeness of the report or plan.

2. *Report Content.* The written report (and the accompanying plan sheets and map figures) shall contain all of the following information, at a minimum:

- a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the critical area report;
- b. A description of the proposal and proposal location including tax parcel numbers of the subject property;
- c. Documentation of any fieldwork performed on the site, including delineation worksheets, figures, function assessments, soil logs, baseline hydrologic data, date and time of site evaluation, etc.;
- d. Identification , characterization, and if applicable wetland rating of all critical areas, water bodies, shorelines, and buffers on or within 300 feet of the proposed project area, including a description of all methodology with references;
- e. A statement specifying the accuracy of the report and all assumptions made and relied upon;
- f. A description of the proposed actions including an estimation of acreages of impacts to critical areas and buffers based on the field delineation;
- g. An assessment of the probable direct, indirect, and cumulative impacts to the critical areas and buffers resulting from the proposed development, including short-term and long-term impacts to critical area functions and values within and adjacent to the site;
- h. A narrative and supporting information describing how the applicable steps of the mitigation sequence of EMC 19.37.100 are proposed to be applied;
- i. A description of measures taken to protect and enhance existing habitat connections with other natural areas;
- j. Scaled drawings of all critical areas and buffers within 300 feet of the proposal, areas of impact to critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the planning director;



- k. Dimensions of all buffers and distances between critical areas and existing and proposed structures and lot lines.

19.37.130 Critical Area Reports—Alternative Best Available Science Analysis

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

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

19.37.140 Setbacks, Fencing, Signs, and Other Protective Measures

- A. *General Requirements.* Storage of building materials, junk and other items is not permitted within critical areas or buffers. All construction staging areas must be shown on approved plans and be located outside of critical areas and buffers.
- B. *Setbacks from Buffers.* To maintain the integrity of the buffer, principal buildings shall be set back a minimum of ten feet from the edges of all critical area buffer boundaries. All other structures and improvements shall maintain a setback of five feet from the edge of the buffer.
- C. *Fencing and Other Protection Mechanisms.* Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife movement.
- D. *Signs.* The city may require the applicant to provide informational signs in conspicuous locations approximately 50 feet apart on a fence marking the buffer to identify the importance of maintaining the critical area and buffer in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 19.36.
- E. *Protection of Significant Trees within Buffers (Evergreens at Least Eight-Inch Diameter at Breast Height).* If evergreen trees at least eight-inch diameter at breast height are identified on the outer edge of the buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:
 - 1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.
 - 2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.



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3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.
7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

19.37.150 Construction Plan Review

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

B. The planning director may require construction monitoring by a qualified professional during alteration activities within or adjacent to critical areas or buffers to ensure approved design recommendations are implemented. When such services are deemed necessary by the planning director, they shall be at the applicant's expense.

19.37.160 Assurance Devices

The city shall require performance or maintenance assurance devices in accordance with Chapter 19.40 to ensure compliance with this chapter and adequate protection and maintenance of critical areas and buffers.

19.37.170 Title Notification

A notice on real property title is required as a condition of permit issuance or project approval when a permit or development application is submitted for development on any property containing critical areas or buffers. The purpose is to inform subsequent purchasers of real property of their existence.

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

1. Utility and road projects in public rights-of-way.
2. Utility and road projects on private easements where the proponent does not own the land.
3. Any development within the special flood hazard area will require a notice on title that the property contains land within the riparian habitat zone and/or special flood hazard area.



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

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

19.37.180 Unauthorized Critical Area Alterations

A. Unauthorized Alterations.

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

2. . Any illegal alteration of a critical area or buffer which is not proposed for development as allowed by this chapter shall be restored to a condition which is equivalent or superior to its prior natural condition to the extent that such condition can be determined.

3. Legal alterations are those alterations to critical areas and buffers that were in conducted in accordance with all local, state, and federal regulations in effect at the time of the alteration.

19.37.190 Enforcement—Restoration Plans

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

B. *Restoration of Impacts Required.* Any unauthorized impacts on a critical area feature or buffer will require restoration of the affected area to an equivalent or improved condition prior to the violation occurring. A restoration plan must be consistent with the requirements of this chapter and a public works permit may be required by the city. If an equivalent or improved condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the portion of the critical area that cannot be restored, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture. In addition to the authority of the city's code enforcement officer to impose penalties pursuant to Chapter 1.20 EMC, the code enforcement officer may impose the fine described in this section as applicable.

C. Restoration plans shall include, but not be limited to, the replacement of all improperly removed vegetation with approved species such that the biological and habitat values will be replaced to an equivalent or improved condition, improper fill removed and slope stabilized. Studies by a qualified



professional shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

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

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

F. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

ARTICLE II. GEOLOGICALLY HAZARDOUS AREAS

19.37.200 Geologically Hazardous Areas – Description and Purpose

A. In accordance with WAC 365-190-120, geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, tsunami, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

B. The purposes of geologic hazard area regulations is to avoid and minimize potential impacts to life and property from geologic hazards, conserve soil resources, avoid and minimize impacts of erosion and landslide hazards on wetlands and important wildlife habitats and species not caused by natural geologic processes, and minimize damage to property and structures due to landslides, seismic hazards, or other naturally occurring events. This purpose shall be accomplished through appropriate levels of study and analysis, application of sound engineering principles, and regulation or limitation of land uses, including maintenance of existing vegetation, regulation of clearing and grading activities, and control of stormwater. Elimination of all risk from geologically hazardous areas is not feasible to achieve, but the purpose of this article is to reduce this risk to acceptable levels.

19.37.210 Geologically Hazardous Areas – Designation and Mapping

A. *Designation.* The following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

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

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

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

b. Those areas defined as medium risk of landslide hazard in the Dames and Moore Methodology for Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available



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science, when combined with springs or seeps, immature vegetation, and/or no vegetation:

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

(2) Slopes of twenty-five percent to forty percent in all other geologic units.

c. Those areas mapped by the Washington Geological Survey as identified in "Landslide inventory of portions of Snohomish County, Washington: Washington Geological Survey Report of Investigations" (Mickelson, et al., 2022) and per landslide maps maintained by Washington Department of Natural Resources.

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

(1) Slopes greater than fifteen percent; and

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

(3) Springs, ground water seepage, or saturated soils.

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

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

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

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

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

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

2. Seismic/liquefaction hazard areas:

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

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

3. Erosion hazard areas:

a. Those areas defined as high and very high/severe risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically



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Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science:

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

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

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

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

4. Tsunami hazard areas:

a. Tsunami hazard areas include coastal areas and shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal wave action generated by seismic events or other geologic events. Suspected tsunami hazard areas are indicated on the Tsunami Hazard Areas maps maintained by the Washington Department of Natural Resources.

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

B. Mapping. The approximate location and extent of potential geologically hazardous areas are shown on maps maintained by the City of Everett and the Washington State Department of Natural Resources, as referenced in the designation descriptions, above. These maps are meant to serve as a guide for applicants, owners, and plan reviewers. However, they do not provide a conclusive or definitive indication of geologically hazardous area presence or extent. This article does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of the City of Everett or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

19.37.220 Geologically Hazardous Areas – Critical Area Report Additional Requirements

A. Minimum Standards for Geological Assessments. A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity. In addition to the general critical area report requirements in EMC 19.37.100 and EMC 19.37.120, the following additional report requirements apply when assessing geologically hazardous areas.

1. A field investigation and geological assessment shall be prepared, stamped, and signed by a qualified professional to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.

a. The geological assessment shall be submitted in the form of a Geological Assessment Letter when the qualified professional finds that no active geological hazard area exists on or within two hundred feet of the site. The Geological Assessment



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Letter shall meet the minimum required content listed in this chapter but may be abbreviated in form .

b. The geological assessment shall be submitted in the form of a Geotechnical Report when the qualified professional finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements pursuant to this chapter.

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

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

a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in EMC 19.37.210.

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

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

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

e. A statement that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale for such conclusions based on geologic conditions and interpretations specific to the project.

f. If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not increased, and recommendations are consistent with this article; For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities;



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

B. *Geological Assessment Review*

1. Geological assessments shall be submitted to the department for review and approval as part of the integrated permit review process described in EMC Title 15, Local Project Review Procedures. The department shall review the geological assessment and either:
 - a. Accept the geological assessment; or
 - b. Reject the geological assessment and require revisions or additional information.
2. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title 15, Local Project Review Procedures.
3. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.

19.37.230 Geologically Hazardous Areas – Development Standards

A. *Geologically Hazardous Slope Setbacks and Slope Protection.*

1. *Geotechnical Assessment Requirements.* Development proposals on or within two hundred feet of any area designated as or which, based on site-specific field investigation, the city has reason to believe are geologically hazardous areas shall submit a geological assessment as required by this chapter.
2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 18 of the International Building Code (IBC), or as the IBC is updated and amended.
 - a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.
 - b. The city may require larger setback buffer widths under any of the following circumstances:
 - (1) The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.
 - (2) The area has a severe risk of slope failure or downslope stormwater drainage impacts.
 - (3) The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.



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

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

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

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;
2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;
3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation, demonstrating the degree of the alteration is limited to the minimum needed to accomplish the project purpose;
5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;
6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and
8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.

C. *Additional Requirements.* As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by this chapter:

1. The city shall require:
 - a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by EMC 19.37. 170;
 - b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.
2. The city may require:
 - a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide



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the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;

- b. Vegetation and other soil-stabilizing structures or materials be retained or provided;
- c. Long-term maintenance of slopes and on-site drainage systems.

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

1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under EMC 19.37.050. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.
2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on site or off site, shall be prohibited.

ARTICLE III. WETLANDS

19.37.300 Wetlands - Description and Purpose

A. Wetlands are defined using the Washington State definition of wetlands established under RCW 36.70A.030(48) and as defined in EMC 19.04.110.

B. The purpose of this chapter's wetland regulations are to:

1. Recognize and protect the beneficial functions performed by wetlands, including those physical, biological, chemical, and geologic interactions within wetlands and the surrounding landscape, including buffers. These functions are often grouped into three main categories – water quality improvement functions, hydrologic functions, and habitat functions and may include but are not limited to:
 - a. The uptake, removal, transformation, and cycling of nutrients, sediment, and toxicants;
 - b. Floodflow alteration, surface water storage, reduction of peak flows, groundwater recharge, decreasing downstream erosion, and energy dissipation of flows;
 - c. Supporting food webs and providing several habitat niches and features for wildlife breeding, nesting, and rearing, and providing thermal refugia.
2. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values and of wetlands throughout the city.
3. Establish review procedures for development proposals in and adjacent to wetlands.
 - a. Compliance with the provisions of this chapter does not necessarily constitute compliance with other federal, state, and local regulations and permit requirements. Applicants are responsible for complying with these requirements.

19.37.310 Wetlands - Delineation, Mapping, and Rating

A. *Wetland Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and



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applicable regional supplements (Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. A wetland delineation shall be performed by a qualified professional experienced in wetland science. Wetland delineations are valid for five years, after such date, the city shall determine whether a revision or additional assessment is necessary.

B. *Wetland Mapping.* A wetland delineation shall result in a wetland boundary clearly marked in the field and an accurate ground-verified map of the boundaries. This map should be created using either a professional survey or using an equivalent method such as Global Positioning System (GPS) with sub-meter accuracy. The map shall also include an indication of where wetlands extend off site. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified.

C. *Wetland Rating.* Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington 2014 Update Version 2.0, or as revised (Ecology Publication No. 23-06-009). Wetland ratings are valid for five years; after such date the city shall determine whether a revision or additional rating is necessary.

D. *Illegal Modifications of Wetlands.* Wetland rating categories shall not change due to illegal modifications made to the wetland.

19.37.320 Wetlands - Critical Area Report Additional Requirements.

A. *Additional Critical Area Report Content for Wetlands.* A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland and stream reports, or a professional who demonstrates expertise in wetland science, stream ecology, or fish and wildlife biology to the satisfaction of the planning director.

1. Wetlands shall be rated according to the categories defined by the Washington State Department of Ecology Washington State Rating System for Western Washington 2014 Update, Version 2.0 or as revised (Ecology Publication No. 23-06-029).

2. Hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and, to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

B. Wetland and buffer impact mitigation plans shall be prepared consistent with the guidance in [Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans](#) (Ecology Publication #06-06-011b, or as revised). The report shall include a written plan and plan sheets that contain, at a minimum, the elements listed below.

1. 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 description of how the development project has been designed in accordance with mitigation sequencing provisions.



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2. A baseline study that describes and quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation. Include acreage or square footage of the existing wetland and buffer areas to be altered, landscape position, and surrounding land uses. Include a description of existing versus proposed water regimes, vegetation, soils, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating. This assessment could involve assessing functions using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended;

3. A 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 compensatory mitigation actions are not undertaken.

4. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;

5. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies. Specify proposed mitigation actions, if applicable, and include written specifications and descriptions of the mitigation proposed, such as:

- a. The proposed construction sequence, timing, and duration;
- b. Grading and excavation details;
- c. Erosion and sediment control features;
- d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- e. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.; 6. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

7. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful;

8. Include provisions for an assurance device as provided by Chapter 19.40 to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the applicant's qualified professional and the planning director



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sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

9. Include provisions for the protection of the mitigation site. The wetland mitigation area and any associated buffer shall be protected by a legal mechanism such as a critical area tract or critical area covenant. The planning director may approve another legal and administrative mechanism if it is determined to be adequate to protect the site. 10. Scaled plan sheets shall contain, at a minimum:

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

19.37.330 Wetlands - Buffer Width Requirements

A. Wetland Buffer Widths.

1. The following buffer widths listed in Tables 37.2 and 37.3 apply to all wetlands within the city of Everett. Buffer widths have been established in accordance with the best available science. Buffers are based on the category of wetland and the habitat score as determined under EMC 19.37.310. Wetland buffers shall be measured perpendicular from the wetland boundary as delineated and marked in the field.

2. Wetland buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.330(F).

2. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

3 The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer and habitat corridor vegetation may require enhancement or restoration per the following:

a. Applicability of Vegetative Buffer Standard. If the on-site buffer does not include a relatively intact native vegetative community, the buffer shall be enhanced or restored to contain a native vegetation community when either:

- i. The total new net impervious area on the entire subject property exceeds 2,000 square feet; or
- ii. The value of the new construction or alteration occurring within a two-year period is equal to or greater than fifty percent of the assessed value of the existing improvements; or
- iii. More than 25% of the buffer on the subject site is covered with non-native and/or invasive vegetation.

b. Vegetative Buffer Standard. The following vegetative buffer standards shall be met when the proposal meets the applicability requirements:



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I	All including forested except those listed below	100	150	300
	Bogs	250		300
	Estuarine	200		
II	All except estuarine	100	150	300
	Estuarine	150		
III		80	150	300
IV		50		

Table 37.3: Reduced Wetland Buffers When Impact Minimization Measures are Implemented and a Habitat Corridor is Provided

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5 (Habitat Corridor Not Required)	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75	110	225
I	Bogs	190		225
I	Estuarine	150		
II	All except estuarine	75	110	225
II	Estuarine	110		
III		60	110	225
IV		40		

4. *Habitat Corridors.* When feasible, wetlands that score six points or more for habitat function can use the buffers in Table 37.3 provided all of the below criteria are met. Presence or absence of a nearby habitat corridor must be confirmed by a qualified professional. For wetlands that are unable to provide habitat corridors or that score five or fewer habitat points, only the measures in Table 37.4 are required.

- a. A relatively undisturbed vegetation corridor at least 100 feet wide is protected between the wetland and:



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- i. A legally protected, relatively undisturbed and vegetated area (e.g. Priority Habitats, compensatory mitigation sites, wildlife areas/refuges, county and state parks where they have management plans with identified areas designated as Natural, Natural Forest, or Natural Area Preserve), or
 - ii. An area that is the site of a Watershed Project, identified within, and fully consistent with, a Watershed Plan as defined by RCW 89-08-460, or
 - iii. An area where development is prohibited according to the provisions of the City's Shoreline Master Program, or
 - iv. An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with WDFW.
- b. The corridor is permanently protected for the entire distance between the wetland and the shoreline or legally protected area by a conservation easement, deed restriction, or other legal site protection mechanisms.
 - c. Presence or absence of the shoreline or Priority Habitat must be confirmed by a qualified professional and the planning director.
 - d. The measures in Table 37.4 are implemented, as applicable, to minimize impacts of the adjacent land uses.

B. *Increased Wetland Buffer Width.* Buffer widths stated in subsection A of this section shall be increased:

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular wetland; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;
2. When the wetland is used by a state or federally listed plant or animal species under WAC 220-610-010, 50 CFR 17-11, 50 CFR 17-12, or other state or federal regulations; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting trees, and the increased buffer is necessary to protect such habitat;
3. When a habitat assessment or habitat management plan is required by EMC 19.37. 110 and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;
4. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by EMC 19.37. 230;
5. When the wetland buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or
6. When the city finds, based upon a site-specific critical area analysis, that impacts to a wetland or other critical area from a proposed development can only be mitigated by a greater buffer width.



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C. *Impact Minimization Measures.*

Developments that produce the listed disturbances and are requesting reduced wetland buffers per Table 37.3 are required to address the disturbance through the use of applicable minimization measures. This is not a complete list of measures, nor is every example measure required. Though not every measure is required, all effort should be made to implement as many measures as possible. Regulatory staff should determine, in coordination with the applicant, which measures are applicable and practicable. The critical areas report shall address how each impact minimization measure is being provided.

Table 37.4 – Impact Minimization Measures

Example of Disturbance	Activities and Uses that Cause Disturbances	Examples of Impact Minimization Measures
Light	<ul style="list-style-type: none"> • Parking lots • Commercial/Industrial uses • Residential uses • Recreation (e.g. athletic fields) • Agricultural buildings 	<ul style="list-style-type: none"> • Direct lights away from wetlands and buffers • Only use lighting when and where necessary for public safety • Motion-activated lighting • Use of full-cut off shields • Dim light to lowest acceptable intensity • Warmer lighting temperatures (<3000K)
Noise	<ul style="list-style-type: none"> • Commercial/Industrial uses • Residential uses • Recreation (e.g. athletic fields) • Agriculture 	<ul style="list-style-type: none"> • Locate noise-generating activity away from wetlands and buffers • Construct fencing and/or install dense landscape screening between noise sources and critical area
Toxic Runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Commercial/Industrial uses • Residential uses • Application of pesticides • Landscaping • Agriculture 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetlands and buffers while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetlands • Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)
Stormwater Runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Commercial/Industrial uses • Residential uses • Recreation 	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent developments • Prevent channelized or sheet flow from lawns that directly enter buffers



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	<ul style="list-style-type: none"> • Landscaping/lawns • Other impermeable surfaces, compacted soils, etc. 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns • Retain native vegetation elsewhere in the property
Pets and Human Disturbance	<ul style="list-style-type: none"> • Residential uses • Recreation 	<ul style="list-style-type: none"> • Install privacy fencing • Plant dense native vegetation to delineate buffer edge and to discourage disturbance • Place wetlands and buffers in a separate tract • Install signage along wetland buffer edge
Dust	<ul style="list-style-type: none"> • Tilled Fields • Roads 	<ul style="list-style-type: none"> • Use Best Management Practices to control dust

D. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement

E. *Functionally Disconnected Buffer Areas.* Buffers may exclude areas that are functionally and effectively disconnected from a wetland by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37. 340 Wetlands - Buffer Width Averaging

The city may allow wetland buffer width averaging when all of the following are met:

- A. No feasible alternatives to the site design could be accomplished without buffer averaging.
- B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging
- C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional.
- D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.



19.37. 350 Wetlands - Compensatory Mitigation

A. *Mitigation Sequencing.* Before being authorized to impact any wetland or its buffer, an applicant must demonstrate that they have implemented mitigation sequencing in the order presented in EMC 19.37.100.

B. *Requirements for Compensatory Mitigation.* Allowed wetland and wetland buffer compensation shall be subject to the following requirements:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans—Version 1 (Ecology Publication #06-06-011b, or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach [Western Washington (Ecology Publication #09-06-32).
2. Mitigation ratios for wetland impacts shall be consistent with the Standard Wetland Compensatory Mitigation Ratios presented in this section.
3. 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.
4. Mitigation requirements may be determined using the Credit-Debit Method described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication #10-06-011)
5. Plantings used in mitigation actions shall be native species appropriate to the ecoregion.
6. The following areas within a proposed compensation site shall not contribute to satisfying the requirements for compensatory mitigation:
 - a. Easements for utility corridors, stormwater facilities, rights-of-way, and streams conveyed underground
 - b. Driveways
 - c. Roads
 - d. Any paved or graveled areas intended to convey vehicle or foot traffic.
7. Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. All required buffers for the wetland mitigation site shall be located on the subject site, except where wetland mitigation banking is used to purchase buffer credits. Buffers shall be based on the expected or target category of the proposed wetland mitigation site and the expected level of impact from the adjacent land use. Buffers need to be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, paved areas, and mowed or developed areas will not be considered buffers or included in buffer area calculations when assessing whether adequate compensatory mitigation buffers have been provided. Properties adjacent to or abutting wetland mitigation sites shall not be responsible for providing any additional buffer requirements.
8. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
9. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting



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

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

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within a watershed through an existing watershed plan or a local or regional study that characterizes watershed processes; or

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

Preference of Mitigation Actions. Mitigation for wetland and buffer impacts shall rely on a method listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this Section.

1. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former or degraded wetland. Restoration is divided into two categories:

- a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions. Example activities could include removing fill, plugging ditches, or breaking drain tiles to restore a wetland hydroperiod, which in turn will lead to restoring wetland biotic communities and environmental processes.

- b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland area. The area already meets wetland criteria, but hydrological processes have been altered. Rehabilitation involves restoring historic hydrologic processes. Example activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland where a wetland did not previously exist at an upland site. Establishment results in a gain in wetland area and functions. An example activity could involve excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils by intercepting groundwater, and in turn supports the growth of hydrophytic plant species.

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



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

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

- a. The planning director determines that the proposed preservation is the best mitigation option;
- b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;
- c. The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:
 - i. Category I or II wetland rating
 - ii. Rare or irreplaceable wetland type [e.g, peatlands, mature forested wetland, estuaries, vernal pools, alkali wetlands] or aquatic habitat that is rare or a limited resource in the area.
 - iii. The presence of habitat for threatened or endangered species (state, federal, or both).
 - iv. Provides biological and/or hydrological connectivity to other habitats.
 - v. Priority sites identified in an adopted watershed plan.
- d. Permanent preservation of the wetland and buffer shall be provided through a legal mechanism such as a conservation easement or tract held by an appropriate natural land resource manager/land trust.
- e. The planning director may approve another legal and administrative mechanism in lieu of a conservation easement if it is determined to be adequate to protect the site.

4. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific wetland function(s). Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or



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wildlife habitat. Enhancement results in the gain of selected wetland function(s) but may also lead to a decline in other wetland function(s). Enhancement does not result in a gain in wetland area. Enhancement activities could include planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods in existing wetlands. Applicants proposing to enhance wetlands and/or associated buffers shall demonstrate how the proposed enhancement will increase the wetland and/or buffer functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

5. Alternative Types of Mitigation/Resource Tradeoffs. The planning director may approve alternative mitigation proposals that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals shall provide an equivalent or better level of ecological functions and values than would be provided by standard mitigation approaches. Alternative mitigation approaches shall comply with all reporting, monitoring, and performance measures of this Section including adherence to mitigation sequencing. The city may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. The planning director will consider the following for approval of an alternative mitigation proposal:

- a. Clear identification of how an alternative approach will achieve equal or better ecological benefit.
- b. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach in Western Washington (Ecology Publication #09-06-32), or as revised].
- c. All impacts are identified, evaluated, and mitigated.
- d. Methods to demonstrate ecological success are clear and measurable.

E. Location of Compensatory Mitigation. Permittee-responsible compensatory mitigation actions shall be conducted using a watershed approach and shall generally occur within the same sub-drainage basin. However, when the applicant can demonstrate that a mitigation site in a different sub-drainage basin is ecologically preferable, it ~~should~~ may be used. Compensatory mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas. The following criteria will be evaluated when determining whether on-site or off-site compensatory mitigation is ecologically preferable. When considering the location of mitigation, preference ~~should~~ may be given to using programmatic approaches, such as a mitigation bank or an in-lieu fee program after evaluating the following criteria.

1. No reasonable opportunities exist on site or within the sub-drainage basin or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capability of the site to compensate for the impacts. Considerations should include anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic class(es) of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. On-site mitigation would require elimination of high-quality upland habitat;
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions compared to the altered wetland.



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4. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify locating mitigation at another site;
 - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
 - c. Fees are paid to an approved ILF program to compensate for the impacts.
5. The design for the compensatory mitigation project needs to be appropriate for its position in the landscape. Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

F. Timing of Compensatory Mitigation. Compensatory mitigation projects should be completed prior to activities that will impact wetlands. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered. Otherwise, compensatory mitigation shall be completed immediately following wetland impacts and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The planning director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties. For example, a project delay that creates conflicts with other regulatory requirements (fisheries, wildlife, stormwater, etc.) or installing plants should be delayed until the dormant season to ensure greater survival of installed materials. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the delay shall include a written justification that documents the environmental constraints that preclude timely implementation of the compensatory mitigation plan. The justification will be verified by the city who will issue a formal decision.

G. Wetland Compensatory mitigation Ratios. In approving alteration of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensatory mitigation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section are based on wetland category, function, special characteristics, risk, and temporal loss. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.4 shall be used, except as otherwise provided below in this subsection.

Table 37. 5: Standard Wetland Compensatory Mitigation Ratios

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only ¹	Reestablishment or Creation (R/C) plus Rehabilitation (RH) ¹	Reestablishment or Creation (R/C) plus Enhancement (E) ¹	Reestablishment or Creation (R/C) plus Preservation (P) ¹	Enhancement Only ¹
All category IV	1.5:1	3:1	1:1 R/C plus 1:1 RH	1:1 R/C plus 2:1 E	1:1 R/C plus 2:1 P	6:1



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Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only ¹	Reestablishment or Creation (R/C) plus Rehabilitation (RH) ¹	Reestablishment or Creation (R/C) plus Enhancement (E) ¹	Reestablishment or Creation (R/C) plus Preservation (P) ¹	Enhancement Only ¹
All category III	2:1	4:1	1:1 R/C plus 2:1 RH	1:1 R/C plus 4:1 E	1:1 R/C plus 4:1 P	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case
All other category II	3:1	6:1	1:1 R/C plus 4:1 RH	1:1 R/C plus 8:1 E	1:1 R/C plus 8:1 P	12:1
Category I Forested	6:1	12:1	1:1 R/C plus 10:1 RH	1:1 R/C plus 20:1 E	1:1 R/C plus 20:1 P	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C plus 6:1 RH	1:1 R/C plus 12:1 E	1:1 R/C plus 12:1 P	16:1
Category I Bog	Not considered possible ²	6:1 Rehabilitation of a bog	R/C Not considered possible ²	R/C Not considered possible ²	R/C Not considered possible ²	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case



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¹ These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

² Bogs are considered irreplaceable wetlands because they perform some special functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensatory mitigation is proposed.

a. As an alternative to the mitigation ratios described above, the planning director may allow mitigation based one of the following ways:

i. Using the Credit-Debit Method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication # 10-06-011), or as amended.

ii. For properties designated “urban mixed-use industrial” in the city’s shoreline master program, the applicant shall use the Snohomish Estuary Wetland Integration Plan (SEWIP, 1997) and Salmon Overlay (2001) for projects that include wetland compensatory mitigation. Per Table 37.4, mitigation ratios for estuarine wetlands shall be determined on a case-by-case basis.

b. In no case shall the mitigation acreage be less than that which is altered.

19.37.360 Wetlands - Approaches to Compensatory Mitigation

A. *Wetland mitigation banks*. For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument when all of the following are met:

1. The director determines that the wetland mitigation bank provides appropriate compensatory mitigation for the authorized impacts.
2. The proposed use of credits is consistent with the terms and conditions of the mitigation bank instrument.
3. Mitigation ratios are consistent with the mitigation bank instrument.

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

1. The planning director determines that it would provide appropriate compensation for the proposed impacts.
2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
3. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the applicant’s qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.



4. The impacts are located within the service area specified in the approved in-lieu fee instrument.

C. Permittee-responsible, advance mitigation. Advance mitigation is a form of permittee-responsible mitigation implemented before a permitted impact takes place. It is designed to compensate for impacts expected to occur in the future. The applicant proposing the advance mitigation is the only one who can use the credits generated. Credits cannot be sold or transferred to another applicant. Advance mitigation proposals should be developed in accordance with state and federal rules and guidance on advance mitigation (Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation, Ecology Publication #12-06-015, and Chapter 4.2 of Wetland Mitigation in Washington State—Part 1: Policies and Guidance—Version 2, Ecology Publication #21-06-003, or as revised).

D. Permittee-responsible, concurrent mitigation. Concurrent mitigation is a form of permittee-responsible mitigation implemented at the same time permitted impacts are occurring. The permittee is responsible for implementation and success of the compensation. Concurrent mitigation may occur at the site of the permitted impacts or at an off-site location, usually within the same watershed. Permittee-responsible, concurrent mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that the proposed approach is ecologically preferable to use of a bank or in-lieu fee program, consistent with the criteria in this Section.

ARTICLE IV. FREQUENTLY FLOODED AREAS

19.37.400 Areas of Special Flood Hazard

Areas of special flood hazard shall be governed by the provisions of Chapter 19.30.

ARTICLE V. FISH AND WILDLIFE HABITAT CONSERVATION AREAS

19.37.500 Fish and wildlife habitat Conservation areas - Description and Purpose

A. All areas meeting the definition of fish and wildlife habitat conservation areas are subject to the regulations in this chapter. The intent of the management of these areas is to ensure sufficient habitat quality, quantity, and connectivity for species within their natural geographic distribution in order to support viable populations over the long term and to prevent isolated subpopulations.

Fish and wildlife habitat conservation areas are ecosystems composed of unique interacting systems of soils, geology, topography, and plant and animal communities. They consist of land-based areas and aquatic areas. Wildlife habitat provides opportunities for food, cover, nesting, breeding, and movement for fish and wildlife within the City; maintains and promotes diversity of species and habitat within the City; helps to maintain air and water quality; controls erosion; serves as areas for recreation, education and scientific study, and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

Riparian corridors are essential for wild fish populations. Healthy riparian zones are dynamic ecosystems that perform various functions that form salmonid habitat. Some of the major functions include producing and delivering large and small woody debris to shorelines and stream channels; shoreline protection and habitat formation; removing sediments and dissolved chemicals from water; moderating water temperature; providing thermal refugia; providing habitat for terrestrial animals; and providing proper nutrient sources for aquatic life. Additionally, aquatic areas and their associated buffers store and convey stormwater and floodwater; recharge groundwater; and serve as areas for recreation, education and scientific study and aesthetic appreciation. B. The following actions are exempt from other requirements of this chapter, but may require preparation of a habitat assessment or biological



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assessment when conducted within a fish and wildlife habitat conservation area, **and must result in no net loss of ecological functions and values:**

1. EMC 19.37.060(B)(1), Minor utility construction projects.
2. EMC 19.37.060(B)(4), Public and private pedestrian paths and trails
3. Any development application that involves ESA Section 7 consultation with federal agencies is required to follow that process to determine impacts to endangered species and mitigation requirements rather than the procedure described herein. However, the application must demonstrate compliance with all applicable city regulations, and must submit a copy of the biological assessment provided to federal agencies as part of the city's permit process.

4. Maintenance of critical public infrastructure.19.37.510 Fish and wildlife habitat conservation areas - Designation and Mapping

A. Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

1. Areas where endangered, threatened, and sensitive species have a primary association;
 - a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
 - b. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington State Department of Fish and Wildlife that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12- 011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status
2. Habitats and species of local importance, as determined locally;
 - a. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife and included on its current Priority Habitats and Species List, as amended.
3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;



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5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
 - a. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.
6. Waters of the state;
 - a. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, ~~as classified in WAC 222-16-030.~~
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
8. State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.
9. Significant biological areas listed by the city.

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

C. Other mapping sources include the Washington State Department of Fish and Wildlife priority habitat and species maps.

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

1. **Type S Water.** Those streams and waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, including periodically inundated areas of associated wetlands.
2. **Type F Water.** Those segments of natural waters including periodically inundated areas of their associated wetlands, not classified as Type S Waters, which have a fish, wildlife, or human use; which in any case contain fish habitat or are described by one of the following seven categories:
 - a. Waters within lakes, ponds, or impoundments having a surface of 0.5 acre or greater at seasonal low water;
 - b. Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than four percent;



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- c. Waters which are off-channel habitat. These are areas important for rearing and survival of fish and include riverine ponds, wall-based channels, and stream associated wetlands. The area must be connected to Type F or Type S Water and accessible to fish during some portion of the year.
 - i. For channelized streams, the edge of off-channel habitat is determined based on the outer edge of inundation of the stream at the bankfull elevation flow.
 - ii. For nonchannelized streams, including stream associated wetlands, off-channel habitat is the outer edge of the area periodically inundated at the ordinary high water line.
- d. Waters used by fish. Where fish use has not been determined:
 - i. Waters having any of the following characteristics are presumed to have fish use:
 - A. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient of 16 percent or less;
 - B. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size, based on hydrographic boundaries;
 - C. Ponds or impoundments having a surface area of less than one acre at seasonal low water and having an outlet to a fish stream;
 - D. Ponds or impoundments having a surface area of 0.5 acre or greater at seasonal low water;
 - E. Waters within the anadromous fish floor, see WAC 222-16-0301.
 - ii. The planning director may waive or modify the characteristics in (d)(i) of this subsection based on a report prepared by a qualified professional where:
 - A. Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;
 - B. Snowmelt streams with short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1st; or
 - C. Sufficient information about a geomorphic region is available to support a departure from the characteristics in (d)(i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes, and interested parties.
- e. Waters diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where the department determines the diversion is a valid appropriation of water. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;
- f. Waters diverted for use by a federal, state, tribal or private fish hatchery. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The



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department may allow additional harvest beyond the requirements of Type F Water classification if the department determines after a landowner-requested interdisciplinary team assessment that:

- i. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and
 - ii. The additional harvest within the riparian management zone meets the requirements of the water type classification that would apply in the absence of the hatchery;
- g. Waters within a federal, state, local governmental entity, or private campground having more than 10 camping units. These are waters that enter a campground at the boundary of the park lands available for public use and come within 100 feet of a camping unit, trail or other park improvement;

3. *Type Np Water.*

Those segments of natural waters within the bankfull width of perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. *Type Ns Water.* Those segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from a Type Np Water. Type Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

5. For purposes of this section:

- a. "Residential unit" means a home, apartment, condominium unit or mobile home, serving as the principal place of residence.
- b. "Camping unit" means an area intended and used for:
 - i. Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or
 - ii. A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.
- c. "Public accommodation facility" means a business establishment licensed to serve the public, such as a restaurant, tavern, motel or hotel.
- d. "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.
- e. "Seasonal low water" means the conditions of the seven-day, two-year low water situation, as measured or estimated by accepted hydrologic techniques.
- f. "Bankfull width" for defined channels means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as



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marshy or swampy areas, beaver ponds and impoundments. See the Washington Department of Natural Resources board manual section 23.

- g. "Intermittent" means those segments of streams that normally go dry.

E. *Lakes*. Silver Lake shall be protected as required by the shoreline master program. All other lakes shall be subject to the regulations in this chapter.

19.37.520 Fish and wildlife habitat conservation areas - Critical Area Report Additional Requirements

In addition to the general critical area report requirements in EMC 19.37.110 and EMC 19.37.120, the following additional report requirements apply when a proposal is within or near a fish and wildlife habitat conservation area:

A. Goals and Additional Requirements. If a development or redevelopment is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this title, the applicant shall provide a habitat assessment. In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required. The biological assessment shall be prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation produced by FEMA Region 10, April 2011, or as amended. The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

If the habitat assessment/biological assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP) as described in this article, prepared by a wildlife biologist for evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

1. *Distance for Habitats of Primary Association.*

a. *Salmonids and Steelhead.* When development is proposed within the distances specified below, a habitat assessment shall be required.

- (1) Within two hundred fifty feet of the Snohomish River or its estuary;
- (2) Within two hundred feet of a Type S or Type F stream or water including but not limited to North Creek or Swamp Creek together with tributaries with direct confluence to those streams and the associated wetlands, and marine shorelines;
- (3) Within one hundred fifty feet of Lake Chaplain;
- (4) Within two hundred twenty-five feet of a Type Np or Ns stream with unstable slopes within the special flood hazard area;



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(5) Within one hundred fifty feet of a Type Np or Ns stream without unstable slopes within the special flood hazard area; or

(6) Within the special flood hazard area.

b. *Other Species.* If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or HMP.

c. *Continuous Vegetative Corridors Linking Watersheds and Significant Biological Areas.* If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds or a significant biological area, a habitat assessment is required.

B. Habitat Assessment.

1. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.
2. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.
3. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in this title and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.
4. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in this title or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.
5. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in this title or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, an habitat management plan shall be prepared. The habitat management plan must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.
6. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of an HMP.
7. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.
8. The department shall review the habitat assessment and either:
 - a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or



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

C. *Habitat Management Plan.*

1. *Habitat Management Plan Submittal and Review Process.* The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for by this chapter.
2. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.
3. The habitat management plan shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.
4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the habitat management plan. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

D. *Compensatory mitigation for Impacts within the One-Hundred-Year Floodplain.*

1. Compensatory mitigation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.
2. The mitigation plan shall stipulate avoidance and conservation measures, as are needed to ensure that there is no net adverse effect during any phase of the project. Outside the floodway or riparian habitat zone, the mitigation plan shall include such avoidance, minimization, restoration, conservation or compensatory mitigation measures to mitigate all impacts.
3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended.
4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:



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- a. Assignment (purchase) of equivalent mitigation credits from an established mitigation bank within the estuary;
 - b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;
 - c. Creation or restoration of off-channel refuge habitat;
 - d. Restoration of fish habitat where it has been previously eliminated or degraded;
 - e. Enhancement of existing habitat to improve functions and values;
 - f. Buffer enhancement in riparian habitat areas;
 - g. Replacement of the habitat functions and values that are impacted by development.
5. Also in accordance with RPA-3.A.3.b, where conditions permit, the city shall require development within the one-hundred-year floodplain to use low impact development (LID) methods consistent with the city's stormwater management regulations, to minimize or avoid stormwater effects.
6. All development proposals shall follow the mitigation sequence of EMC 19.37.100 to achieve no net loss of ecological functions and values.
7. When development occurs in floodplain areas, the portion of the site not elevated above the one-hundred-year flood elevation shall be designed to create floodplain refugia and prevent stranding of aquatic species during flood events to the maximum extent practicable.
8. Restoration of fish habitat either on site or off site is allowed in order to mitigate for habitat impacts caused by development within the floodplain. Restoration and mitigation for impacts may occur in areas which flood more frequently than the area proposed for development (e.g., tidal restoration project that provides greater habitat benefits to juvenile salmonids).
9. The city shall have the authority to require changes in the design of a development if necessary to avoid, minimize or mitigate impacts to endangered species or habitat for such species.

D. Additional Critical Area Report Content for Biological Assessments (BA). Biological Assessments must conform with 2010 FEMA Region X Regional Guidance - Floodplain Habitat Assessment and Mitigation. Refer to the requirements for habitat assessments in this subsection.

E. Additional Critical Area Report Content for Habitat Assessment and Habitat Management Plans (HMP).

1. *Habitat Assessment.* All habitat assessments required by this chapter shall include the following elements in addition to the general requirements for all critical area reports listed in this section:
 - a. A detailed description of the vegetation on and adjacent to the site.
 - b. Identification and a detailed description of any critical fish or wildlife species or habitats, including listed threatened or endangered species, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.



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c. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.

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

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

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

g. Developments in the floodplain must show the one-hundred-year flood elevation contour, the floodway boundary, and the protected area boundary on the site plan.

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

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

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

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

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

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

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

(1) Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; habitat management plan



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conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

(2) Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness, for a minimum of five years.

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

F. *Stream, Lake, and Buffer Mitigation Plans.* Stream, lake and buffer mitigation plans shall:

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

b. Specify how functions will be replaced;

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

d. Where buffer enhancement is proposed, include an analysis of the ability of the buffer to protect water quality, as outlined in the Update on Wetland Buffers: The State of the Science, Final Report, October 2013, Washington State Department of Ecology Publication No. 13-06-11, or as amended;

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

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

g. Include provisions for an assurance device as provided by Chapter 19.40 EMC to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

19.37.530 Fish and wildlife habitat conservation areas – Stream and Lake Buffer Requirements

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

1. Buffers shall be measured from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the ordinary high water mark shall be determined so as to include the entire stream feature.

2. Stream buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

3. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

4. The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing stream buffer is unvegetated, sparsely vegetated, or vegetated with invasive species,



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the standard buffer width shall be restored or increased as required by this section unless otherwise provided.

5. Except as otherwise provided by EMC 19.37.050, the following buffers of native vegetation shall apply to streams based upon stream classification:

Table 37.5: Stream Buffers

Stream Classification (Type)	Standard Buffer	Increased Buffer
	Intact Native Vegetation	Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	100 feet	150 feet
Type F	100 feet	150 feet
Type Np	100 feet	125 feet
Type Ns	100 feet	125 feet

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

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
 - a. The minimum buffer for that particular stream; or
 - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;
2. The stream reach affected by the development proposal serves as critical habitat for listed species as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and recognized tribal nations;
3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting or lookout trees;
4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;
5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

C. *Standard Stream Buffer Width Application with Enhancement.* The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, apply the standard stream buffer width when the existing buffer is unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria.



Exhibit B

1. The planning director shall only allow standard buffer width application to streams when the proposal includes a critical area and buffer enhancement plan that improves the functions of the buffer and the critical area in accordance with this chapter.
2. *Vegetative Buffer Standard.* The following vegetative buffer standards shall be met when applying the standard buffer to streams with vegetative enhancement:
 - a. An average 80 percent aerial cover of native vegetation, composed of trees, shrubs, and ground cover with at least 20 percent tree cover and 20 percent shrub cover; and
 - b. No more than 10 percent cover of invasive species.

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

E. *Lake Buffers.* Lakes have the following buffers:

- a. Lakes used by salmonids: one hundred feet;
- b. Lakes with no salmonid use: one hundred feet.
- c. Lake buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

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

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

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

1. Vegetative plantings of native or preferred wildlife food species;
2. Construction of nesting islands or installation of nesting boxes;
3. Removal of pollutant sources, hard armoring, or fish movement blockages; or
4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

H. *Functionally Disconnected Buffer Areas.* Buffers may exclude areas that are functionally and effectively disconnected from a stream or lake by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of



the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37.540 Fish and wildlife habitat conservation areas – Buffer Width Averaging for Lakes and Streams

The city may allow buffer width averaging for lakes and streams when all of the following are met:

- A. No feasible alternatives to the site design could be accomplished without buffer averaging;
- B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging;
- C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional; and
- D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point.

19.37.550 Fish and wildlife habitat conservation areas – Stream Alteration Thresholds and Compensatory Mitigation

A. *Stream Preservation/Alteration Thresholds.*

- 1. *Type S Streams.* All Type S streams shall be regulated by the city of Everett shoreline master program.
- 2. *Type F Streams.* All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:
 - a. Where alteration is allowed pursuant to EMC 19.37.050;
 - b. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;
 - c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.
- 3. *Type Np and Type Ns Streams.*
 - a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by EMC 19.37.050; or



Exhibit B

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

- (1) Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;
- (2) The equivalent base flood storage volume shall be maintained;
- (3) There shall be no impact to local ground water;
- (4) There shall be no increase in water velocity;
- (5) There is no interbasin transfer of water;
- (6) The relocation shall occur on site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;
- (7) The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. *Watershed Management Plans.* The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by EMC 19.37.050, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

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

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.
2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
3. A mitigation plan shall be prepared in accordance with this section.
4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.



Exhibit B

5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensatory mitigation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.
6. When stream system relocation or compensatory mitigation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.
7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.
8. The city may apply additional conditions or restrictions, or require specific construction techniques, in order to minimize impacts to stream systems and their buffers.
9. Stream compensatory mitigation shall not occur in areas having high-quality terrestrial habitat.

C. *Voluntary Daylighting of Streams in Pipes and Culverts.*

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection C.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:
 - a. The plan is prepared by a qualified professional;
 - b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and
 - c. If the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection C.1.b of this section are provided as effectively as they would be without the relocation.
2. If the planning director finds the conditions in subsection C.1 of this section are met, the director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection C.1 of this section and shall be in the following order of priority:
 - a. Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.
 - b. The stream and adjacent buffer area may count toward required landscaping.
 - c. The stream and adjacent buffer area may count toward open space requirements of EMC 19.09.050.
 - d. Building heights may be increased.
 - e. Buffers widths and other development standards of this chapter may be reduced or modified as necessary to encourage enhancement of fish and wildlife conservation area functions and values.



Project title: An Ordinance creating a special improvement project entitled “PGSF WMVD Storm and Combined Sewer Improvements” Fund 336, Program 037 and repealing Ordinance No. 3967-23.

Council Bill #

CB 2603-14

Agenda dates requested:Briefing, 1st Reading 03/18/26

Proposed action 03/25/26

Consent

Action 04/01/26

Ordinance X

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Proposed Ordinance

Department(s) involved:

Public Works, Admin

Contact person:

Tom Hood

Phone number:

425-257-8809

Email:

thood@everettwa.gov

Initialed by:*RLS*

Department head

Administration

Council President

Consideration: Plans & Systems Ordinance**Project:** PGSF WMVD Storm and Combined Sewer Improvements**Partner/Supplier:** TBD**Location:** Port Gardner Storage Facility**Preceding action:** [Ordinance No. 3967-23, approved 9/6/23](#)**Fund:** 336 – Water & Sewer System Improvements Fund**Fiscal summary statement:**

Ordinance No. 3967-23 authorized \$4,500,000 for the design of improvements. Currently, a new funding Ordinance is necessary for the construction phase of the project. This Ordinance will authorize an additional \$113,000,000 to be programmed for the construction phase of the project.

Ordinance 3967-23 will be repealed and replaced with the following appropriations:

Design Phase (previously programmed)	\$ 4,500,000
Construction Phase (proposed)	<u>\$113,000,000</u>
Total project costs	\$117,500,000

The total programmed available funding for design and construction of the project will be \$117,500,000.

The funding source for the newly programmed amount will be as follows:

Fund 401 – Water and Sewer Utility	\$117,500,000
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The Public Works Department is actively pursuing grant funding. If awarded, this will reduce local contributions to project funding.

Project summary statement:

As a component of the PGSF program, this project is necessary to comply with the Agreed Order with the Department of Ecology for reduction of Combined Sewer Overflow (CSO) events. This project, to be constructed along the WMVD corridor in two separate contracts, includes the design and construction of new large-diameter storm and combined sewer infrastructure and rehabilitation/replacement of an existing 48-inch water main for combined sewer, as well as crossing pipelines under railroad tracks.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled “PGSF WMVD Storm and Combined Sewer Improvements” Fund 336, Program 037 and repealing Ordinance No. 3967-23.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled “PGSF WMVD Storm and Combined Sewer Improvements” Fund 336, Program 037, to accumulate all costs for the improvement and repealing Ordinance No. 3967-23.

WHEREAS,

- A.** The City of Everett is committed to a planned stormwater and sewer system infrastructure maintenance improvement and replacement program.
- B.** The City of Everett has identified the need and obtained funds to construct new facilities on West Marine View Drive to comply with emerging regulations.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project is hereby established as Fund 336, Program 037, entitled “PGSF WMVD Storm and Combined Sewer Improvements” to accumulate all costs for the improvement. Authorization is hereby given to accumulate costs and distribute payments for the improvement project. Ordinance No. 3967-23 is hereby repealed.

Section 2. Authorization is hereby granted for the “Public Works Director” or “City Engineer” under the direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the actions authorized in this ordinance.

Section 3. The sum of \$117,500,000 is hereby appropriated to Fund 336, Program 037, “PGSF WMVD Storm and Combined Sewer Improvements” as follows:

A. Estimated Project Design and Construction Costs	\$117,500,000
B. Source of Funds	
Fund 401 – Water/Sewer Utility Fund	\$117,500,000

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Cassie Franklin, Mayor

ATTEST:

Marista Jorve, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____



City Council Agenda Item Cover Sheet

Project title: License Agreement for City use of Port of Everett Norton Terminal Facility for PGSF Construction Access

Council Bill # *interoffice use*

Agenda dates requested:

Briefing
Proposed action
Consent
Action 04/01/26
Ordinance
Public hearing
Yes X No

Budget amendment:
Yes X No

PowerPoint presentation:
Yes X No

Attachments:
License Agreement

Department(s) involved:
Public Works

Contact person:
Tom Hood

Phone number:
425-257-8809

Email:
thood@everettwa.gov

Initialed by:
RLS
Department head

Administration

Council President

Project: PGSF WMVD Storm and Combined Sewer

Partner/Supplier: Port of Everett

Location: Port of Everett Norton Terminal Facility

Preceding action: P&S Ordinance Update (4/01/26)

Fund: Fund 336 – Water and Sewer System Improvements Fund

Fiscal summary statement:

Total cost of the agreement is approximately \$32,900.00 per month of use the Port’s property. The estimated duration of usage is 10 months, resulting in a cost of approximately \$329,000.00.

Project funding is through Fund 336, and the amount of the agreement is within the programmed available funding for this project.

Project summary statement:

Construction of the PGSF WMVD Storm and Combined Sewer, Package 2 Project involves the installation of new pipelines within an existing utility easement on the Port of Everett Norton Terminal Facility, which lies west of W Marine View Drive between Everett Ave and the PGSF Site. The Project also involves construction of pipelines along the only existing access into the PGSF site.

The proposed license agreement with the Port of Everett will allow the City to install temporary fencing and barriers required to establish construction, staging and storage, and truck transit zones within the Port’s Norton Terminal Facility. This license area provides access required for the City’s contractors for the PGSF Site and PGSF WMVD Storm and Combined Sewer, Package 2 Projects and significantly reduces traffic impacts to W Marine View Drive in the vicinity of Naval Station Everett. The license agreement also allows the City’s contractor to avoid having disruptive traffic control measures in place during the FIFA World Cup.

The City’s PGSF WMVD Storm and Combined Sewer, Package 2 Project includes construction of temporary security fencing and restoration of damaged pavement on Port property.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the License Agreement with the Port of Everett for City use of the Port of Everett Norton Terminal Facility for PGSF Construction Access.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “*Agreement*”) is made and entered into as of _____, 2026 (the “*Effective Date*”), by and between **Port of Everett**, a Washington port district (the “*Port*”), and **City of Everett**, a Washington municipal corporation (the “*City*”). The Port and the City are referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

A. The Port owns certain real property, which is located in the City of Everett, Snohomish County, Washington, identified by the parcel numbers listed on attached Exhibit A (the “*Port Property*”).

B. The Port, as successor-in-interest as grantor, and the City, as grantee, are parties to that certain Easement Agreement dated July 31, 2019, with Snohomish County Recording No. 201907310975 (the “*Easement Agreement*”). The Easement Agreement provides the City with a non-exclusive easement over a portion of the Port Property that is more fully described in the Easement Agreement (the “*Easement Area*”).

C. The City intends to undertake a major combined sewer and stormwater pipeline project that affects the Easement Area as well as adjacent areas, including portions of West Marine View Drive and the storage facility located north of Norton Terminal. The City has named this project the Port Gardner Storage Facility West Marine View Drive Storm and Combined Sewer Project, which is occurring in connection with the City’s Port Gardner Storage Facility project (both projects together, the “*PGSF Project*”). The PGSF Project includes, among other items, the installation of (2) 48-inch diameter and (1) 24-inch diameter pipelines approximately through the northern 800 feet of the existing easement area.

D. In order to construct the PGSF Project, the City needs a temporary license to access those portions of the Port Property depicted on Exhibit B attached hereto (the “*License Area*”) in connection with construction staging, trucking access, and for minor work related to the construction of the PGSF Project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the terms and conditions of this Agreement and the Recitals described above, which are incorporated herein, as well as the mutual benefits to be derived therefrom, the Parties agree as follows:

1. Grant of Temporary License. Subject to the terms and conditions of this Agreement, the Port hereby grants and conveys to the City a temporary, exclusive license over, across and under the License Area depicted on Exhibit B for the purpose of vehicular access and other ancillary uses related to the City’s construction of the PGSF Project, such as construction staging, storage and parking (the “*License*”). The Parties acknowledge that the License Area consists of three functional sub-areas: (i) a storage sub-area, (ii) a truck transit and staging sub-use area, and (iii) a temporary construction sub-use area (each, a “*Sub-Area*” and collectively, the “*Sub-Areas*”). The temporary construction Sub-Area will involve movement of construction

equipment (including tracked equipment) and other activities that have a high potential for damaging pavement surfaces. For avoidance of doubt, any impacts from the movement of construction equipment and other activities in in the temporary construction Sub-Area shall not be considered normal “wear and tear” and the City will be required to repair and/or replace any damaged pavement surfaces at its sole cost and expense before the end of the Term (or before the City designates the damaged area as Inactive, if that is earlier). Traffic within the remaining Sub-Areas will be limited to rubber-tired vehicles only unless otherwise approved by the Port in writing. Prior to the Commencement Date, the Port and the City shall jointly measure and document the acreage of each Sub-Area, which measurement shall be performed at the City’s sole cost and expense. For clarity, there shall be no excavation, demolition, or ground-disturbing activities conducted within the License Area without the prior consent of the Port, which consent shall be in the Port’s sole and absolute discretion and subject to conditions imposed by the Port in the Port’s sole and absolute discretion. The License shall be for the use and benefit of the City and its representatives, members, officers, employees, contractors, subcontractors, suppliers, and agents (individually, a “**City Party**”, and collectively, the “**City Parties**”). The City specifically acknowledges and agrees that the City’s use of the License is subject to the License Requirements (defined below), which are intended to coordinate the City’s and the Port’s activities in the License Area.

2. Term of Agreement. The term of the License (the “**Term**”) shall begin on the date that is the earlier of (a) thirty (30) days after the City delivers notice to the Port requesting commencement of the Term, which notice shall specify whether one or more Sub-Areas will be designated as Active (as defined below) as of the Commencement Date, or (b) one hundred eighty (180) days after the Effective Date (the “**Commencement Date**”). The Term of the License shall terminate on the earlier of (i) the physical completion of the PGSF Project; (ii) the date that is eighteen (18) months following the Commencement Date; or (iii) March 28, 2028 (the “**Termination Date**”). Notwithstanding the foregoing, the Port shall have the right to terminate the License upon not less than six (6) months written notice to the City in the event the Port needs the License Area for business purposes; provided, that such notice may not be delivered by the Port before the date that is six (6) months after the Commencement Date. (For avoidance of doubt regarding the preceding sentence: the earliest that the License could terminate pursuant to the preceding sentence is the date that is twelve (12) months after the Commencement Date.) The City will have access to each Sub-Area on the date that such Sub-Area is designated Active in accordance with Section 3.

3. License Fee; Reimbursement of Port Costs. During the Term and commencing upon the Commencement Date, the City shall pay the Port a monthly license fee in the amount of \$10,000 per acre of each Sub-Area currently inside the Property’s secure perimeter and \$3,000 per acre outside the Property’s secure perimeter that has been designated as Active (the “**License Fee**”) in accordance with the terms of this Section 3. Notwithstanding the foregoing and for avoidance of doubt, all Sub-Areas shall automatically become designated as Active on the date that is one hundred eighty (180) days after the Effective Date and the License Fee shall be due and payable with respect to all Sub-Areas on such date, regardless of whether the City has sent a notice designating them as such. Further, the City shall reimburse the Port’s reasonable out-of-pocket expenses and costs, including, without limitation, attorneys’ fees and surveying costs, incurred in connection with this Agreement within thirty (30) days of the Port’s written request containing

reasonable documentation of such incurred costs. All License Fees shall be prorated for area (e.g., the License Fee for 2.5 acres inside the secured perimeter would be \$25,000).

(a) Following the Commencement Date, the City may designate a Sub-Area as “*Active*” or “*Inactive*” by delivering not less than thirty (30) days’ prior written notice to the Port; provided, that in order for a Sub-Area to be considered Inactive, (i) the City must have removed all equipment, materials, and security fencing from the applicable Sub-Area, (ii) the City must have restored the applicable Sub-Area to a clean and serviceable condition, reasonable wear and tear excepted, and (iii) the Port shall have inspected and reasonably approved such restoration. For clarity, the License Fee shall not be due with respect to any Sub-Area that is Inactive. Notwithstanding the foregoing, once a Sub-Area is designated Inactive, the City may not designate such Sub-Area as Active without the Port’s prior written approval, which may be withheld in the Port’s sole discretion.

(b) The License Fee (i) shall be due on the first day of each month until the Termination Date (provided the license fee for the month in which the Commencement Date occurs shall be due on the Commencement Date and shall be prorated on a daily basis for the number of days of the month in which the Commencement Date occurs), (ii) shall be delinquent if not paid when due and not thereafter paid within ten (15) days of a written demand for payment, and (iii) shall be prorated on a daily basis for the number of days of the month in which the Term expires or a Sub-Area is designated Inactive, as applicable.

(c) Following the expiration or earlier termination of the Term of the License, if the City shall continue to utilize any portion of the License Area without the Port’s written consent, the City shall pay to the Port a License Fee equal to \$20,000 per acre of Sub-Area that has been designated as Active, and during such holdover period, the City shall continue to be bound by all of the provisions of this Agreement.

4. Use of License. In accordance with the terms and conditions of this Agreement, the Parties agree as follows:

(a) Except for provided for elsewhere herein, the Port shall not be responsible for any obligation, cost, expense, or other amount in connection with this Agreement.

(b) The City shall comply, and shall ensure that the City Parties comply, with the requirements set forth in Exhibit C (collectively, the “*License Requirements*”).

(c) The City shall provide the Port with thirty (30) days’ written notice prior to any City Party first commencing activities within the License Area. The City and the Port shall have weekly coordination meetings, to coordinate on the City’s activities within the License Area.

(d) The Port shall have the right, but not the obligation, to monitor the City Parties’ activities within the License Area; provided that the Port does not interfere with the City’s rights herein, and that the Port’s right to so monitor shall be solely for the Port’s own benefit, at the Port’s sole cost, and the Port shall have no duty to ensure that the City Parties’ activities within the License Area comply with any legal or insurance requirements. The City shall ensure that all contractors and subcontractors performing work within the License Area are licensed and bonded as required by state law. Before any activity commences within the License Area, the City shall

cause any contractor or subcontractor to provide evidence of insurance in the form of an ACORD certificate of insurance and additional insured endorsement(s), which shall name the Port as an additional insured and shall also provide, at the Port's written request, the underlying insurance policy to the Port.

(e) All work by the City Parties shall conform to, and shall be conducted in accordance with, any and all applicable ordinances, laws, rules, and regulations and other requirements of any governmental authorities having jurisdiction over the Port Property, including, without limitation, all permitting, consent and approval requirements of such authorities. Additionally, the Port Property is subject to covenants, agreements, and other encumbrances; and the City shall comply with such covenants, agreements, and encumbrances to the extent the City has notice of them. The City hereby acknowledges that the City has received copies of all documents recorded against the Port Property.

(f) The City shall not permit any lien or claim of preconstruction, construction, mechanics, laborers or materialmen to be filed against the Port Property, or any part thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by the City. Notwithstanding the foregoing, if any lien is so filed against the Port Property, within thirty (30) days after the date of the filing or recording of any such lien, the City shall cause the same to be paid and discharged of record, or, if the City contests the amount allegedly due or the right of the lien or to make its lien claim, the City shall cause a bond for at least one-hundred-twenty-five percent (125%) of the amount of the disputed lien claim to be issued in favor of the Port to protect the Port from any damage resulting from the lien during the entire time of any proceeding in which the City contests the lien. If the City shall fail to obtain a bond or otherwise discharge such lien within such 30-day period then the Port may, after fourteen (14) days' written notice to the City and the City's failure to obtain a bond or other discharge of such lien during such fourteen-day period, do so and shall be entitled to collect from the City all fees, costs, and expenses, including attorneys' fees and costs, reasonably incurred by the Port to discharge such lien.

(g) If, in connection with the use, occupation and enjoyment of the License, the City, or any party acting by, through or under the City, damages or destroys any landscape, hardscape, street, road, sidewalk or other improvements of the Port, the City shall repair or replace such damaged or destroyed improvements at its sole cost and expense before the end of the Term (or before the City designates the damaged area as Inactive, if that is earlier) damage occurred to a condition substantially identical to that existing before any such damage or destruction. This allowance of time does not extend the Term of this Agreement.

5. Breach of Repair Obligations. In the event the City fails to timely repair in accordance with Section 4(g) above, any damages caused by, or under, the City Parties to the License Area, the Port Property, or any improvements or property located thereon, the Port shall have the right, upon thirty (30) days' prior written notice to the City (and except in the event the City shall repair any such damages within any such thirty (30) day period or, in the event more than thirty (30) days shall be required to complete any such repairs, the City shall have commenced such repair within such thirty (30) day period and, then, diligently prosecute the same to completion), to cause the maintenance or repair work specified in such notice to be commenced and completed and, in any such event, the City shall reimburse the Port for undertaking the repair

work for the total documented cost thereof within thirty (30) days after receipt of written notice therefor, which notice shall include written evidence of such incurred costs.

6. Security; Access.

(a) The City shall install temporary fencing and gates as necessary to preserve at all times adequate federal security fencing at the Port Property, including, without limitation, complying with at least the minimum applicable Maritime Security (MARSEC) requirements. The City shall install the foregoing MARSEC compliant security fencing and gates in other areas of the License Area where required along the boundary of the License Area to maintain a secure perimeter, which shall be approved in advance by the Port. The City shall maintain continuous and uninterrupted security for the License Area, in accordance with the Port's existing requirements, including, without limitation, in the event of any damage to or necessary removal of the existing security fencing and gate system. The City shall maintain and modify the fencing as required. Notwithstanding the exclusive nature of the License, the Port shall be entitled to cross the License Area at all times in order to access portions of the Port Property. To facilitate the foregoing, the City shall install gates in the fencing in areas approved in advance by the Port to give the Port continuous access for vehicles and other equipment across the License Area.

(b) A City Party may not access the License Area unless (i) escorted by the Port or its employees or representatives, at the City's expense, (ii) such City Party has a current Transportation Worker Identification Credential issued by the Transportation Security Administration, or (iii) the License Area is separated from the federally secured area by MARSEC fencing.

(c) The City acknowledges that the Port Property serves as a Commercial Strategic Seaport for the Department of Defense and that in the event of a national defense emergency, use of the Port Property, including the License Area, may be restricted and/or terminated. In the event of any national defense emergency that prevents use of the License Use for more than sixty (60) days, either party may terminate this Agreement at any time.

7. General Limitations. This Agreement and the rights and privileges granted hereunder shall be subject to and/or limited as follows:

(a) The City's use of the License shall be limited to the uses set forth in this Agreement, and subject to the conditions set forth in this Agreement, including but not limited to the License Requirements.

(b) The Port makes no warranties of any kind, express or implied, to the City concerning the condition of or title to the License Area. The City hereby accepts the License Area AS IS, WHERE IS, without any warranties, including but not limited to fitness for a particular purpose. Except to the extent of the Port's intentional misconduct, negligence or breach of this Agreement, the City hereby assumes all risk and liability of its use of the License Area and the exercise of its rights under this Agreement. Except to the extent of the Port's intentional misconduct, negligence or breach of this Agreement, the City hereby unconditionally, irrevocably, and forever discharges, waives, and releases the Port from any and all damages, costs, expenses,

liabilities, suits and claims, of any nature whatsoever arising from the grant, condition, or use of the License Area by the City or its invitees, licensees, employees, contractors, or agents.

(c) The City shall not construct, install, or modify any improvements within the License Area, including but not limited to temporary or permanent trafficking areas, without the prior written review and approval of the Port, which approval shall include, without limitation, the Port's review of design, location, and material types. The City shall be solely responsible for obtaining and complying with all required permits, approvals, and other regulatory requirements related to such improvements. Upon termination or expiration of the License, the City shall, at its sole cost, remove any such improvements and restore the License Area to a clean and serviceable condition, reasonable wear and tear excepted (provided impact and damage from construction vehicles and equipment shall not be deemed "wear and tear"), unless the Port, in its sole discretion, elects to accept the improvements in place, excluding temporary fencing and its appurtenances, in which case the City shall execute all documents reasonably required by the Port to transfer ownership of such improvements to the Port AS-IS without additional cost.

8. Indemnification. The City shall and hereby agrees to indemnify, reimburse, defend and hold harmless the Port and its commissioners, representatives, members, affiliates, officers, employees, and agents (collectively, the "**Port Parties**"), from and against all damages, claims, actions, causes of action, losses, demands, costs, fees (including reasonable attorneys' fees), liabilities or proceedings caused to the Port Property (collectively, "**Claims**"), arising from or due to the City Parties': (a) use of the License Area; (b) any breach, violation or non-performance of any covenant or agreement in this Agreement; and/or (c) exercise of the rights and privileges herein granted. This duty to indemnify and defend the Port shall continue and survive after the expiration of the Term. If and to the extent (but only if and only to the extent) this Agreement is subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such Claims arise from the concurrent negligence of the Port Parties and the City Parties, the City's obligations of indemnity under this Section 7 shall be effective only to the extent of the negligence of the City and in no event shall the Port Parties be indemnified against the sole negligence of the Port Parties or its agents. SOLELY FOR THE PURPOSE OF EFFECTUATING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND NOT FOR THE BENEFIT OF THEIR EMPLOYEES OR ANY THIRD PARTIES, THE CITY SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED TO IT UNDER APPLICABLE FEDERAL, STATE OR LOCAL WORKERS COMPENSATION ACTS OR OTHER EMPLOYEE BENEFIT ACTS, INCLUDING WITHOUT LIMITATION THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. The parties acknowledge that the foregoing waiver has been specifically and mutually negotiated between the parties.

9. Miscellaneous.

(a) Authority. The Port and the City each hereby represents to the other that (i) it has the legal right, power and authority to enter into this Agreement and to perform in accordance with its terms and provisions; (ii) the individual(s) signing this Agreement on its behalf have the authority to bind the party and to enter into this Agreement; and (iii) it has taken all required action(s) to legally authorize the execution, delivery, and performance of this Agreement.

(b) No Waiver; Severability. The failure of any Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such Party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein. Invalidation of any one of the covenants or restrictions set forth in this Agreement by judgment or court order shall in no way affect all other provisions, which shall remain in full force and effect.

(c) Counterparts; Successors and Assigns; Recitals and Exhibits; Notices. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement, binding upon and inuring to the benefit of the Parties hereof and their respective successors and assigns. All recitals and exhibits referred to herein and attached hereto are incorporated herein by this reference.

(d) Reservation; Amendments; Governing Law. This Agreement may not be modified except with the mutual consent of the Parties and then, only by written instrument duly executed by the Parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party, and shall be governed by and construed in accordance with the laws of the State of Washington. Notwithstanding anything contained herein to the contrary, this Agreement is without prejudice to the Port's rights and remedies, whether at law, in equity, or otherwise, all of which are expressly reserved without limitation. Further, venue for any issues relating to this Agreement shall be with the Superior Court of Snohomish County, State of Washington.

(e) Attorneys' Fees. If any legal action or other proceeding is brought to enforce this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party shall be entitled to recover their reasonable attorneys' fees, and any other fees and costs incurred in the action or proceeding, including appeals, in addition to any other relief to which such Party may be entitled.

(f) No Joint Venture; Construction; No Third Party Rights; Survival. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the Parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party. Except as expressly set forth herein, this Agreement does not otherwise create any rights in any third party. The indemnifications and other provisions of Agreement, which expressly survive the termination of this Agreement, shall survive the termination of this Agreement.

(g) JURY TRIAL WAIVER. THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT OR IN ANY CAUSE OF ACTION OF ANY NATURE.

(h) Limitation of Damages. Neither party shall be liable hereunder for indirect, consequential, punitive, or special damages.

(i) Calculation of Time. All reference to number of days in this Agreement shall be calculated based on calendar days.

(j) Exhibits. This Agreement includes the following exhibits, which are attached hereto and made a part hereof as if set forth herein in full:

- A – Parcel Numbers of Port Property
- B – Depiction of License Area
- C – License Requirements

[Signatures on following pages.]

IN WITNESS WHEREOF, the Port and the City have executed this Agreement as of the date first written above.

PORT:

Port of Everett,
a Washington port district

By: _____
Name: Lisa Lefebber
Title: CEO/Executive Director

CITY:

City of Everett,
a Washington municipal corporation

By: _____
Name: Cassie Franklin
Title: Mayor

EXHIBIT A

PARCEL NUMBERS OF PORT PROPERTY

29051900300100, 29051900300200, 29051900201000, 29051900200900, 29051900201500;
00437461700200, 00597761803000

;

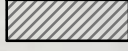



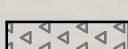

EXHIBIT B

DEPICTION OF LICENSE AREA

See attached.

LEGEND

PORT OF EVERETT
NORTON TERMINAL

- A  Storage Sub-Use area, outside secure perimeter
Approx. 52,700 SF
- B  Truck, Transit and Staging Sub-Use area, outside secure perimeter
Approx. 14,900 SF
- C  Storage Sub-Use area, within secure perimeter
Approx. 20,700 SF
- D  Truck, Transit, and Storage Sub-Use area, within secure perimeter
Approx. 82,300 SF
- E  Temporary Construction Sub-Use area,
Approx. 20,000 SF
- F  Use within Existing City Utility Easement, No license required, Approx. 51,600 SF

Temp Construction Fence (not MARSEC-Compliant), with gates as required

Demo portion of existing MARSEC-Compliant fence as required, replace in kind.

MARSEC-Compliant Temporary Construction Fence

Install 25' swing gate in temp fencing for Port access. Coordinate location with Port

PORT GARDENER STORAGE FACILITY

BNSF ROW

LOWER NORTON AVE

WEST MARINE VIEW DRIVE



EXHIBIT C

LICENSE REQUIREMENTS

1. The City acknowledges that its use of the License Area will impact cargo movement at the Port Property. The Port is being compensated for such impact by the License Fee. However, all of the City's activities in the License Area during the Term shall be coordinated in advance with the Port to the extent reasonably possible. If requested by the Port, the City and the Port shall have weekly meetings to coordinate the foregoing.
2. The City Parties will be allowed to utilize an existing asphalt and gravel road to the License Area through a locked gate at Federal Ave near the entrance to the former warehouse building. The City Parties may only use such road for ingress and egress of vehicles that have rubber-tires to the License area, for access road maintenance, and for barrier and fence installation or removal. Port access to the area adjacent to the former warehouse building shall not be unnecessarily impeded, and the City agrees to coordinate with the Port when Port access to the warehouse area is required.
3. The City, if applicable, shall provide cultural monitoring in order to meet regulatory compliance within the License Area.
4. During use of the License and in an effort to maintain public communications, the City shall coordinate with the Port's Public Communications Director, on all public communications associated with this Agreement.

Project title: 2026 CDBG, HOME, and AHTF Funding Resolution

Council Bill # *interoffice use*

Agenda dates requested:

Briefing	04/01/26
Proposed action	
Consent	
Action	04/08/26
Ordinance	
Public hearing	
Yes	<input checked="" type="checkbox"/> No

Budget amendment:
 Yes No

PowerPoint presentation:
 Yes No

Attachments:
 2026 CDBG, HOME, and AHTF Funding Resolution

Department(s) involved:
 Community Development

Contact person:
 Kembra Landry
 Julie Willie

Phone number:
 425-257-7155

Email:
klandry@everettwa.gov
jwillie@everettwa.gov

Initialed by:
JW
 Department head

Administration

Council President

Project: 2026 CDBG, HOME, and AHTF Funding Resolution

Partner/Supplier: HUD, Snohomish County

Location: NA

Preceding action: CDAC Public Hearing, 2/3/26

Fund: 198/197

Fiscal summary statement:

Annually, the City receives a direct entitlement from HUD’s Office of Community Planning and Development for the CDBG Program. The City is also party to an Interlocal Agreement with Snohomish County.

The 2026 Annual Action Plan is anticipated to receive \$850,000 in CDBG Entitlement Funds with an additional \$150,000 estimated in Program Income/Revolving Loan payoffs. The City will also receive an estimated \$300,000 in HOME Program funds and \$116,398.89 in 2060 AHTF Funds. An estimated \$83,601.11 of AHTF 2060 funds will be re-allocated from prior years.

The total revenue available for the 2025 Program Year is estimated to be \$1,350,000.

Project summary statement:

The 2026 Annual Action Plan (AAP) will support the second program year under the 2025 – 2029 Consolidated Plan. The 2026 AAP will begin on July 1, 2026 and end June 30, 2027.

The City’s Consolidated and Annual Action Plans are conducted in coordination with the City of Marysville and Snohomish County, with Snohomish County acting as the Lead Participating Jurisdiction. Through interlocal agreements, Snohomish County also allocates 21% of HOME Program Funds and 2060 AHTF Funds to the City.

Following a public hearing held on February 3rd, 2026, the Community Development Advisory Committee (CDAC) has recommended the 2026 Annual Action Plan for Council review and action.

Recommendation (exact action requested of Council):

Approve the Resolution concerning 2026 Annual Action Plan and authorize the Mayor to execute the 2026 Grant agreement with HUD and associated supporting subrecipient agreements.



RESOLUTION NO. _____

**A RESOLUTION concerning
2026 Community Development Block Grant (CDBG) Annual Action Plan and
allocations of CDBG, HOME, and 2060 Affordable Housing Trust Funds**

WHEREAS, the City Council of the City of Everett recognized the need for certain housing and community development programs in Everett; and

WHEREAS, Community Development Block Grant (CDBG) funds have been made available through the United States Department of Housing and Urban Development to provide for those programs, and Everett anticipates receiving approximately \$850,000; and

WHEREAS, through Interlocal Agreements that automatically renew, the City of Everett will receive HOME funds and 2060 Affordable Housing Trust funds from Snohomish County this year; and

WHEREAS, the Community Development Advisory Committee (CDAC) has studied the housing and community development needs and priorities for Everett and at a public hearing on February 3, 2026 has made its recommendations for CDBG funds, HOME funds, and 2060 Affordable Housing Trust funds; and

WHEREAS, the 2025 – 2029 Consolidated Plan and 2026 Annual Action Plan have been written in cooperation with the Everett Housing Authority, Snohomish County Housing Authority, Snohomish County, the City of Marysville and local non-profit service providers; and

WHEREAS, the City Council has reviewed the recommendations from the CDAC; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERETT AS FOLLOWS:

1. Programs and Projects to be funded with CDBG funds:

PUBLIC SERVICE PROJECTS <i>(Priority)</i>	FUNDING
---	---------

Volunteers of America Western Washington: Food Pantry program (Food) Funds for food assistance in Census Tracts 412 and 419.	\$92,000.00
Homage Senior Services: Home Delivered Meals (Food) Funds to support the delivery of meals to homebound adults and seniors.	\$35,000.00
TOTAL PUBLIC SERVICE	\$127,000.00
NON-PUBLIC SERVICE PROJECTS (Priority)	
Community Housing Improvement Program (Housing) Rehabilitation loans and administration costs to conduct home improvement projects for low-income homeowners and multi-family structures.	\$328,000.00
Homage: Minor Home Repair (Housing) Minor home repairs for low-income senior and disabled homeowners.	\$225,000.00
TOTAL NON-PUBLIC SERVICE	\$553,000.00
CDBG Administration	\$170,000.00
TOTAL CDBG	\$850,000.00

2. Projects to be funded with HOME funds:

NON-PUBLIC SERVICE PROJECTS (Priority)	FUNDING
Housing Hope: EUCC Rainbow Terrace (Housing) Funds to support new affordable housing units for seniors.	\$100,000.00
Community Housing Improvement Program (Housing) Rehabilitation loans to conduct home improvement projects for low-income homeowners.	\$200,000.00
TOTAL HOME	\$300,000.00

3. Projects to be funded with 2060 Affordable Housing Trust Funds

PUBLIC SERVICE PROJECTS (Priority)	FUNDING
Cocoon House: Cocoon House Transitions (Youth Shelter) Support transitional housing shelter and supportive service costs for homeless and at-risk youth.	\$80,000.00
Domestic Violence Services: Emergency Shelter (Shelter) Support emergency shelter and service costs for victims and families of domestic violence.	\$60,000.00
Interfaith: Family Shelter (Shelter) Support emergency shelter and service costs for homeless families.	\$60,000.00
TOTAL 2060 AHTF	\$200,000.00

TOTAL CDBG, HOME, 2060 AHTF AWARDS	\$1,350,000.00
---	-----------------------

4. Revenue to be received:

FUNDING SOURCE	FUNDING LEVEL
-----------------------	----------------------

2026 CDBG Entitlement Funds	\$850,000.00
2026 HOME Program Entitlement Funds	\$300,000.00
2026 2060 Affordable Housing Trust Funds (AHTF)	\$116,398.89
Prior Program Year (2023 & 2025) 2060 AHTF Funds & Interest	\$83,601.11
TOTAL	\$1,350,000.00

5. For the purposes of the resolution, projects approved to receive funding under this resolution are referred to as “Approved Projects.” Persons approved to receive funding under this resolution for the Approved Projects are referred to as “Approved Providers.”
6. The City Council approves the CDAC recommendation of evenly adjusting all Approved Projects’ funding amounts based on the difference between the estimated and final award for CDBG and HOME funds. If the final award difference is greater than \$250,000 the Committee will reconvene to provide an updated funding recommendation.
7. To facilitate timely spending of federal funds in accordance with the City’s agreement with HUD, pursuant to allocation thresholds for CDBG funds, the City Council approves the recommended CDAC contingency project list for additional fund distribution in priority order if funds become available during the 2026 program year. Accordingly, the following contingency projects would receive an increase in funding with no more than \$250,000 being reallocated from each funding source for all contingency projects combined. Additional allocations above the \$250,000 threshold would require a CDAC public hearing.

Contingency Project List for CDBG Funds (in priority order):

1. Volunteers of America Western Washington: Food Pantry program
2. City of Everett: Community Housing Improvement Program (CHIP)
3. Stations Unidos: Community Development Corporation (CDC)

Contingency Project List for HOME Funds (in priority order):

1. Housing Hope: EUCC Rainbow Terrace

8. The Mayor and the Mayor’s designee(s) are hereby authorized to make application to the U.S. Department of Housing and Urban Development (and, as necessary to the State of Washington, Snohomish County or any other governmental entity) for funding assistance in accordance with this resolution and the requirements of each such application. The Mayor and the Mayor’s designee(s) are authorized to sign and provide the needed documents and to take all necessary actions necessary to complete all application processes.

9. This resolution will become part of the formal application to the U.S. Department of Housing and Urban Development and to the State of Washington.
10. All payments and income from the Housing Rehabilitation Program (Fund 197) revolving loan fund will be used for CHIP housing rehabilitation and administrative purposes. This is estimated at \$150,000 for 2026.
11. Loans for Approved Projects that are housing projects will be paid back to the City of Everett unless otherwise approved by City Council.
12. The annual Community Development Block Grant Administration funding will be the amount allowed from the annual grant and will be set-aside and no application made. This is being done as a time-saving action and because of the need to be more efficient with staff time.
13. The Mayor is authorized to execute all contracts and take all other actions necessary to implement the funding to Approved Providers for the Approved Projects, all in accordance with this resolution, including without limitation grant agreements, loan agreements, and associated documents with Approved Providers.
14. The 2026 Annual Action Plan is hereby approved to be submitted to the U.S. Department of Housing and Urban Development.

Councilmember Introducing Resolution

PASSED and APPROVED this _____ day of _____, 2026.

Council President

From: Linda Bookwalter <lbookwalter19@gmail.com>
Sent: Sunday, March 29, 2026 9:13 PM
To: DL-Council
Subject: [EXTERNAL]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Subject: Support NR-MHC Zoning – Fairway Estates Resident

Dear Everett City Councilmembers,

I live in Fairway Estates and am writing to ask you to **vote to approve the NR-MHC zoning**.

This zoning is important for protecting manufactured home communities and preserving affordable housing for seniors, retirees, veterans, and others in Everett.

The **Planning Commission recommended approval with a unanimous 6–0 vote**. Please support this and help protect residents from displacement.

Please include this email in the public record

Thank you for your time.

Sincerely,

Linda Bookwalter

Fairway Estates

Unit 100

From: Carol Cirar <toostrippy@gmail.com>
Sent: Saturday, March 28, 2026 4:58 PM
To: DL-Council
Subject: [EXTERNAL] Support NR-MHC Zoning – Fairway Estates Resident

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: council@everettwa.gov

Subject: Support NR-MHC Zoning – Fairway Estates Resident

Dear Everett City Councilmembers,

I live in Fairway Estates and am writing to ask you to **vote to approve the NR-MHC zoning.**

This zoning is important for protecting manufactured home communities and preserving affordable housing for seniors, retirees, veterans, and others in Everett.

The **Planning Commission recommended approval with a unanimous 6–0 vote.** Please support this and help protect residents from displacement.

Please include this email in the public record

Thank you for your time.

Sincerely,
Carolyn Cirar
Fairway Estates Resident

Sincerely,

Fairway Estates Homeowners Alliance Board Members Sent from my iPhone

From: Mike Hartman <szmikeh@gmail.com>
Sent: Saturday, March 28, 2026 9:54 AM
To: DL-Council
Cc: kab62317@gmail.com
Subject: [EXTERNAL] Support NR-MHC Zoning – Fairway Estates Resident

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Everett City Councilmembers,

I live in Fairway Estates and am writing to ask you to **vote to approve the NR-MHC zoning**.

This zoning is important for protecting manufactured home communities and preserving affordable housing for seniors, retirees, veterans, and others in Everett.

The **Planning Commission recommended approval with a unanimous 6–0 vote**. Please support this and help protect residents from displacement.

Please include this email in the public record

Thank you for your time.

Sincerely,

Michael Hartman
Fairway Estates Resident

From: JeLynn Jeter <jeter.jelynn@gmail.com>
Sent: Friday, March 27, 2026 12:59 PM
To: DL-Council
Subject: [EXTERNAL] Support NR-MHC Zoning - Fairway Estates Residents

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: council@everettwa.gov

Subject: Support NR-MHC Zoning – Fairway Estates Resident

Dear Everett City Councilmembers,

I live in Fairway Estates and am writing to ask you to **vote to approve the NR-MHC zoning.**

This zoning is important for protecting manufactured home communities and preserving affordable housing for seniors, retirees, veterans, and others in Everett.

The **Planning Commission recommended approval with a unanimous 6–0 vote.** Please support this and help protect residents from displacement.

Please include this email in the public record

Thank you for your time.

Sincerely,
Walter R Jeter and Roxie L Jerer
Fairway Estates Resident

From: [john martin](#)
To: [Angela Ely](#); [Scott Bader](#); [Judy Tuohy](#); [Paula Rhyne](#); [Donald Schwab](#); [Ben Zarlingo](#); [Erica Weir](#); [Luis Burbano](#); [Angela Ely](#); [DL-Council](#)
Subject: [EXTERNAL] MLB should pay for its own stadium
Date: Wednesday, April 1, 2026 7:30:18 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Everett City Council Meeting
April 1, 2026
Comments for the Public Record
And Council Meeting Packet

Angela Ely
Executive Assistant | Everett City Council
425.257.8703 | 2930 Wetmore Ave, Ste 9A, Everett, WA 98201
AEly@everettwa.gov

Dear Angela Ely,

I am again submitting comments and documentation for the April 1, 2026, Everett City Council meeting.

Please confirm that the email that follows is included as part of the council meeting packet for the April 1, 2026, Everett City Council Meeting.

Thank you.

Best Regards,

John E. Martin
425-361-2854
jmartinnoj@hotmail.com

Dear Everett City Councilmember Erica Weir, Position 1, Councilmember Paula Rhyne, Position 2, Councilmember Don Schwab, Position 3 Councilmember Luis Burbano, Position 4 Councilmember Ben Zarlingo, Position 5, Councilmember Scott Bader (At Large), and Councilmember Judy Tuohy (At Large)

Same story, different city. Major League Baseball (MLB) wants a new stadium and bullies the

city into paying for it. Only this time, it's a round of Minor League Baseball (MiLB) stadiums for everyone!

The city of Everett, Washington is under siege. MLB threatened to leave if they didn't get certain MiLB stadium upgrades. They have a stadium, currently called Funko Field. A study was done, and the upgrades were doable. That wasn't enough.

Over the last several years, MLB and MiLB have bullied and brainwashed the city of Everett staff, councilmembers, and even legislature, into thinking there is no option but to make them a brand new stadium, on the backs of taxpayers and through the proposed low-balling displacement of many businesses.

The funding is being scrapped together by a crucially in-debt city, and includes a \$7.4 million legislative confiscation of youth activity funds; all in order to further line the pockets of MLB & MiLB owners.

Is there a breach of the Sherman anti-trust law?

Does the Major League Baseball Monopoly expect the City of Everett to go \$38 million in debt for a new stadium and get the \$38 million from taxpayers?

(See <https://www.heraldnet.com/2026/02/26/everett-would-need-another-38m-to-build-stadium-documents-show/>)

Why doesn't Major League Baseball support and pay for the Funko Field Option on land already owned by the Everett School Board?

(See <https://www.everettwa.gov/DocumentCenter/View/38294/PUBLIC-Funko-Field-Renovation-Feasibility-Study-Final---April-2024?bidId=>)

The Everett City Council can still vote no for the new stadium and support the Funko Field Option - Memorial Stadium.

Everett City Council: VOTE NO!

Thank you.

Best Regards,

John E. Martin

425-361-2854

jmartinnoj@hotmail.com

<https://www.snoho.com/news/2026/mar/25/mlb-should-pay-for-its-own-stadium/>



EVERETT CITY COUNCIL
Public Comment Form

Thank you for being here today. Please fill out this form to speak at the council meeting.

State your name and city of residence when you begin speaking. Each person is asked to limit comments to three minutes. This allows everyone a fair opportunity to speak. Return this form to the council administrator before the meeting begins.

The following comments are not allowed:

- Comments on any kind of campaigning, whether for or against ballot measures or candidates running for office
Comments focused on personal matters that are unrelated to City business

You can also submit a comment and attend meetings online at everettwa.gov/city council. Click on "Council meeting public comment sign up form." This must be done at least 30 minutes prior to the meeting. Additional instructions are available on the web page.

City staff may wish to contact you for follow up, therefore, your contact information is appreciated.

DATE: 04-01-26

NAME (required): HUYNH "HELEN" VO

CITY (required): Everett ZIP (required): 98208

EMAIL (optional): huynhvo18@gmail.com PHONE (optional): 425-327-5920

DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city

Is your topic on today's agenda?

[] YES - the comment period will follow the agenda item
AGENDA ITEM #: _____

[x] NO - speak during general public comment, topic you would like to speak on:
Code Enforcement Notice.



EVERETT CITY COUNCIL
Public Comment Form

Thank you for being here today. Please fill out this form to speak at the council meeting.

State your name and city of residence when you begin speaking. Each person is asked to limit comments to three minutes. This allows everyone a fair opportunity to speak. Return this form to the council administrator before the meeting begins.

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- Comments on any kind of campaigning, whether for or against ballot measures or candidates running for office
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You can also submit a comment and attend meetings online at everettwa.gov/city council. Click on "Council meeting public comment sign up form." This must be done at least 30 minutes prior to the meeting. Additional instructions are available on the web page.

City staff may wish to contact you for follow up, therefore, your contact information is appreciated.

DATE: 4/11/26
NAME (required): Russell Joe
CITY (required): Bellevue ZIP (required): 98005
EMAIL (optional): rjoe@MBAKS.com PHONE (optional):

DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city

Is your topic on today's agenda?

[] YES - the comment period will follow the agenda item
AGENDA ITEM #:

[x] NO - speak during general public comment, topic you would like to speak on:
Critical Area Regulations

Critical Areas Regulations Periodic Update

Everett City Council

April 1, 2026



What are Critical Areas?



Fish and Wildlife Habitat Conservation Areas
(incl. streams/rivers/lakes)



Wetlands



Geologically Hazardous Areas



Frequently Flooded Areas



Critical Aquifer Recharge Areas



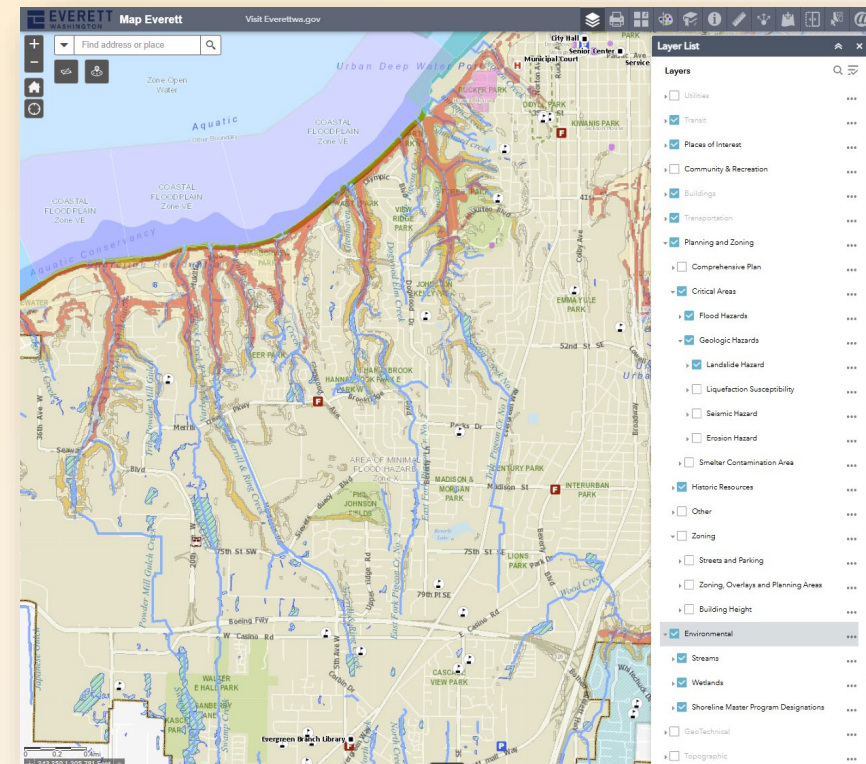
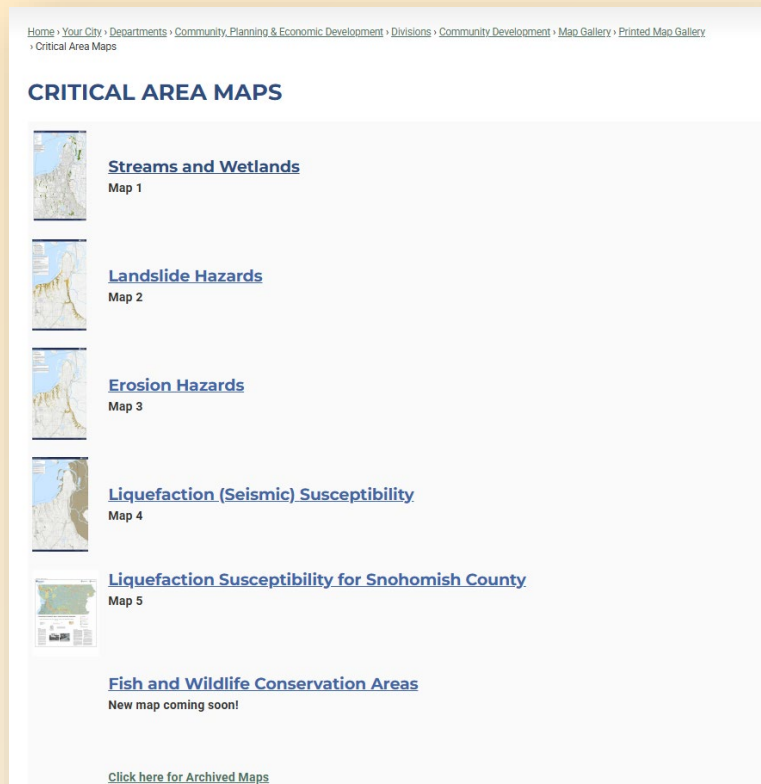
Where are Critical Areas in Everett?

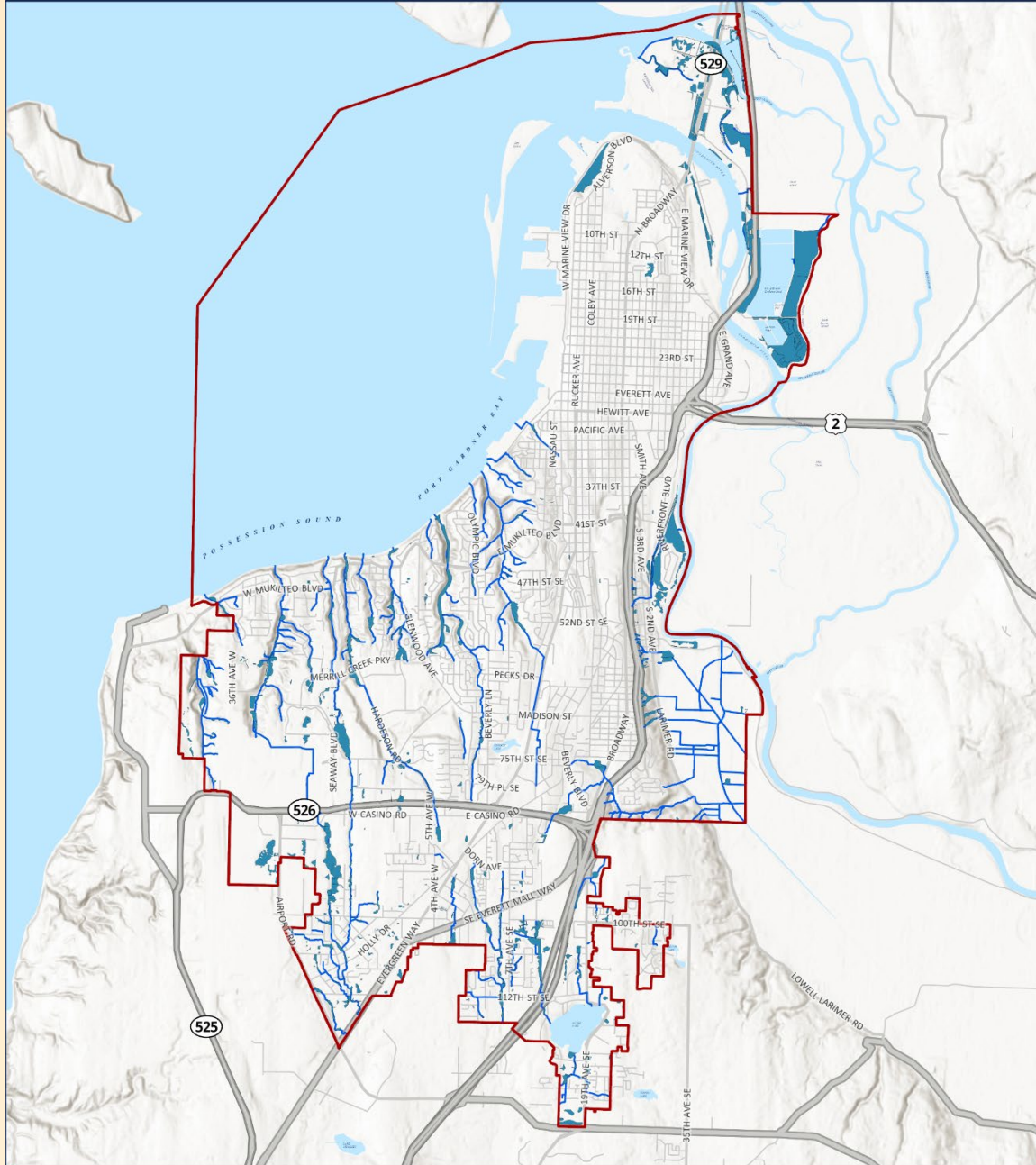
Critical Area Maps (PDFs)

everettwa.gov/1556/Critical-Area-Maps

Map Everett Interactive Map:

<https://gismaps.everettwa.gov/apps/MapEverettDE/>





Fish and Wildlife Habitat Conservation Areas

Snohomish River

Streams

Lakes

Marine waters

Wetlands

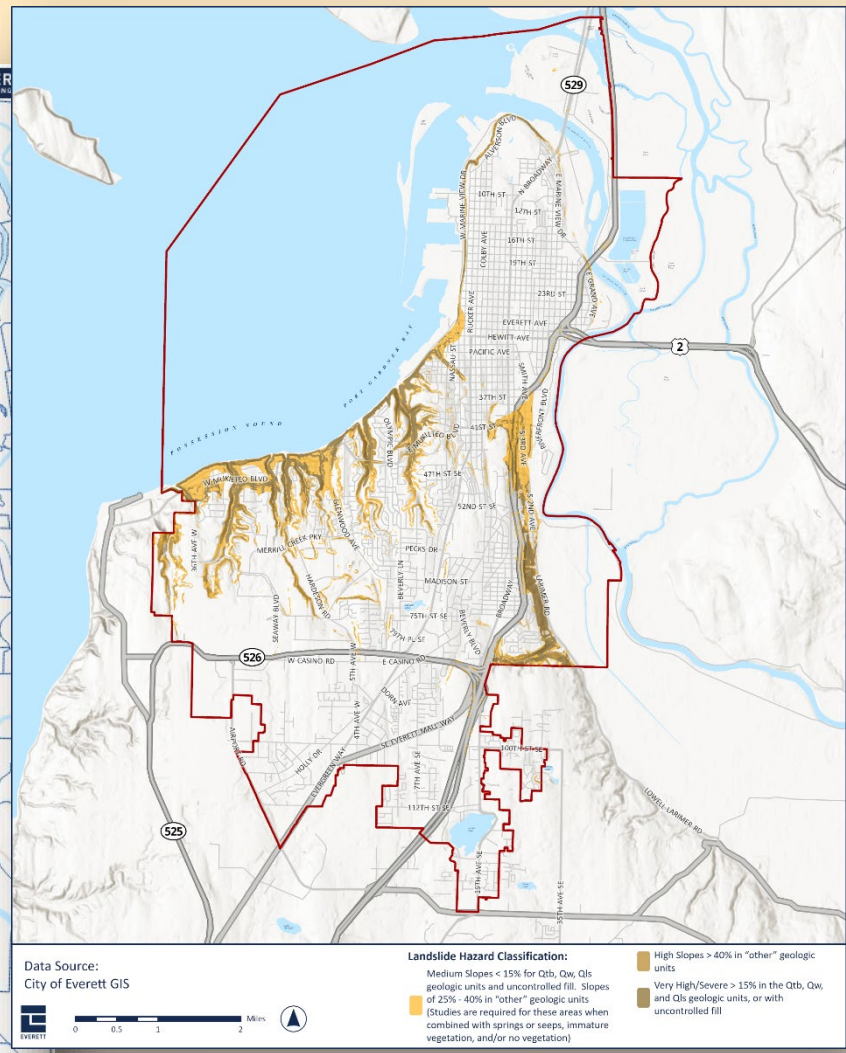
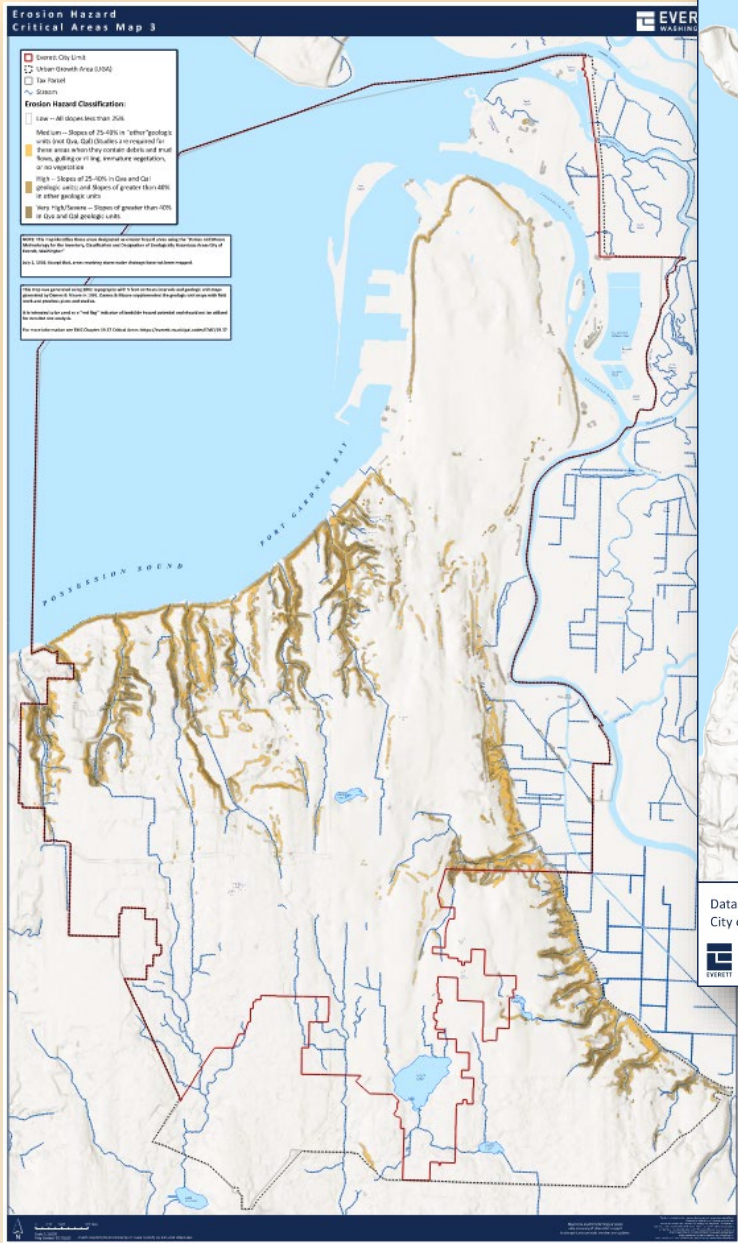
Data Source:
City of Everett GIS



 Stream
 Wetland



Source: City of Everett GIS



Geologically Hazardous Areas

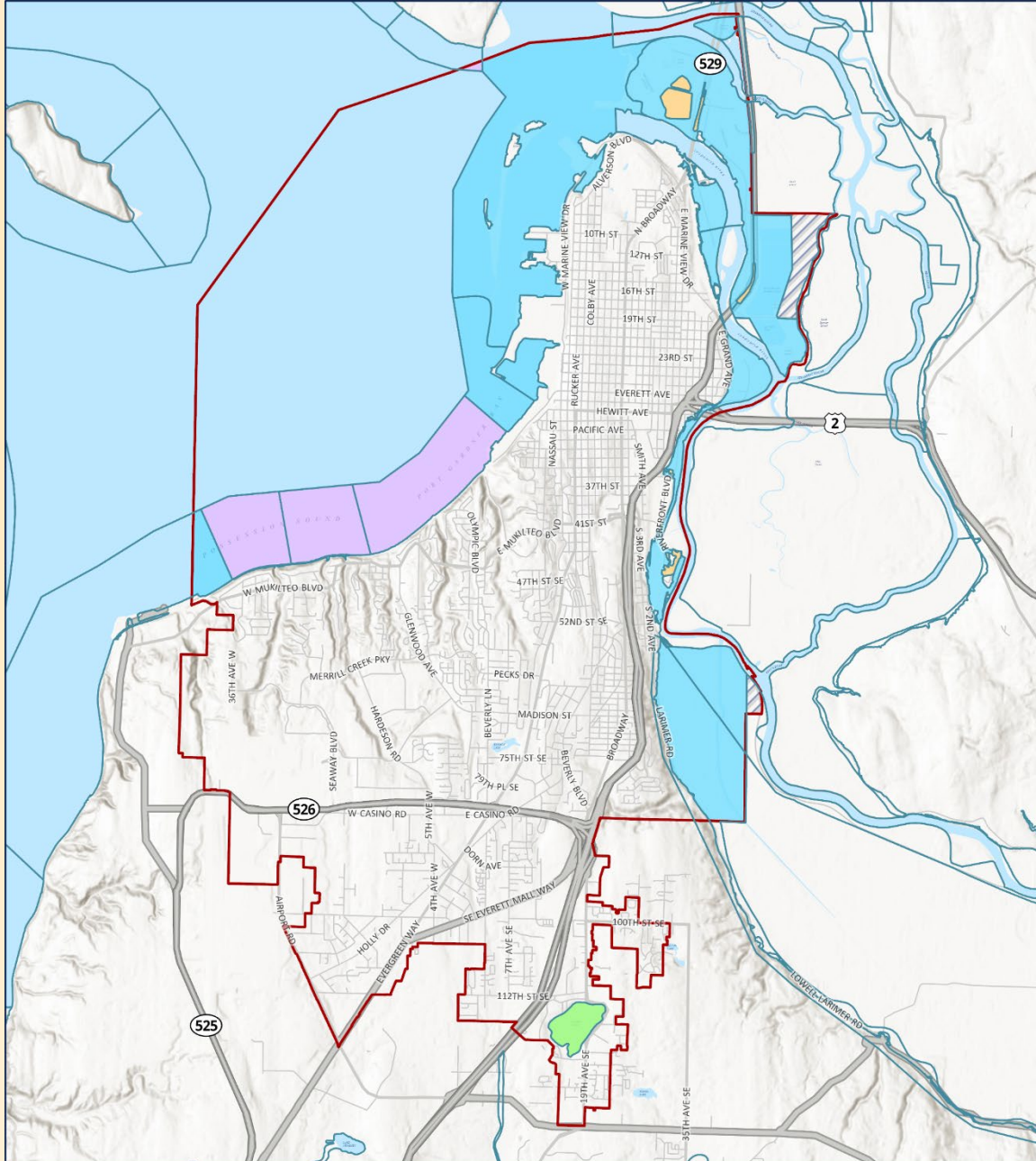
Erosion hazard areas

Landslide hazard areas

Seismic (liquefaction) hazard areas

Tsunami hazard areas





Special flood hazard areas

Data Source:
FEMA & City of Everett GIS



Flood Hazard Area

Zone A: 1% Chance of Annual Flooding, no BFE

Zone AE: 1% Chance of Annual Flooding, with BFE

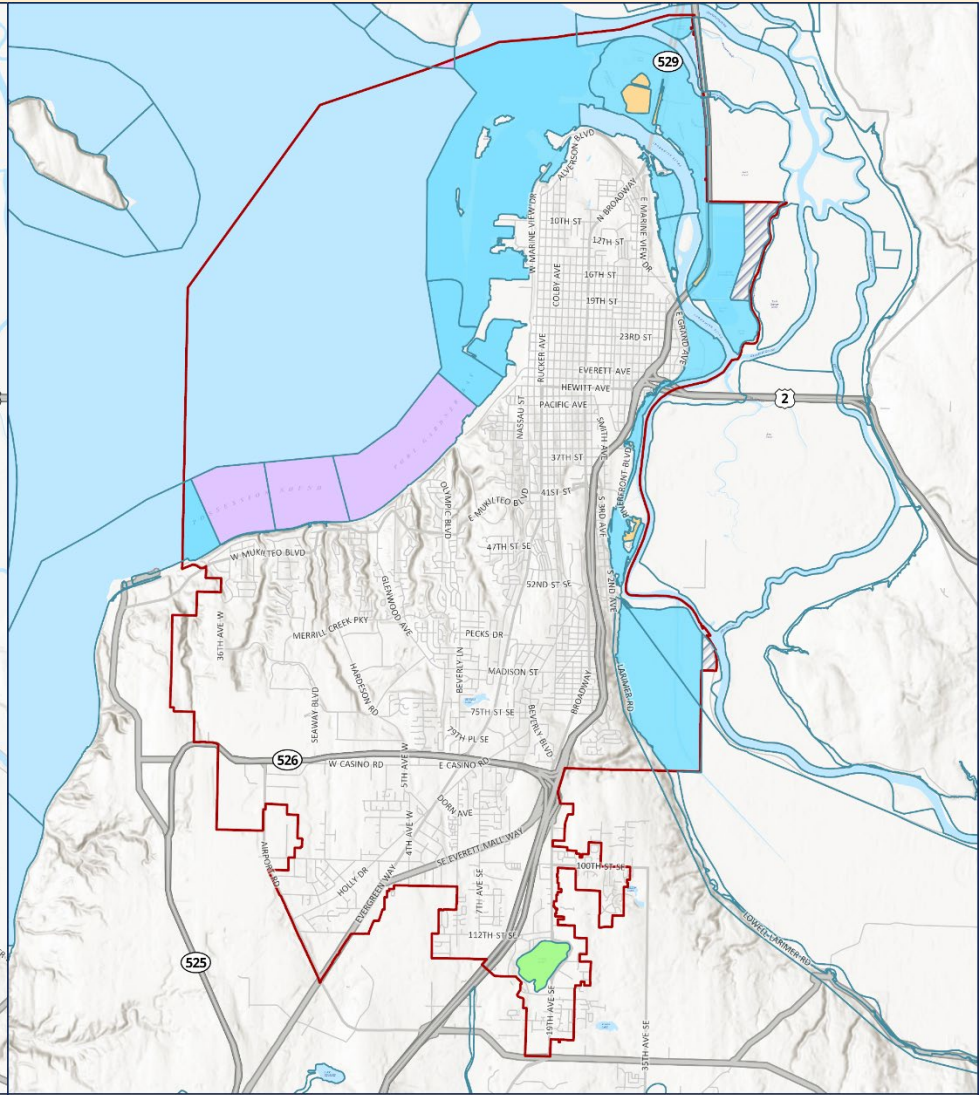
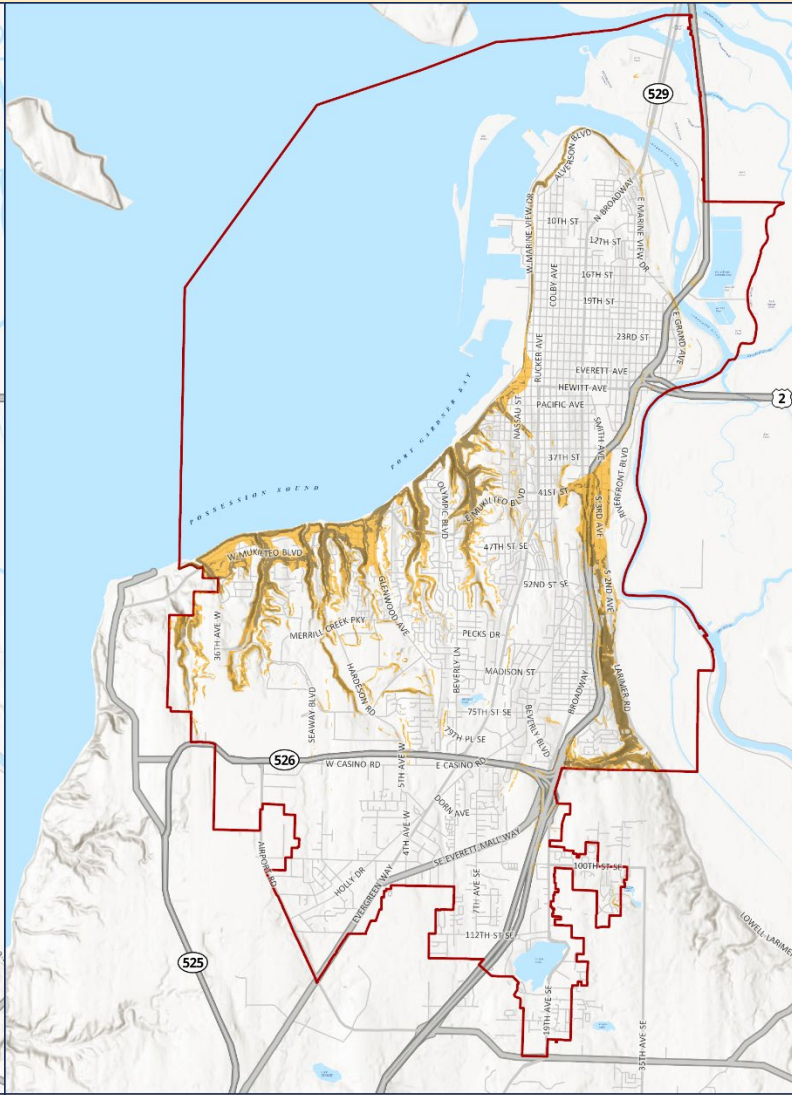
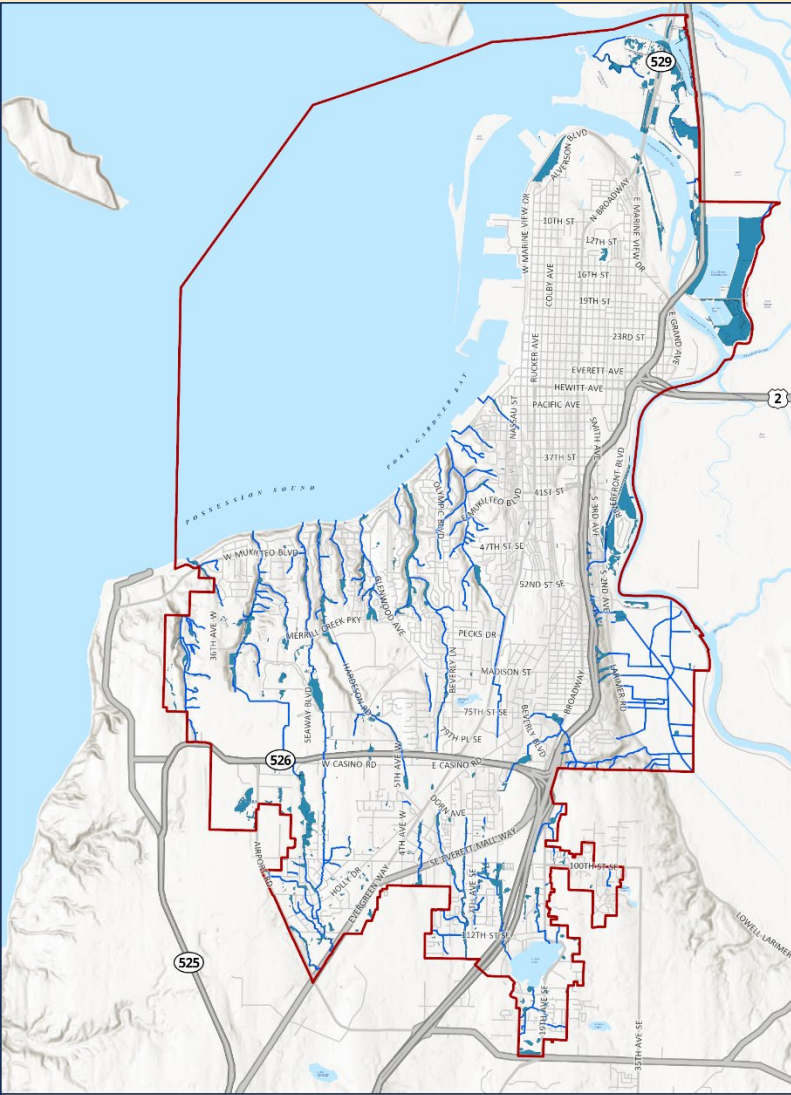
Zone AE: Density Fringe Areas

Zone VE: High Risk Coastal Area

Zone X: 0.2% Annual Chance of Flooding

Source: City of Everett GIS





Data Source:
City of Everett GIS

Stream
 Wetland

0 0.5 1 2 Miles

Data Source:
City of Everett GIS

Landslide Hazard Classification:
 Medium Slopes < 15% for Qtz, Qw, Qls geologic units and uncontrolled fill. Slopes of 25% - 40% in "other" geologic units (Studies are required for these areas when combined with springs or seeps, immature vegetation, and/or no vegetation)

High Slope units
 Very High and Q1s uncontro

0 0.5 1 2 Miles

Data Source:
FEMA & City of Everett GIS

Flood Hazard Area
 Zone A: 1% Chance of Annual Flooding, no BFE
 Zone AE: 1% Chance of Annual Flooding, with BFE

Zone VE: High Risk Coastal Area
 Zone X: 0.2% Annual Chance of Flooding

Zone AE: Density Fringe Areas

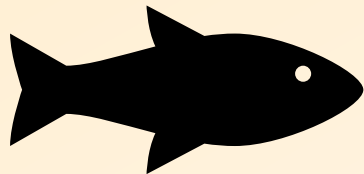
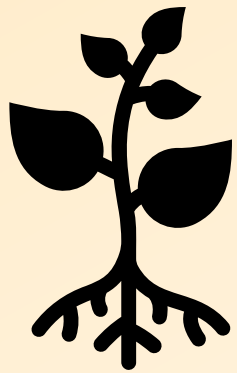
0 0.5 1 2 Miles



Why Protect Critical Areas?

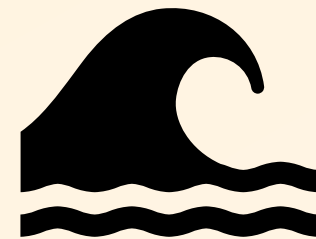
Protect Ecological Functions

- Water quality
- Hydrologic
- Habitat



Protect Life and Safety

- Focus on avoidance and risk minimization



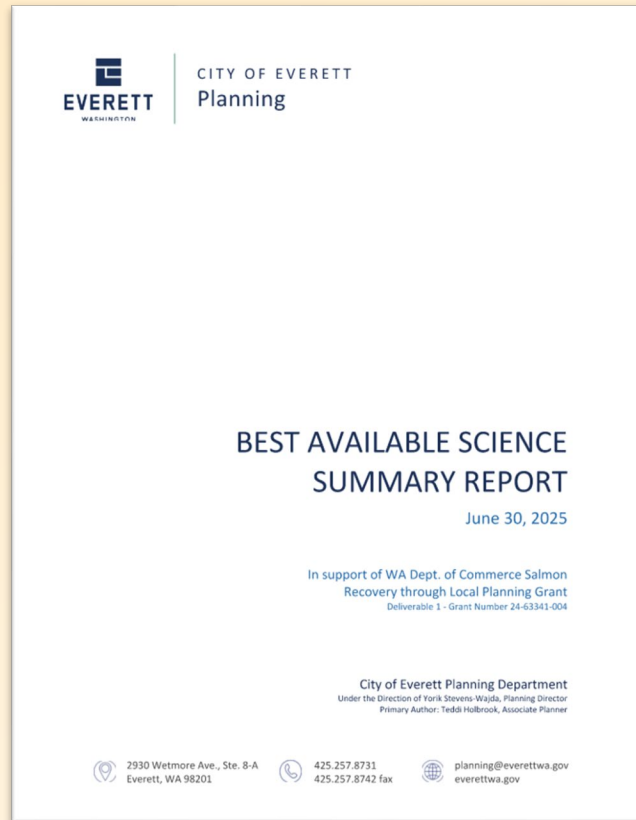
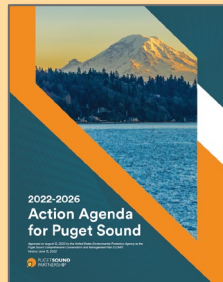
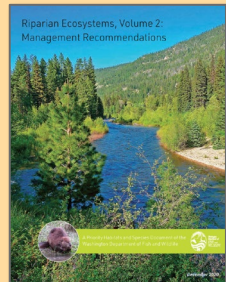
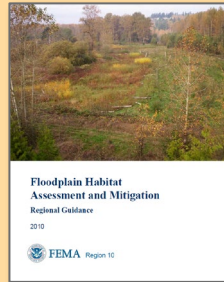
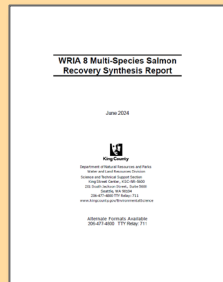
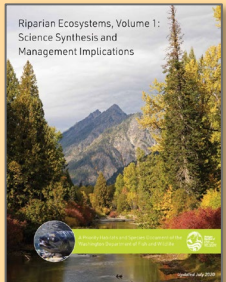
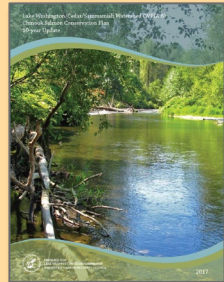
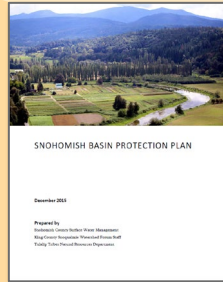
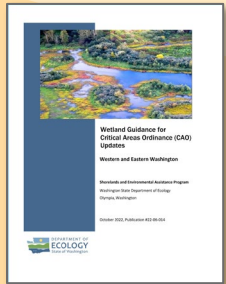
Regulatory Framework

Growth Management Act (GMA) WAC 365-196

- Requires local jurisdictions to **review and update** regulations to **designate and protect** critical areas
- Requires “**no net loss**” of ecological functions and values
- Update must be based on **Best Available Science (BAS)**
- Must give “**special consideration**” to preserve or enhance anadromous fisheries (salmon)



Best Available Science



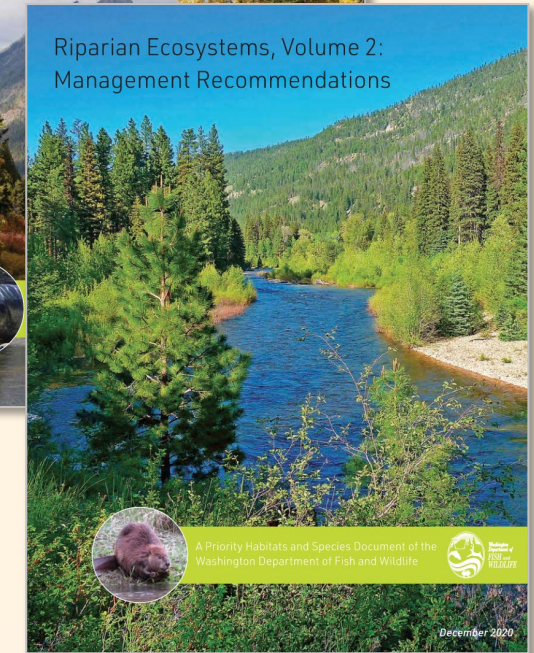
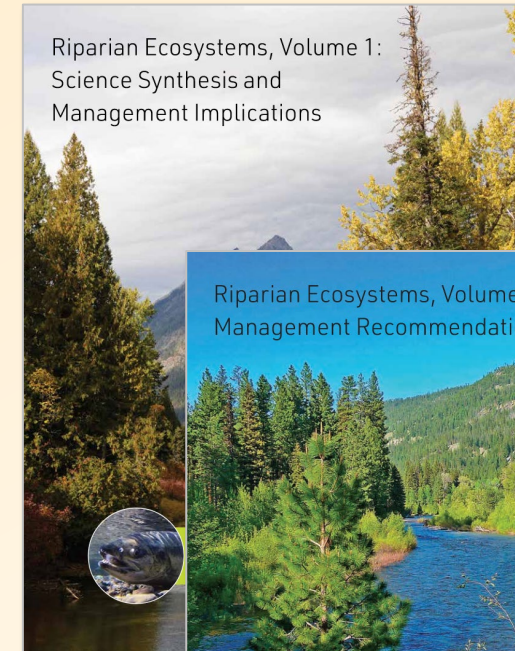
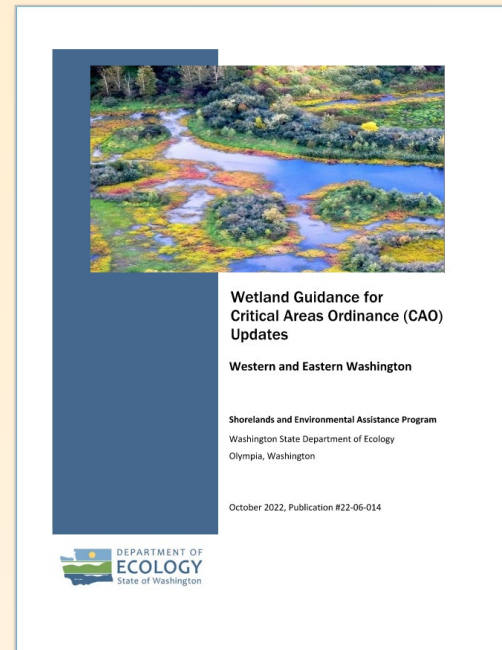
Best Available Science (BAS) Summary Report

Review of best currently-available science

Basis for revising development regulations



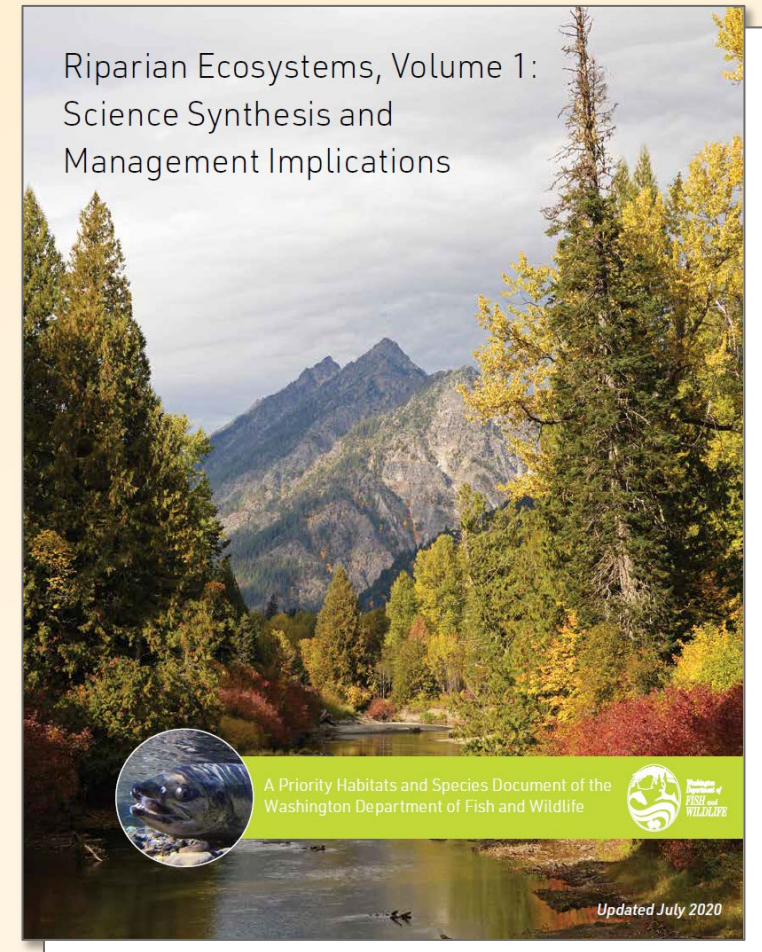
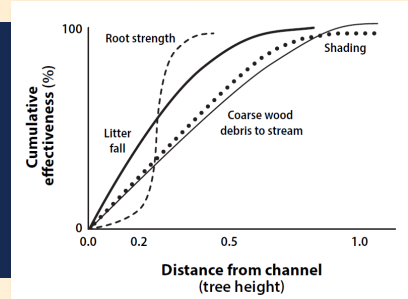
Agency Meetings



Functions (streams)

- Stream form and shape
- Wood
- Water temperature
- Pollutant removal
- Nutrients

Special consideration should be given to ... stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species.



Quinn et al. 2020



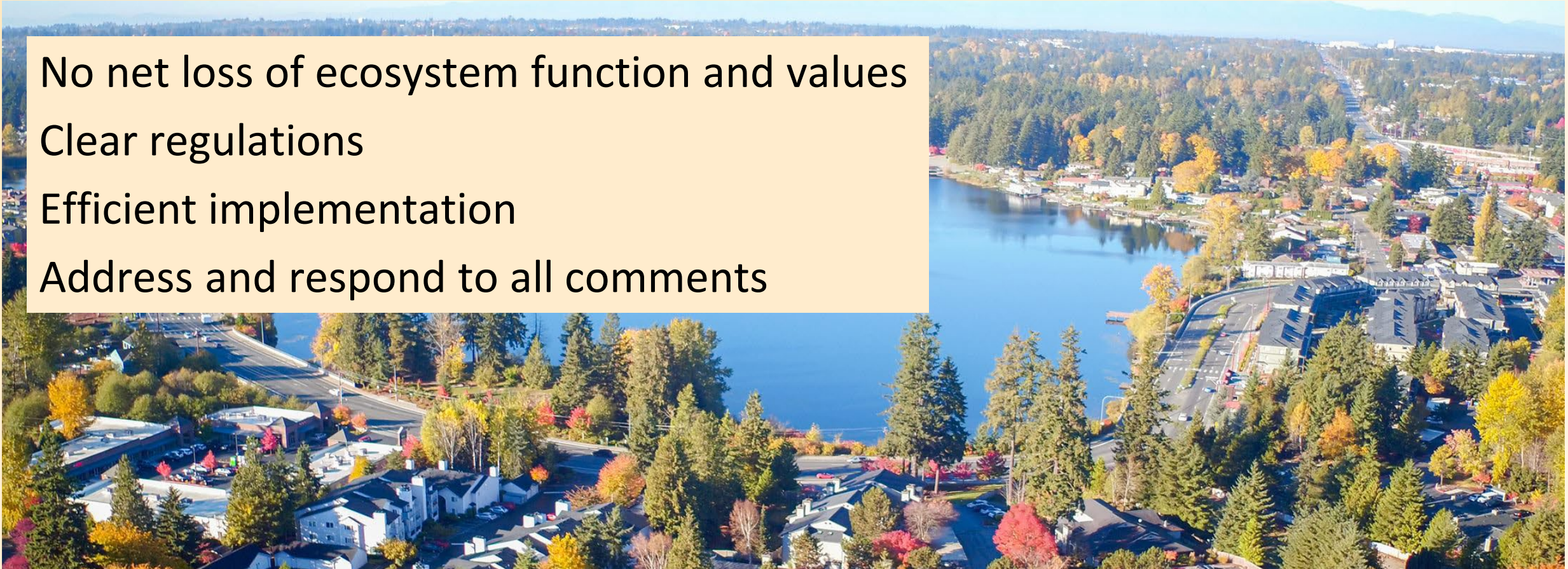
Values – Benefits to Society

- Cultural
- Spiritual
- Aesthetic
- Recreation
- Flood damage reduction
- Water quality improvement
- Harvestable salmon population



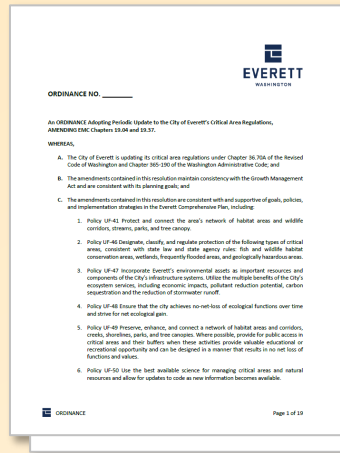
Project Goals

No net loss of ecosystem function and values
Clear regulations
Efficient implementation
Address and respond to all comments



Documents

Ordinance



Section 1: Amends Chapter 19.04 EMC

Section 2: Repeals Chapter 19.37 EMC

See exhibit A for deleted text

Section 3: Adopts new Chapter 19.37 EMC

See Exhibit B for new chapter

Staff memo



Memo: Background, process, and summary of changes

Exhibit A: Comprehensive Plan Policies

Exhibit B: Strikethrough version of Ordinance Exhibit B



Proposed Changes



CITY OF EVERETT
Planning

STAFF MEMORANDUM

TO: Everett City Council
FROM: Yorik Stevens-Wajda, Planning Director
DATE: March 20, 2026
SUBJECT: Critical Areas Regulations Periodic Update

The city is updating its critical area regulations, primarily contained in Chapter 19.37 EMC, consistent with state law requirements (RCW 36.70A). The planning commission recommends approval of the code amendments included in the proposed ordinance attached to this memo.

BACKGROUND

The Growth Management Act (GMA) of Washington State (RCW 36.70A) requires local jurisdictions to designate and protect critical areas and to periodically review and update those regulations. See the [Department of Commerce Critical Areas Protection Program](#) for handbooks and other guidance documents.

Critical areas present in Everett that are subject to regulation include: wetlands; streams and other fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas (RCW 36.70A.030(12)). The city maintains [critical area maps](#) and the [Map Everett online map viewer](#) to share information on where known critical areas exist in the city.

The City of Everett regulates critical areas under Everett Municipal Code (EMC) Chapters 19.30 (flood damage prevention) and 19.37 (critical areas) and provides definitions of these areas and key concepts in EMC 19.04. The city's first critical area regulations were adopted in 1991 (Ord. 1838-91), with major updates in 2006 (2909-06) and 2019 (Ord. 3676-19).

The Growth Management Act requires "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Per WAC 365-195-925(3), these include:

...measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species.

A Best Available Science (BAS) summary report was completed in 2025 and provides a review of current best available science documents as prepared by qualified scientific experts and defined in WAC 365-195. The report documents scientific sources that will be used as the basis for revising the city's

2930 Wetmore Ave., Ste. 8-A
Everett, WA 98201


425.257.8731
425.257.8742 fax

planning@everettwa.gov
everettwa.gov

- See staff memorandum for summary*
- Organization and clarity
 - Exemptions / exceptions / allowed uses
 - Stream buffers
 - Width
 - Vegetation
 - Functionally disconnected
 - Nonconformities



Comments and Responses



Everett Critical Area Regulations
Periodic Update

Comments and Responses
April 1, 2026

everettwa.gov/3354/2025-Critical-Area-Ordinance-Update

This document presents a list of comments received on the City of Everett's Critical Areas Ordinance update through April 1, 2026 and notes and responses to each from the Planning department.

Comment letters included:

11/13/25	Washington Dept. of Natural Resources- Washington Geologic Service	1/8/26	Port of Everett
11/18/25	Snoqualmie Tribe	1/28/26	Master Builders of King and Snohomish County
11/18/25	Master Builders of King and Snohomish County	2/17/26	Tulalip Tribes
11/18/25	The Bargreen Family	3/2/26	WA Dept. of Fish and Wildlife
11/20/25	Washington Dept. of Fish and Wildlife	3/27/26	WA Dept. of Natural Resources (Washington Geologic Services)
11/24/25	Tulalip Tribes	3/31/26	Master Builders of King and Snohomish County
1/6/26	Sound Transit		

Notes for the reader:

- **Highlighting** in the rightmost column identifies changes since the October 31 draft updated regulations.
- Statements and excerpts in the second column (Comments) are provided by the commentor and are not reviewed or corrected for accuracy. **Red text** indicates code change suggestions in many letters.
- Excerpts in the middle and rightmost columns are not always complete. Text between two relevant subsections may be omitted to reduce length. See the February 13 review draft document for complete proposed sections.
- Hyperlinks are identified throughout in blue text.

Everett Critical Area Regulations Periodic Update Comments and Responses
February 13, 2026
Page 1 of 55

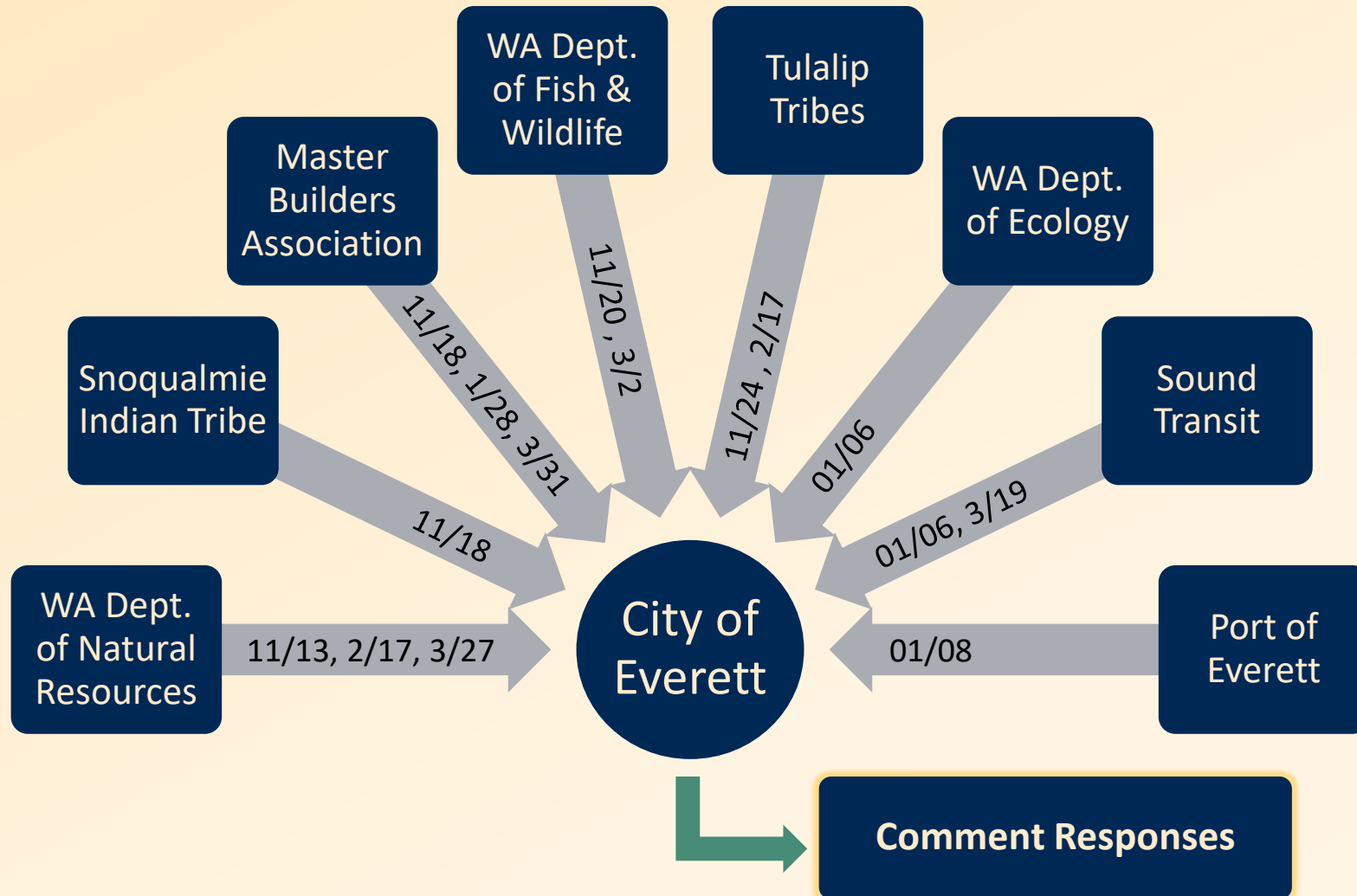
Comment EMC sections for reference Staff response

Source	Comments	Context as proposed in Critical Area Regulations October 31, 2025 DRAFT	City of Everett Notes and Responses (February 13, 2026 Draft)
DNR-WGS 11/13/25 <u>Topics</u> Geohazard	On page 6 of the document, it is good to see the definition of geologically hazardous areas and geologist. There is no definition of engineer. On page 9 there is a definition of qualified professional. Great to see it requires a licensed geologist or engineering geologist or geotechnical engineer. The license requirement does not specify licensed in Washington, so licensed in any state is acceptable? Suggest clarifying if only WA licensed is acceptable. Suggest including a definition of geotechnical engineer since there is a definition of geologist, the other described qualified professional for geologically hazardous areas.	19.04.110, Critical areas definitions "Qualified professional" means a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director. A qualified professional for geologic assessments or reports means a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or at minimum of five years of experience evaluating geologically hazardous areas. 19.37.120 Critical Area Reports—Professional Qualifications and General Report Content A. General Requirements for All Critical Area Reports. 1. Preparation by a Qualified Professional. A critical area report shall be prepared by a qualified professional who is a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director. The qualifications of the professional who prepared the report shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. When a geological assessment or geological report is required, the report shall be prepared by a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or a minimum of five years of experience evaluating geologically hazardous areas. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the plan.	The proposal has been revised, at EMC 19.04.110 and EMC 19.37.120 to include reference to licensure in Washington state. This corresponds with similar requirements in Snohomish County's code (see SCC 30.62B.140(2)). 19.04.110, Critical areas definitions "Qualified professional" means a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director, a person with experience and training in the applicable field who possesses a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, engineering, fisheries, ecology, resource management, or related field, and who has at least two additional years of full-time, related work experience. A qualified professional for wetland delineations will also have completed additional wetland-specific training programs and/or have professional certificates or certifications. A qualified professional for geologic assessments or reports means an engineer or geologist licensed in the state of Washington, including: a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or at minimum of five years of experience evaluating geologically hazardous areas. 19.37.120 Critical Area Reports—Professional Qualifications and General Report Content A. General Requirements for All Critical Area Reports. 1. Preparation by a Qualified Professional. A critical area report shall be prepared by a qualified professional, who is a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director. The qualifications of the qualified professional who prepared the plan report shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. When a geological assessment or geological report is required, the report shall be prepared by a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or a minimum of five years of experience evaluating geologically hazardous areas. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the report or plan.

Comments received after Feb. 17
start page 47



Comments Received



Future Work

- Consider implementing **Riparian Management Zones** for streams rather than critical areas + buffers of the same size.
- Develop provisions and incentives to **encourage daylighting of piped streams.**
- Coordinate with partners around preferences and incentives for **on-site vs programmatic (off-site) mitigation**
- Critical area **regulations for shoreline jurisdiction**
- Review Comprehensive Plan Policy UF-56 (“Prohibit alteration of Category I wetlands...”)



Schedule – Critical Area Regulation Update

September 16	Planning Commission briefing
October 7	Planning Commission briefing
November 4	Planning Commission briefing
November 12	City Council Parks & Built Environment Committee check-in
November 18	Planning Commission public hearing
January 6	Planning Commission briefing
February 11	City Council Parks & Built Environment Committee briefing
February 17	Planning Commission public hearing and recommendation
April 1	City Council briefing
April 8	City Council 2nd reading
April 15	City Council public hearing and action



How to Comment

- Follow the project website: everettwa.gov/3354/2025-Critical-Area-Ordinance-Update
- Provide written comments via email to cao@everettwa.gov
- Provide comments to the City Council at a public hearing
- Contact the project team at cao@everettwa.gov



Project Webpage

Divisions Services Business Residents I Want To...

EVERETT
COMMUNITY, PLANNING &
ECONOMIC DEVELOPMENT

How can we help you?

Home › Your City › Departments › Community, Planning & Economic Development › Divisions › Planning › 2025 Critical Area Ordinance Update

2025 CRITICAL AREA ORDINANCE UPDATE

Draft code amendments available for review: [October 31, 2025 Everett Critical Area Regulations Periodic Update Review Draft](#)

Status Update (11/21/25)

Comments have been received on the October 31 draft and are posted below; comments are still welcome on this draft. Planning commission briefings and discussions are nearly complete. Staff will provide a next, and perhaps final, draft prior to the planning commission's next meeting on January 6 at which the commission will act on a recommendation to the city council via resolution unless more time or another meeting is needed. The city council will then hold briefings, discussions, and a public hearing before acting on an ordinance in late winter (January-February 2026).

Why are Everett's Critical Areas regulations being updated now?

Critical areas are geologically hazardous areas, wetlands, frequently flooded areas, and fish and wildlife habitat conservation areas including rivers, lakes, and streams. The City of Everett protects and regulates development near critical areas under regulations and definitions contained in Everett Municipal Code (EMC) chapters [19.04](#), [19.37](#), and [19.30](#), known collectively as the city's critical areas regulations.

Every ten years, Washington's [Growth Management Act](#) (GMA, RCW [36.70A](#)) requires cities and counties to review and update their critical areas policies and regulations. The City of Everett must complete its next critical area regulations periodic update by December 31, 2025 to stay up-to-date with the latest science and regulatory requirements. This update ensures the city's critical areas regulations remain consistent with current state law, reflects [Best Available Science \(BAS\)](#), and will balance strong environmental protections while supporting responsible growth.

What is a critical area?

The state identifies types of critical areas that must be designated and protected:

- Geologically hazardous areas

everettwa.gov/3354/2025-Critical-Area-Ordinance-Update

