

ORDINANCE NO. 362

AN ORDINANCE of the City Council of the City of Lakewood, Washington repealing Chapters 14.138, 14.142, 14.146, 14.150, 14.154, 14.158, 14.162, 14.166 and 14.170 of the Lakewood Municipal Code, adopting new Critical Areas and Resource Lands Regulations, codified as Title 14A of the Lakewood Municipal Code, and amending Section 18A.40.230 of the Lakewood Municipal Code

WHEREAS, since incorporation the City of Lakewood has used an interim critical areas and resource lands code based to a large extent on Pierce County codes in effect prior to incorporation; and,

WHEREAS, in order to address the needs of the City and to comply with the planning requirements of the State's Growth Management Act, the City Council adopted its initial Comprehensive Plan on July 10, 2000; and,

WHEREAS, the City Council finds that RCW 36.70A.040 requires that the City adopt development regulations that are consistent with and implement the adopted comprehensive plan; and,

WHEREAS, the City Council finds that RCW 36.70A.060 and 170 and WAC 365-195-410 require the City to designate critical areas (wetlands, areas of critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas) and to develop and adopt development regulations that protect critical areas; and,

WHEREAS, the City Council finds that pursuant to Chapter 36.70A RCW, the City of Lakewood adopted Ordinance No. 56 on February 12, 1996, which enacted Chapters 14.138 through 14.170 of the Lakewood Municipal Code, which are the City's Interim Critical Areas and Natural Resource Lands Regulations; and,

WHEREAS, the City Council finds that RCW 36.70A.172 was amended in 1995 to require all jurisdictions to include best available science in developing policies and development regulations to protect the functions and values of critical areas and to give special consideration to

conservation or protection measures necessary to preserve or enhance anadromous fisheries;
and,

WHEREAS, the City Council finds that WAC 395-195-900 through 925 (Best Available Science Rule) provides guidance for acquiring and evaluating scientific information to determine whether this information constitutes the best available science and requires local governments to use best available science in their critical area regulation updates consistent with RCW 36.70A.172; and,

WHEREAS, the City Council finds that RCW 36.70A.130 requires all jurisdictions to review, and if necessary, update their critical area regulations using best available science by December 1, 2004; and,

WHEREAS, because the City has its own unique character it thus also has development, zoning and land use needs different than Pierce County and other jurisdictions; and,

WHEREAS, in order to assure consistency between the City's Comprehensive Plan and its development regulations, the Lakewood Planning Advisory Board has been studying ways to address development, zoning and land use needs, and has held public hearings and provided forums to receive public input for updated critical areas and resource lands regulations; and,

WHEREAS, the Planning Advisory Board has also made its recommendations to the City Council for critical areas and resource lands regulations and associated code provisions; and,

WHEREAS, having fully studied the issues, aspects and areas of concern regarding critical areas and resource lands protection in the City, the City Council is ready to adopt its full, non-interim, Critical Areas and Resource Lands Regulations;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON
DO ORDAIN as follows:

Section 1. That the Findings of Fact establishing the basis and rationale for the adoption of proposed new critical areas regulations is hereby adopted as set forth in **Exhibit A** attached hereto.

Section 2. That Lakewood Municipal Code Chapters 14.138, 14.142, 14.146, 14.150, 14.154, 14.158, 14.162, 14.166 and 14.170 are hereby repealed as follows:

~~Chapter 14.138~~

~~CRITICAL AREAS AND NATURAL RESOURCE LANDS
AUTHORITY AND PURPOSE~~

~~Sections:~~

~~14.138.010 Authority and Title:~~

~~14.138.020 Purpose and Goals:~~

~~14.138.030 Intent:~~

~~14.138.040 Interpretation:~~

~~14.138.050 Severability:~~

~~14.138.010 Authority and Title:~~

~~This Title is established pursuant to the requirements of the Growth Management Act (RCW 36.70A.060) and the State Environmental Protection Act (RCW 43.21C). This Title shall be known as "Critical Areas and Natural Resource Lands."~~

~~14.138.020 Purpose and Goals:~~

~~This Title establishes interim regulations pertaining to the development of critical areas and natural resource lands:~~

~~The regulations established in this Title are intended to protect critical areas and conserve natural resource land features in the City of Lakewood. By regulating development within and adjacent to or abutting critical areas and natural resource lands this Title seeks to implement the following goals:~~

~~A. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.~~

~~B. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.~~

~~C. Avoid or in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands, and to maintain and enhance the biological and physical functions and values of wetlands with respect to water quality maintenance, stormwater and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, education, and historic and cultural preservation. When avoiding impacts is not reasonable, mitigation should be implemented to achieve no net loss of wetlands in terms of acreage, function and value.~~

~~14.138.030 Intent:~~

~~Erosion, landslide, seismic, volcanic, mine and flood hazard areas, streams, wetlands, fish and wildlife habitat, and aquifer recharge areas constitute critical areas; and mineral resource lands constitute natural resource lands. All of these areas are of special concern to the people of Lakewood, Pierce County and the State of Washington. The intent of this Title is to protect critical areas and conserve the natural resource lands of the City by establishing minimum standards for development of sites which contain or are adjacent to critical areas or natural resource lands and thus promote the public health, safety, and welfare by:-~~

- ~~—— A. Mitigating unavoidable impacts by regulating development;~~
- ~~—— B. Protecting from impacts of development;~~
- ~~—— C. Protecting the public against losses from:
 - ~~———— 1. Costs of public emergency rescue and relief operations where the causes are avoidable;—~~
 - ~~———— 2. Degradation of the natural environment and the expense associated with repair or replacement;~~~~
- ~~—— D. Preventing adverse impacts on water availability, water quality, wetlands, and streams;~~
- ~~—— E. Protecting unique, fragile, and valuable elements of the environment, including fish and wildlife habitat;~~
- ~~—— F. Providing City officials with sufficient information to adequately protect critical areas and natural resource lands when approving, conditioning, or denying public or private development proposals;~~
- ~~—— G. Providing the public with sufficient information and notice of potential risks associated with development in critical areas;~~
- ~~—— H. Implementing the Goals and Requirements of the Growth Management Act of 1990, the State Environmental Policy Act, the Puget Sound Water Quality Management Plan, the City Comprehensive Plan, including all updates and amendments, and other land use policies formally adopted or accepted by the City.~~

14.138.040 Interpretation:

In the interpretation and application of this Title, all provisions shall be:

- A.—— Considered the minimum necessary;
- B.—— Liberally construed to serve the purposes of this Title; and
- C.—— Deemed neither to limit nor repeal any other powers under state statute.

14.138.050 Severability:

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

~~Chapter 14.142~~

~~CRITICAL AREAS AND NATURAL RESOURCE LANDS
GENERAL REQUIREMENTS~~

Sections:

- ~~14.142.010 Purpose.~~
- ~~14.142.020 Definitions.~~
- ~~14.142.030 Applicability.~~
- ~~14.142.040 Permitted Uses.~~
- ~~14.142.050 Regulated Uses/Activities.~~
- ~~14.142.060 Exemptions.~~
- ~~14.142.070 Reasonable Use Exception.~~
- ~~14.142.080 Process.~~
- ~~14.142.090 Variance.~~
- ~~14.142.095 Current Use Assessment.~~
- ~~14.142.100 Compliance Provisions.~~
- ~~14.142.110 Fees.~~
- ~~14.142.115 Title and Plat Notification.~~
- ~~14.142.120 Appeals.~~
- ~~14.142.130 Severability.~~

14.142.010 Purpose

~~This Chapter establishes general requirements and regulations for the protection of critical areas and the conservation of natural resource lands which shall apply throughout this Title.~~

14.142.020 Definitions:

~~For the purpose of this Title, the following definitions shall apply:~~

- ~~A. **"Abutting"** means bordering upon, to touch upon, in physical contact with. Sites are considered abutting even though the area of contact may be only a point.~~
- ~~B. **"Applicant"** means a person, party, firm, corporation, or other legal entity that proposes a development on a site.~~
- ~~C. **"Aquifer"** means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.~~
- ~~D. **"Aquifer recharge area"** means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater.~~
- ~~E. **"Best management plan"** means a plan developed for a property which specifies best management practices for the control of animal wastes, stormwater runoff, and erosion.~~
- ~~F. **"Buffer"** means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.~~

- ~~G. **"Building footprint"** means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.~~
- ~~H. **"Classification"** means defining value and hazard categories to which critical areas and natural resource lands will be assigned.~~
- ~~I. **"Clearing"** means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site. In addition to the above, clearing is an activity which does not require reforestation per an approved Forest Practices Application/notification issued by the Department of Natural Resources.~~
- ~~J. **"Critical areas"** means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, and geologically hazardous areas.~~
- ~~K. **"Department"** means the City of Lakewood Department of Community Development.~~
- ~~L. **"Designation"** means taking formal legislative action to adopt classifications, inventories, and regulations.~~
- ~~M. **"Development"** means any human-induced change to improved or unimproved real property including, but not limited to, the construction of buildings or other structures, placement of manufactured home/mobile, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, or the subdivision of property.~~
- ~~N. **"Director"** means the Director of the Department of Community Development or his/her designee.~~
- ~~O. **"Erosion"** means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.~~
- ~~P. **"Erosion hazard areas"** means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.~~
- ~~Q. **"Existing"** means those uses legally established prior to incorporation whether conforming or nonconforming.~~
- ~~R. **"Fish and wildlife habitat areas"** means those areas identified as being of critical importance to maintenance of fish, wildlife, and plant species, including: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; commercial and recreational shellfish areas; kelp and eelgrass beds, herring and smelt spawning areas; naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, or private organization; state natural area preserves and natural resource conservation areas.~~

- ~~S. **"Flood hazard areas"** means areas of land located in floodplains which are subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.~~
- ~~T. **"Geologically hazardous areas"** means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, may pose a risk to the siting commercial, residential, or industrial development consistent with public health or safety concerns.~~
- ~~U. **"Grading"** means any excavating, filling, clearing, creating (or combination thereof) of impervious surfaces.~~
- ~~V. **"Landslide"** means the abrupt downslope movement of soil, rocks, or other surface matter on a site. Landslides may include, but are not limited to, slumps, mudflows, earthflows, rockfalls, and snow avalanches.~~
- ~~W. **"Landslide hazard areas"** means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.~~
- ~~X. **"Long-term commercial significance"** means the growing capacity, productivity, and soil composition of land which makes it suitable for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land.~~
- ~~Y. **"Minerals"** means gravel, sand, and valuable metallic substances.~~
- ~~Z. **"Mineral resource lands"** means lands primarily devoted to the extraction of minerals or which have known or potential long-term commercial significance for the extraction of minerals.~~
- ~~AA. **"Natural resource lands"** means mineral resource lands which have long-term commercial significance.~~
- ~~BB. **"Private organization"** means a nonprofit corporation organized pursuant to RCW 24.03, which includes the planting of game fish among its purposes for organizing as a nonprofit corporation.~~
- ~~CC. **"Public services"** include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.~~
- ~~DD. **"Regulated activities"** include, but are not limited to, any of the following activities which are directly undertaken or originate in a regulated critical area or resource land or their buffer: building permit, commercial or residential; binding site plan; boundary line adjustment; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; large lot subdivision, short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit;~~

variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter.

- ~~EE. **"Seismic hazard areas"** means areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.~~
- ~~FF. **"Short subdivision"** or **"short plat"** means the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.~~
- ~~GG. **"Site"** means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed.~~
- ~~HH. **"Subdivision"** or **"formal subdivision"** means the division or redivision of land into five (5) or more lots, tracts, parcels, sites, or division for the purpose of sale, lease, or transfer of ownership.~~
- ~~II. **"Urban governmental services"** include those governmental services historically and typically delivered by cities, and includes storm and sanitary sewer systems, domestic water systems, street cleaning services, and other public utilities associated with urban areas and normally not associated with non-urban areas.~~
- ~~JJ. **"Urban growth"** refers to growth that makes intensive use of the land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. Characterized by urban growth refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.~~
- ~~KK. **"Wetland"** or **"Wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands generally do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the City.~~

14.142.030 Applicability and Mapping.

A. Applicability.

~~This Title shall apply to all properties which are designated as Critical Areas or Natural Resource Lands by the City, including wetlands. Properties containing critical areas or natural resource lands are subject to this Title. When the~~

~~requirements of this Title are more stringent than those of other City codes and regulations, the requirements of this Title shall apply.~~

~~Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this Title.~~

~~Critical area regulations shall also apply to natural resource lands as set forth in this Title.~~

~~**B. Mapping.**~~

~~Maps have been developed to indicate the location of natural resource lands. Maps may be developed by the City which show the general location of critical areas for informational purposes. The actual presence of critical areas and the applicability of these regulations shall be determined by the classification criteria established for each critical area.~~

~~14.142.040 Permitted Uses.~~

~~Uses permitted on properties designated as critical areas or natural resource lands shall be the same as those permitted in the zone classification shown in the City Zoning Atlas unless specifically prohibited by this Title.~~

~~14.142.050 Regulated Uses/Activities.~~

~~Unless the requirements of this Title are met, the City shall not grant any approval or permission to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement including but not limited to the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; large lot subdivision, short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit; variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter.~~

~~14.142.060 Exemptions.~~

~~The following activities are exempt from the provisions of this Title:~~

- ~~_____ A. Existing agricultural activities.~~
- ~~_____ B. Maintenance or reconstruction of existing roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities, provided that reconstruction does not involve expansion of facilities;~~
- ~~_____ C. Maintenance or reconstruction of existing regional storm drainage facilities, provided that reconstruction does not involve expansion of facilities;~~
- ~~_____ D. For the following utility line activities, when undertaken pursuant to best management practices to avoid impacts to critical areas:~~
 - ~~_____ 1. Normal and routine maintenance or repair of existing utility structures or right-of-way.~~
 - ~~_____ 2. Relocation within improved rights-of-way of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less only when required by a local government agency.~~
 - ~~_____ 3. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency which approves the new location of the facilities.~~
 - ~~_____ 4. Installation or construction in improved City road rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.~~

~~5. Installation or construction in improved City road rights-of-way and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances.~~

~~E. Reconstruction, remodeling, or maintenance of existing single-family residential structures and accessory structures, provided that a one-time only expansion of the building footprint does not increase by more than twenty-five percent and that the new construction or related activity does not further intrude into the critical area or related buffer. The exemption shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a landslide hazard area;~~

~~F. Reconstruction, remodeling, or maintenance of structures, other than single-family structures and accessory structures, provided that such reconstruction, remodeling, or maintenance does not increase the floor area nor extend beyond the existing ground coverage. The exemption shall not apply to reconstruction which is proposed as a result of site or structural damage associated with a critical area, such as slope failure in a landslide hazard area;~~

~~G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities;~~

~~H. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken.~~

~~I. A residential building permit for a lot which was subject to previous reports and assessments as required under this Title; provided that the previous reports and assessments adequately identified the impacts associated with the current development proposal.~~

~~J. Activities related to a permit for on-site sewage disposal issued by the Tacoma-Pierce County Health Department (T-PCHD) according to all Washington State Department of Health and Tacoma-Pierce County Board of Health requirements for on-site sewage disposal. The T-PCHD shall notify the applicant or applicant's agent that the approval of the on-site sewage disposal system design complies with all Washington State Department of Health and Tacoma-Pierce County Board of Health requirements. The applicant or applicant's agent shall be advised that the requirements of the City Zoning Code shall apply to all other regulated activities associated with site development and that they can contact the City Planning Department for additional information.~~

14.142.065 Special Permitted Uses

~~A. The following procedures allow Community Development Department review of activities that are normally regulated, but may be allowed, provided applicable fees and application materials are submitted and the following criteria are met and approved by the Director:~~

~~B. Educational and Recreational Facilities.~~

~~Minor structural fill may be allowed for the construction and enhancement of public trails, such as bridging, and trail-related facilities such as benches, interpretive signs, and viewing platforms. Construction of such features on all previously filled areas is allowed. The following conditions must be met:~~

- ~~1. An alternative location outside the wetland is not feasible. Trails and related facilities within wetlands shall, to the extent possible, be placed on other previously disturbed areas;~~
- ~~2. Associated facilities, such as interpretive centers, restrooms, or parking areas are not allowed within wetlands or buffers by this Conditional Exemption;~~
- ~~3. The fill on which the trails or trail-related facilities is placed is limited to the minimum dimensions necessary for the actual crossing and shall not exceed 5,000 square feet;~~
- ~~4. Project design shall minimize adverse impacts to wetlands/buffers and wildlife habitat. Pervious surfaces shall be used;~~
- ~~5. All construction work in the wetland shall be done during the summer dry season (July 15 to October 15). A time extension may be granted by the Department;~~
- ~~6. Native vegetation disturbed by trail construction activities shall be salvaged and replanted in the disturbed areas to the extent possible.~~

~~C. Minor road or trail crossings:~~

~~Fills for the construction of a road or trail crossing shall be allowed in wetlands or buffers provided that crossings of wetlands shall be avoided to the extent possible. Fills for the construction of a road crossing through a category I wetland shall not be allowed by this Conditional Exemption. Crossings shall follow the following criteria:~~

- ~~1. An alternative location outside the wetland is not reasonably feasible;~~
- ~~2. The fill on which the road or trail is placed is limited to the minimum dimensions necessary for the actual crossing;~~
- ~~3. The fill placed in wetlands is limited to 5,000 square feet in wetland area;~~
- ~~4. Crossings shall utilize design which minimizes the adverse impacts to the wetland and hydrology of the existing system;~~
- ~~5. Wetland disturbance shall be limited to no greater than five feet beyond the designated toe-of-fill;~~
- ~~6. All construction work in the wetland shall be done during the summer dry season (July 15 to October 15). A time extension may be granted in writing by the Department ; and~~
- ~~7. Crossing shall serve multiple purposes and properties, whenever possible.~~

~~D. Erosion Control.~~

~~Bank stabilization activities necessary for erosion prevention shall be allowed in buffers and Category II and III wetlands as part of a single and complete project. Bank stabilization projects shall meet all other applicable local, state and federal laws and the following criteria:~~

- ~~1. The minimum amount of material needed for erosion prevention is used;~~
 - ~~2. The bank stabilization activity is no more than 500 feet in length, 15 feet high, and will not exceed an average of 1/2 cubic yard of fill per running foot of bank;~~
 - ~~3. No material is placed in any location or manner that may impair surface water movement into or out of any wetland area or other water body;~~
 - ~~4. No material is placed in any location or manner that may be eroded by normal or anticipated high flows; and~~
 - ~~5. The disturbed area shall be re-vegetated within 60 days after completion of the project with native species indigenous to the site. Hydro-seeding with approved mix may be used for temporary erosion control.~~
- ~~E. The construction of utility lines and poles in category II or III wetlands and buffers provided there are no feasible alternatives and impacts are mitigated.~~

14.142.070 Reasonable Use Exception.

- ~~A. If the application of this Title would deny all reasonable use of a site, development may be allowed which is consistent with the general purposes of this Title and the public interest.~~

- ~~B. Nothing in this Title is intended to preclude all reasonable use of property. An applicant for a development proposal may file a request for a reasonable use exception which shall be considered by the City Hearing Examiner at a public hearing, following notice, as required by the City Zoning Code. The request shall include the following information:
 - ~~1. A description of the areas of the site which are critical areas and/or natural resource lands or within setbacks required under this Title;~~
 - ~~2. A description of the amount of the site which is within setbacks required by other standards of the zoning code;~~
 - ~~3. A description of the proposed development, including a site plan;~~
 - ~~4. An analysis of the impact that the amount of development described in subsection (3) would have on the natural resource land(s) or critical areas(s);~~
 - ~~5. An analysis of whether any other reasonable use with less impact on the natural resource land(s) or critical area(s) and associated buffer(s) is possible;~~
 - ~~6. A design of the proposal so that the amount of development proposed as reasonable use will have the least impact practicable on the natural resource land(s) and/or critical area(s);~~
 - ~~7. An analysis of the modifications needed to the standards of this Title to accommodate the proposed development;~~
 - ~~8. A description of any modifications needed to the required front, side and rear setbacks; building height; and buffer widths to provide for a reasonable use while providing greater protection to the critical area(s) and/or natural resource land(s); and~~
 - ~~9. Such other information as the Department determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development.~~
 - ~~10. The Department will forward a copy of a request for reasonable use exception to the Washington State Departments of Fisheries and Wildlife and the affected Tribes for review, comment, and recommendation.~~~~

- ~~C. The Hearing Examiner may approve the reasonable use exception, if the Examiner determines the following criteria are met:~~

- ~~1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the natural resource land(s) and/or critical area(s); and~~
- ~~2. The proposed development does not pose a threat to the public health, safety or welfare on or off the site; and~~
- ~~3. Any alteration of the natural resource land(s) and/or critical area(s) shall be the minimum necessary to allow for reasonable use of the property; and~~
- ~~4. The inability of the applicant to derive reasonable 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 this Title; and~~
- ~~5. The proposal mitigates the impacts on the natural resource land(s) and/or critical area(s) to the maximum extent possible, while still allowing reasonable use of the site.~~

~~D. Except when application of this Title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the Title shall pursue a variance as provided in Section 14.142.090.~~

~~14.142.080 Process:~~

~~A. The Department shall perform a critical areas and natural resource lands review of any City permit or approval requested for any regulated activity including, but not limited to, those set forth in Section 14.142.050, on a site which includes or is adjacent to or abutting one or more natural resource lands or critical areas unless otherwise provided in this Title.~~

~~B. As part of all development applications:~~

~~1. The Department shall review the information submitted by the applicant to:~~

- ~~a. Confirm the nature and type of the natural resource land and/or critical area and evaluate any required studies;~~
- ~~b. Determine whether the development proposal is consistent with this Title;~~
- ~~c. Determine whether any proposed alterations to the site containing natural resource lands or critical areas are necessary;~~
- ~~d. Determine if the mitigation and monitoring plans proposed by the applicant are sufficient to protect the public health, safety and welfare consistent with the goals, purposes, objectives and requirements of this Title.~~

~~C. A threshold determination may not be made prior to Departmental review of any~~

~~_____ special studies or technical reports required by this Title, except where the applicant requests a declaration of significance so that environmental review is required.~~

~~_____ D. The City may approve, approve with conditions, or deny any development proposal in order to comply with the requirements and carry out the goals, purposes, objectives and requirements of this Title.~~

~~_____ E. Approval of a development proposal does not discharge the obligation of the applicant to comply with the provisions of this Title.~~

~~14.142.090 Variance:~~

~~Variance applications shall be considered by the City according to Variance procedures in the City Zoning Code.~~

~~14.142.095 Current Use Assessment~~

~~A. An owner of agricultural land, timberland, or open space desiring current use classification under RCW 84.34 may file for such current use classification as provided in the City of Lakewood City Code.~~

~~_____ B. The Department shall notify the Assessor-Treasurer's Office when restrictions on development occur on a particular site.~~

~~_____ C. The Assessor-Treasurer's Office shall consider buffering requirements of this Chapter in determining the fair market value of the land. Any owner of an undeveloped buffer which has been placed in a separate tract or tracts, protective easement, public or private land trust dedication, or other similarly preserved area shall have that portion of land assessed consistent with those restrictions~~

~~14.142.100 Compliance Provisions:~~

~~The City shall require an applicant to submit a financial guarantee to the City to guarantee any performance, mitigation or monitoring required as a condition of permit approval. The permit shall not be granted until the financial guarantee is received by the Department.~~

~~**A. Financial Guarantees required under this Title shall:**~~

- ~~1. be in addition to the site development construction guarantee required by the City's Site Development Regulations;~~
- ~~-~~
- ~~2. be submitted on financial guarantee forms found in the City's Site Development Regulations Appendix;~~
- ~~-~~
- ~~3. be 125 percent of the estimate of the cost of mitigation or monitoring to allow for inflation and administration should the City have to complete the mitigation or monitoring;~~
- ~~-~~
- ~~4. be released by the City only when:~~

- ~~a. City officials have inspected the site(s) and the applicant's engineer and/or appropriate technical professional has provided written confirmation that the performance, mitigation or monitoring requirements have been met.~~

~~**B. Penalties, Enforcement and Civil Infractions:**~~

- ~~1. The Department is authorized to make site inspections and take such actions as necessary to enforce this Title. A Department representative may enter into private property with the consent of the owner or occupant or pursuant to a warrant.~~
- ~~-~~
- ~~2. The Department shall have the authority to order restoration, rehabilitation or replacement measures to compensate for the destruction or degradation of critical areas or natural resource lands at the owner's expense.~~
- ~~-~~
- ~~3. Any person, party, firm, corporation or other legal entity convicted of violating any of the provisions of this Title, shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this Title is continued, committed, or permitted shall constitute a separate offense. Any development carried out contrary to the provisions of this Title shall constitute a public nuisance and may be enjoined as provided by the Statutes of the State of Washington.~~
- ~~-~~
- ~~4. In addition to any other sanction or penalty, or any remedial or administrative procedure available under the City Code or state law, violation of any provision of this Chapter or failure to comply with any permit or other written order or decision issued pursuant to this Chapter constitutes a civil infraction.~~

~~14.142.110 Fees:~~

The City shall establish an appropriate fee structure for administrative and technical review by separate resolution.

~~14.142.115 Title and Plat Notification:~~

If more than one critical areas/resource lands exist on the site subject to the provisions of this Title, then one notice which addresses all of the critical areas/resource lands shall be sufficient.

~~14.142.120 Appeals:~~

Appeals of a decision issued under this Title shall be considered by the City according to procedures in City Zoning Code.

~~14.142.130 Severability:~~

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

Chapter 14.146

~~———— GEOLOGICALLY HAZARDOUS AREAS~~

Sections:

~~14.146.010 Purpose:~~

~~14.146.020 Definitions:~~

~~14.146.030 Erosion and Landslide Hazard Areas:~~

~~14.146.040 Seismic Hazard Areas:~~

~~14.146.050 Severability:~~

~~————~~
~~14.146.010 Purpose:~~
~~————~~

~~The intent behind the classification and designation of geologically hazardous areas is to classify and designate areas on which development should be prohibited, restricted, or otherwise controlled because of danger from geological hazards. For purposes of this Title, geologically hazardous areas include the following: erosion and landslide hazard areas; seismic hazard areas; mine hazard areas; and volcanic hazard areas.~~

~~14.146.020 Definitions:~~

- ~~———— A. **"Alluvial geologic unit"** means geologically recent stream, lake, swamp and beach deposits of gravel, sand, silt and peat.~~
- ~~———— B. **"Buffer"** means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.~~
- ~~———— C. **"Clearing"** means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site. In addition to the above, clearing is an activity which does not require reforestation per an approved Forest Practices Application/notification issued by the Department of Natural Resources.~~
- ~~———— D. **"Critical facilities"** means those facilities occupied by populations or which handle dangerous substances including but not limited to hospitals, medical facilities; structures housing, supporting or containing toxic or explosive substances; covered public assembly structures; school buildings through secondary including day care centers; buildings for colleges or adult education; jails and detention facilities; and all structures with occupancy of greater than 5,000 people.~~
- ~~———— E. **"Debris flow"** means the rapid downslope movement of a viscous mass of water-saturated regolith.~~
- ~~———— F. **"Earthflow"** means a slow downslope movement in which saturated regolith sags downward in a series of irregular terraces.~~
- ~~———— G. **"Erosion"** means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.~~

- H. ~~"Erosion hazard areas" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or man-made changes to such characteristics, are vulnerable to erosion.~~
- I. ~~"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.~~
- J. ~~"Geological assessment" means an assessment prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or prepared by a professional geologist, hydrologist, or soils scientist as specified later in this section, who has earned the related bachelor's degree from an accredited college or university, or equivalent educational training, and has five (5) years experience assessing the relevant geologic hazard. A geological assessment must detail the surface and subsurface conditions of a site and delineate the areas of a property that might be subject to specified geologic hazards.~~
- K. ~~"Geotechnical report" means a report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering, evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.~~
- L. ~~"Ground amplification" means an increase in the intensity of earthquake induced ground shaking which occurs at a site whereby thick deposits of unconsolidated soil or surficial geologic materials are present.~~
- M. ~~"Landslide" means the abrupt downslope movement of soil, rocks, or other surface matter on a site. Landslides may include, but are not limited to, slumps, mudflows, earthflows, rockfalls, and snow avalanches.~~
- N. ~~"Landslide hazard areas" means areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.~~
- O. ~~"Liquefaction" means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.~~
- P. ~~"Mine hazard areas" means areas directly underlain by, adjacent to or abutting, or affected by mine workings such as adits, tunnels, drifts, or air shafts.~~
- Q. ~~"Recessional outwash geologic unit" means sand and gravel materials deposited by melt-water streams from receding glaciers.~~
- R. ~~"Regolith" means any body of loose, noncemented particles overlying and usually covering the bedrock.~~

- S. **"Seismic hazard areas"** means those areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.
- T. **"Slump"** means the downward and outward movement of a mass of bedrock or regolith along a distinct surface of failure.
- U. **"Toe of slope"** means a distinct topographic break in slope at the lower most limit of the landslide or erosion hazard area.
- V. **"Top of slope"** means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

~~14.146.030 Erosion and Landslide Hazard Areas:~~

~~A. General:~~

~~Erosion hazard areas are those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion. Landslide hazard areas are areas potentially subject to risk of mass-movement due to a combination of geologic, topographic, and hydrologic factors.~~

~~B. Classification:~~

~~1. Criteria:~~

- ~~a. Erosion hazard areas are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions which are vulnerable to erosion. Erosion hazard areas are those areas that are classified as having moderate to severe, severe or very severe erosion potential by the Soil Conservation Service, United States Department of Agriculture (USDA).~~
- ~~b. Landslide hazard areas are those areas meeting any two or more of the following criteria:~~
 - ~~1. Areas of historic failures, including areas of unstable old and recent landslides;~~
 - ~~2. Areas with all three of the following characteristics:~~
 - ~~a. Slopes steeper than 15%; and~~
 - ~~b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and~~
 - ~~c. Springs or groundwater seepage.~~
 - ~~3. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems, and fault planes, in subsurface materials;~~
 - ~~4. Slopes having gradients steeper than 80% subject to rockfall during seismic shaking;~~
 - ~~5. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;~~
 - ~~6. Areas that show evidence of, or are at risk from snow avalanches;~~
 - ~~7. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;~~

8. Any area with a slope of 30 percent or steeper and with a vertical relief of ten or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least ten feet of vertical relief;
9. Areas which have a "severe" limitation for building site development because of slope conditions, according to the Soil Conservation Service.

2. Mapping.

Areas meeting the criteria established above may be delineated in the following documents:

- a. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA);
- b. Coastal Zone Atlas for Washington, Washington Department of Ecology;
- c. Areas designated as slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources Division of Geology and Earth Resources;

C. Restrictions on Building

In areas meeting all three of the following characteristics, no structure or disturbance of vegetation is permitted:

1. An area with a slope of 100% or steeper (45 degrees); and
2. hillside intersecting geological contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
3. springs or groundwater seepage.

D. Regulation.

For all regulated activities proposed within landslide and erosion hazard areas, a geotechnical report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering shall be submitted (See Subsection 2 below). Where the applicant can clearly demonstrate to the Department through submittal of a geological assessment (see Subsection 1 below) that the regulated activity or any related site alterations will not occur within the landslide or erosion hazard area or any associated buffers, the requirements for a geotechnical report may be waived. A geological assessment may be prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or by a professional geologist/hydrologist or soils scientist who has earned a bachelor's degree in geology, hydrology, soils science, or closely related field from an accredited

college or university, or equivalent educational training, and has five (5) years experience assessing erosion and landslide hazards.

1. Geological Assessments:

a. Should the applicant question the presence of landslide or erosion hazard areas on the site, the applicant may submit a geological assessment.

b. The geological assessment shall include at a minimum the following:—

(1) A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and

(2) An evaluation of the analysis area's inherent landslide and erosion hazards; and

(3) A site plan of the area delineating all areas of the site subject to landslide and erosion hazards, based on mapping and criteria referenced in 14.146.030 B above.

The submittal must include a contour map of the proposed site, at a scale of 1" = 20 feet or as deemed appropriate by the department. Slopes shall be clearly delineated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site specific conditions indicate the necessity, the Department may require the topographic data to be field surveyed.

2. Geotechnical Reports:

The geotechnical report shall be prepared by a professional engineer licensed by the State of Washington with experience in geotechnical engineering and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The geotechnical report shall include at a minimum the following:

a. Site Geology Information required:

(1) Topographic data. Submittal must include a contour map of the proposed site, at a scale of 1" = 20 feet or as deemed appropriate by the Department. Slopes shall be clearly delineated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site specific conditions indicate the necessity, the Department may require the topographic data to be field surveyed.

(2) Subsurface data. Submittal must include boring logs and exploration methods; soil and rock stratigraphy,

~~groundwater levels and seasonal changes of groundwater levels.~~

~~(3) Site history. Submittal must include a description of any prior grading, soil instability, or slope failure.~~

~~(4) Seismic hazard. Submittal of data concerning the vulnerability of the site to seismic events.~~

~~**b. Geotechnical Engineering Information required:**~~

~~(1) slope stability studies and opinion(s) of slope stability;~~

~~(2) proposed angles of cut and fill slopes and site grading requirements;~~

~~(3) structural foundation requirements and estimated foundation settlements;~~

~~(4) soil compaction criteria;~~

~~(5) proposed surface and subsurface drainage;~~

~~(6) lateral earth pressures;~~

~~(7) vulnerability of the site to erosion;~~

~~(8) suitability of on-site soil for use as fill;~~

~~(9) laboratory data and soil index properties for soil samples; and~~

~~(10) building limitations.~~

~~Where a valid geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.~~

~~The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the ability of the proposed mitigation measures to reduce risks associated with the erosion and landslide hazard area.~~

~~**3. Performance Standards:**~~

~~The Department shall evaluate all geotechnical reports for landslide and erosion hazard areas to insure that the following standards are met:~~

~~a. Location and extent of development:~~

- ~~(1) Development shall be located to minimize disturbance and removal of vegetation;~~
- ~~(2) Structures shall be clustered where possible to reduce disturbance and maintain natural topographic character; and~~
- ~~(3) Structures shall conform to the natural contours of the slope and foundations should be tiered where possible to conform to existing topography of the site.~~

~~b. Design of development:~~

- ~~(1) All development proposals shall be designed to minimize the building footprint and other disturbed areas;~~
- ~~(2) All development shall be designed to minimize impervious lot coverage;~~
- ~~(3) Roads, walkways and parking areas shall be designed to parallel the natural contours;~~
- ~~(4) Access shall be in the least sensitive area of the site.~~

~~The Department may approve, approve with conditions, or deny development proposals based on these performance standards.~~

~~**4. Buffer Requirement.**~~

~~A buffer, consisting of undisturbed natural vegetation, and measured (as shown in diagram 1) in a perpendicular direction from all landslide and erosion hazard areas, shall be required from the top of slope and toe of slope of all landslide or erosion hazard areas that measure 10 feet or more in vertical elevation change from top to toe of slope, as identified in the geotechnical report, maps, and field-checking. The minimum buffer distance requirements from the top of slope and toe of slope of landslide or erosion hazard areas shall be the same as for setbacks from slopes as identified in the Uniform Building Code, as amended by the State Building Code Council under RCW 19.27.074.~~

~~To increase the functional attributes of the buffer, the Department may require that the buffer be enhanced through planting of indigenous species. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing or construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site-clearing shall not commence until the engineer has submitted written notice to the Department that buffer requirements of this Chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and final approval has been granted by the Department. The buffer shall be placed in a separate critical area tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the Department.~~

~~**5. Modifications to Buffer Width.**~~

When the geotechnical report demonstrates that a lesser buffer distance, and design and engineering solutions, will meet the intent of this Chapter, such reduced buffer and design and engineering solutions may be permitted. Should the geotechnical report indicate that a greater buffer than that required by Subsection 4 is needed to meet the intent of this Chapter, the greater buffer shall be required.

~~6. Building Setback and Construction near Buffer.~~

~~Eight foot minimum setback lines shall be required from the buffer area required in Subsection 4., for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within eight feet of the buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.~~

~~7. On-site sewage disposal systems.~~

~~On-site sewage disposal systems, including drain fields within landslide or erosion hazard areas and related buffers as identified in Subsection 4. shall meet all requirements of the Tacoma Pierce County Board of Health and the Washington State Department of Health for on-site sewage disposal (WAC 246-272-140).~~

~~8. Erosion Control Plan.~~

~~Erosion control plans shall be required for all regulated activities in erosion hazard areas. The erosion control plans shall be consistent with the City Site Development Regulations, Section 3.04.~~

~~9. Notification.~~

~~a. Title Notification.~~

~~The owner of any site within an erosion hazard or landslide hazard area, as identified in 14.146.030 B. of the City Code, on which a development proposal is submitted, shall record a notice with the Pierce County Auditor in the form set forth below:~~

b. Form of Notice:

EROSION OR LANDSLIDE HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Present Owner: _____

Notice: This site lies within an erosion or landslide area as defined by Chapter 14.14 of the City Code. The site was the subject of a development proposal for _____

application number _____

filed on _____

(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the erosion or landslide hazard area and any restriction on use.

Signature of Owner(s)

(NOTARY ACKNOWLEDGMENT)

c. Plat Notification.

For all proposed short subdivision and subdivision proposals within erosion hazard or landslide hazard areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: *This site lies within an erosion hazard or landslide hazard area as defined in Chapter 14.146 of the City Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.*

14.146.040 Seismic Hazard Areas:

A. General.

Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

~~**B. Classification:**~~

~~**1. Criteria.** Seismic hazard areas are areas which possess one of the two following characteristics:~~

~~a. Alluvial surficial geologic unit; or~~

~~b. Recessional outwash surficial geologic unit overlain by Barneston, Everett, Neilton, Pilchuck or Spanaway soils.~~

~~**2. Mapping:**~~

~~Seismic hazard areas are alluvial surficial geologic units and sub-areas of recessional outwash surficial geologic units, as identified in Groundwater Occurrence and Stratigraphy of Unconsolidated Deposits, Central Pierce County, Washington, Water Supply Bulletin Number 22, Plates One and Two, and Water Resources and Geology of the Kitsap Peninsula and Certain Adjacent Islands, Water Supply Bulletin Number 18, Plate One, US Department of the Interior, Geological Survey, Water Resources Division. Recessional outwash geologic units are designated seismic hazard areas if overlain by Barneston, Everett, Neilton, Pilchuck or Spanaway soils, as identified in the Soil Survey of Pierce County Area, Washington, United States Department of Agriculture, Soil Conservation Service.~~

~~**C. Regulation:**~~

~~For all regulated activities, except the construction of wood frame structures under~~

~~5,000 square feet, mobile homes, fences, and/or subdivision of property, proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering shall be submitted (see Subsection 2. below).~~

~~Retaining walls may also be excluded from the requirement of a geotechnical report when the height of soil fills on the upper side are not in excess of 5 feet above the toe of the wall, backfills do not exceed a top surface slope of 4:1 (H:V), and there is no permanent structure existing or proposed within a distance of 3 times the height of the wall. Where an applicant can demonstrate through submittal of a geological assessment (see Subsection 1.), that there are no seismic hazards on site, the requirement for the geotechnical report may be waived. A geological assessment may be prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or by a professional geologist who has earned a bachelor's degree in geology from an accredited college or university, or equivalent educational training, and has five (5) years experience assessing seismic hazards.~~

~~**1. Geological Assessments:**~~

~~a. Should the applicant question the presence of seismic hazard areas on the site, the applicant may submit a geological assessment.~~

~~b. The geological assessment shall include at a minimum the following:~~

~~(1) A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and~~

~~(2) An evaluation of the analysis area's inherent seismic hazards; and~~

~~(3) A site plan of the area delineating all areas of the site subject to seismic hazards, based on mapping and criteria referenced in 14.146.040 B. above.~~

~~If the geological assessment demonstrates, to the satisfaction of the Department, that the proposed site is not located in any seismic hazard areas, based upon the criteria set forth in Subsection B. above, then the requirements of this Section shall not apply.~~

~~2. Geotechnical Report.~~

~~The geotechnical report shall be prepared by a professional engineer licensed by the State of Washington with experience in geotechnical engineering and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The geotechnical report shall include at a minimum the following:~~

~~a. A discussion of the surface and subsurface geologic conditions of the site;~~

~~b. A site plan of the area delineating all areas of the property subject to seismic hazards, based on mapping and criteria referenced in 14.146.040 B. above;~~

~~c. A discussion of mitigation measures which can be taken to reduce seismic risks associated from liquefaction, ground shaking, settlement or slope failure with the underlying surficial geology; and~~

~~d. An evaluation of the effectiveness of the proposed mitigation measures.~~

~~Where a valid geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.~~

~~The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the ability of the proposed mitigation measures to reduce seismic risks associated with the underlying surficial geology.~~

~~3. Notification.~~

~~a. Title Notification.~~

The owner of any site within a seismic hazard area as identified in 14.146.040 B. of the City Code, on which a development proposal is submitted, shall record a notice with the Pierce County Auditor in the form set forth below:

Form of Notice:

SEISMIC HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Present Owner: _____

Notice: This site lies within a seismic hazard area as defined by Chapter 14.14 of the City Code. The site was the subject of a development proposal for _____

application number _____

filed on _____ (date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a seismic hazard area and any restrictions on use.

Signature of owner(s)

NOTARY ACKNOWLEDGMENT

b. Plat Notification:

For all proposed short subdivision and subdivision proposals within seismic hazard areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This site lies within a seismic hazard area as defined in Chapter 14.146, of the City Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

14.146.050 Severability:

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

Chapter 14.150

~~————~~ AQUIFER RECHARGE AREA

Sections:

~~14.150.010 Purpose.~~

~~14.150.020 Definitions.~~

~~14.150.030 Applicability.~~

~~14.150.040 Severability.~~

~~14.150.010 Purpose.~~

~~The intent of this Chapter is to protect important water supplies from additional degradation or depletion originating from land use activities. Due to the exceptional vulnerability and susceptibility of the aquifer recharge areas to further contamination, it is the intent of this Chapter to safeguard groundwater resources in the aquifer system from hazardous substance and hazardous waste pollution by controlling or abating future pollution from new land uses or activities.~~

~~14.150.020 Definitions.~~

- ~~————~~ A. **"Animal Containment Area"** means a site where two or more animal units of large animals per acre or .75 of an animal unit of small animals per acre are kept, and where a high volume of waste material is deposited in quantities capable of impacting groundwater resources.
- ~~————~~ B. **"Animal Unit"** means the equivalent of 1000 pounds of animal.
- ~~————~~ C. **"Aquifer"** means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.
- ~~————~~ D. **"Aquifer recharge area"** means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater. ———
- ~~————~~ E. **"Contaminant"** means any chemical, physical, biological, or radiological substance that does not occur naturally or occurs at concentrations and duration as to be injurious to human health or welfare or shown to be ecologically damaging.
- ~~————~~ F. **"DRASTIC"** means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility. ———

- ~~G. **"Facility"** means all structures, contiguous land, appurtenances, and other improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, disposing, or otherwise handling a hazardous substance. Use of the term "facility" includes underground and aboveground tanks, and operations which handle, use, dispose of, or store hazardous substances.~~
- ~~H. **"Groundwater"** means all water found beneath the ground surface, including slowly moving subsurface water present in aquifers and recharge areas.~~
- ~~I. **"Hazardous Substance(s)"** means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.~~
- ~~J. **"Hazardous Substance Processing or Handling"** means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five (5) gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Ch. 173-303 WAC, and any pertinent local ordinances, such as sewer discharge standards.~~
- ~~K. **"Hazardous waste"** means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Ch. 70.105 RCW, Ch. 173-303 WAC.~~
 - ~~1. **"Dangerous waste"** means any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:
 - ~~a. Have short lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or~~
 - ~~b. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.~~~~
 - ~~2. **"Extremely hazardous waste"** means any waste which:
 - ~~a. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife, and~~
 - ~~b. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.~~~~
 - ~~L. **"Hazardous Waste Treatment and Storage Facility"** means a facility that treats and stores hazardous waste and is authorized pursuant to Ch. 70.105-RCW, Ch. 173-303 WAC. It includes all contiguous land and structures used for~~

recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste. Treatment includes using physical, chemical, or biological processing of hazardous wastes to make such waste non-dangerous or less dangerous and safer for transport, amenable for energy or material resource recovery. Storage includes the holding of waste for a temporary period but not the accumulation of waste on the site of generation as long as the storage complies with applicable requirements of Ch. 173-303 WAC.

1. **"Onsite Treatment and Storage Facility"** means a facility that treats or stores hazardous wastes generated on the same geographically contiguous property.

2. **"Offsite Treatment and Storage Facility"** means a facility that treats or stores hazardous wastes generated on property other than those on which the offsite facility is located.

M. **"Hydrogeologic Assessment"** means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of groundwater supplies.

N. **"Impervious Surface"** means natural or human-produced material on the ground that does not allow surface water to penetrate into the soil. Impervious surfaces may consist of buildings, parking areas, driveways, roads, sidewalks, and any other areas of concrete, asphalt, plastic, etc.

O. **"Landfill"** means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

P. **"Large Animal"** means an animal with an average weight of 100 pounds or more.

Q. **"Permeable Surfaces"** mean sand, gravel, and other penetrable deposits on the ground which permit movement of groundwater through the pore spaces, and which permit the movement of fluid to the groundwater.

R. **"Sludge"** means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or system or other sources, including septage sludge, sewage sludge, and industrial sludge.

S. **"Sludge Land Application Site"** means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

1. Sludge land application sites are classified under the following five category system:

S-1 Sites of less than one acre with an application rate of less than ten dry tons of sludge per acre per five year period.

S-2 Sites with an application rate of less than 20 dry tons of sludge per acre per ten year period or less than an annual application of two dry tons of sludge per acre.

- ~~S-3 Sites with an application rate of more than 20, but less than 43, dry tons of sludge per ten year period or 4.3 dry tons per acre per year.~~
- ~~S-4 Sites with one-time applications greater than 43 dry tons per acre and cumulative limits for metals greater than State designated practices for agricultural cropland application.~~
- ~~S-5 Sites which are permanent landfill disposal facilities.~~

- ~~T. **"Small Animal"** means an animal with an average weight of less than 100 pounds.~~

- ~~U. **"TPCHD"** means the Tacoma-Pierce County Health Department.~~

- ~~V. **"Underground Tank"** means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground.~~

14.150.030 Applicability.

A. General. Aquifer recharge areas are areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute to the replenishment of groundwater.

B. Classification. For the purposes of this Chapter, the boundaries of the City's aquifer recharge areas are:

1. The boundaries of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range, as identified in Map of Ground Water Pollution Potential, Pierce County, Washington, National Water Well Association, US Environmental Protection Agency; and
2. The Clover/Chambers Creek Aquifer Basin boundary, as identified in Draft Clover/Chambers Creek Basin Ground Water Management Program and Environmental Impact Statement, Brown and Caldwell for Washington State Department of Ecology;
3. Any site located within the Clover/Chambers Creek Basin boundary or the two highest DRASTIC zone boundaries is included in the aquifer recharge area.

C. Regulation.

1. Exemptions. In addition to the exemptions listed in 14.142.060, the following uses shall be exempt from the requirements of this Chapter:

- a. Sewer lines and appurtenances.

2. Notification.

a. Title Notification.

The owner of any site within an aquifer recharge area as identified in 14.150.030 B above, on which a development proposal is submitted, shall record a notice with the Pierce County Auditor in the form set forth below:

AQUIFER RECHARGE AREA NOTICE

Parcel Number: _____

Address: _____

Notice: This site lies within an aquifer recharge area as defined by Chapter 14.16 of the City Code. The site was the subject of a development proposal for _____

application number _____

filed on _____

(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of an aquifer recharge area and any restrictions on use.

Signature of owner(s)

(NOTARY ACKNOWLEDGMENT)

b. Plat Notification.

For all proposed short subdivision and subdivision proposals within aquifer recharge areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This site lies within an aquifer recharge area as defined in Chapter 14.16 of the City Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

3. Permeable Surfaces:

Uses that are not identified as a threat to the aquifer shall provide as much open permeable space as possible, and impervious surfaces shall be minimized.

4. Hydrogeologic Assessment.

a. The following uses of land shall require a hydrogeologic assessment of the proposed site if the site is located within an aquifer recharge area:

(1) Hazardous Substance Processing or Handling;

(2) Hazardous Waste Treatment and Storage Facility;

(3) Subdivision of land as defined in the City's Subdivision Regulations

- ~~(4) Residential structures housing three units or more and utilizing an on-site septic system;~~
- ~~(5) All commercial and industrial sites except
 - ~~(a) those under 8,000 square feet which do not store or handle hazardous waste and~~
 - ~~(b) those that are on the public sewer system;~~~~
- ~~(6) Sludge land application sites categorized as S-3, S-4 and S-5, as defined above;~~
- ~~(7) Animal Containment Area;~~
- ~~(8) Landfills.~~

~~b. The hydrogeologic assessment shall include, but is not limited to:~~

- ~~(1) Information sources;~~
- ~~(2) Geologic Setting-Include well logs or borings used to identify information;~~
- ~~(3) Background water quality;~~
- ~~(4) Groundwater elevations;~~
- ~~(5) Location/Depth to perched water tables;~~
- ~~(6) Recharge potential of facility site (permeability/transmissivity);~~
- ~~(7) Groundwater flow direction and gradient;~~
- ~~(8) Currently available data on wells located within 1,000 feet of site;~~
- ~~(9) Currently available data on any spring within 1,000 feet of site;~~
- ~~(10) Surface water location and recharge potential;~~
- ~~(11) Water source supply to facility (e.g. high capacity well);~~
- ~~(12) Any sampling schedules necessary;~~
- ~~(13) Discussion of the effects of the proposed project on the groundwater resource;~~
- ~~(14) Other information as required by the TPCHD.~~

~~c. The hydrogeologic assessment may be submitted by a geologist/hydrologist or by a soils scientist with a strong background in geology as demonstrated by course work from an accredited college or university; or by an environmental scientist~~

with a strong background in geology and physical sciences as demonstrated by course work from an accredited college or university. Persons who believe they are qualified to conduct a hydrogeologic assessment may petition the TPCHD for consent.

- d. Uses requiring a hydrogeologic assessment may be conditioned or denied based upon the TPCHD's evaluation of the hydrogeologic assessment. Any project denied a permit based upon the Tacoma-Pierce County Health Department's evaluation of the hydrogeologic assessment shall receive a written explanation of the reason(s) for denial and an explanation of measures required, if any, to comply with these regulations.

5. Storage Tank Permits:

The Fire Marshal specifically regulates and authorizes permits for underground storage tanks, pursuant to the Uniform Fire Code (Article 79) and this Chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (WAC 173-360). The TPCHD regulates and authorizes permits for the removal of underground storage tanks (Pierce County Code, Chapter 8.34).

a. Facilities with underground tanks. New Underground Tanks.

1. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
2. Prevent releases due to corrosion or structural failure for the operational life of the tank;
3. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and
4. Use material in the construction or lining of the tank which is compatible with the substance to be stored.

b. Above ground tanks.

1. No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, groundwaters, or surface waters of Lakewood within an aquifer recharge area.
2. No new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.
3. A new aboveground tank will require a secondary containment system either built into the tank structure or a dike system built

outside the tank for all tanks located within an aquifer recharge area.

~~14.150.040~~ Severability.

_____ If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

———— Chapter 14.154

———— FISH AND WILDLIFE HABITAT AREAS

Sections:

~~14.154.010 Purpose and Intent.~~

~~14.154.015 General Requirements and Reasonable Use Exception.~~

~~14.154.020 Definitions.~~

~~14.154.025 Exemptions.~~

~~14.154.030 Applicability and Scope.~~

~~14.154.040 Point Locations and Habitat Distances.~~

~~14.154.050 Habitat Protection Procedures.~~

~~14.154.055 Title and Plat Notification.~~

~~14.154.060 Habitat Protection for Rivers and Streams.~~

~~14.154.062 Habitat Protection for Lakes.~~

~~14.154.065 Habitat Protection for Ponds and Puget Sound.~~

~~14.154.067 Provisions for Buffers, Where Required.~~

~~14.154.069 Variances from Buffer Requirements.~~

~~14.154.070 Appendices.~~

~~———— A. ——— Endangered, Threatened, Sensitive Candidate and Monitored
Species Recorded in Pierce County, January 1992.~~

~~———— B. ——— Diagrams Illustrating Distances from Habitat Areas and Point
Locations of Species.~~

~~———— C. ——— Fish Species Identified by the Tribes as Being of Critical
Importance~~

~~14.154.075 Assessment Relief.~~

~~14.154.090 Severability.~~

~~14.154.010 Purpose and Intent.~~

~~Many land use activities can impact the habitats of fish and wildlife. Where areas of critical fish and wildlife habitat are subject to development pressure, land use should be managed to protect critical habitats. Managing land use to protect critical habitats is intended to allow proposed development to occur in a manner that is sensitive to the habitat needs of critical fish and wildlife species.~~

~~As a necessary first step in achieving the necessary protection of critical fish and wildlife species, it is the intent of this Chapter to:~~

- ~~A. identify critical fish and wildlife species and habitats;~~
- ~~B. emphasize and encourage education, information and voluntary action to enhance, protect, rehabilitate, and restore critical fish and wildlife species and habitats;~~
- ~~C. rely primarily upon existing procedures and laws, such as the State Environmental Policy Act, RCW 43.21C, the City's Shoreline Use Regulations and the Shorelines Management Act, RCW 90.58, that directly or indirectly, protect fish and wildlife species and habitats; and~~
- ~~D. establish buffers adjacent to rivers and streams to protect critical fish and wildlife habitats.~~

~~It is not intended that this Chapter repeal, abrogate, or impair any existing law or regulations. If the buffering provisions of this Chapter conflict with any existing City law or regulation, the more stringent shall apply.~~

~~14.154.015 General Requirements and Reasonable Use Exception.~~

- ~~A. The general requirement provisions of Chapter 14.142 apply throughout this Title, including this Chapter 14.150 pertaining to fish and wildlife habitat areas.~~
- ~~B. The reasonable use exception provisions of Chapter 14.142.070 apply throughout this Title, including this Chapter 14.150 pertaining to fish and wildlife habitat areas.~~

~~14.154.020 Definitions.~~

- ~~A. **"Buffer"** means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.~~
- ~~B. **"Cave"** means a natural subterranean chamber, greater than one foot in diameter and greater than three feet deep.~~
- ~~C. **"Cliff"** means a steep vertical or overhanging face of rock or earth greater than 25 feet in height.~~
- ~~D. **"Ecotone"** means a transition area between two adjacent vegetation communities.~~
- ~~E. **"Extirpation"** means the elimination of a species from a portion of its original geographic range.~~

- ~~F. **"Fish and wildlife habitat areas"** means those areas identified as being of critical importance to maintenance of fish and wildlife species, including: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; commercial and recreational shellfish areas; kelp and eelgrass beds, herring and smelt spawning areas; naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; streams, and rivers planted with game fish by a governmental or tribal entity; state natural area preserves and natural resource conservation areas.~~
- ~~G. **"Fisheries biologist"** means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years professional experience as a fisheries biologist.~~
- ~~H. **"Habitat assessment"** means a report prepared by a professional wildlife biologist or fisheries biologist, which identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.~~
- ~~I. **"Habitat management plan"** means a report prepared by a professional wildlife biologist or fisheries biologist, which discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.~~
- ~~J. **"Habitat of local importance"** means an area, range or habitat within which a species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Examples include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These areas may also include habitats that are of limited availability or high vulnerability to alteration.~~
- ~~K. **"Lakes"** means impoundments of open water 20 acres or larger in size.~~
- ~~L. **"Oak woodlands"** means those areas where Oregon White Oak comprises more than 20 percent of the trees in a stand, and where the stand size is one acre or greater, provided that stand size may be smaller where White Oak serve as linkages between larger stands. Trees should be greater than 15 inches in diameter at breast height and greater than 16 feet tall.~~
- ~~M. **"Old growth forests"** means a stand of trees generally containing: mature and over-mature trees in the overstory; a multi-layered canopy and trees of several age classes; and standing dead trees and down material.~~
- ~~N. **"Ordinary high water"** means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this Chapter or as it may naturally change thereafter. Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the mean high water.~~

- ~~O. **"Ponds"** means naturally occurring impoundments of open water less than 20 acres in size and larger than 2,500 square feet which maintain standing water throughout the year.~~
- ~~P. **"Prairies"** means open areas predominated by native, drought-resistant, grasses, forbs (flowering non-woody plants) and herbs. In Pierce County, prairies are an unusual vegetation regime found in areas of extremely well-drained soils.~~
- ~~Q. **"Regulated Activities,"** as defined in Chapter 14.142.020, include, but are not limited to, any of the following activities which are directly undertaken or originate in a regulated critical area or resource land or their buffer: building permit, commercial or residential; binding site plan; boundary line adjustment; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit; variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter.~~
- ~~R. **"Rocky Shoreline Areas"** means areas composed of boulders or exposed bedrock in shoreline areas of Puget Sound.~~
- ~~S. **"Snag-rich areas"** means forested areas which contain concentrations of standing dead trees, averaging ten snags or greater per acre, and averaging greater than 15 inches in diameter at breast height.~~
- ~~T. **"Species of local importance"** means species that are of local concern due to their population status or their sensitivity to habitat manipulation.~~
- ~~U. **"View corridor"** means an area which affords views of lakes, mountains, or other scenic amenities normally enjoyed by residential property owners.~~
- ~~V. **"Wildlife biologist"** means a professional with a degree in wildlife, or certification by The Wildlife Society, or with five years professional experience as a wildlife biologist.~~

~~**14.154.025 Exemptions:**~~

- ~~A. The activities listed in Chapter 14.142 are exempt from the provisions of this Title, including this Chapter pertaining to fish and wildlife habitat areas.~~
- ~~B. Control of noxious weeds that are included on the state noxious weed list (WAC 16-750) are exempt from this Chapter. Control may be by clipping, pulling, or digging, or by an alternative plan upon approval of a plan by the Department.~~

~~**14.154.030 Applicability and Scope:**~~

- ~~A. **General.** This Chapter applies to proposed regulated activities within critical fish and wildlife habitat areas. Critical fish and wildlife habitat areas are those areas identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both.~~

~~B. Identification of Critical Fish and Wildlife Species and Habitats.~~

~~1. Critical Fish and Wildlife Habitat Areas.~~

~~a) Areas which have a primary association with federally or state-listed endangered, threatened, or sensitive species of fish or wildlife (specified in 50 CFR 17.11, 50 CFR 17.22, WAC 232-12-011, and WAC 232-12-014) and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Endangered, threatened, or sensitive species found in Pierce County as of January 1992 are listed in Appendix A.~~

~~b) Habitats and species of local importance, including the following:~~

~~(1) Areas with which state listed monitor or candidate species or federally listed candidate species have a primary association, as specified in Washington Department of Wildlife Policies 4802 and 4803, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Candidate and monitored species found in Pierce County as of January 1992 are listed in Appendix A.~~

~~(2) Documented habitat areas or outstanding potential habitat areas for endangered, threatened, sensitive, candidate, or monitor species. These areas include specific habitat types which are infrequent in occurrence in Pierce County and may provide specific habitats with which endangered, threatened, sensitive, candidate, or monitor species have a primary association, such as breeding habitat, winter range, and movement corridors. These areas include the following:~~

~~(a) Oak Woodlands~~

~~(b) Prairies~~

~~(c) Old growth forests~~

~~(d) Rocky shoreline areas~~

~~(e) Caves~~

~~(f) Cliffs~~

~~(g) Snag-rich areas~~

~~(h) Rivers and streams with critical fisheries as specifically set forth in 14.154.060 B.;~~

- ~~(i) — Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;~~
- ~~(j) — Waters of the state, including all water bodies classified by the Washington Department of Natural Resources (DNR) water typing classification system as detailed in WAC 222-16-030;~~
- ~~(k) — Lakes, ponds, streams, and rivers planted with game fish by a governmental entity or tribal entity;~~
- ~~(l) — State natural area preserves and natural resource conservation areas.~~

~~2. Mapping.~~

~~The resources listed below provide information on fish and wildlife habitat areas:~~

~~a. Puget Sound Environmental Atlas, Puget Sound Water Quality Authority.~~

~~b. The following Washington Department of Natural Resources documents and data sources:~~

~~1. Stream Typing Maps.~~

~~2. Natural Heritage Data Base.~~

~~c. The following Washington Department of Wildlife documents and data sources:~~

~~1. Priority Habitats and Species Program.~~

~~2. Non-game Data Base.~~

~~3. Washington Rivers Information System.~~

~~d. The following Washington Department of Fisheries documents:~~

~~1. Water Resource Index Areas (WRIA).~~

~~14.154.040 Point Location and Habitat Area Distances.~~

~~A. Point Locations and Habitat Distances Established.~~

~~1. Point locations are the specific sites (nests, dens, etc.) where critical wildlife species are found. Many of these sites have been identified and mapped by the Washington Department of Wildlife. The procedure for identifying whether proposed regulated activities are in the vicinity of species or habitat areas is as set forth below and illustrated in Appendix B.~~

~~a. Preconstruction Biology Surveys~~

~~14.154.050 Habitat Protection Procedures.~~

~~A. Education and Information.~~

~~A voluntary education program to explain the need for and methods of habitat management will provide for long-term protection and enhancement of critical fish and wildlife habitat areas. By informing citizens of the declining populations of several fish and wildlife species in Pierce County, the diminishing animal habitat available, and the management techniques that individuals can use to preserve and restore fish and wildlife habitat areas, the City can foster good stewardship of the land by property owners.~~

- ~~1. The Department will provide educational materials and lists of additional sources of information to applicants proposing regulated activities in the vicinity of critical fish and wildlife habitat areas. Materials will be selected from a variety of state and local resources.~~
- ~~2. The Department will accumulate information on the number of proposed activities associated with fish and wildlife habitat areas as identified by this Chapter and indicated by County maps to be in the vicinity of identified critical fish and wildlife habitats pursuant to 14.154.040. Information shall include the number of single family residences and other development occurring in the vicinity of critical fish and wildlife areas. Based on this information, additional regulations may be developed.~~

~~B. Use of Existing Procedures and Laws.~~

~~The primary procedures used to implement this Chapter shall be the State Environmental Policy Act (RCW 43.21C), the City's Environmental regulation Shorelines Management Act (RCW 90.58), and the City's Shoreline Management Regulations.~~

~~Regulated activities subject to environmental review shall be reviewed with consideration for impacts on critical fish and wildlife habitat as identified in Section 14.154.030.~~

~~Projects undergoing review for fish and wildlife considerations shall be routed to tribal agencies with jurisdiction for review. Tribes will have an opportunity to provide specific habitat information on proposed development sites. If necessary, the Department will seek additional assistance from the Washington Department of Wildlife, Washington Department of Fisheries, and similar appropriate state and federal agencies.~~

~~Regulated activities not normally subject to environmental review shall be exempt from the requirements of this subsection (B). Fish and wildlife habitat areas shall not be considered environmentally sensitive areas pursuant to the City's environmental regulations~~

~~14.154.055 Title and Plat Notification.~~

~~For regulated activities where a Habitat Assessment or Habitat Management Plan has been prepared as part of the proposal's environmental review, the owner of the site~~

shall record a notice of the reports with the Pierce County Auditor so that information is known if the property changes hands.

A. Title Notification.

The owner of any site where a habitat assessment or habitat management plan has been prepared for a development proposal shall record a notice with the Pierce County Auditor in the form set forth below:

Form of Notice:

FISH AND WILDLIFE HABITAT AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Present Owner: _____

Notice: This site lies within a critical fish and wildlife habitat area as defined by Chapter 14.18 of the City Code. The site was the subject of a development proposal for _____

application number _____

filed on _____
(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the fish and wildlife habitat area and any restriction on use.

Signature of Owner(s)

Date

(NOTARY ACKNOWLEDGMENT)

~~B. Plat Notification.~~

~~For all proposed short subdivision and subdivision proposals within critical fish and wildlife habitat areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:~~

~~**Notice:** This site lies within a critical fish and wildlife habitat area as defined in Chapter 14.154 of the City Code. Restrictions on use and alteration of the site may exist due to natural conditions of the site and resulting regulation.~~

~~14.154.060 Habitat Protection for Rivers and Streams.~~

~~Regulated activities proposed along rivers and streams shall provide for habitat protection.~~

~~A. Habitat Protection for Rivers and Streams Shall be Provided Through Buffers.~~

- ~~1. The buffer, consisting of undisturbed natural vegetation, shall be required along all streams, as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water mark of the water body.~~
- ~~2. The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact proposed activities would have on the river or stream.~~

~~**B. Critical Fishery Rivers and Streams Requiring Buffers.** The following river and stream (segments) have been identified by the various Indian tribes, particularly the Puyallup Tribe, as being critical to anadromous fish and, therefore, requiring a larger buffer protection. Specific salmon species identified by the Tribes in March 1992 are listed in Appendix C. Critical fishery rivers and streams include:~~

Stream Name	WRIA #	In Feet	Identifying Tribe
Chambers Creek	12.0007	150	Puyallup

~~**C. Other Rivers and Streams Requiring Buffers.** For rivers and streams not governed by 14.154.060 B above, the buffer width shall be as follows:~~

DNR Water Type	Buffer Width in Feet
1 through 5	35

~~14.154.062 Habitat Protection for Lakes.~~

- ~~A. Regulated activities proposed on lakes that are urban in character will not be subject to the buffering requirements of this Chapter. The following lakes are urban in character:~~
- ~~American~~

~~_____ Gravelly
_____ Louise
_____ Steilacoom
_____ Spanaway
_____~~

~~_____ For proposed single-family residences on lakes that are urban in character, habitat protection shall be provided through education and/or voluntary agreements. However, existing law, as referenced in 14.154.050, may affect such proposals.~~

~~_____ For proposed regulated activities other than single-family residences, on lakes that are urban in character, habitat protection shall be provided through education, voluntary agreements, and existing laws as referenced in 14.154.050.~~

~~_____ B. Regulated activities proposed on lakes that are not urban in character shall be subject to a 35-foot buffer requirement. The buffer, consisting of undisturbed natural vegetation, shall extend landward from the ordinary high water mark of the water body. Buffers may be altered only as provided in Sections 14.154.067 and 14.154.069.~~

~~14.154.065 Habitat Protection for Ponds~~

~~Regulated activities proposed on ponds will not be subject to the buffering requirements of this Chapter. Habitat protection for ponds shall be provided through education, voluntary agreements and existing laws as referenced in 14.154.050.~~

~~14.154.067 Provisions for Buffers, Where Required:~~

~~_____ A. Building Setback and Construction near Buffer. A minimum setback of eight (8) feet from the buffer shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within eight feet of the buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.~~

~~_____ B. Marking of the Buffer Area. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground.~~

~~_____ C. Fencing from Farm Animals. Permanent fencing shall be required from the buffer when farm animals are introduced on a site.~~

~~_____ D. Enhancements to natural buffers consistent with the education program (such as re-vegetation or nest boxes) are allowed.~~

~~_____ E. Allowable Activities Within Buffers. The following activities may occur within the buffer after notification to the Department, provided that any other required permits are obtained.~~

~~_____ 1. Removal of diseased trees and trees that present a threat to properties.~~

- ~~2. Repair of existing fences.~~
- ~~3. Construction, reconstruction, remodeling, or maintenance of docks and bulkheads as authorized and pursuant to the Shoreline Management Regulations.~~
- ~~4. Construction of a pervious path for purposes of private access to the shoreline.~~
- ~~5. Trimming of vegetation for purposes of providing view corridors, provided that trimming shall be limited to view corridors of 20 feet or less and provided that benefits of the buffer to fish and wildlife habitat are not reduced. Trimming shall be limited to pruning of branches and vegetation. Trimming shall not include felling or removal of trees.~~
- ~~6. Construction of public trails.~~
- ~~7. Roadways, bridges, rights-of-way, and utility lines where no feasible alternative exists, and where the development minimizes impacts on the stream and buffer area.~~

~~14.154.069 Variances from Buffer Requirements:~~

~~The Examiner shall have the authority to grant a variance from the buffer width provisions of this Chapter. In order to grant a buffer width variance, the applicant must demonstrate and the Examiner must find that the requested buffer width modification preserves adequate vegetation to: (1) maintain proper water temperature, (2) minimize sedimentation, and (3) provide food and cover for critical fish species. Variance applications shall be considered according to the variance procedures in the City Zoning Code.~~

14.154.070 Appendices.

APPENDIX A

~~Endangered, Threatened, Sensitive, Candidate, and Monitored Species
Recorded in Pierce County, January 1992.~~

~~The following species have been confirmed to occur in Lakewood by the
Washington Department of Wildlife as of January 1992. The state status of
each species is listed.~~

Birds

<u>Common Name</u>	<u>State Status</u>
Bald Eagle	Threatened
Great Blue Heron	Monitor
Marbled Murrelet	Candidate
Northern Goshawk	Candidate
Osprey	Monitor
Peregrine Falcon	Endangered
Pileated Woodpecker	Candidate
Purple Martin	Candidate
Spotted Owl	Endangered
Vaux's Swift	Candidate
Western Bluebird	Candidate

Mammals

<u>Common Name</u>	<u>State Status</u>
Gray Wolf	Endangered
Roy Prairie Pocket Gopher	Candidate
Western Gray Squirrel	Candidate

Reptiles

<u>Common Name</u>	<u>State Status</u>
Western Pond Turtle	Threatened

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— **APPENDIX B**

Diagrams Illustrating Distances from Habitat Areas and Point Locations of Identified Species.

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~~APPENDIX C~~

~~Fish Species Identified by the Tribes as Being of Critical Importance.~~

~~Protection of these species shall be by education and information according to 14.154.050-A. and by buffers according to 14.154.060.~~

~~**14.154.075 Assessment Relief.**~~

- ~~A. The assessment provisions of Chapter 14.142.095 apply through this Title, including this Chapter 14.154) pertaining to fish and wildlife habitat areas.~~
- ~~B. The Assessor-Treasurer's Office shall consider buffering requirements of this Chapter in determining the fair market value of land. Any owner of an undeveloped buffer which has been placed in a separate buffer tract, protective easement, public or private land trust dedication, or other similarly preserved areas shall have that portion of the land assessed consistent with these restrictions.~~

~~**14.154.090 Severability.**~~

~~If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.~~

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~~Chapter 14.158~~

~~FLOOD HAZARD AREAS~~

Sections:

~~14.158.010 Purpose.~~

~~14.158.020 Definitions.~~

~~14.158.030 Applicability.~~

~~14.158.040 Severability.~~

~~14.158.010 Purpose:~~

~~Floodplains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.~~

~~14.158.020 Definitions:~~

- ~~A. **"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the "100-year flood."~~
- ~~B. **"Flood or Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - ~~1. The overflow of inland or tidal waters, and/or~~
 - ~~2. The unusual and rapid accumulation of runoff of surface waters from any source.~~~~
- ~~C. **"Floodfringe"** means the area subject to inundation by the base flood, but outside the limits of the floodway, and which may provide needed temporary storage capacity for flood waters.~~
- ~~D. **"Flood Hazard Areas"** means land in a floodplain within the City subject to a one percent or greater chance of flooding in any given year.~~
- ~~E. **"Floodplain"** means the total area subject to inundation by the base flood, including the floodfringe and the floodway areas.~~
- ~~F. **"Floodway"** means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.~~

~~14.158.030~~Applicability:

~~A. General.~~

~~Floodplains and other areas subject to flooding perform important hydrologic functions.~~

~~B. Classification.~~

~~All flood hazard areas shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA).~~

~~C. Regulation.~~

~~All development in flood hazard areas shall be according to the "Site Development Regulations Ordinance."~~

~~14.158.040~~Severability:

~~If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.~~

CHAPTER 14.162

WETLANDS AREAS

Sections:

- ~~14.162.010 Purpose.~~
- ~~14.162.020 Definitions.~~
- ~~14.162.030 Wetland Categories.~~
- ~~14.162.040 Regulated Activities.~~
- ~~14.162.050 Exemptions.~~
- ~~14.162.060 Delineation and Wetland Analysis Requirements.~~
- ~~14.162.070 Establishing Buffers.~~
- ~~14.162.080 Standards for Allowing Regulated Activities in Wetlands and Buffers, Including a Reasonable Use Exception.~~
- ~~14.162.090 Mitigation.~~
- ~~14.162.100 On-site Density Transfer.~~
- ~~14.162.110 Transfer of Development Rights.~~
- ~~14.162.220 One-Family Dwellings Procedures and Reasonable Use Exception.~~
- ~~14.162.130 New Agricultural Activities.~~
- ~~14.162.135 Alternative Review Process, Corps of Engineers Section 404 Individual Permits.~~
- ~~14.162.140 Wetland Application Procedure and Fees.~~
- ~~14.162.150 Reconsideration and Appeal Procedures.~~
- ~~14.162.160 Wetland Variances.~~
- ~~14.162.170 Suspension and Revocation.~~
- ~~14.162.175 Financial Guarantees.~~
- ~~14.162.180 Compliance Provisions.~~
- ~~14.162.185 Nonconforming Uses.~~
- ~~14.162.190 Administrative Procedures and Technical Criteria.~~
- ~~14.162.195 Assessment Relief.~~
- ~~14.162.210 Appendices.~~
 - ~~A. Wetland Categories.~~
 - ~~B. Information to be Included in a Wetland Analysis Report.~~
 - ~~C. Mitigation Plan for Regulated Activities in Buffers.~~
 - ~~D. Compensatory Mitigation Plan for Regulated Activities in Wetlands, Conceptual Phase.~~
 - ~~E. Compensatory Mitigation Plan for Regulated Activities in Wetlands, Detailed Phase.~~
- ~~14.162.220 Severability.~~

~~14.162.010 Purpose.~~

~~The purpose of these regulations is to avoid, or in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands, and to maintain and enhance the biological and physical functions and values of wetlands with respect to water quality maintenance, stormwater and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, education, and historic and cultural preservation. When avoiding impacts is not reasonable, mitigation should be implemented to achieve no net loss of wetlands in terms of acreage, function and value.~~

~~14.162.020 Definitions.~~

~~For purposes of this Chapter, the following definitions shall apply:~~

- ~~A. **"Activity"** means any use conducted on a site.~~
- ~~B. **"Agricultural activities"** means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW, Title 222 WAC are not included in this definition.~~
- ~~C. **"Applicant"** means a person, party, firm, corporation, or other legal entity that proposes any activity on a site.~~
- ~~D. **"Best management plan"** means a plan developed for property which specifies best management practices for the control of animal wastes, stormwater runoff, and erosion.~~
- ~~E. **"Buffer"** means an area contiguous to a wetland that is required for the integrity, maintenance, function, and structural stability of the wetland.~~
- ~~F. **"Building footprint"** means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.~~
- ~~G. **"Class"** means one of the wetland classes in the United States Fish and Wildlife Service (USFWS) December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.~~
- ~~H. **"Clearing"** means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site. In addition to the above, clearing is an activity which does not require reforestation per an approved Forest Practices Application/notification issued by the Department of Natural Resources.~~

- I. **"Compensatory mitigation"** means mitigation to compensate for loss of wetland habitat due to filling of wetlands or other regulated activities in wetlands.
- J. **"Creation"** means producing or forming a wetland through artificial means from an upland (non-wetland) site.
- K. **"Degraded"** means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.
- L. **"Delineation"** means a wetland study conducted in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989 edition (Unified Federal Manual).
- M. **"Delineation report"** means a written document prepared by a wetland specialist which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.
- N. **"Department"** means the City Department of Community Development.
- O. **"Dwelling unit"** means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen facilities for use solely by one family.
- P. **"Earth/earth material"** means naturally occurring rock, soil, stone, sediment, or combination thereof.
- Q. **"Enhancement"** means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing non-indigenous plant or animal species, removing fill material or solid waste).
- R. **"Excavation"** means the mechanical removal of earth material.
- S. **"Fill/fill material"** means a deposit of earth material, placed by human or mechanical means.
- T. **"Filling"** means the act of placing fill material on any surface, including temporary stockpiling of fill material.
- U. **"Grading"** means any excavating, filling, clearing, or creating of impervious surfaces or combination thereof.
- V. **"Hydrologically isolated wetland"** means a wetland which:
 - 1. Is not contiguous to any 100-year floodplain of a lake, river or stream; and
 - 2. Has no contiguous surface hydrology, hydric soil or hydrophytic vegetation between the wetland and any other wetland or stream system.

- ~~W. **"In-kind mitigation"** means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.~~
- ~~X. **"Mitigation"** means to avoid, minimize or compensate for adverse wetland impacts.~~
- ~~Y. **"One-family dwelling"** means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.~~
- ~~Z. **"Out-of-kind mitigation"** means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.~~
- ~~AA. **"Permanent erosion control"** means continuous on-site and off-site control measures that are needed to control conveyance and/or deposition of earth, turbidity or pollutants after development, construction, or restoration.~~
- ~~AB. **"Person"** means an individual, firm, company, partnership, association, corporation, or other legal entity.~~
- ~~AC. **"Restoration"** means the re-establishment of a viable wetland from a previously filled or degraded wetland site.~~
- ~~AD. **"Site"** means a parcel or combination of parcels of land on which a regulated activity is proposed.~~
- ~~AE. **"Slope"** means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.~~
- ~~AF. **"Stockpiling"** means the placement of material with the intent to remove it at a later time.~~
- ~~AG. **"Subclass"** means one of the subclasses identified in the United States Fish and Wildlife Service (USFWS), December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.~~
- ~~AH. **"Substrate"** means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of a wetland.~~
- ~~AI. **"Temporary erosion control"** means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.~~
- ~~AJ. **"Utility line"** means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications and sanitary sewers.~~
- ~~AK. **"Wetland"** or **"wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do~~

not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm-ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from non-wetland areas, created to mitigate conversion of wetlands, if permitted by the City.

AL. **"Wetland specialist"** means a person with experience and training in wetlands issues, and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

1. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or
2. Four years of related work experience and training, with a minimum of two years experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans.

The person should be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, The City Site Development Regulations, The City Wetland Management Policies, and the requirements of this Chapter.

~~14.162.030 Wetland Categories:~~

~~Appendix A provides the detailed criteria for establishing wetland categories; however, wetlands shall be generally designated as follows:~~

- ~~A. Category I wetlands are those regulated wetlands of exceptional resource value based on significant functional value and diversity, wetland communities of infrequent occurrence, and other attributes which may not be adequately replicated through creation or restoration.~~
- ~~B. Category II wetlands are those regulated wetlands of significant resource value based on significant functional value and diversity, wetland communities of infrequent occurrence, and other attributes which may not be adequately replicated through creation or restoration.~~
- ~~C. Category III wetlands are those regulated wetlands which have important resource value based on vegetative diversity.~~
- ~~D. Category IV wetlands are those regulated wetlands of ordinary resource value based on monotypic vegetation of similar age and class, lack of special habitat features, and isolation from other aquatic systems.~~
 - ~~1. The provisions of this Chapter apply to development proposed on properties within 300 feet of designated resource lands.~~
 - ~~2. All plats, short plats, development permits, and building permits issued for development activities within 300 feet of lands designated as agricultural, forest, or mineral resource lands shall contain a notice that the property is within 300 feet of agricultural, forest, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.~~

~~14.162.040 Regulated Activities:~~

- ~~A. Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other Federal, State, or local law or regulation. Requirements include but are not limited to those of the U.S. Army Corps of Engineers, Washington Department of Wildlife and Washington Department of Fisheries, which must be met prior to commencing activities affecting wetlands, except as addressed in Section 14.162.135 regarding Engineers Section 404 Individual Permits.~~
- ~~B. The following activities within a wetland and/or buffer, unless exempted by Section 14.162.050, shall be regulated:~~
 - ~~1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;~~
 - ~~2. Dumping, discharging or filling;~~
 - ~~3. Draining, flooding or disturbing the water level or water table. In addition, an activity which involves intentional draining, flooding or disturbing the~~

~~water level or water table in a wetland, in which the activity itself occurs outside the wetland and buffer, shall be considered a regulated activity.~~

~~4. Driving piling or placing obstructions, including placement of utility lines;~~

~~5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure;~~

~~6. Altering the character of a wetland by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting;~~

~~7. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland water sources, including changes in quantity of water and pollutant level;~~

~~8. Application of pesticides, fertilizers and/or other chemicals, unless demonstrated not to be harmful to wetland habitat or wildlife.~~

~~9. The division or redivision of land.~~

~~C. The Department may require protection measures or erosion control measures such as temporary or permanent fencing to provide for protection of a wetland and buffer when any of the above activities are proposed on a site, but are not proposed within a wetland and/or buffer.~~

14.162.050 Exemptions:

The following activities are exempt from the provisions of this Chapter:

~~A. Existing agricultural activities. The activities cease to be existing when the area on which they were conducted has been converted to a non-agricultural use or has lain idle both more than five years and so long that modifications to the hydrological regime are necessary to resume agricultural activities, unless the idle land is registered in a federal or state soils conservation program;~~

~~B. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations, Title 222 WAC, and which are exempt from the City jurisdiction;~~

~~C. Activities in artificial wetlands, except as set forth in 14.162.020 Definitions, Subsection AK;~~

~~D. Activities affecting:~~

~~1. Category III wetlands which are less than 2,500 square feet;~~

~~2. Category IV wetlands which are less than 10,000 square feet;~~

~~E. Placement of access roads, utility lines and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative;~~

- ~~F. Maintenance or reconstruction of roads existing on the effective date of this Chapter, provided that reconstruction does not involve expansion of facilities;~~
- ~~G. For the following utility line activities, when undertaken pursuant to best management practices to avoid impacts to wetlands:

 - ~~1. Normal and routine maintenance or repair of existing utility structures or right-of-way.~~
 - ~~2. Relocation within improved rights-of-way of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency.~~
 - ~~3. Relocation within improved rights-of-way of utility lines, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities.~~
 - ~~4. Installation or construction in improved City rights-of-way, and replacement, operation or alteration of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.~~
 - ~~5. Installation or construction in improved City road rights-of-way, and replacement, operation, repair or alteration of all utility lines, equipment or appurtenances.~~~~
- ~~H. Activities on improved portions of roads, rights-of-way or easements, provided there is no expansion of ground coverage;~~
- ~~I. Reconstruction, remodeling, or maintenance of one-family dwellings and accessory structures existing on the effective date of this Chapter, provided that a one-time only expansion of the building footprint does not increase that footprint by more than twenty-five percent;~~
- ~~J. Reconstruction, remodeling, or maintenance of structures, other than one-family dwellings and accessory structures, provided that such reconstruction, remodeling, or maintenance does not increase the floor area nor extend beyond the existing ground coverage;~~
- ~~K. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. Wetland impacts shall be minimized and disturbed areas shall be immediately restored;~~
- ~~L. Activities in wetlands in areas managed according to a Special Area Management Plan or other plan adopted by the City and specifically designed to protect wetland resources;~~
- ~~M. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. the Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken.~~

- ~~N. Control of noxious weeds that are included on the state noxious weed list. Control Agency's Administrative Superfund Enforcement Order or a Washington Department of may be by clipping, pulling, or digging, or by an alternative plan upon approval of a plan by the Department.~~
- ~~O. Activities undertaken to comply with the United States Environmental Protection Ecology Administrative Enforcement Order pursuant to the Model Toxins Control Act, including the following activities:~~
- ~~1. Remediation or removal of hazardous or toxic substances;~~
 - ~~2. Source control; and~~
 - ~~3. Natural resource damage restoration.~~
- ~~P. Maintenance activities of landscaping and gardens in a wetland buffer, including, but not limited to, mowing lawns, weeding, harvesting and replanting of garden crops, pruning and planting of vegetation to maintain the condition and appearance of the site existing on February 1, 1992.~~
- ~~Q. Activities designed for previously approved maintenance and enhancement of wetlands.~~
- ~~R. Activities undertaken on the site of an existing holding pond where the water flow and/or water table is controlled by a previously approved pump system.~~
- ~~S. Public stormwater retention/detention facilities may be constructed within Category 2, 3 and 4 wetlands or their buffers provided that the following conditions are met: 1). no untreated stormwater is released directly into the wetlands; 2). water levels are monitored annually to ensure that pre-existing functions and values of the wetland are not significantly lost through fluctuations in wetland hydrology; 3). maintenance activity within the wetland is limited to removal of invasive vegetation and/or removal of sediment accumulation at inflow structures in a manner acceptable to the Community Development Department; 4). there is no loss of wetland area; and 5). all construction activity is conducted in accordance with accepted BMPs.~~
- ~~Stormwater conveyance facilities such as bioswales, culverts, and open trenches, that are not designed to drain wetlands, may be placed within required buffers for category 1, 2, 3 and 4 wetlands, subject to meeting the conditions listed above. This conditional exemption would not apply in situations where there are threatened or endangered species, or sensitive plants, unless approved by the State Department of Fish and Wildlife or Department of Natural Resources, respectively.~~
- ~~All permits from other regulatory agencies must be obtained.~~
- ~~T. A utility line (any pipe or pipeline that transports any gaseous, liquid, liquefiable or slurry substance, and any cable, line or wire for the transmission of electrical energy, telephone, and telegraph messages, and radio and television communication, not including activities which drain a wetland, but including pipes that convey drainage from one area to another) may be placed in an underground trench within a category 2, 3 or 4 wetland or its buffer. There must be no resulting changes in pre-construction~~

contours, and trench excavation materials that are temporarily sidecast must be stabilized to prevent erosion and sedimentation. All sidecast materials shall be replaced within the trench or removed after 90 days, unless an extension is granted by the Community Development Department. The trench shall be the minimum size required to construct the utility line. The top 12" of the trench shall be backfilled with topsoil from the trench excavation. Trenches in wetlands shall be backfilled with wetland topsoil from the excavation, and appropriate vegetation planted to restore the site to a nearly as practical the pre-trenching condition. Trench excavation should be restricted to the dry season.

All permits from other regulatory agencies must be obtained.

14.162.060 Delineation and Wetland Analysis Requirements.

Regulated activities shall comply with the following requirements:

A. The Department may require a delineation report to determine if a regulated wetland is present on the site or to determine if the proposed activity is within 150 feet of a wetland. The delineation report indicates wetland and/or buffer boundaries that may extend onto the site. While the delineation report shall discuss all wetland areas within 150 feet of the site, only those boundaries within the site property lines need be marked in the field; there is no need to intrude on others' property.

1. A preliminary site inspection may be required by the Department to determine whether a delineation report is needed.

2. If a preliminary site inspection is necessary, the applicant may either select a consultant or request Department staff to inspect the site. The applicant shall pay the appropriate fee prior to a site inspection by Department staff.

B. If the Department determines that a regulated wetland is on the site, or within 150 feet of the site so that a wetland buffer boundary may extend onto the site, then the Department shall require a wetland analysis report. Appendix B identifies information required in a wetland analysis report.

C. The Department shall review and approve the wetland analysis report to determine the appropriate wetland category and buffer, and shall include the wetland in the City Wetland Atlas. The Department shall approve the report's findings and proposals unless specific, written reasons are provided which justify not doing so.

14.162.070 Establishing Buffers.

A. Buffer widths shall be determined according to the following table:

Wetland Category	Buffer Width
I	150 feet
II	100 feet
III	50 feet
IV	25 feet

B. Buffer widths may be modified by averaging, reducing, or increasing.

~~_____ 1. Buffer width averaging may be allowed only where the applicant demonstrates _____ the following:~~

- ~~_____ a. The wetland contains variations in sensitivity due to existing physical _____ characteristics; and~~
- ~~_____ b. Width averaging will not adversely impact the wetland; and~~
- ~~_____ c. The total buffer area after averaging is no less than the buffer area prior to _____ averaging; and~~
- ~~_____ d. The minimum buffer width will not be less than fifty percent of the widths _____ established in 14.162.070 A.~~

~~_____ 2. Buffer width reduction may be allowed only where the applicant demonstrates _____ the following circumstances. Such reduction shall not result in greater than a _____ twenty-five percent reduction in the buffer width established in 14.162.070 A.~~

- ~~_____ a. The proposed buffer area is extensively vegetated and has less than fifteen _____ percent slopes, and the reduction will not result in adverse impacts to the _____ wetland; or~~
- ~~_____ b. The project includes a buffer enhancement plan, as part of the mitigation _____ required by Section 14.162.090. The buffer enhancement plan shall use plant _____ species which are indigenous to the project area, and shall substantiate that an _____ enhanced buffer will improve the functional attributes of the buffer to provide _____ additional protection for wetland functional values; or~~
- ~~_____ c. The acreage included in the buffer would substantially exceed the size of the _____ wetland and the reduction will not result in adverse impacts to the wetland or _____ the project includes a buffer enhancement plan which ensures that the _____ reduction will not result in adverse impacts to the wetland.~~

~~_____ 3. The Department may require increased buffer width when a larger buffer is _____ necessary to protect wetland functions and values based on local conditions. _____ This determination shall be reasonably related to protection of the functions and _____ values of the regulated wetland. Such determination shall demonstrate that:~~

- ~~_____ a. A larger buffer is necessary to maintain viable populations of existing _____ species; or~~
- ~~_____ b. The wetland is used by species listed by the federal government or the state _____ as endangered, threatened, sensitive or as documented priority species or _____ habitats, or essential or outstanding potential sites such as heron rookeries or _____ raptor nesting areas; or~~
- ~~_____ c. The adjacent land is susceptible to severe erosion and erosion control _____ measures will not effectively prevent adverse wetland impacts; or~~

~~_____~~ d. The adjacent land has minimal vegetative cover or slopes greater than fifteen _____ percent.

~~_____~~ C. Buffers shall be measured perpendicular from the wetland edge.

~~_____~~ D. When buffer boundaries have been determined, they shall be marked in the field by _____ a licensed surveyor. The markers shall be clearly visible, durable, and permanently _____ affixed to the ground.

~~_____~~ E. A building setback line of eight feet shall be required from the edge of a buffer.

~~_____~~ F. Except as otherwise specified, buffers shall be retained in a natural condition.

~~**14.162.080 Standards for Allowing Regulated Activities in Wetlands and Buffers, Including a Reasonable Use Exception:**~~

~~_____~~ A. Regulated activities in Category III and IV wetlands and/or buffers for Category III _____ and IV wetlands may be allowed when the applicant demonstrates to the _____ Department that all adverse impacts to wetlands will be mitigated according to _____ Section 14.162.090; _____

~~_____~~ B. The placement of access roads, utility lines, and utility poles may be allowed in _____ buffers for Category II wetlands if the following conditions are met: _____

~~_____~~ 1. There is no feasible alternative location for an access road and/or utilities to the _____ site; and _____

~~_____~~ 2. The applicant demonstrates that all adverse impacts to wetlands will be _____ mitigated according to a mitigation plan which complies with Appendix C. _____

~~_____~~ C. The following activities may be allowed in a buffer without a complete mitigation plan if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated according to Section 14.162.090. _____ In cases which require environmental review, a threshold environmental determination may not be made until the Department is satisfied that adequate mitigation will occur. The allowed activities are as follows: _____

~~_____~~ 1. One well and necessary appurtenances, including a pump and appropriately _____ sized pump house, but not including a water storage tank (unless the water _____ storage tank can be contained within the pump house), may be allowed on _____ each _____ site in a buffer if all the following conditions are met: _____

~~_____~~ a. The pump house is a one-story building with a ground area of less than _____ 220 _____ square feet; and _____

~~_____~~ b. The well is more than 75 feet deep; and _____

~~_____~~ c. For Category I and II wetlands, the minimum distance from the well and _____ appurtenances to the wetland edge is no less than fifty percent of the _____ buffer _____ widths established in the table in Section 14.162.070 A.; and _____

~~_____ d. Access to the well and pump house shall be by a pervious trail for pedestrian _____ traffic only, or, if necessary, by an unimproved access for a maintenance _____ vehicle.~~

~~_____ 2. Pervious trails and associated viewing platforms, provided that in the case of _____ Category I wetlands the minimum distance from the wetland edge is no less than _____ fifty percent of the buffer width established in the table in Section 14.162.070 A.~~

~~_____ 3. The placement of utility lines which do not require excavation, or utility poles, _____ in any part of a buffer for a Category II, III, or IV wetland. They may be placed _____ in a buffer for a Category I wetland, provided that the minimum distance from _____ the wetland edge is no less than fifty percent of the Category I buffer width _____ established in the table in Section 14.162.070 A.~~

~~_____ 4. Activities within that area of a buffer in which a direct line to the wetland is _____ obstructed by an existing substantial improvement such as an improved road or a _____ permanent structure, the presence of which significantly reduces the likely _____ impact of the proposed activity on the wetland.~~

~~_____ D. Reasonable Use Exception, Wetland Category I and II: Regulated activities in _____ Category I and II wetlands and/or buffers for Category I and II wetlands may be _____ allowed if, following a public hearing, the Hearing Examiner determines the _____ following criteria are met:~~

- ~~1. No reasonable use with less impact on the wetland is possible; and
-~~
- ~~2. There is no feasible on-site alternative to the proposed activities, including phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning and density considerations, that would allow a reasonable economic use with less adverse impacts to wetlands; and
-~~
- ~~3. The proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and
-~~
- ~~4. The disturbance of wetlands has been minimized by locating any necessary activities outside the wetland to the extent possible; and
-~~
- ~~5. The proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats; and
-~~
- ~~6. The proposed activities will not cause significant degradation of groundwater or surface water quality; and
-~~
- ~~7. The proposed activities comply with all state, local and federal laws, including, but not limited to, those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal; and
-~~
- ~~8. Any and all regulated activities in wetlands and buffers will be mitigated according to Section 14.162.090; and
-~~

9. ~~There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and~~
10. ~~The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this Chapter.~~

~~E. Reasonable Use Provision, Categories III and IV Wetlands: If an applicant for regulated activity on a Category III or IV wetland and/or associated buffer cannot obtain permission through the procedures described in 14.162.080 A. and 14.162.080 C., the activity may be allowed if, following a public hearing, the Hearing Examiner determines the criteria of 14.162.080 D. are met.~~

~~**14.162.090 Mitigation:**~~

~~A. All activities in wetlands and/or buffers shall be mitigated according to this Section. Usually, mitigation is considered in order of preference; there may be circumstances when an alternative mitigation strategy is preferable.~~

~~The order of preference for mitigation is:~~

- ~~1. Avoiding the impact altogether by not taking a certain action or parts of actions;~~
- ~~2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to reduce impacts;~~
- ~~3. The following types of mitigation (no order of preference):~~
 - ~~a. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~
 - ~~b. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;~~
 - ~~c. Compensating for the impact by replacing or providing substitute resources or environments;~~
- ~~4. Monitoring the impact and compensation and taking appropriate corrective measures.~~
- ~~5. Mitigation for individual actions may include a combination of the above measures.~~

~~B. Regulated activities which occur in buffers, and which will not eliminate wetland habitat, shall be mitigated according to a mitigation plan approved by the Department. See Appendix C for specific requirements of this mitigation plan. Where environmental review is required, a threshold determination may not be made prior to Department review of the mitigation plan.~~

~~C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands, and shall meet the following minimum requirements:~~

~~1. A wetland specialist shall develop a compensatory mitigation plan that provides for construction, maintenance, and monitoring of any replacement wetlands;~~

~~2. The applicant and/or applicant's representatives shall demonstrate to the Department sufficient scientific expertise to carry out the compensation project;~~

~~3. The compensation area shall be provided with permanent protection and management to avoid further degradation and to provide for the long term persistence of the compensation area as designed;~~

~~4. The compensatory mitigation plan shall be completed in two phases, a conceptual phase and a detailed phase:~~

~~a. Conceptual Phase. The applicant shall submit to the Department a conceptual mitigation plan for compensatory mitigation. Where environmental review is required, the Department shall not make a threshold determination prior to Department review of the conceptual mitigation plan. See Appendix D for specific requirements of the conceptual mitigation plan.~~

~~b. Detailed Phase. Following the Department's approval of the conceptual mitigation plan, the applicant shall submit a detailed mitigation plan for compensatory mitigation to the Department. See Appendix E for specific requirements of the detailed mitigation plan.~~

~~5. The detailed mitigation plan shall be signed by the wetland specialist to indicate that the plan is according to specifications determined by the wetland specialist. A signed original mitigation plan shall be submitted to the Department.~~

~~6. Approval of the detailed mitigation plan shall be signified by a notarized memorandum of agreement signed by the applicant and Department Director or designate, and recorded with the County Auditor. The agreement shall refer to all requirements for the mitigation project.~~

~~7. The mitigation project shall be completed according to a schedule agreed upon between the Department and the applicant.~~

~~8. Wetland mitigation shall occur according to the approved wetland mitigation plan, and shall be consistent with provisions of this Chapter.~~

~~9. On completion of construction for the wetland mitigation project, the wetland specialist shall notify the Department. The Department will inspect and review the construction project prior to acceptance.~~

14.162.100 On-site Density Transfer:

A. Residential density may be transferred from a wetland to an area on the same site which is neither wetland nor buffer. Those portions of the wetland in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

Percentage of site in wetland	Amount of Credit
0-15%	100%
>15-25%	75%
>25-50%	50%
>50-75%	35%
>75-85%	25%
>85-90%	10%
>90-100%	0%

B. Residential density may be transferred from a buffer to an area on the same site which is neither wetland nor buffer. Those portions of the buffer in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

Percentage of site in buffer	Amount of Credit
0-10%	100%
>10-20%	90%
>20-30%	80%
>30-40%	70%
>40-50%	60%
>50-60%	50%
>60-70%	40%
>70-80%	30%
>80-90%	20%
>90-100%	10%

C. A request for on-site density transfer shall be reviewed as part of a Planned Development District (PDD) application. Residential density shall be equal to the number of dwelling units that can be produced on the site if the site were subdivided in terms of the minimum requirements of the underlying zone as evidenced by a preliminary plan sketch.

14.162.110 Transfer of Development Rights:

If a site contains a regulated wetland and/or buffer, a person may transfer residential development rights from the regulated wetland and/or buffer to another site or sites within The City jurisdiction. The transfer of development rights (TDR) shall meet the following criteria:

- A. The TDR must be associated with a complete Planned Development District (PDD) residential development application filed with the City for the receiving site(s). The TDR request shall be included in the application
- B. The Hearing Examiner shall consider the request for TDR at the public hearing for the land use proposal for the receiving site.
- C. To assure that the wetland is adequately protected, a restriction shall be placed on the deed of the sending property, which prohibits all regulated activities within the wetland and/or buffer. This restriction shall be required regardless of the number of dwelling units for which development rights are transferred. A memorandum of agreement (MOA) between the applicant and the Department shall be recorded with the Pierce County Auditor. The MOA shall refer to all deed restrictions and restrictions on activities in the wetland and/or buffer.
- D. If the wetland and/or buffer is degraded as a result of human or agricultural activity, the applicant may be required to enhance the wetland and/or buffer according to an enhancement plan approved by the Department.
- E. Except for required enhancement, the buffer and wetland shall remain in a natural condition. This shall be indicated by a note on the face of any final plat, final site plan, or other final approval for activity on the sending site. In the case of a formal subdivision, the wetland and buffer shall be placed in a separate tract.
- F. TDR shall not exceed the number of dwelling units which would be allowed in the wetland and/or buffer of the sending site according to the zoning

~~designation of the sending site, if there were no development restrictions tied to wetland areas. This number of dwelling units shall be equal to the number of dwelling units that could be produced on the wetland and/or buffer if the sending site were subdivided in terms of the minimum requirements of the underlying zone as evidenced by a preliminary plan sketch.~~

~~G. TDR may go to more than one receiving site; however, this shall not increase the total number of transferred dwelling units which are allowed.~~

~~H. The increased number of dwelling units on the receiving site(s) shall not be more than twenty-five percent above the number of dwelling units allowed according to the zoning designation of the receiving site(s). The beginning number of dwelling units (that is, the allowed number prior to TDR) at the receiving site(s) shall be equal to the number of dwelling units that can be produced on the same site if the site were subdivided in terms of the minimum requirements of the underlying zone as evidenced by a preliminary plan sketch.~~

~~I. If on-site density transfer provisions of this Chapter have been previously applied to the sending site, the number of additional dwelling units allowed on the receiving site through TDR provisions shall be calculated as follows:~~

~~1. Calculate the increased number of dwelling units allowed on the receiving site, according to 14.162.110 H.~~

~~2. From this number, subtract the number of dwelling units which were previously transferred on-site.~~

~~J. TDR shall be allowed only if the land use proposal on the receiving site(s) is designed in such a way that the increased density:~~

~~1. Is consistent with any land use plan associated with the receiving site and with goals, purposes, and intents of the zoning designation of the receiving site; and~~

~~2. Is compatible with existing and likely future developments in the vicinity; and~~

~~3. Adequately addresses infrastructure, natural constraints and other constraints, and does not result in significant environmental impacts.~~

~~K. The TDR shall not be approved until final plat approval or other required final approval for the receiving site is granted by the City.~~

~~L. Provisions of this Section on transfer of development rights, as they apply to both:~~

~~**14.162.120 One-family Dwellings Procedures and Reasonable Use Exception.**~~

~~An applicant may use the following procedure for construction of a one-family dwelling and regulated activities accessory to a one-family dwelling:~~

A. Where the Department determines that a regulated wetland may be present within 150 feet of the proposed activity, the applicant shall select one of the following options:

1. The applicant shall provide the Department with a report prepared by a wetland specialist which recommends the appropriate wetland category and includes rationale for the recommendation. The Department will review and approve the wetland category and buffer as follows:

Wetland Category	Buffer
I	150 feet
II	100 feet
III	50 feet
IV	25 feet

2. Alternatively, the Department, upon request, shall determine the appropriate wetland category. The buffer width shall be according to the table in 14.162.220.

B. The Department will determine whether the activity would intrude into the buffer, the wetland, or both.

1. If the Department determines that the proposed activity may intrude into the wetland and/or buffer, the applicant shall prepare a delineation report subject to approval by the Department; or

2. If the Department determines that the proposed activity may intrude only into the buffer, the Department, upon request, shall delineate the wetland.

C. Following approval of the delineation report or the Department's completion of the delineation, the applicant shall place permanent clearly visible markers on-site at the edge of the buffer. Placement of markers by a licensed surveyor is not required. No regulated activities shall occur within the wetland and/or buffer except as allowed in 14.162.220 Subsection D. Temporary intrusion into the buffer necessary for construction activities may be allowed if the buffer can be adequately restored.

D. Construction of a one-family dwelling and regulated activities accessory to a one-family dwelling may be allowed:

1. In the buffer if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated.

2. In the wetland, after Department approval of the following reports. The reports shall be prepared by a wetland specialist obtained by the applicant.

a. A report which recommends the appropriate wetland category and includes rationale for the recommendation, unless the category has already been determined by the Department; and

b. A wetland delineation report, unless a delineation has already been approved by the Department; and

~~_____ c. A mitigation plan. The mitigation plan shall provide that all adverse impacts _____ to the wetland will be mitigated.~~

~~**E. Reasonable Use Exception:**~~

~~_____ If strict application of this Section would not allow use of the property for a one- _____ family dwelling, the Hearing Examiner may approve use of the property for a one- _____ family dwelling. Following a public hearing, approval shall be granted if the _____ following conditions are met:~~

- ~~_____ 1. The proposed activity will have only minor impacts to the wetland; and~~
- ~~_____ 2. The proposed activity will not jeopardize the continued existence of species _____ listed by the federal government or the state as endangered, threatened, sensitive, _____ or documented priority species or priority habitats; and~~
- ~~_____ 3. The proposed activity will not cause significant degradation of groundwater or _____ surface water quality; and~~
- ~~_____ 4. All adverse impacts to the wetland will be mitigated to the greatest extent _____ possible; and~~
- ~~_____ 5. There will be no damage to public or private property and no threat to the health _____ or safety of people caused by the proposed activity; and~~
- ~~_____ 6. The inability to use the property for a one-family dwelling is not the result of _____ segregating or dividing the property after the effective date of this~~

~~Chapter.~~

14.162.130 New Agricultural Activities.

An applicant may use the following procedure to initiate agricultural activities:

A. Where the Department determines that a regulated wetland may be present within 150 feet of the proposed activity, the applicant shall select one of the following options:

1. The applicant shall provide the Department with a report prepared by a wetland specialist which recommends the appropriate wetland category and includes rationale for the recommendation. The Department will review and approve the wetland category and buffer as follows:

Wetland Category	Buffer
I	150 feet
II	100 feet
III	50 feet
IV	25 feet

2. Alternatively, the Department, upon request, shall determine the appropriate wetland category. The buffer width shall be according to the table in 14.162.130.

B. The Department will determine whether the activity would intrude into the buffer, the wetland, or both.

1. If the Department determines that the proposed activity may intrude into the wetland and/or buffer, the applicant shall prepare a delineation report subject to approval by the Department; or

2. If the Department determines that the proposed activity may intrude only into the buffer, the Department, upon request, shall delineate the wetland.

C. Following approval of the delineation report or the Department's completion of the delineation, the applicant shall place permanent, clearly visible markers on-site at the edge of the buffer. Placement of markers by a licensed surveyor is not required. No regulated activities shall occur within the wetland and/or buffer except as allowed in 14.162.130 D. Temporary intrusion into the buffer necessary for construction activities may be allowed if the buffer can be adequately restored.

Livestock shall be fenced from the wetland and buffer, unless requirements of 14.162.130 D. are met.

~~D. Agricultural activities may be initiated:~~

~~1. In a buffer, if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated.~~

~~2. In the wetland after Department approval of the following reports, which shall be prepared by a wetland specialist obtained by the applicant:~~

~~a) A report which recommends the appropriate wetland category and includes rationale for the recommendation, unless the category has already been determined by the Department; and~~

~~b) A wetland delineation report, unless a delineation has already been approved by the Department; and~~

~~c) A Best Management Plan developed by the Pierce County Conservation District or U.S.D.A. Soil Conservation Service. A wetland specialist shall review the plan and specify mitigation for all impacts to wetlands, other than water quality impacts reviewed by the Conservation District or Soil Conservation Service; and~~

~~d) A report prepared by a wetland specialist which demonstrates that the proposed activity:~~

~~(1) Will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats;~~

~~(2) Will not cause significant degradation of groundwater or surface water quality; and~~

~~(3) Will not damage public or private property and will not threaten public health or safety.~~

~~**14.162.135 Alternative Review Process, Corps of Engineers Section 404 Individual Permits:**~~

~~A. The alternative review process outlined below will be used in cases where a Section 404 individual permit is required from the U.S. Army Corps of Engineers. (Refer to 33 CFR § 320.1, § 323.2(g), and § 325.5(b)(1).~~

~~1. The applicant shall notify the Department when the applicant applies for the Section 404 permit or contacts the Corps concerning a specific project. The applicant shall apprise the Department of the Corps' permitting process, including notifying the Department of all hearings or meetings scheduled to discuss the applicant's project, potential mitigation or approval. The review process of the Corps will substitute for the review process outlined in Section 14.162.140. The City participation in the Corps' review process does not constitute approval of the applicant's project by the City. The substantive provisions of this Chapter are still applicable and a wetland permit will be approved or denied by the Department~~

~~based upon those provisions. However, the Department shall consider the mitigation requirements as set forth by the commenting agencies during the Corps' review process and shall concur with that mitigation, if it is functionally equivalent with the requirements of this Chapter.~~

~~2. The applicant shall submit the information specified in Section 14.162.060 and 14.162.140 to the Department when filing for the Corps permit. The Department may also require the submittal of any additional information deemed necessary.~~

~~3. Notice of Application: A notice of application will be required as provided for in Section 14.162.140.~~

14.162.140 Wetland Application Procedure and Fees:

~~A. The Department shall, to the extent reasonable, consolidate the processing of related aspects of other the City regulatory programs which affect activities in wetlands, such as subdivision, site development, floodplain and environmentally sensitive areas, with the wetland approval process established herein so as to provide a timely and coordinated review process.~~

~~B. When the Department determines that a regulated wetland is on the site or may be within 150 feet of the site, an application containing the following shall be submitted to the Department:~~

~~1. The City Master Application;~~

~~2. Wetland Application;~~

~~3. Wetland Analysis Report;~~

~~4. Fees: Each applicable fee shall be payable at the time the applicant submits the document to which the fee applies. Site inspection fees shall be payable prior to the staff site visit.~~

~~C. **Notice.** Upon City acceptance of a completed application for Wetland Approval, notice of application shall be posted by the applicant on the property at its principal entry point to the nearest right-of-way, as determined by the Department. The applicant shall verify by notarized affidavit to the Department that such notice was posted. Notice will be posted on a 1 1/2' x 2' waterproof sign. The sign shall be made of corrugated plastic to specifications provided by the City. If desired, a sign may be purchased from the City at a cost to be determined by the manufacturing cost at the time of purchase. The sign(s) shall be located so as to be easily visible from the abutting road. When more than one road abuts the property, the sign(s) shall be easily visible from the road having the greatest traffic volume as determined by the Department. When a proposal is within an existing subdivision, planned development district or planned unit development, an additional sign shall be posted at each major roadway entrance to the development as determined by the Department. The sign(s) shall be erected and maintained by the applicant for a minimum of thirty (30) days before a decision is rendered on the application, and shall be removed by the applicant within one (1) week following the decision by the Department.~~

~~D. **Notice on Title.** When the City determines that activities not exempt from this Chapter are proposed, the property owner shall file for record with the Pierce County Auditor a notice approved by the Department in a form substantially as set forth below. The notice shall provide notice in the public record of the presence of a wetland or buffer, the application of this Chapter to the property, and that limitations on actions in or affecting such wetlands and buffers may exist. The notice shall be notarized and shall be recorded prior to approval of any land use proposal for the site.~~

~~Notice on title is not required for utility line easements on lands not owned by the jurisdiction conducting the regulated activity.~~

~~**Form of notice:**~~

~~**WETLAND AND/OR WETLAND BUFFER NOTICE**~~

~~Tax Parcel Number: _____
Name: _____
Address: _____
Legal Description: _____~~

~~*NOTICE: This property contains wetlands or wetland buffers as defined by the City Code 14.162. Restrictions on use or alteration of the wetlands or wetland buffers may exist due to natural conditions of the property and resulting regulations.*~~

~~Signature of owner _____
Date: _____~~

~~-(NOTARY ACKNOWLEDGMENT)~~

~~**E. Wetland Tract:**~~

- ~~1. Prior to final approval of any wetland application, the part of the wetland and/or buffer which is on the site shall be placed in a separate wetland tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the City. All wetland tracts, protective easements, land trust dedications and other similarly preserved areas shall remain undeveloped in perpetuity, except as they may be allowed to be altered pursuant to this Chapter.~~
- ~~2. Prior to final approval of any wetland application, the common boundary between a wetland tract, protective easement, land trust dedication, or other similarly preserved area and the adjacent land shall be permanently identified with permanent signs. Sign locations, wording, and size and design specifications shall be as required by the Department.~~
- ~~3. At any time after a wetland tract, protective easement, land trust dedication, or other similarly preserved area has been established, the owner may submit a delineation report to the Department. If the Department determines that a boundary change has occurred, or that~~

~~a wetland no longer exists, the wetland tract, protective easement, land trust dedication, or other similarly preserved area may be altered or eliminated, as appropriate. If the Department determines that wetland boundaries have changed or that a wetland has been eliminated due wholly or in part to illegal activity, a change or elimination of wetland tract, protective easement, land trust dedication, or other similarly preserved area shall not be permitted.~~

~~4. A wetland tract, protective easement, land trust dedication, or other similarly preserved area is not required for utility lines in easements on lands not owned by the jurisdiction conducting the regulated activity.~~

~~F. **Review and Approval.** A Wetland Application shall be reviewed by the Department. Approval shall be granted upon a determination that the wetland analysis report and mitigation plan meet all applicable requirements of this Chapter, and that the monitoring program and contingency plan are tied to an acceptable financial guarantee to assure that the requirements will be complied with.~~

~~G. **Expiration.** Approvals shall be valid for a period of three years from the date of issue unless a longer or shorter period is specified by the Department. An extension of an original approval may be granted upon submittal of a written request to the Department prior to expiration. Prior to the granting of an extension, the Department may require updated studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the applicant failed to abide by the terms of the original approval.~~

~~14.162.150 Reconsideration and Appeal Procedures:~~

~~Requests for Reconsideration and Appeals of a decision issued under this Chapter shall be considered by the City according to procedures in the City Zoning Code~~

~~14.162.160 Wetland Variances:~~

~~A. Wetland Variance Applications shall be considered by the City according to Variance procedures in the City Zoning Code, except that required criteria for a Wetland Variance shall be as set forth in Section 14.162.160 C.~~

~~B. To apply for a Wetland Variance the applicant shall submit a complete Wetland Variance Application. The Variance Application shall include a City Master Application, site plan, cover letter addressing the required criteria for a variance, and appropriate fees.~~

~~C. The Hearing Examiner shall have the authority to grant a Wetland Variance from the requirements of this Chapter, when, in the opinion of the Examiner, the following criteria have been met:~~

~~1. There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties; and~~

- ~~2. The Wetland Variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and~~
 - ~~-~~
 - ~~3. Granting the Wetland Variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and~~
 - ~~-~~
 - ~~4. Granting the Wetland Variance will not violate, abrogate or ignore the goals, objectives or policies of the City Wetland Management Policies.~~
- ~~D. When granting a Wetland Variance, the Examiner may attach specific conditions to the Wetland Variance which will serve to meet the goals, objectives and policies of the City Wetland Management Policies.~~

~~14.162.170~~Suspension and Revocation.

~~In addition to other penalties provided for elsewhere, the Department may suspend or revoke an approval if it finds that the applicant has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application.~~

~~14.162.175~~Financial Guarantees

~~The City shall require an applicant to submit a financial guarantee to the City to guarantee any performance, mitigation or monitoring required as a condition of permit approval. The permit would not be granted until the financial guarantee is received by the Department.~~

~~————— A. ——— Financial Guarantees required under this Chapter shall:~~

- ~~1. — be in addition to the site development construction guarantee required by the City's Site Development Regulations, Section 5.00(A);~~
- ~~-~~
- ~~2. — be submitted on financial guarantee forms found in the City's Site Development Regulations Appendix;~~
- ~~-~~
- ~~3. — be 125 percent of the estimate of the cost of mitigation or monitoring to allow for inflation and administration should the City have to complete the mitigation or monitoring;~~
- ~~-~~
- ~~4. — be released by the City only when:~~

~~————— a. ——— City officials have inspected the site(s) and the applicant's appropriate technical professional has provided written confirmation that the performance, mitigation, or monitoring requirements have been met.~~

~~14.162.180~~Compliance Provisions:

~~————— A. ——— The Department shall have authority to enforce this Chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this Chapter, against any violation or threatened violation thereof. The Department is authorized to issue civil infraction citations and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this Chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this Chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.~~

~~————— B. ——— Enforcement actions shall include civil infractions, administrative orders, and actions for damages and restoration.~~

- ~~1. The Department may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of regulated wetlands or buffers which are inconsistent with this Chapter.~~
- ~~2. The Department may serve a cease and desist order when any person makes or partakes in any use of land, development or any activity on regulated wetlands and/or buffers in violation of this Chapter. The order shall include the following:
 - ~~a. A description of the specific nature, extent and time of violation. The order may include the damage or potential damage resulting from the violation.~~
 - ~~b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.~~
 - ~~c. Effective date. The cease and desist order issued under this Section shall become effective immediately upon receipt by the person to whom the order is directed.~~
 - ~~d. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.~~
 - ~~e. The order may include specific corrective measures to be taken to mitigate environmental damage.~~
 - ~~f. The order shall state that a hearing may be requested by an affected party by sending a written request for a hearing to the Hearing Examiner within ten (10) days of the receipt of said order.~~~~
- ~~3. Any person who undertakes any activity within a regulated wetland or buffer without first obtaining an approval required by this Chapter, or any person who violates one or more conditions of any approval required by this Chapter or of any cease and desist order issued under this Chapter shall be subject to a Class 1 civil infraction citation. Each violation and, in the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The civil penalty shall be assessed at a rate of two hundred fifty dollars per day per violation. The penalty provided shall be appealable as provided in fee Resolution.~~
- ~~4. Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation of this Chapter.~~
- ~~5. Orders and penalties issued pursuant to this Section may be appealed as provided for by this Chapter.~~
- ~~6. Application for remission or mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the Department for remission or mitigation of such penalty. Upon receipt of the application, the Department may remit or mitigate the penalty only~~

upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. Any person found to have violated any provision of this Chapter or who knowingly makes a false statement, representation or certification in any application, record or other document filed or required to be maintained under this Chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this Chapter or pursuant to a Wetland Application approval, shall be guilty of a misdemeanor.

14.162.185 Nonconforming Uses:

An established use or existing structure that was lawfully permitted prior to adoption of this Chapter, but which is not in compliance with this Chapter, may continue subject to the following:

- A. Nonconforming uses shall not be expanded, or changed in any way that increases the nonconformity without a permit issued pursuant to the provisions of this Chapter;
- B. Existing structures shall not be expanded or altered in any manner which will increase the nonconformity without a permit issued pursuant to the provisions of this Chapter, except one family dwellings and accessory structures may be expanded or altered as provided in Section 14.162.050 I.;
- C. Activities or uses which are discontinued for twelve (12) consecutive months shall be allowed to resume only if they are in compliance with this Chapter; and
- D. Nonconforming structures destroyed by fire, explosion, or other casualty may be replaced or restored if reconstruction is commenced within one (1) year of such damage and is substantially completed within eighteen (18) months of the date such damage occurred. The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity.

14.162.190 Administrative Procedures and Technical Criteria:

The Department shall develop administrative procedures, including technical requirements, to guide decision making in implementing provisions of this Chapter. In particular, the Department shall establish procedures for determining the category of specific wetlands. In so doing, the Department shall solicit the views of wetland specialists, ecologists, developers and interested citizens. Administrative procedures can be modified from time to time, and can include material by reference to state or federal criteria subject to notice to the public and consideration of public views and input. Administrative procedures shall be made available to the public upon request, and shall be consistent with the provisions of this Chapter. Upon request, the Department shall provide The City Council with copies of all administrative procedures, including modifications, to ensure consistency with the provisions of this Chapter.

14.162.195 Assessment Relief:

- ~~— A. An owner of agricultural land, timberland, or open space desiring current use classification under Chapter 84.34 RCW may file for such current use classification as provided for in Chapter 18.35.050 of the City Zoning Code.~~
- ~~— B. The Department shall notify the Assessor-Treasurer's Office of any application of this Chapter which results in building restrictions on a particular site.~~
- ~~— C. The Assessor-Treasurer's Office shall consider wetlands delineation under this Chapter in determining the fair market value of land. Any owner of an undeveloped wetland and/or buffer which has been placed in a separate wetland tract or tracts, protective easement, public or private land trust dedication, or other similarly preserved areas shall have that portion of land assessed consistent with those restrictions.~~

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14.162.210 Appendices A through E:

APPENDIX A

WETLAND CATEGORIES

Wetland categories shall be designated according to the following criteria:

~~A. Category I:~~

~~-~~

- ~~1. Documented habitat for endangered or threatened plant, fish or animal species or for potentially extirpated plant species recognized by state or federal agencies; or~~
- ~~2. High quality native wetland communities, including documented Natural Heritage wetland sites and sites which qualify as a Natural Heritage wetland; or~~
- ~~3. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or~~
- ~~4. Wetlands of exceptional local significance, as designated by separate City Ordinance.~~

~~B. Category II:~~

- ~~1. Regulated wetlands that do not contain features outlined in category I; and~~
- ~~2. Documented habitats for sensitive plants or fish species recognized by federal or state agencies; or~~
- ~~3. Documented priority habitats and species recognized by state agencies; or~~
- ~~4. Regionally rare wetland communities which are not high quality, but which have irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or~~
- ~~5. Wetland types with significant functions which may not be adequately replicated through creation or restoration. These wetlands may be demonstrated by the following characteristics:~~
 - ~~a. Significant peat systems; or~~
 - ~~b. Forested swamps that have three canopy layers, excluding monotypic stands of red alder averaging eight inches diameter or less at breast height; or~~
 - ~~c. Significant spring fed systems; or~~
- ~~6. Wetlands with significant habitat value based on diversity and size, including wetlands which are:~~

- ~~_____~~
- ~~_____~~ a. ~~Ten acres or greater in size; and two or more wetland classes together with open water at any time during a normal year; or~~
- ~~_____~~ b. ~~Ten acres or greater in size; and three or more wetland classes; and five or more subclasses of vegetation in a dispersed pattern; or~~
- ~~_____~~ c. ~~Five acres or greater in size; and forty to sixty percent open water at any time during a normal year; and two or more subclasses of vegetation in a dispersed pattern; or~~
- ~~_____~~ 7. ~~Regulated wetlands which are contiguous with both year-round and intermittent salmonid fish-bearing waters; or~~
- ~~_____~~ 8. ~~Wetlands with significant use by fish and wildlife.~~
- ~~_____~~ C. ~~Category III: Regulated wetlands that do not contain features outlined in category I, II or IV.~~
- ~~_____~~ D. ~~Category IV:~~
 - ~~_____~~ 1. ~~Regulated wetlands which do not meet the criteria of a category I or II wetland; and~~
 - ~~_____~~ 2. ~~Hydrologically isolated wetlands that are less than or equal to one acre in size, and have only one wetland class, and have only one dominant plant species (monotypic vegetation).~~
- ~~_____~~ E. ~~The Category of a wetland shall not be changed to recognize illegal modifications to the wetland.~~

APPENDIX B

~~INFORMATION TO BE INCLUDED IN A WETLAND ANALYSIS REPORT~~

~~A wetland analysis report shall include the following:~~

~~A. Vicinity map;~~

~~B. When available, a copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service) and/or a City Wetland Inventory Map identifying the wetlands on or adjacent to the site;~~

~~C. A site map setting forth all of the following:~~

~~1. Surveyed wetland boundaries based upon a delineation by a wetlands specialist;~~

~~2. Site boundary property lines and roads;~~

~~3. Internal property lines, rights-of-way, easements, etc.;~~

~~4. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;~~

~~5. Contours at the smallest readily available intervals, preferably at 2-foot intervals;~~

~~6. Hydrologic mapping showing patterns of surface water movement and known subsurface water movement into, through, and out of the site area;~~

~~7. Location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets;~~

~~8. The Department may require an air photo with overlays displaying the site boundaries and wetland delineation.~~

~~D. A report which includes the following:~~

~~1. Location information (legal description, parcel number and address);~~

~~2. Delineation report. The wetland boundaries on the site established by the delineation shall be staked and flagged in the field. If the wetland extends outside the site, the delineation report shall discuss all wetland areas within 150 feet of the site, but need only delineate those wetland boundaries within the site;~~

~~3. General site conditions including topography, acreage, and surface areas of all wetlands identified in the City Wetland Atlas and water bodies within one quarter mile of the subject wetland(s);~~

- ~~4. Hydrological analysis, including topography, of existing surface and known significant sub-surface flows into and out of the subject wetland(s);~~
- ~~5. Analysis of functional values of existing wetlands, including vegetative, faunal, and hydrologic conditions;~~
- ~~E. A summary of proposed activity and potential impacts to the wetland(s);~~
- ~~F. Recommended wetland category, including rationale for the recommendation;~~
- ~~G. Recommended buffer boundaries, including rationale for boundary locations;~~
- ~~H. Proposed on-site residential density transfer from wetlands and/or buffers to upland areas;~~
- ~~I. Site plan of proposed activity, including location of all parcels, tracts, easements, roads, structures, and other modifications to the existing site. The location of all wetlands and buffers shall be identified on the site plan.~~

~~APPENDIX G~~

~~MITIGATION PLAN FOR REGULATED ACTIVITIES IN BUFFERS~~

~~A mitigation plan for regulated activities in buffers should contain the following components:~~

- ~~A. General goals of the mitigation plan;~~
- ~~B. Approximated site topography before and after alteration;~~
- ~~C. Location of proposed mitigation area;~~
- ~~D. General hydrologic patterns on the site before and after construction;~~
- ~~E. General plant selection and justification, planting instructions, and approximate planting sequencing and schedule;~~
- ~~F. A maintenance plan;~~
- ~~G. A monitoring and contingency plan.~~

~~Upon Department review and approval of this plan, it shall become the detailed plan.~~

~~Where environmental review is required, a threshold determination may not be made prior to submittal of a plan which meets Department approval.~~

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APPENDIX D

~~COMPENSATORY MITIGATION PLAN FOR REGULATED ACTIVITIES IN WETLANDS CONCEPTUAL PHASE~~

~~The conceptual phase of a mitigation plan for regulated activities in wetlands should include the following components:~~

- ~~A. General goals of the compensatory mitigation plan, including an overall goal of no net loss of wetland function and acreage;~~
- ~~B. A review of literature or experience to date in restoring, enhancing, or creating the type of wetland proposed;~~
- ~~C. Approximated site topography before and after construction;~~
- ~~D. Location of proposed wetland mitigation area;~~
- ~~E. General hydrologic patterns on the site before and after construction;~~
- ~~F. Nature of mitigation, including wetland types (in-kind and out-of-kind), general plant selection and justification, approximate project sequencing and schedule, and approximate size of the new wetland buffer;~~
- ~~G. A conceptual maintenance plan;~~
- ~~H. Conceptual monitoring and contingency plan.~~

~~Once the Department approves the conceptual mitigation plan, a detailed mitigation plan shall be submitted. Due to the complex nature of creating and restoring wetlands, very detailed plans are needed. See Appendix E for further information on detailed mitigation plans.~~

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APPENDIX E

~~COMPENSATORY MITIGATION PLAN FOR REGULATED ACTIVITIES IN WETLANDS -- DETAILED PHASE~~

I. ~~OUTLINE OF DETAILED MITIGATION PLAN~~

- ~~A. The detailed mitigation plan shall contain the following:~~
- ~~1. Site specific, quantifiable criteria for evaluating whether or not the goals for the proposed compensation are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria. See Subsection III. below for specific performance standards.~~
 - ~~2. Text and map of the existing condition of the proposed compensation area, including:~~
 - ~~a. Existing vegetation community analysis;~~
 - ~~b. Hydrological analysis, including topography, of existing surface and significant sub-surface flows into and out of the area in question;~~
 - ~~c. Soils analysis providing both Soil Conservation Service mapping and data provided by on-site verified determinations;~~
 - ~~d. Detailed description of flora and fauna existing on the site;~~
 - ~~e. Description of existing site conditions in relation to historic conditions for those sites which have been recently altered or degraded.~~
 - ~~3. Text and map of the proposed changes to the compensation area, including:~~
 - ~~a. Relationship of the project to the watershed and existing water bodies;~~
 - ~~b. Topography, using one foot contour intervals;~~
 - ~~c. Water level data, including depth and duration of seasonally high water table;~~
 - ~~d. Water flow patterns;~~
 - ~~e. Grading, filling and excavation, including a description of imported soils;~~
 - ~~f. Irrigation requirements;~~
 - ~~g. Water pollution mitigation measures during construction;~~

- ~~h. Aerial coverage of planted areas to open water areas (if any open water is to be present);~~
- ~~i. Appropriate buffers.~~
- ~~4. 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. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.~~
- ~~5. Landscape plan designed by a registered landscape architect working with a wetland specialist, describing what will be planted where and when. The landscape plan shall include the following:

 - ~~a. Soils and substrate characteristics;~~
 - ~~b. Specification of substrate stockpiling techniques;~~
 - ~~c. Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirements;~~
 - ~~d. Specification of where plant materials will be procured. Documentation shall be provided which guarantees plant materials are to be procured from licensed regional nurseries, or from wetlands on site which are part of the mitigation plan.~~~~
- ~~6. Schedule showing dates for beginning and completing the mitigation project, including a sequence of construction activities.~~
- ~~7. Monitoring and maintenance plan which includes the following:

 - ~~a. Specification of procedures for monitoring and site maintenance; and~~
 - ~~b. Schedule for submitting monitoring reports.~~~~
- ~~8. Contingency plan, consistent with Subsection IV. below.~~
- ~~9. Detailed budget for implementing the mitigation plan, including monitoring, maintenance and contingency phases.~~
- ~~10. Financial guarantee for the work to be performed as planned and approved.~~

~~H. LOCATION CRITERIA~~

~~In cases in which it is determined that compensatory mitigation is appropriate, the following shall apply:~~

- ~~A. Compensatory mitigation shall be provided on-site, except where the applicant demonstrates that on-site mitigation is not scientifically feasible or practical due to physical features of the site.~~

- ~~_____ B. When compensatory mitigation cannot be provided on-site, it shall be provided in the immediate vicinity of and within the same watershed as the regulated activity.~~
- ~~_____ C. Whether occurring on-site or off-site, the mitigation project shall occur near an adequate water supply (e.g., river, stream, ground, sheet flow) with a hydrologic connection to the wetland to ensure successful wetland creation, enhancement, and/or restoration.~~

~~III. MITIGATION PERFORMANCE STANDARDS~~

~~_____ A. When regulated activities occur in wetlands, the applicant shall restore, create, or enhance equivalent areas of wetlands. Equivalent areas shall be determined according to acreage, functional value, type, location, time factors, and projected success. No overall net losses shall occur in wetland acreage, functions and/or values, and any restored, created, or enhanced wetland shall be as persistent as the wetland it replaces.~~

~~_____ B. When an applicant proposes to alter or eliminate wetland, the applicant shall replace acreage at the following ratios:~~

_____	Category I:	_____	3:1 (acreage replacement: acreage lost)
_____	Category II and III:	_____	
	Forested Class:	_____	2.0:1
	Scrub/Shrub Class:	_____	1.5:1
	Emergent Class:	_____	1.5:1
	Open water:	_____	1.0:1
	Category IV:	_____	1.0:1

- ~~C. Ratios provided are for proposed projects with on-site, in-kind replacement which occurs prior to regulated activities on the site. The Department may increase the ratios under the following circumstances:~~
- ~~1. Uncertainty as to the probable success of the proposed restoration or creation; or~~
 - ~~2. Significant period of time between destruction and replication of wetland functions; or~~
 - ~~3. Projected losses in wetland functional value; or~~
 - ~~4. Off-site and/or out-of-kind compensation.~~
- ~~D. The Department may allow the minimum acreage replacement ratio to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value results from the decreased ratio. In no case shall the Department approve a ratio less than 1:1.~~
- ~~E. In the case of Category II, III and IV wetlands, the replacement ratio may be decreased to a ratio of less than 1:1, if, following a public hearing, the Hearing Examiner determines the following:~~
- ~~1. A replacement ratio of greater than 1:1 is either not feasible on-site or would be likely to result in substantial degradation of other natural features; and~~
 - ~~2. The mitigation plan shows that a net increase in wetland functional values will result from the mitigation; and~~
 - ~~3. The mitigation is completed, and then monitored by the Department for one year prior to the issuance of permits. If, after one year of monitoring, the Department is not satisfied that the anticipated final outcome of the mitigation plan will be met, modifications to the mitigation plan and further monitoring may be required. When the Department is satisfied that the mitigation will be successful, permits will be issued.~~
- ~~F. In-kind compensation shall be provided except where the applicant demonstrates that:~~
- ~~1. Greater functional and habitat values can be achieved through out-of-kind mitigation; and~~
 - ~~2. The wetland system is already significantly degraded; or~~
 - ~~3. Problems such as the presence of exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation infeasible; or~~
 - ~~4. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).~~

- ~~G. Detailed performance standards for the mitigation plan shall include the following:~~
- ~~1. Use only plants indigenous to Pierce County (not introduced or exotic species);~~
 - ~~2. Use plants appropriate to the depth of water at which they will be planted;~~
 - ~~3. Use plants available from local sources;~~
 - ~~4. Use plant species high in food and cover value for fish and wildlife;~~
 - ~~5. Plant mostly perennial species;~~
 - ~~6. Avoid committing significant areas of site to species that have questionable potential for successful establishment;~~
 - ~~7. Water depth is not to exceed 6.5 feet (2 meters);~~
 - ~~8. The grade or slope that water flows through the wetland is not to exceed 6 percent;~~
 - ~~9. Slopes within the wetland and buffer should not be steeper than 3:1 (horizontal to vertical);~~
 - ~~10. The substrate should consist of a minimum of one foot, in depth, of clean (uncontaminated with chemicals, or solid/hazardous wastes) materials;~~
 - ~~11. Planting densities and placement of plants shall be shown on the design plans;~~
 - ~~12. The wetland should not contain more than 60 percent open water as measured at the seasonal high water mark;~~
 - ~~13. Stockpiling shall be confined to upland areas and contract specifications should limit stockpile durations to less than four weeks;~~
 - ~~14. Planting instructions shall describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock;~~
 - ~~15. Apply controlled release fertilizer at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process), and only to the extent that the release would be conducted in an environmentally sound manner;~~
 - ~~16. Install an irrigation system, if necessary, for initial establishment period;~~
 - ~~17. If impacts to natural wetland functional values can be fully mitigated, capacity of the wetland to store surface water should be equal to surface water storage capacity prior to the proposed activity;~~

- ~~18. If impacts to natural wetland functional values can be fully mitigated, ability of the wetland to intercept surface water runoff on the site should be equal to such ability prior to the proposed activity.~~
- ~~19. If impacts to natural wetland functional values can be fully mitigated, the ability of the wetland to perform stormwater detention functions should be equal to such functions prior to the proposed activity.~~
- ~~20. A biofiltration system to remove pollutants from surface water may be necessary. This system may include grass-lined swales, sedimentation ponds, and other facilities. The draft Puget Sound Stormwater Management Manual, issued by the Department of Ecology in June 1990, or updates of that document, may serve as a guideline for system design.~~

~~IV. MONITORING PROGRAM AND CONTINGENCY PLAN~~

- ~~A. A contingency plan shall be established for compensation in the event the mitigation project is inadequate or fails. A financial guarantee on a form acceptable to the City is required for the duration of the monitoring period, and the guarantee plus any accrued interest will be released by the City when the required mitigation and monitoring are completed. To determine the amount of the financial guarantee, an estimate shall be submitted to the City detailing the work to be accomplished and the cost thereof. The estimate shall be based on current costs. The City will review the estimate and, if acceptable, will establish the financial guarantee at 125 percent of the estimate to allow for inflation and administration expenses should the City have to complete the project.~~
- ~~B. Requirements of the monitoring program and contingency plan are as follows:~~
- ~~1. During monitoring, use scientific procedures for establishing the success or failure of the project.~~
 - ~~2. To determine vegetative success, permanent sampling points shall be established.~~
 - ~~3. Vegetative success equals 80 percent survival of planted trees, shrubs and cover of desirable understory or emergent species through the monitoring period.~~
 - ~~4. Submit monitoring reports prepared by a wetland specialist on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, according to the following schedule:~~
 - ~~a. At completion of construction of mitigation project.~~
 - ~~b. 30 days after completion.~~
 - ~~c. Early in the first growing season after construction.~~
 - ~~d. End of the first growing season after construction.~~
 - ~~e. Twice the second year.~~
 - ~~f. Annually after the second year.~~
 - ~~5. Monitor a minimum of three growing seasons, with the time period depending on the complexity of the wetland system.~~
 - ~~6. Correct for failures in the mitigation project.~~
 - ~~7. Replace dead or undesirable vegetation with appropriate plantings.~~
 - ~~8. Repair damages caused by erosion, settling, or other geomorphological processes.~~

- ~~9. If necessary, redesign mitigation project and implement the new design.~~
- ~~10. Correction procedures shall be approved by a wetland specialist and the Department Director or designate.~~

~~_____~~
14.162.220 Severability.

~~If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected. _____~~

~~_____~~

~~Chapter 14.166~~

~~MINERAL RESOURCE LANDS~~

Sections:

~~14.166.010 Purpose.~~

~~14.166.020 Definitions.~~

~~14.166.030 Applicability.~~

~~14.166.040 Title Notification.~~

~~14.166.050 Plat Notification.~~

~~14.166.060 Regulated Activities Notification.~~

~~14.166.070 Severability.~~

14.166.010 Purpose:

The purpose of this Chapter is to promote the conservation of mineral resource lands through inclusion of known deposits of minerals and materials; to assure that undeveloped mineral and material resources will not be forever lost by prior development of the land for other purposes; and to allow for the necessary processing to convert such minerals and materials to marketable products.

14.166.020 Definitions:

- ~~A. "Minerals" include gravel, sand, and valuable metallic substances.~~
- ~~B. "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.~~

14.166.030 Applicability:

~~A. **General.** Mineral resource lands are lands that have long-term significance for the extraction of minerals.~~

~~B. **Classification:**~~

~~1. Any area under this Chapter presently operating under a valid Washington State Department of Natural Resources (DNR) surface mining permit.~~

~~2. Any other area shall be classified Mineral Resource Lands when:~~

- ~~a. a surface mining permit is granted by the DNR; and~~
- ~~b. an Unclassified Use Permit is granted by the City of Lakewood, pursuant to the City Zoning Code, provided;~~

~~1. The site does not contain prime agricultural soils, and~~

~~2. the site is not a registered or designated historic or archeological site, and~~

~~3. the site is not within a Shoreline of the State or State-wide Significance designated Natural.~~

14.166.040 Title Notification:

The owner of any site within this designation, for which an application for a regulated activity is submitted, shall record a title notice with the Pierce County Auditor. The notice shall be notarized and shall be recorded prior to approval of any development proposal for the site. Such notification shall be in the form as set forth below.

MINERAL RESOURCE LANDS AREA TITLE NOTIFICATION

Parcel Number: _____

Parcel Address: _____

Notice: This parcel lies within an area of land designated mineral resource lands by the City. A variety of commercial mineral extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City has established mineral resource extraction as a priority use on productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconveniences or discomfort from normal, necessary mineral resource extraction operations.

Signature of Owner(s)

date

(NOTARY ACKNOWLEDGMENT)

~~14.166.050 Plat Notification:~~

~~The owner of any site within this overlay district, on which a Large Lot, Short Subdivision, or Formal Subdivision is submitted, shall record a notice on the face of the plat. Such notification shall be in the form as set forth below.~~

~~MINERAL RESOURCE LANDS AREA PLAT NOTIFICATION~~

~~— This property lies within an area of land designated mineral resource lands by the City. A variety of mineral resource extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City has established mineral resource extraction as a priority use on productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconveniences or discomfort from normal, necessary mineral resource extraction lands.~~

~~14.166.060 Regulated Activities Notification:~~

~~The Department shall require that all permits issued for regulated activities, as defined in Section 14.142.020, within this designation contain a notice as set forth below:~~

~~REGULATED ACTIVITIES NOTIFICATION~~

~~This property lies within an area of land designated mineral resource lands by the City. A variety of mineral resource extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of chemicals and extraction of minerals which occasionally generates dust, smoke, noise, and odor. The City has established mineral resource extraction as a priority use on productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconveniences or discomfort from normal, necessary mineral resource extraction lands.~~

~~14.166.070 Severability:~~

~~If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.~~

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Chapter 14.170

~~PROPERTY ADJACENT TO DESIGNATED RESOURCE LANDS~~

Sections:

~~14.170.010 Purpose:~~

~~14.170.020 Definitions:~~

~~14.170.030 Applicability:~~

~~14.170.040 Title Notification:~~

~~14.170.050 Plat Notification:~~

~~14.170.060 Regulated Activities Notification:~~

~~14.170.070 Severability:~~

~~14.170.010 Purpose:~~

~~The purpose of this Chapter is to conserve resource lands by limiting the encroachment of incompatible development from designated resource lands.~~

~~14.170.020 Definitions:~~

~~A. "Adjacent" means within a radius of 300 feet from the exterior boundaries of designated resource land.~~

~~B. "Resource lands" means lands designated pursuant to Chapter 14.166 of the City Code as mineral resource lands.~~

~~14.170.030 Applicability:~~

~~A. General:~~

~~14.170.040 Title Notification:~~

~~The owner of any site within 300 feet of lands designated resource lands, for which an application for a regulated activity is submitted, shall record a title notice with the Pierce County Auditor. The notice shall be notarized and shall be recorded prior to approval of any development proposal for the site. Such notification shall be in the form as set forth below:~~

~~PROPERTY ADJACENT TO RESOURCE LANDS AREA TITLE NOTIFICATION~~

~~Parcel Number: _____~~

~~Parcel Address: _____~~

~~NOTICE: This parcel lies within 300 feet of land designated resource lands by the City. A variety of commercial and industrial activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of chemicals; or from spraying or extraction, which occasionally generates dust, smoke, noise, and odor. The City has established resource uses as priority uses on productive resource lands, and residents of adjacent property should be prepared to accept such inconveniences or discomfort from normal, necessary commercial resource lands operations.~~

~~Signature of Owner(s)~~

~~_____~~
~~date~~

~~(NOTARY ACKNOWLEDGMENT)~~

14.170.050 Plat Notification:

The owner of any site within 300 feet of land designated as resource lands, on which a Large Lot, Short Subdivision, or Formal Subdivision is submitted, shall record a notice on the face of the plat. Such notification shall be in the form as set forth below:

~~PROPERTY ADJACENT TO RESOURCE LANDS AREA PLAT NOTIFICATION~~

~~This property lies within 300 feet of land designated resource lands by the _____ City. A variety of commercial and industrial activities occur in the area that _____ may be inconvenient or cause discomfort to area residents. This may arise _____ from the use of chemicals; or from spraying or extraction, which occasionally _____ generates dust, smoke, noise, and odor. The City has established resource _____ uses _____ as priority uses on productive resource lands, and residents of adjacent _____ property should be prepared to accept such inconveniences or discomfort _____ from normal, necessary commercial resource lands operations.~~

~~14.170.060 Regulated Activities Notification.~~

~~The Department shall require that permits issued for regulated activities, as defined in 14.142.020, within 300 feet of lands designated as resource lands contain a notice as set forth below.~~

REGULATED ACTIVITIES NOTIFICATION

~~— This property lies within 300 feet of land designated resource lands by the City. A variety of commercial and industrial activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of chemicals; or from spraying or extraction, which occasionally generates dust, smoke, noise, and odor. The City has established resource uses as priority uses on productive resource lands, and residents of adjacent property should be prepared to accept such inconveniences or discomfort from normal, necessary commercial resource lands operations.~~

~~14.170.070 Severability.~~

~~If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.~~

Section 3. That new Chapters 14A.142, 14A.146, 14A.150, 14A.154, 14A.158, 14A.162, 14A.165 and 14A.170 are hereby adopted as follows:

Chapter 14A.142

CRITICAL AREAS AND NATURAL RESOURCE LANDS AUTHORITY, INTENT,
AND GENERAL PROVISIONS

Sections:

14A.142.010 Authority and Title.

14A.142.020 Intent.

14A.142.030 Interpretation.

14A.142.040 Applicability and Mapping.

14A.142.050 Permitted Uses.

14A.142.060 Regulated Uses/Activities.

14A.142.070 Exemptions.

14A.142.080 Reasonable Use Exception.

14A.142.090 Reasonable Use Exception And Modification Of Critical Area
Requirements For Individual Single-Family Residences

14A.142.100 Process.

14A.142.110 Variances.

14A.142.120 Current Use Assessment.

14A.142.130 Compliance Provisions.

14A.142.140 Appeal Procedures.

14A.142.150 Financial Guarantees

14A.142.160 Fees.

14A.142.170 Title and Plat Notification.

14A.142.180 Nonconforming Uses.

14A.142.190 Administrative Procedures and Technical Criteria.

14A.142.200 Severability.

14A.142.010 Authority and Title.

This Title (Lakewood Municipal Code Section 14A.142 through 14A.165) is established pursuant to the requirements of the Growth Management Act (RCW 36.70A.060) and the State Environmental Protection Act (RCW 43.21C). This Title shall be known as the "Critical Areas and Natural Resource Lands Regulations"

14A.142.020 Intent.

It is the intent of the Critical Areas and Resource Lands Regulations to:

- A. Designate and protect critical areas and natural resource lands, including wetlands, critical aquifer recharge areas, fish and wildlife habitat areas, geologically hazardous areas, flood hazard areas, and mineral resource lands.
- B. Protect the natural environment, including air and water, to preserve the community's high quality of life.
- C. Protect unique, fragile and valuable elements of the environment, including fish and wildlife habitat; including suitable habitats to maintain native fish and wildlife species within their natural geographic distribution so that isolated sub-populations are not created.
- D. Protect the public against losses from:
 - Costs of public emergency rescue and relief operations where the causes are avoidable.
 - Degradation of the natural environment and the expense associated with repair or replacement.
- E. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides, steep slope failures, erosion, seismic events, or flooding.
- F. Avoid, minimize and mitigate for impacts arising from land development and other activities affecting critical areas to maintain their ecological functions and values including water quality, flood attenuation, habitat, recreation, education, and cultural preservation.
- G. Provide the public with sufficient information and notice of potential risks associated with developing in and adjacent to critical areas.
- H. Implement the goals and requirements of the Growth Management Act and the Lakewood Comprehensive Plan.

14A.142.030 Interpretation.

In the interpretation and application of this Title, all provisions shall be:

- A. Considered the minimum necessary;

- B. Liberally construed to serve the purposes of this Title; and,
- C. Deemed neither to limit nor repeal any other powers under state statute.

14A.142.040 Applicability and Mapping.

A. Applicability.

This Title shall apply to all lands, land uses and development activity in the City which are designated as Critical Areas or Natural Resource Lands by the City, including wetlands. Properties containing critical areas or natural resource lands are subject to this Title. When the requirements of this Title are more stringent than those of other City codes and regulations, the requirements of this Title shall apply.

Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this Title.

B. Mapping.

Maps may be developed and maintained by the City which show the general location of critical areas for informational purposes. The actual presence of critical areas and the applicability of these regulations shall be determined by the classification criteria established for each critical area.

14A.142.050 Permitted Uses.

Uses permitted on properties designated as critical areas or natural resource lands shall be the same as those permitted in the zone classification shown in the City's Land use and Development Code unless specifically prohibited by this Title.

14A.142.060 Regulated Uses/Activities.

- A. Unless the requirements of this Title are met, the City shall not grant any approval or permission to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement including but not limited to the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; large lot subdivision, short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit; variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter.
- B. Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other Federal, State, or local law or regulation. Requirements include but are not limited to those of the U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, and the Washington Department of Ecology, which must be met prior to commencing

activities affecting wetlands, except as addressed in Section 14A.162.130 regarding Corps of Engineers Section 404 Individual Permits.

C. The following activities within a critical area and/or buffer, unless exempted by Section 14A.142.070, shall be regulated:

1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
2. Dumping, discharging or filling;
3. Draining, flooding or disturbing the water level or water table. In addition, an activity which involves intentional draining, flooding or disturbing the water level or water table in a wetland, in which the activity itself occurs outside the wetland and buffer, shall be considered a regulated activity.
4. Driving piling or placing obstructions, including placement of utility lines;
5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure;
6. Altering the character of a wetland by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting;
7. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland water sources, including changes in quantity of water and pollutant level;
8. Application of pesticides, fertilizers and/or other chemicals, unless demonstrated not to be harmful to wetland habitat or wildlife.
9. The division or redivision of land.

D. The Department may require protection measures or erosion control measures such as temporary or permanent fencing to provide for protection of a wetland and buffer when any of the above activities are proposed on a site, but are not proposed within a wetland and/or buffer.

14A.142.070 Exemptions.

The following activities are exempt from the provisions of this Title:

- A. Existing agricultural activities. The activities cease to be existing when the area on which they were conducted has been converted to a non-agricultural use or has lain idle both more than five years and so long that modifications to the hydrological regime are necessary to resume agricultural activities, unless the idle land is registered in a federal or state soils conservation program;
- B. Maintenance or reconstruction of existing roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities, provided that reconstruction does not involve significant expansion of facilities. Construction of curbs, gutters, sidewalks or other incidental improvements to existing roadways shall generally be considered to

fall within this exemption when undertaken pursuant to best management practices to avoid impacts to critical areas;

C. Activities on improved portions of roads, rights-of-way or easements, provided there is no expansion of ground coverage

D. Maintenance or reconstruction of existing regional storm drainage facilities, provided that reconstruction does not involve expansion of facilities;

E. For the following utility line activities, when undertaken pursuant to best management practices to avoid impacts to critical areas:

1. Normal and routine maintenance or repair of existing utility structures or right-of-way.

2. Relocation within improved rights-of-way of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less only when required by a local government agency.

3. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency which approves the new location of the facilities.

4. Installation or construction in improved City road rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.

5. Installation or construction in improved City road rights-of-way and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances.

F. A utility line (any pipe or pipeline that transports any gaseous, liquid, liquefiable or slurry substance, and any cable, line or wire for the transmission of electrical energy, telephone, and telegraph messages, and radio and television communication, not including activities which drain a wetland, but including pipes that convey drainage from one area to another) may be placed in an underground trench within a category 2, 3 or 4 wetland or its buffer. There must be no resulting changes in pre-construction contours, and trench excavation materials that are temporarily sidecast must be stabilized to prevent erosion and sedimentation. All sidecast materials shall be replaced within the trench or removed after 90 days, unless an extension is granted by the Community Development Department. The trench shall be the minimum size required to construct the utility line. The top 12" of the trench shall be backfilled with topsoil from the trench excavation. Trenches in wetlands shall be backfilled with wetland topsoil from the excavation, and appropriate vegetation planted to restore the site to a nearly as practical the pre-trenching condition. Trench excavation should be restricted to the dry season. All permits from other regulatory agencies must be obtained.

G. Reconstruction, remodeling, or maintenance of existing single-family residential structures and accessory structures, provided that cumulative expansion of the building footprint does not increase by more than twenty-five percent from its size as of October 8, 1991 (the effective date of Pierce County Critical Areas Regulations) and that the new construction or related activity does not further intrude into the

critical area or related buffer. The exemption shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a landslide hazard area;

H. Reconstruction, remodeling, or maintenance of structures, other than single-family structures and accessory structures, provided that such reconstruction, remodeling, or maintenance does not increase the floor area nor extend beyond the existing ground coverage. The exemption shall not apply to reconstruction which is proposed as a result of site or structural damage associated with a critical area, such as slope failure in a landslide hazard area;

I. Activities in artificial wetlands, except those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands;

J. Activities affecting:

- Category IV wetlands which are less than 1,000 square feet where the wetland is found to provide no special habitat functions for wildlife or special status plants or plant communities, and the hydrological functions of the exempted wetland are replaced to the satisfaction of the City Engineer, and ;

K. Activities in wetlands in areas managed according to a Special Area Management Plan or other plan adopted by the City and specifically designed to protect wetland resources;

L. Maintenance activities of landscaping and gardens in a wetland buffer, including, but not limited to, mowing lawns, weeding, harvesting and replanting of garden crops, pruning and planting of vegetation to maintain the condition and appearance of the site existing on February 1, 1992.

M. Activities designed for previously approved maintenance and enhancement of wetlands.

N. Placement of access roads, utility lines and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative.

O. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities;

P. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken.

Q. Activities undertaken to comply with the United States Environmental Protection Ecology Administrative Enforcement Order pursuant to the Model Toxins Control Act, including the following activities:

- (1) Remediation or removal of hazardous or toxic substances;
- (2) Source control; and
- (3) Natural resource damage restoration.

- R. Control of noxious weeds that are included on the State noxious weed list. Control methods shall be subject to review and approval of an abatement plan by the Department that minimizes the impacts to the critical area and any associated buffers.
- S. Activities undertaken on the site of an existing holding pond where the water flow and/or water table is controlled by a previously approved pump system.
- T. Public stormwater retention/detention facilities may be constructed within Category 2, 3 and 4 wetlands or their buffers provided that the following conditions are met: 1). no untreated stormwater is released directly into the wetlands; 2). water levels are monitored annually to ensure that pre-existing functions and values of the wetland are not significantly lost through fluctuations in wetland hydrology; 3). maintenance activity within the wetland is limited to removal of invasive vegetation and/or removal of sediment accumulation at inflow structures in a manner acceptable to the Community Development Department; 4). there is no loss of wetland area; 5) all construction activity is conducted in accordance with accepted BMPs; and 6) the stormwater management activity shall not adversely affect the hydro-period of the wetland or adversely affect water quality.

Stormwater conveyance facilities such as bio-swales, culverts, and open trenches, that are not designed to drain wetlands, may be placed within required buffers for category 1, 2, 3 and 4 wetlands, subject to meeting the conditions listed above. This conditional exemption would not apply in situations where there are threatened or endangered species, or sensitive plants, unless approved by the State Department of Fish and Wildlife or Department of Natural Resources, respectively. All permits from other regulatory agencies must be obtained.

- U. A residential building permit for a lot which was subject to previous reports and assessments as required under this Title; provided that the previous reports and assessments adequately identified the impacts associated with the current development proposal.
- V. The installation of an on-site sewage disposal system for a single or two-family dwelling may be permitted within an aquifer recharge area, subject to the issuance of a permit by the Tacoma-Pierce County Health Department (TPCHD) according to all Washington State Department of Health and Tacoma-Pierce County Board of Health requirements for on-site sewage disposal. The TPCHD shall verify and notify the applicant or applicant's agent that the approval of the on-site sewage disposal system design complies with all Washington State Department of Health and Tacoma-Pierce County Board of Health requirements. The development shall otherwise be subject to all of the other requirements and restrictions of this Title (including exclusion from other identified critical areas), the Lakewood Municipal code, and other applicable state and federal law.

14A.142.080 Reasonable Use Exception.

- A. If the application of this Title would deny all reasonable use of a site, development may be allowed which is consistent with the general purposes of this Title and the public interest.
- B. Nothing in this Title is intended to preclude all reasonable use of property. An applicant for a development proposal may file a request for a reasonable use exception which shall be considered as a Process III permit action by the City

Hearing Examiner at a public hearing, following notice, as required by the City Zoning Code. The request shall include the following information:

1. A description of the areas of the site which are critical areas and/or natural resource lands or within buffers required under this Title;
2. A description of the amount of the site which is within setbacks required by other standards of the zoning code;
3. A description of the proposed development, including a site plan;
4. An analysis of the impact that the amount of development described in subsection (3) would have on the natural resource land(s) or critical areas(s);
5. An analysis of what other reasonable uses with less impact on the natural resource land(s) or critical area(s) and associated buffer(s) are possible;
6. A design of the proposal so that the amount of development proposed as reasonable use will have the least impact practicable on the natural resource land(s) and/or critical area(s);
7. An analysis of the modifications needed to the standards of this Title to accommodate the proposed development;
8. A description of any modifications needed to the required front, side and rear setbacks; building height; and buffer widths to provide for a reasonable use while providing greater protection to the critical area(s) and/or natural resource land(s); and
9. Such other information as the Department determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development.
10. The Department will forward a copy of a request for reasonable use exception to the Washington State Departments of Fish and Wildlife and Ecology for review, comment, and recommendation.

C. The Hearing Examiner may approve the reasonable use exception, if the Examiner determines the following criteria are met:

1. There is no other reasonable use to the proposed development with less impact on the natural resource land(s) and/or critical area(s); and
2. The proposed development does not pose a threat to the public health, safety or welfare on or off the site; and
3. Any alteration of the natural resource land(s) and/or critical area(s) shall be the minimum necessary to allow for reasonable use of the property; and
4. The inability of the applicant to derive reasonable 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 October 8, 1991 (the effective date of Pierce County Critical Areas Regulations); and

5. The proposal mitigates the impacts on the natural resource land(s) and/or critical area(s) to the maximum extent possible, while still allowing reasonable use of the site.

6. For Reasonable Use Exceptions involving wetlands, the additional requirements of Section 14A.162.090.D shall apply.

D. Where appropriate in the context of Section 14A.142.110, the City shall give preference to the modification of the development standards set forth in the Land Use and Development Code (LMC Title 18A) as the first method to accommodate reasonable development on lots constrained by critical areas and/or their buffers.

14A.142.090 Reasonable Use Exception And Modification Of Critical Area Requirements For Individual Single-Family Residences

The purpose of this section is to provide an alternative to the full reasonable use exception process for an individual single-family residence on an existing, legal lot, while minimizing impacts to critical areas. The Director shall have the authority to grant minor variances and/or reasonable use exceptions to modify or waive some or all of the requirements of this chapter in accordance with the provisions of this section, subject to the following procedure:

A. The applicant for the modification or waiver of critical area requirements shall submit any critical area special studies following a preapplication review meeting as well as such other documents or studies, as requested by the Director.

B. The Director may adjust critical area requirements or grant minor variances for single-family residence applications provided:

1. The proposal is the minimum necessary to accommodate the building footprint and access. In no case, however, shall the building footprint and outdoor activity areas encroaching into the critical area or required buffer exceed 7,000 square feet.

2. Access shall be located so as to have the least impact on the critical area and its buffer.

3. The proposal shall be designed to preserve the functions and values of the critical area(s) to the maximum extent possible.

4. Adverse impacts resulting from alterations of steep slopes shall be minimized.

5. The proposal includes on-site mitigation to the maximum extent possible.

6. The proposal will not significantly affect drainage capabilities, flood potential, and steep slopes and landslide hazards on neighboring properties; and

7. The proposal first develops noncritical area land, then the critical area buffer before the critical area itself is developed.

C. The Director may require reasonable, non-compensatory mitigation measures to mitigate and minimize the loss of the functions and values of the critical areas and may impose mitigating conditions to the modification, waiver or variance in order to meet the standards of this subsection.

D. Modifications pursuant to this chapter that relate only to the buffer requirements for single-family residential permits shall be reviewed and decided as a Process 1 determination in conjunction with the Building Permit application. Modifications that would impinge upon the critical area itself or require an administrative building setback variance shall be reviewed and decided using Process 2 procedures.

E. This section shall not apply to the following critical areas:

1. Steep slope hazard areas that are unmitigatable landslide hazard areas;
2. Steep slope hazard areas of slope greater than 70 percent where either the lot or slope are abutting and above a class 1 or 2 wetland stream, and associated buffer, or an open stormwater conveyance system;

14A.142.100 Process.

- A. The Department shall perform a critical areas and natural resource lands review of any City permit or approval requested for any regulated activity including, but not limited to, those set forth in Section 14A.142.060, on a site which includes or is adjacent to or abutting one or more natural resource lands or critical areas and their buffers, unless otherwise provided in this Title.
- B. As part of all development applications:
 1. The Department shall review the information submitted by the applicant to:
 - a. Confirm the nature and type of the natural resource land and/or critical area and evaluate any required studies;
 - b. Determine whether the development proposal is consistent with this Title;
 - c. Determine whether any proposed alterations to the site containing natural resource lands or critical areas are necessary;
 - d. Determine if the mitigation and monitoring plans proposed by the applicant are sufficient to protect the public health, safety and welfare consistent with the goals, purposes, objectives and requirements of this Title.
- C. A threshold determination may not be made prior to Departmental review of any special studies or technical reports required by this Title, except where the applicant requests a declaration of significance so that environmental review is required.
- D. The City may approve, approve with conditions, or deny any development proposal in order to comply with the requirements and carry out the goals, purposes, objectives and requirements of this Title.
- E. Approval of a development proposal does not discharge the obligation of the applicant or any successors in interest to comply with the provisions of this Title.

14A.142.110 Variances.

Variance applications for exceptions to the development standards of the City's Land Use and Development Code may be used as a method for reducing impacts to critical areas. The City's Hearing Examiner or Community Development Director may consider impacts to critical areas as an undue hardship, and as a basis for finding that unique circumstances apply to a specific property in support of the granting of variances. Variance applications

shall be considered by the City according to variance procedures in the City Land Use and Development Code.

14A.142.120 Current Use Assessment

- A. The Department shall notify the Assessor-Treasurer's Office when restrictions on development occur on a particular site.
- B. The City shall provide the Assessor-Treasurer's Office with relevant information regarding critical areas and buffering requirements of this Chapter in determining the fair market value of the land. Any owner of an undeveloped buffer which has been placed in a separate tract or tracts, protective easement, public or private land trust dedication, or other similarly preserved area may petition the County Assessor-Treasurer's Office to have that portion of land assessed consistent with those restrictions

14A.142.130 Compliance Provisions.

1. General Provisions

- A. The Department shall have authority to enforce this Title, any rule or regulation adopted, and any permit, order or approval issued pursuant to this Title, against any violation or threatened violation thereof. The Department is authorized to issue civil infraction citations and administrative orders, levy fines, and/or institute legal actions in court including prosecution of misdemeanor violations. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this Title, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this Title, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. An application for a required permit, when pursued in good faith, shall stay the accumulation of violations. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.
- B. The Department is authorized to make site inspections and take such actions as necessary to enforce this Title. A Department representative may enter private property with the consent of the owner or occupant or pursuant to a warrant.
- C. The Department shall have the authority to order restoration, rehabilitation or replacement measures to compensate for the destruction or degradation of critical areas or natural resource lands at the owner's expense.
- D. The Department may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of critical areas or buffers which are inconsistent with this Title. Enforcement actions shall include civil infractions, administrative orders, prosecution of misdemeanors, and actions for damages and restoration.
- E. Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation of this Title.

F. Any person found to have violated any provision of this Title or who knowingly makes a false statement, representation or certification in any application, record or other document filed or required to be maintained under this Title or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this Title shall be guilty of a misdemeanor, punishable by up to 90 days in jail and/or a fine of up to \$1,000.00.

G. Orders and penalties issued pursuant to this Section may be appealed as provided for by this Title.

2. Administrative Orders

A. The Department may serve an administrative order when any person makes or partakes in any use of land, development or any activity on regulated critical areas and/or buffers in violation of this Title. The order shall include the following:

- (1) A description of the specific nature, location, extent and time of violation. The order may include the damage or potential damage resulting from the violation.
- (2) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.
- (3) Effective date. The cease and desist order issued under this Section shall become effective immediately upon receipt by the person to whom the order is directed.
- (4) Compliance. Failure to comply with the terms of an administrative order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
- (5) The order may include specific corrective measures to be taken to mitigate environmental damage.
- (6) The order shall state that a hearing may be requested by an affected party by sending a written request for a hearing to the Hearing Examiner within ten (10) days of the receipt of said order and upon payment of the applicable appeal fee.
- (7) Failure to comply with the terms and provisions of an administrative order issued under this Title shall constitute public nuisance and may be abated and prosecuted according to applicable law including Lakewood Municipal Code Section 8.16, RCW 7.48 and RCW 9.66.
- (8) Administrative orders pursuant to this Title shall be served upon the property owner or person or party occupying the property by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to the property owner at the property address or to the mailing address listed upon public records regarding the property. In the event that personal service or certified mail service cannot be completed, or the property owner cannot be identified or located, service of the order may be achieved by posting the administrative order in a conspicuous location upon the property.

B. Any person who undertakes any activity within a regulated critical area or buffer without first obtaining an approval required by this Title, or who violates one or more conditions of any approval required by this Title, shall be subject to a Class 2 civil infraction citation with a mandatory \$250.00 fine. Any person who violates one or more conditions of administrative order issued under this Title may be subject to prosecution for a misdemeanor, and a maximum penalty of 90 days in jail and/or a \$1,000.00 fine may be imposed. Each violation and, in the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. An application for a required permit, when pursued in good faith, shall stay the accumulation of violations. The penalty provided shall be appealable as provided by law.

3. Penalties and Enforcement.

Any person, party, firm, corporation or other legal entity convicted of violating any of the provisions of this Title, shall be guilty of a civil infraction or misdemeanor. Each day or portion of a day during which a violation of this Title is continued, committed, or permitted shall constitute a separate offense. Any development carried out contrary to the provisions of this Title shall constitute a public nuisance and may be enjoined as provided by the Statutes of the State of Washington.

4. Suspension and Revocation.

In addition to other penalties provided for elsewhere, the Department may suspend or revoke any project permit approval if it finds that the applicant has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application.

14A.142.140 Appeal Procedures.

Requests for reconsideration and appeals of a decision issued under this Title shall be considered by the City according to procedures provided in the City's Land Use and Development Code for the underlying permit or entitlement, or as an appeal of an administrative decision.

14A.142.150 Financial Guarantees

The City shall require an applicant to submit a financial guarantee to the City to guarantee any performance, mitigation or monitoring required as a condition of permit approval under this title. The permit shall not be granted until the financial guarantee is received by the Department.

A. Financial Guarantees required under this Title shall:

1. be in addition to the site development construction guarantee required by the City's Site Development Regulations.
2. be submitted on financial guarantee forms found in the City's Site Development Regulations Appendix;

3. be 125 percent of the estimate of the cost of mitigation or monitoring to allow for inflation and administration should the City have to complete the mitigation or monitoring;
4. be released by the City only when City officials have inspected the site(s) and the applicant's engineer and/or appropriate technical professional has provided written confirmation that the performance, mitigation or monitoring requirements have been met.

14A.142.160 Fees.

The City shall establish an appropriate fee structure for permit processing and technical review by separate resolution.

14A.142.170 Title and Plat Notification.

If more than one critical areas/resource lands exist on the site subject to the provisions of this Title, then one notice which addresses all of the critical areas/resource lands shall be sufficient.

14A.142.180 Nonconforming Uses.

An established use or existing structure that was lawfully permitted prior to adoption of this Chapter, but which is not in compliance with this Chapter, may continue subject to the following:

- A. Nonconforming uses shall not be expanded, or changed in any way that increases the nonconformity without a permit issued pursuant to the provisions of this Chapter;
- B. Existing structures shall not be expanded or altered in any manner which will increase the nonconformity without a permit issued pursuant to the provisions of this Chapter, except one-family dwellings and accessory structures may be expanded or altered as provided in Section 14A.142.070 G.;
- C. Activities or uses which are discontinued for twelve (12) consecutive months shall be allowed to resume only if they are in compliance with this Chapter; and
- D. Nonconforming structures destroyed by fire, explosion, or other casualty may be replaced or restored if reconstruction is commenced within one (1) year of such damage and is substantially completed within eighteen (18) months of the date such damage occurred. The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity.

14A.142.190 Administrative Procedures and Technical Criteria.

The Department shall develop administrative procedures, including technical requirements, to guide decision making in implementing provisions of this Chapter. In particular, the Department shall adopt procedures for determining the category of specific wetlands. In so doing, the Department shall solicit the views of wetland specialists, ecologists, developers and interested citizens. Administrative procedures can be modified from time to time, and can include material by reference to state or federal criteria subject to notice to the public and consideration of public views and input. Administrative procedures shall be made

available to the public upon request, and shall be consistent with the provisions of this Chapter. Upon request, the Department shall provide The City Council with copies of all administrative procedures, including modifications, to ensure consistency with the provisions of this Chapter.

14A.142.200 Severability.

If any provision of this Title or any of its subsections, or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

Chapter 14A.146

GEOLOGICALLY HAZARDOUS AREAS

Sections:

- 14A.146.010 Purpose.
- 14A.146.020 Designation of Erosion and Landslide Hazard Areas.
- 14A.146.030 Protection Standards in Erosion and Landslide Areas
- 14A.146.040 Designation of Seismic Hazard Areas.
- 14A.146.050 Protection Standards in Seismic Hazard Areas

14.146.010 Purpose.

The intent behind the classification and designation of geologically hazardous areas is to classify and designate areas on which development should be prohibited, restricted, or otherwise controlled because of danger from geological hazards. For purposes of this Title, geologically hazardous areas include the following: erosion and landslide hazard areas and seismic hazard areas.

14A.146.020 Designation of Erosion and Landslide Hazard Areas.

A. General.

Erosion hazard areas are those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion. Landslide hazard areas are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

B. Classification.

1. Criteria.

- a. Erosion hazard areas are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions which are vulnerable to erosion. Erosion hazard areas are those areas that are classified as having moderate to severe, severe or very severe erosion potential by the Soil Conservation Service, United States Department of Agriculture (USDA). The geologic units considered as potential erosion hazards within areas of slopes greater than 15% may consist of the following: m (modified land, Oal (alluvium), Qw (wetland deposits), Qb (beach deposits), Qtf (tide flat deposits), Qls (landslide deposits), Qf (fan deposits), the Qvr and Qvs series (Vashon recessional outwash, and Steilacoom Gravel), and Qvi (Ice contact deposits). These units are identified because of density and composition.
- b. Landslide hazard areas are those areas meeting any of the following criteria:

1. Areas of historic failures, including areas of unstable old and recent landslides;
2. Areas with all three of the following characteristics:
 - a. Slopes steeper than 15%; and
 - b. Hillsides intersecting geologic contacts with a relatively _____ permeable sediment overlying a relatively impermeable sediment or bedrock; and
 - c. Springs or groundwater seepage.
3. Slopes that are parallel or sub-parallel to planes of weakness, _____ such as bedding planes, joint systems, and fault planes, in _____ subsurface materials;
4. Slopes having gradients steeper than 80% subject to rockfall during seismic shaking;
5. Areas potentially unstable as a result of rapid stream incision, _____ stream bank erosion, and undercutting by wave action;
6. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;
7. Any area with a slope of 30 percent or steeper and with a vertical relief of ten or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least ten feet of vertical relief;
8. Areas which have a "severe" limitation for building site development because of slope conditions, according to the Soil Conservation Service.

2. Mapping.

_____ Areas meeting the criteria established above may be delineated in the following _____ documents:

- a. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA).
- b. Coastal Zone Atlas for Washington, Washington Department of Ecology;
- c. Areas designated as slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources Division of Geology and Earth Resources;

d. Geologic Map of the Steilacoom 7.5-Minute Quadrangle, Washington 2003.

14A.146.030 Protection Standards For Erosion And Landslide Hazard Areas

A. Prohibited Development Areas

In areas meeting all three of the following characteristics, no structure or disturbance of vegetation is permitted:

1. An area with a slope of 100% or steeper (45 degrees); and
2. hillside intersecting geological contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
3. springs or groundwater seepage.

B. Regulation- Geotechnical Report Required.

For all regulated activities proposed within landslide and erosion hazard areas, a geotechnical report prepared by a professional geotechnical engineer or geologist licensed by the State of Washington shall be submitted (See Subsection 2 below). Where the applicant can clearly demonstrate to the Department through submittal of a geological assessment (see Subsection 1 below) that the regulated activity or any related site alterations will not occur within the landslide or erosion hazard area or any associated buffers, the requirements for a geotechnical report may be waived. A geological assessment may be prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or by a professional geologist/hydrologist or soils scientist who has earned a bachelor's degree in geology, hydrology, soils science, or closely related field from an accredited college or university, or equivalent educational training, and has at least five (5) years experience assessing erosion and landslide hazards.

1. Geological Assessments.

- a. Should the applicant question the presence of landslide or erosion hazard areas on the site, the applicant may submit a geological assessment.
- b. The geological assessment shall include at a minimum the following:
 - (1) A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
 - (2) An evaluation of the analysis area's inherent landslide and erosion hazards; and

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- (3) A site plan of the area delineating all areas of the site subject to landslide and erosion hazards, based on mapping and criteria referenced in 14A.146.020 above.

The submittal must include a contour map of the proposed site, at a scale of 1"= 20 feet or as deemed appropriate by the Department. Slopes shall be clearly delineated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site specific conditions indicate the necessity, the Department may require the topographic data to be field surveyed.

2. Geotechnical Reports.

The geotechnical report shall be prepared by a professional geotechnical engineer or geologist licensed by the State of Washington, and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The geotechnical report shall include at a minimum the following:

a. Site Geology Information required:

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- (1) Topographic data. Submittal must include a contour map of the proposed site, at a scale of 1"= 20 feet or as deemed appropriate by the Department. Slopes shall be clearly delineated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site specific conditions indicate the necessity, the Department may require the topographic data to be field surveyed.
-
- (2) Subsurface data. Submittal must include boring logs and exploration methods; soil and rock stratification, groundwater levels and seasonal changes of groundwater levels. Subsurface data shall include any evidence of the presence of any organic fill or other conditions that would have the potential to affect buildings or development on the site.
-
- (3) Site history. Submittal must include a description of any prior grading, soil instability, or slope failure.
-
- (4) Seismic hazard. Submittal of data concerning the vulnerability of the site to seismic events, including potential for liquefaction of soils.

b. Geotechnical Engineering Information required:

-
- (1) slope stability studies and opinion(s) of slope stability for the pre-developed and post-developed condition. Site specific setbacks and buffers from landslide hazard areas should be based on the results of the stability analysis; _____

- (2) proposed angles of cut and fill slopes and site grading requirements;
- (3) structural foundation requirements and estimated foundation settlements;
- (4) soil compaction criteria;
- (5) proposed surface and subsurface drainage;
- (6) lateral earth pressures;
- (7) vulnerability of the site to erosion;
- (8) suitability of on-site soil for use as fill;
- (9) laboratory data and soil index properties for soil samples; and
- (10) building limitations.

Where a valid geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.

The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the ability of the proposed mitigation measures to reduce risks associated with the erosion and landslide hazard area.

3. Protection- Performance Standards.

The Department shall evaluate all geotechnical reports for landslide and erosion hazard areas to insure that the following standards are met:

a. Location and extent of development:

- (1) Development shall be located to minimize disturbance and removal of vegetation;
- (2) Structures shall be clustered where possible to reduce disturbance and maintain natural topographic character; and
- (3) Structures shall conform to the natural contours of the slope and foundations should be tiered where possible to conform to existing topography of the site.

b. Design of development:

- (1) All development proposals shall be designed to minimize the building footprint and other disturbed areas within the identified geologically hazardous area;
- (2) All development shall be designed to minimize impervious lot coverage;
- (3) Roads, walkways and parking areas shall be designed to parallel the natural contours;
- (4) Access ways shall be designed to avoid geological hazards to the extent feasible. If hazardous areas cannot be avoided, then hazards shall be mitigated as directed by a professional engineer licensed by the State of Washington.

The Department may approve, approve with conditions, or deny development proposals based on these performance standards.

4. Protection- Buffer Requirement.

A buffer, consisting of undisturbed natural vegetation, and measured (as shown in diagram 1) in a perpendicular direction from all landslide and erosion hazard areas, shall be required from the top of slope and toe of slope of all landslide or erosion hazard areas that measure 10 feet or more in vertical elevation change from top to toe of slope, as identified in the geotechnical report, maps, and field-checking. The minimum buffer distance requirements from the top of slope and toe of slope of landslide or erosion hazard areas shall be the same as for setbacks from slopes as identified in the International Building Code Section 1805.3, as may be amended by the State Building Code Council, or as indicated by a site-specific geotechnical report.. In addition, a setback from the buffer area shall be provided as described in Subsection 6 below. In no case shall the building setback from the top, sides and toe of a landslide hazard area be less than 10 feet.

To increase the functional attributes of the buffer, the Department may require that the buffer be enhanced through planting of appropriate native species that will provide effective protection against erosion and landslides. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing or construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site-clearing shall not commence until the engineer has submitted written notice to the Department that buffer requirements of this Chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and final approval has been granted by the Department. The identified critical area and buffer shall be placed in a separate critical area tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the Department.

5. Modifications to Buffer Width.

When the geotechnical report demonstrates that a lesser buffer distance, and design and engineering solutions, will meet the intent of this Chapter, such reduced buffer and design and engineering solutions may be permitted.

Should the geotechnical report indicate that a greater buffer than that required by Subsection 4 is needed to meet the intent of this Chapter, the greater buffer shall be required.

6. Building Setback and Construction near Buffer.

Eight foot minimum setback lines shall be required from the buffer area required in Subsection 4, for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within eight feet of the buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.

7. On-site sewage disposal systems.

On-site sewage disposal systems, including drain fields within landslide or erosion hazard areas and related buffers as identified in Subsection 4. shall meet all requirements of the Tacoma-Pierce County Board of Health and the Washington State Department of Health for on-site sewage disposal (WAC Chapter 246-272).

8. Erosion Control Plan.

Erosion control plans shall be required for all regulated activities in erosion hazard areas. The erosion control plans shall be consistent with the City Site Development Regulations, Section 3.04.

9. Notification.

a. Title Notification.

The owner of any site within an erosion hazard or landslide hazard area, as identified in LMC 14A.146.020, on which a development proposal is submitted, shall record a notice with the Pierce County Auditor in the form set forth below:

b. Form of Notice:

EROSION OR LANDSLIDE HAZARD AREA NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Present Owner: _____

Notice: This site lies within an erosion or landslide area as defined by Chapter 14A . ____ of the Lakewood Municipal Code. The site was the subject of a development proposal for _____

application number _____

filed on _____

(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the erosion or landslide hazard area and any restriction on use.

Signature of Owner(s)

(NOTARY ACKNOWLEDGMENT)

c. Plat Notification.

For all proposed short subdivision and subdivision proposals within erosion hazard or landslide hazard areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This site lies within or includes an erosion hazard or landslide hazard area as defined in Chapter 14.146 of the City Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

14A.146.040 Designation of Seismic Hazard Areas.

A. General.

Seismic Hazard Areas are areas subject to severe risk of earthquake damage from seismically induced settlement or lateral spreading as a result of soil liquefaction in an area underlain by cohesionless soils of low density and usually in association with a shallow ground water table.

B. Classification.

1. Criteria.

Seismic hazard areas are generally those areas susceptible to ground failure during seismic events. Failure can consist of soil liquefaction, slope failure, settlement, ground rupture, or lateral displacement. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils, usually fine sand, of low density, typically in association with a shallow groundwater table.

2. Mapping.

Seismic hazard areas may be identified using the Geologic Map of the Steilacoom 7.5-Minute Quadrangle, Washington 2003; and the "Preliminary Liquefaction Susceptibility Map of Pierce County, Washington, September 2003" published by the Washington Department of Natural Resources.

14A.146.050 Protection Standards in Seismic Hazard Areas

A. Regulation –Geotechnical Report Required.

For all regulated activities, except the construction of wood frame structures under 5,000 square feet, mobile homes, fences, and/or subdivision of property, proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering shall be submitted (see Subsection 2.

below). Retaining walls may also be excluded from the requirement of a geotechnical report when the height of soil fills on the upper side are not in excess of 4 feet above the toe of the wall, backfills do not exceed a top surface slope of 4:1 (H:V), and there is no permanent structure existing or proposed within a distance of 3 times the height of the wall. Where an applicant can demonstrate through submittal of a geological assessment (see Subsection 1.), that there are no seismic hazards on site, the requirement for the geotechnical report may be waived. A geological assessment may be prepared by a professional geotechnical engineer or by a professional geologist licensed by the State of Washington.

1. Geological Assessments.

- a. Should the applicant question the presence of seismic hazard areas on the site, the applicant may submit a geological assessment.
- b. The geological assessment shall include at a minimum the following:
 - (1) A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
 - (2) An evaluation of the analysis area's inherent seismic hazards; and
 - (3) A site plan of the area delineating all areas of the site subject to seismic hazards, based on mapping and criteria referenced in LMC 14A.146.040 above.

If the geological assessment demonstrates, to the satisfaction of the Department, that the proposed site is not located in any seismic hazard areas, based upon the criteria set forth in Subsection B. above, then the requirements of this Section shall not apply.

2. Geotechnical Report.

The geotechnical report shall be prepared by a professional engineer licensed by the State of Washington with experience in geotechnical engineering and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The geotechnical report shall include at a minimum the following:

- a. A discussion of the surface and subsurface geologic conditions of the site;
- b. A site plan of the area delineating all areas of the property subject to seismic hazards, based on mapping and criteria referenced in LMC 14.146.040 above;
- c. A discussion of mitigation measures which can be taken to reduce seismic risks associated from liquefaction, ground shaking, settlement or slope failure with the underlying surficial geology; and

d. An evaluation of the effectiveness of the proposed mitigation measures.

Where a valid geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.

The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the ability of the proposed mitigation measures to reduce seismic risks associated with the underlying surficial geology.

3. Notification.

a. Title Notification.

The owner of any site within a seismic hazard area as identified in LMC 14A.146.040, on which a development proposal is submitted, shall record a notice with the Pierce County Auditor in the form set forth below:

Form of Notice:

SEISMIC HAZARD AREA NOTICE

Parcel Number:

Address:

Legal Description:

Present Owner:

Notice: This site lies within a seismic hazard area as defined by Chapter 14.146 of the Lakewood Municipal Code. The site was the subject of a development proposal for

application number

filed on

(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of a seismic hazard area and any restrictions on use.

Signature of owner(s)

NOTARY ACKNOWLEDGMENT

b. Plat Notification.

For all proposed short subdivision and subdivision proposals within seismic hazard areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This site lies within a seismic hazard area as defined in Chapter 14.146, of the City Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

Chapter 14A.150

AQUIFER RECHARGE AREAS

Sections:

14A.150.010 Purpose.

14A.150.020 Designation of Aquifer Recharge Areas.

14A.150.030 Protection Standards in Aquifer Recharge Areas

14A.150.040 Hydrogeological Assessments

14A.150.010 Purpose.

The Growth Management Act requires the City of Lakewood to designate areas and adopt development regulations for the purpose of protecting areas within the city critical to maintaining ground water recharge and quality. The Growth Management Act, Water Pollution Control Act, Water Resources Act of 1971, and the Ground Water Quality Standards require that these actions be taken to protect ground water quality and quantity such that it's use as potable water can be preserved for current and future uses. This ordinance shall define a scientifically valid methodology by which the City of Lakewood will designate areas determined to be critical in maintaining both ground water quantity and quality. This ordinance shall specify regulatory requirements to be enacted when development within these areas is proposed to occur.

14A.150.020. Designation of Aquifer Recharge Areas.

A. General. Aquifer recharge areas are areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute to the replenishment of groundwater.

B. Classification. For the purposes of this Chapter, the boundaries of the City's aquifer recharge areas are:

1. The boundaries of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range, as identified in Map of Ground Water Pollution Potential, Pierce County, Washington, National Water Well Association, US Environmental Protection Agency; and
2. The Clover/Chambers Creek Aquifer Basin boundary, as identified in Draft Clover/Chambers Creek Basin Ground Water Management Program and Environmental Impact Statement, Brown and Caldwell for Washington State Department of Ecology.
3. Any site located within the Clover/Chambers Creek Basin boundary or the two highest DRASTIC zone boundaries is included in the aquifer recharge area.

14A.150.030 Protection Standards in Aquifer Recharge Areas.

1. Exemptions. In addition to the exemptions listed in LMC 14A.142.070, the following uses shall be exempt from the requirements of this Chapter:

- a. Sewer lines and appurtenances.

- b. Individual on-site domestic sewage disposal (septic) systems releasing less than 14,500 gallons of effluent per day, subject to permitting by the Tacoma-Pierce County Health Department

2. Plat Notification.

For all proposed short subdivision and subdivision proposals within the City, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This subdivision lies within an aquifer recharge area as defined in Chapter 14.150 of the Lakewood Municipal Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

3. Prohibited Activities.

Because of high potential for contamination, and low potential for remediation of groundwaters used as potable water sources, the following uses of land shall be prohibited within the City of Lakewood:

- A. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, and woodwaste. Inert and demolition waste landfills may be permitted subject to the requirements of Subsection 5 below.
- B. Underground injection wells, except as may be proposed by a public agency for remediation of groundwater contamination or aquifer enhancement.
- C. Metals mining
- D. New sand and gravel mining
- E. Wood treatment facilities
- F. Storage of more than 70,000 gallons of liquid petroleum or other hazardous substance.

4. Regulated Activities.

The following land uses may only be permitted after review and approval of a hydrogeological assessment by the Tacoma- Pierce County Health Department. Uses requiring a hydrogeological assessment may be conditioned or denied based upon the TPCHD's evaluation of the hydrogeologic assessment. Other state and federal regulations pertaining to the specific activities are listed should be referenced in the hydrogeologic assessment and agency review:

- (1) Above Ground Storage Tanks (WAC 173-303-640);
- (2) Automobile Washing Facilities (WAC 173-216, DOE Publication WQ-R-95-56);
- (3) Below Ground Storage Tanks (WAC 173-360);

- (4) Residential structures housing three or more units and utilizing on-site septic systems (WAC 246-272, TPCHD Regulations)
- (5) Sludge land application sites categorized as S-3, S-4 and S-5, as defined above;
- (6) Animal Containment Area (WAC 173-216, WAC 173-220);
- (7) Inert and demolition waste landfills (WAC 173-304);
- (8) Facilities with the potential to generate hazardous waste, including, but not limited to: boat repair facilities, biological research facilities, dry cleaners, furniture stripping, motor vehicle service garages, photographic processing, and printing shops. (WAC 173-303).

5. Storage Tank Permits.

The Fire Marshal specifically regulates and authorizes permits for underground storage tanks, pursuant to the Uniform Fire Code (Article 79) and this Chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (WAC 173-360). The TPCHD regulates and authorizes permits for the removal of underground storage tanks (Pierce County Code, Chapter 8.34).

a. Facilities with underground tanks. New Underground Tanks.

All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

1. Prevent releases due to corrosion or structural failure for the operational life of the tank;

2. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and

3. Use material in the construction or lining of the tank which is compatible with the substance to be stored.

4. The installation of underground storage tanks shall also be subject to state and local permit requirements.

b. Above ground tanks.

1. No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, groundwaters, or surface waters of Lakewood within an aquifer recharge area.

2. No new aboveground tank or part thereof, with the exception of tanks for potable water, shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.
3. A new aboveground tank that will contain hazardous substances shall be of double wall construction and shall include a secondary containment system separate from the tank that will hold 110% of the tank's capacity. The secondary containment system must be designed and constructed contain the material stored in the tank.

14A.150.040 Hydrogeological Assessments

- A. The hydrogeologic assessment may be submitted by a State of Washington licensed hydrogeologist, or Professional Engineer with a strong background in geology as demonstrated by course work from an accredited college or university. Persons who believe they are qualified to conduct a hydrogeologic assessment may petition the TPCHD for consent.
- B. The hydrogeologic assessment shall include, but is not limited to:
 - (1) Information sources;
 - (2) Geologic Setting-Include well logs or borings used to identify information;
 - (3) Background water quality;
 - (4) Groundwater elevations;
 - (5) Location/Depth to perched water tables;
 - (6) Recharge potential of facility site (permeability/transmissivity);
 - (7) Groundwater flow direction and gradient;
 - (8) Currently available data on wells located within 1,000 feet of site;
 - (9) Currently available data on any spring within 1,000 feet of site;
 - (10) Surface water location and recharge potential;
 - (11) Water source supply to facility (e.g. high capacity well);
 - (12) Any sampling schedules necessary;
 - (13) Discussion of the effects of the proposed project on the groundwater resource;
 - (14) Other information as required by the TPCHD.

C. Uses requiring a hydrogeologic assessment may be conditioned or denied based upon the TPCHD's evaluation of the hydrogeologic assessment. Any project denied a permit based upon the Tacoma-Pierce County Health Department's evaluation of the hydrogeologic assessment shall receive a written explanation of the reason(s) for denial and an explanation of measures required, if any, to comply with these regulations.

Chapter 14A.154

FISH AND WILDLIFE HABITAT AREAS

Sections:

14A.154.010 Purpose and Intent.

14A.154.020 Designation of Fish and Wildlife Habitat Areas

14A.154.030 Habitat Protection Standards.

14A.154.040 Title and Plat Notification.

14A.154.050 Habitat Protection for Rivers and Streams.

14A.154.060 Habitat Protection for Lakes.

14A.154.070 Habitat Protection for Ponds.

14A.154.090 Provisions for Buffers, Where Required.

14A.154.010 Purpose and Intent.

Many land use activities can impact the habitats of fish and wildlife. Where areas of critical fish and wildlife habitat are subject to development, land use shall be managed to protect critical habitats. Managing land use to protect critical habitats is intended to allow proposed development to occur in a manner that is sensitive to the habitat needs of critical fish and wildlife species. The purpose of this Chapter is to identify critical fish and wildlife habitat species and habitats and establish habitat protection procedures and mitigation practices that are designed to achieve no "net loss" of species and habitat due to new development or other regulated activities.

As a necessary first step in achieving the necessary protection of critical fish and wildlife species, it is the intent of this Chapter to:

- A. Define and identify critical fish and wildlife species and habitats;
- B. emphasize and encourage education, information and voluntary action to enhance, protect, rehabilitate, and restore critical fish and wildlife species and habitats;
- C. rely primarily upon existing procedures and laws, such as the State Environmental Policy Act, RCW 43.21C, the City's Shoreline Use Regulations and the Shorelines Management Act, RCW 90.58, that directly or indirectly, protect fish and wildlife species and habitats; and
- D. establish buffers adjacent to rivers, streams, and other identified critical habitat areas and locations to protect critical fish and wildlife habitats.

It is not intended that this Chapter repeal, abrogate, or impair any existing law or regulations. If the buffering provisions of this Chapter conflict with any existing City law or regulation, the more stringent shall apply.

14A.154.020 Designation of Critical Fish and Wildlife Habitat Areas.

- A. **General.** This Chapter applies to proposed regulated activities within critical fish and wildlife habitat areas. Critical fish and wildlife habitat areas are those areas identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both.

B. Identification of Critical Fish and Wildlife Species and Habitats.

1. Critical Fish and Wildlife Habitat Areas.

- a) Federal and State-Listed Species and their Associated Habitats. Areas which have a primary association with federally or state listed endangered, threatened, or sensitive species of fish or wildlife (specified in 50 CFR 17.11, 50 CFR 17.12, WAC 232-12-014 and WAC 232-12-297) and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Endangered, threatened, or sensitive species found in Lakewood are listed in Appendix B.
- b) Habitats and Species of Local Importance, including the following:
 - (1) Areas with which state listed monitor or candidate species or federally listed candidate species have a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Special status and monitored species potentially found in Lakewood are listed in Appendix B.
 - (2) Documented habitat areas or outstanding potential habitat areas for fish and wildlife species. These areas include specific habitat types which are infrequent in occurrence in Pierce County and Lakewood, and may provide specific habitats with which endangered, threatened, sensitive, candidate, or monitor species have a primary association, such as breeding habitat, winter range, and movement corridors. These areas include the following:
 - (a) Priority Oregon White Oak Woodlands
 - (b) Prairies
 - (c) Old growth forests
 - (d) Caves
 - (e) Cliffs
 - (f) Snag-rich areas
 - (g) Rivers and streams with critical fisheries as specifically set forth in 14A.154.050 B.;
 - (h) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

- (i) Waters of the state, including all water bodies classified by the Washington Department of Natural Resources (DNR) water typing classification system as detailed in WAC 222-16-030, together with associated riparian areas;
- (j) Lakes, ponds, streams, and rivers planted with game fish by a governmental entity or tribal entity;
- (k) State natural area preserves and natural resource conservation areas.

2. Mapping.

The resources listed below provide information on fish and wildlife habitat areas:

a. Puget Sound Environmental Atlas, Puget Sound Water Quality Authority.

b. The following Washington Department of Natural Resources documents and data sources:

1. Stream Typing Maps.
2. Natural Heritage Data Base.

c. The following Washington Department of Wildlife documents and data sources:

1. Priority Habitats and Species Program.
2. Non-game Data Base.
3. Washington Rivers Information System.

d. The following Washington Department of Fisheries documents:

1. Water Resource Index Areas (WRIA).

14A.154.030 Habitat Protection Standards.

A. Education and Information.

A voluntary education program to explain the need for and methods of habitat management will help provide for long-term protection and enhancement of critical fish and wildlife habitat areas. By informing citizens of the declining populations of several fish and wildlife species in Pierce County, the diminishing animal habitat available, and the management techniques that individuals can use to preserve and restore fish and wildlife habitat areas, the City can foster good stewardship of the land by property owners.

1. The Department will provide educational materials and lists of additional sources of information to applicants proposing regulated activities in the

vicinity of critical fish and wildlife habitat areas. Materials will be selected from a variety of state and local resources.

2. The Department will accumulate information on the number of proposed activities associated with fish and wildlife habitat areas as identified by this Chapter and indicated by County maps to be in the vicinity of identified critical fish and wildlife habitats pursuant to 14A.154.020. Information shall include the number of single family residences and other development occurring in the vicinity of critical fish and wildlife areas. Based on this information, additional regulations may be developed.

B. Use of Existing Procedures and Laws–Biological Assessments.

The primary procedures used to implement this Chapter shall include this Chapter itself, the City's Land Use and Development Code (particularly Section 18A.40.200 relating to riparian areas), the State Environmental Policy Act (RCW 43.21C), the City's Environmental Regulations, the State Shorelines Management Act (RCW 90.58), and the City's Shoreline Management Regulations.

Regulated activities subject to environmental review shall be reviewed with consideration for impacts on critical fish and wildlife habitat as identified in this Title. The Community Development Director may require a biological assessment prepared by a qualified wildlife biologist whenever the Director finds that a project site may contain, affect, or be affected by, species or habitats designated in this Chapter. Biological assessments shall be prepared in accordance with Appendix A, and are subject to the review and approval of the Director.

Projects undergoing review for fish and wildlife considerations shall be routed to the Washington Department of Fish and Wildlife, the Washington Department of Ecology, the US Fish and Wildlife Service, the US Army Corps of Engineers and any other appropriate state and federal agencies. These agencies will have an opportunity to provide specific habitat information on proposed development sites, advise the City of their jurisdiction and applicable permit requirements, and suggest appropriate project modifications and or other mitigation.

The City shall give substantial weight to the management recommendations contained in the Washington Department of Fish and Wildlife Priority Habitats and Species Program, particularly the management recommendations for Oregon White Oak Woodlands.

14A.154.040 Title and Plat Notification.

For regulated activities where a Habitat Assessment or Habitat Management Plan has been prepared as part of the proposal's environmental review, the owner of the site shall record a notice of the reports with the Pierce County Auditor so that information is known if the property ownership changes.

A. Title Notification.

The owner of any site where a habitat assessment or habitat management plan has been prepared for a development proposal shall record a notice with the Pierce County Auditor in the form set forth below:

Form of Notice:

FISH AND WILDLIFE HABITAT AREA NOTICE

Parcel Number:

Address:

Legal Description:

Present Owner:

Notice: This site lies within/ contains a critical fish and wildlife habitat area as defined by Chapter 14A.154 of the Lakewood Municipal Code. The site was the subject of a development proposal for

application number

filed on

(date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the fish and wildlife habitat area and any restriction on use.

Signature of Owner(s)

Date

(NOTARY ACKNOWLEDGMENT)

B. Plat Notification.

For all proposed short subdivision and subdivision proposals within critical fish and wildlife habitat areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

Notice: This site lies within/ contains a critical fish and wildlife habitat area as defined in Chapter 14A.154 of the Lakewood Municipal Code. Restrictions on use and alteration of the site may exist due to natural conditions of the site and resulting regulation.

14.154.050Habitat Protection for Rivers and Streams.

Regulated activities proposed along rivers and streams shall provide for habitat protection.

A. Habitat Protection for Rivers and Streams Shall be Provided Through Buffers.

1. The buffer, consisting of undisturbed natural vegetation, shall be required along all streams, as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water mark of the water body.

2. The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact proposed activities would have on the river or stream.

3. Buffer widths shall be as established by this Chapter or as required by LMC 18A.40.230 for Riparian Overlay areas, whichever is greater.

B. Critical Fishery Rivers and Streams Requiring Buffers. The following river and stream (segments) have been identified by the various Indian tribes, particularly the Puyallup Tribe, as being critical to anadromous fish and, therefore, requiring a larger buffer protection. Critical fishery rivers and streams include:

<u>Stream Name</u>	<u>WRIA #</u>	<u>Buffer Width In Feet</u>	<u>Tribe Identifying</u>
<u>Chambers Creek-</u>	<u>12.0007</u>	<u>150</u>	<u>Puyallup</u>
<u>Clover Creek</u>	<u>12.0007</u>	<u>50</u>	

C. Other Rivers and Streams Requiring Buffers. For rivers and streams other than Chambers and Clover Creek, a habitat protection buffer shall be provided as outlined in LMC Section 18A.40.230 (Riparian Overlay Zone), or 35 feet, whichever is greater.

14A.154.060 Habitat Protection for Lakes.

A. Regulated activities proposed on lakes that are urban in character will not be subject to the buffering requirements of this Chapter. The following lakes are urban in character:

- American
- Gravelly
- Louise
- Steilacoom

For proposed regulated activities on lakes that are subject to the State Shoreline Management Act, habitat protection shall be provided through education, voluntary agreements, and existing laws as referenced in 14A.154.030.B, and regulation via the City's Shoreline Master Program and Shoreline Management Regulations.

B. Regulated activities proposed on lakes that are not subject to the State Shoreline Management Act shall be subject to a 35 foot buffer requirement. The buffer, consisting of undisturbed natural vegetation, shall extend landward from the ordinary high water mark of the water body. Existing laws as referenced in Section 14A.154.030.B may also affect such proposals.

14A.154.070 Habitat Protection for Ponds

Regulated activities proposed on ponds will not be subject to the buffering requirements of this Section. Habitat protection for ponds shall be provided through education, voluntary agreements and existing laws as referenced in 14A.154.030.B. Ponds shall be regulated as wetlands where appropriate.

14A.154.090 Provisions for Fish and Wildlife Habitat Buffers, Where Required.

A. Building Setback and Construction near Buffer. A minimum setback of eight (8) feet from the buffer shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within eight feet of the buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.

B. Marking of the Buffer Area. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground.

C. Fencing from Farm Animals. The Director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the Director shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence around the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as not to interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

D. Enhancements to natural buffers consistent with the education program (such as re-vegetation or nest boxes) are allowed.

E. Allowable Activities Within Buffers. The following activities may occur within the buffer after notification to the Department, provided that any other required permits are obtained.

1. Removal of diseased trees and trees that present an imminent threat to properties. The Director may require a written report by a registered landscape architect, certified nursery professional, or certified arborist assessing the condition of any tree that is purported to be diseased or hazardous.

2. Repair of existing fences.

3. Construction, reconstruction, remodeling, or maintenance of docks and bulkheads as authorized and pursuant to the Shoreline Management Regulations.

4. Construction of a pervious path for purposes of private access to the shoreline.

5. Trimming of vegetation for purposes of providing view corridors, provided that trimming shall be limited to view corridors of 20 feet or less and provided that benefits of the buffer to fish and wildlife habitat are not reduced. Trimming shall be limited to pruning of branches and vegetation. Trimming shall not include felling or removal of trees.

6. Construction of public trails.

7. Roadways, bridges, rights-of-way, and utility lines where no feasible alternative exists, and where the development minimizes impacts on the stream and buffer area. Clear documentation explaining the lack of alternatives and measures taken to minimize impacts on the critical area and buffer shall be provided to the Community Development Department prior to approval.

Chapter 14A.158

FLOOD HAZARD AREAS

Sections:

14A.158.010 Purpose.

14A.158.020 Designation

14A.158.030 Protection

14.158.010 Purpose.

The purpose of this section is to:

- A. Promote the general health, welfare and safety of the city's residents.
- B. Prevent the establishment of certain structures and land uses unsuitable for human habitation because of the danger of flooding, unsanitary conditions or other hazards.
- C. Minimize the need for rescue and relief efforts associated with flooding.
- D. Help maintain a stable tax base by providing for sound use and development in flood-prone areas and to minimize prolonged business interruptions
- E. Minimize damage to public facilities and utilities located in flood hazard areas.
- F. Ensure that potential home and business buyers are notified that property is in a flood area.
- G. Minimize expenditure of public money for costly flood relief and control projects.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

14A.158.020 Designation.

All Areas of Special Flood Hazard shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA).

14A.158.030 Protection.

All development in Areas of Special Flood Hazard shall be regulated according to the City's Site Development Regulations, and Section 18A.40.100, Flood Hazard Overlay, of the City's Land Use and Development Code.

CHAPTER 14A.162

WETLANDS AREAS

Sections:

14A.162.010 Purpose.

14A.162.020 Designation of Wetland Areas.

14A.162.030 Wetland Categories.

14A.162.040 Regulated Activities.

14A.162.050 Exemptions.

14A.162.060 Special Permitted Uses

14A.162.070 Delineation and Wetland Analysis Requirements.

14A.162.080 Protection Standards- Establishing Buffers.

14A.162.090 Protection Standards for Allowing Regulated Activities in Wetlands and Buffers

14A.162.100 Mitigation.

14A.162.110 New Agricultural Activities.

14A.162.120 Alternative Review Process, Corps of Engineers Section 404 Individual Permits.

14A.162.130 Wetland Review Procedure and Fees and Title Notification.

14A.162.140

14A.162.010 Purpose.

The purpose of these regulations is to avoid, or in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands, and to maintain and enhance the biological and physical functions and values of wetlands with respect to water quality maintenance, stormwater and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, education, and historic and cultural preservation. When avoiding impacts is not reasonable, mitigation shall be implemented to achieve no net loss of wetlands in terms of acreage, function and value.

14A.162.020 Designation of Wetland Areas.

The City will require the use of the following documents to determine the presence or absence of potential wetlands:

- a. Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Corps of Engineers Wetlands Delineation Manual, 1987 Edition and corresponding guidance letters; and
- b. Washington State Wetlands Identification and Delineation Manual, March 1997 Edition (DOE Publication 96-94).

14A.162.030 Wetland Categories.

In order to provide information on the functions and values of wetlands in a time- and cost-effective way, wetland analysis reports shall categorize wetlands by their attributes and characteristics. Wetlands shall be rated using the latest adopted version of the *Washington State Wetland Rating System for Western Washington* published by the Washington State Department of Ecology. ("State Wetland Rating System").

The State Wetland Rating System provides the detailed criteria for establishing wetland categories. Wetlands are generally designated as follows:

Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. Generally, these wetlands are not common and make up a small percentage of the wetlands in the region. The following are considered Category I wetlands:

- Bogs
- Mature and Old-growth Forested Wetlands
- Wetlands That Perform Many Functions Very Well- Wetlands scoring 70 points or more (out of 100) using the *Washington State Wetland Rating System for Western Washington*, Ecology Publication # 04-06-025.

Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands in western Washington include "Wetlands That Perform Functions Well"- Wetlands scoring between 51-69 points (out of 100) using the *Washington State Wetland Rating System for Western Washington*. Wetlands scoring 51-69 points were judged to perform most functions relatively well, or performed one group of functions very well and the other two moderately well.

Category III wetlands are wetlands with a moderate level of functions (scores between 30 -50 points) using the *Washington State Wetland Rating System for Western Washington*. Category III wetlands usually have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

Category IV wetlands have the lowest levels of functions (scores less than 30 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. These wetlands may provide some important functions.

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14.162.040 Regulated Activities.

A list of regulated activities is included in Section 14A.142.070 of the General Provisions section of this Title.

14.162.050 Exemptions.

A list of exempt activities is included in Section 14A.142.080 of the General Provisions section of this Title.

14A.162.060 Special Permitted Uses

A. The following uses are normally regulated but may be allowed, subject to a Process I administrative determination by the Director, provided the listed criteria are met.

B. Educational and Recreational Facilities.

Minor structural fill may be allowed for the construction and enhancement of public trails, such as bridging, and trail-related facilities such as benches, interpretive signs, and viewing platforms. Construction of such features on all previously filled areas is allowed. The following conditions must be met:

1. An alternative location outside the wetland is not feasible. Trails and related facilities within wetlands shall, to the extent possible, be placed on other previously disturbed areas;
2. Associated facilities, such as interpretive centers, restrooms, or parking areas are not allowed within wetlands or buffers by this Conditional Exemption;
3. The fill on which the trails or trial-related facilities is placed is limited to the minimum dimensions necessary for the actual crossing and shall not cover more than 5,000 square feet of wetland area;
4. Project design shall minimize adverse impacts to wetlands/buffers and wildlife habitat. Pervious surfaces shall be used;
5. All construction work in the wetland shall be done during the summer dry season (July 15 to October 15). A time extension may be granted by the Department;
6. Native vegetation disturbed by trail construction activities shall be salvaged and replanted in the disturbed areas to the extent feasible.

C. Minor road or trail crossings.

Fills for the construction of a road or trail crossing shall be allowed in wetlands or buffers provided that crossings of wetlands shall be avoided to the extent possible. Fills for the construction of a road crossing through a Category I wetland shall not be allowed by this Conditional Exemption. Crossings shall follow the following criteria:

1. An alternative location outside the wetland is not reasonably feasible;
2. The fill on which the road or trail is placed is limited to the minimum dimensions necessary for the actual crossing;
3. The fill placed in wetlands is shall not cover more than 5,000 square feet of wetland area;
4. Crossings shall utilize design which minimizes the adverse impacts to the wetland and hydrology of the existing system;
5. Wetland disturbance shall be limited to no greater than five feet beyond the designated toe-of-fill;
6. All construction work in the wetland shall be done during the summer dry season (July 15 to October 15). A time extension may be granted in writing by the Department ; and
7. Crossing shall serve multiple purposes and properties, whenever possible.

D. Erosion Control.

Bank stabilization activities necessary for erosion prevention shall be allowed in buffers and Category II, III, and IV wetlands as part of a single and complete project. Bank stabilization projects shall meet all other applicable local, state and federal laws and the following criteria:

1. The minimum amount of material needed for erosion prevention is used;
2. The bank stabilization activity is no more than 500 feet in length, 15 feet high, and will not exceed an average of 1/2 cubic yard of fill per running foot of bank;
3. No material is placed in any location or manner that may impair surface water movement into or out of any wetland area or other water body;
4. No material is placed in any location or manner that may be eroded by normal or anticipated high flows; and
5. The disturbed area shall be re-vegetated within 60 days after completion of the project with native species indigenous to the site. Hydro-seeding with approved mix may be used for temporary erosion control.

E. The construction of utility lines and poles in Category II, III or IV wetlands and buffers provided there are no feasible alternatives and impacts are mitigated.

14A.162.070 Delineation, and Wetland Analysis Requirements.

A. Wetland Review Procedures - General Requirements.

1. The Critical Areas Atlas – City Wetland Inventory Maps provide an indication of where potential wetlands are located within the County. The actual presence or location of a potential wetland or a potential wetland that has not been mapped, but may be present on or adjacent to a site shall be determined using the procedures and criteria established in this Chapter.
2. The Department will complete a review of the Critical Areas Atlas – Wetland Inventory Maps and other source documents for any proposed regulated activity to determine whether the project area for a proposed single-family dwelling unit or other proposed development is located in the vicinity of a known wetland. Identification of a potential wetland may also occur as a result of field investigations conducted by Department staff.
3. When the Department's maps, sources, or field investigation indicate that a potential wetland is located within 200 feet of the project area for a proposed one family dwelling unit or other proposed regulated activities, the Department shall require a Wetland Verification Report to determine whether or not a regulated wetland is present and if so, its relative location in relation to the proposed project area or site. The findings of the Wetland Verification Report shall be documented as outlined in Subsections 14A.162.070.B.1 below.

4. If Department staff completes a field investigation and determines that no regulated wetlands are present, then wetland review will be considered complete.

5. If it is determined that a wetland exists within 165 feet of a project site, then a Wetland Analysis Report shall be required. All wetland analysis reports shall include a proposed categorization of the wetland in accordance with the guidelines set forth in Section 14A.162.030, and a calculation of the standard wetland buffer as set forth in Section 14A.162.080.

B. General Wetland Review. General wetland review shall include the submittal of a wetland verification report or a wetland analysis report, together with a wetland review fee as established in the City's Fee Schedule.

1. Wetland Verification Report.

a. A wetland verification report shall be submitted when a field investigation or review of the City's Critical Areas Atlas determines that a regulated wetland may be present within 200 feet of the site.

b. A wetland verification report may determine that:

(1) No regulated wetland is, in fact, present within 200 feet of the project site; or

(2) Wetlands are identified but are evaluated and found to be non-regulated; or

(3) A regulated wetland is present within 200 feet of the project site, in which case a Wetland Analysis Report may be required to determine the limits of the wetland, its classification and appropriate buffer width and other appropriate mitigations necessary to protect the wetland functions and values; or

(4) A regulated wetland is present, however categorization can be summarily determined and it is apparent that the standard buffer does not extend within the site; or

c. The wetland verification report shall include data sheets, site maps, and other field data and information necessary to confirm wetland presence or absence and category. If non-regulated wetlands are identified, a site plan must be provided that identifies their location.

d. The wetland verification report shall identify and discuss wetland boundaries within the site as well as those that extend offsite. Offsite wetlands and associated standard buffers do not have to be marked in the field.

e. Department staff shall review the wetland verification report and either:

(1) Accept the report and approve the wetland application; or

(2) Reject the report and require the submittal of a wetland analysis report.

2. Wetland Analysis Report.

a. If a regulated wetland or its standard buffer extends onto the site, the Department shall require a wetland analysis report. Information required in a wetland analysis report is identified in Appendix C of the *Critical Areas Regulations- Administrator's Manual*.

b. If the Department determines that a Category I wetland is onsite which is associated with documented habitat for endangered, threatened, or sensitive species or for potentially extirpated plant species recognized by State or Federal agencies, the Department shall

also require the submittal of a habitat assessment report as set forth in Chapter 14A.154.030.B

c. If the Department determines that additional mitigation is necessary to offset the identified impacts, the applicant shall comply with the additional mitigation requirements set forth in the Wetland Analysis Report, biological assessment, or SEPA determination.

d. The Department shall review and approve the wetland analysis report to determine the appropriate wetland category and buffer, and shall include the wetland in the City's Wetland Atlas. The Department shall approve the report's findings and proposals unless specific, written reasons are provided which justify not doing so.

e. Approval of the wetland review shall be concluded upon a determination that the wetland analysis report and mitigation plan, if applicable, are thorough and accurate, and meet all requirements of this Title, and that the monitoring program and contingency plan are tied to an acceptable financial guarantee as set forth in Section 14A.142.150 to assure that the requirements will be followed.

14A.162.080 Protection Standards- Establishing Buffers.

A. Buffer widths shall be determined according to the following table:

<u>Wetland Category</u>	<u>Buffer Width</u>
<u>I</u>	<u>200 feet</u>
<u>II</u>	<u>100 feet</u>
<u>III</u>	<u>75 feet</u>
<u>IV</u>	<u>50 feet</u>

B. Buffer widths may be modified by averaging, reducing, or increasing.

1. Buffer width averaging may be allowed only where the applicant demonstrates the following:

- a. Buffer encroachment is unavoidable.
- b. A habitat assessment has been submitted which demonstrates that the site does not provide habitat for any endangered, threatened, or sensitive fish or animal species; or,
- c. For wetlands and/or required buffers associated with documented habitat for endangered, threatened, or sensitive fish, or wildlife species, a habitat assessment report has been submitted that demonstrates that the buffer modification will not result in an adverse impact to the species of study.
- d. The wetland contains variations in sensitivity due to existing physical characteristics; and
- e. Width averaging will not adversely impact the wetland or critical fish and wildlife habitat; and
- f. The total buffer area after averaging is no less than the buffer area prior to averaging; and

g. The minimum buffer width will not be less than twenty-five percent of the widths established in 14A.162.080.A above.

h. The averaging is accomplished within the project boundaries.

i. Buffer width averaging shall only be permitted where it is shown that there is no feasible alternatives to the site design that could be accomplished without buffer averaging.

2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a thirty-five percent (35%) reduction in the buffer width established in 14A.162.080.A. and shall result in a buffer no less than 30 feet in any case.

a. The proposed buffer area is extensively vegetated and has less than fifteen percent slopes, and the reduction will not result in adverse impacts to the wetland; or

b. The project includes a buffer enhancement plan, as part of the mitigation required by Section 14A.162.100. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or

c. The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan which ensures that the reduction will not result in adverse impacts to the wetland.

3. The Department may require increased buffer width when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

a. A larger buffer is necessary to maintain viable populations of existing species; or

b. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas; or

c. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

d. The adjacent land has minimal vegetative cover or slopes greater than fifteen percent.

C. Buffers shall be measured perpendicular from the wetland edge.

D. When buffer boundaries have been determined, they shall be marked in the field by a licensed surveyor. The markers shall be clearly visible, durable, and permanently affixed to the ground.

E. A building setback line of eight (8) feet shall be required from the edge of a buffer.

F. Except as otherwise specified, buffers shall be retained in a natural condition.

G. A wetland buffer shall not be required to extend beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure, where the existing improvement obviates the beneficial impact that the buffer would provide for the wetland.

14A.162.090 Protection Standards for Allowing Regulated Activities in Wetlands and Buffers.

A. Regulated activities in Category III and IV wetlands and/or buffers for Category III and IV wetlands may be allowed when the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100;

B. The placement of access roads, utility lines, and utility poles may be allowed in buffers for Category II wetlands if the following conditions are met:

1. There is no feasible alternative location for an access road and/or utilities to the site; and

2. The applicant demonstrates that all adverse impacts to wetlands will be mitigated according to a mitigation plan which complies with Appendix C.

C. The following activities may be allowed in a buffer without a complete mitigation plan if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100. In cases that require environmental review, a threshold environmental determination may not be made until the Department is satisfied that adequate mitigation will occur. The allowed activities are as follows:

1. One well and necessary appurtenances, including a pump and appropriately sized pump house, but not including a water storage tank (unless the water storage tank can be contained within the pump house), may be allowed on each site in a buffer if all the following conditions are met:

a. The pump house is a one story building with a ground area of less than 220 square feet; and

b. The well is more than 75 feet deep; and

c. For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is no less than fifty percent of the buffer widths established in the table in Section 14.162.070 A.; and

d. Access to the well and pump house shall be by a pervious trail for pedestrian traffic only, or, if necessary, by an unimproved access for a maintenance vehicle.

2. Pervious trails and associated viewing platforms, provided that in the case of Category I wetlands the minimum distance from the wetland edge is no less than fifty percent of the buffer width established in the table in Section 14.162.070 A.

3. The placement of utility lines which do not require excavation, or utility poles, in any part of a buffer for a Category II, III, or IV wetland. They may be placed in a buffer for a Category I wetland, provided that the minimum distance from the wetland edge is no less than fifty percent of the Category I buffer width established in the table in Section 14.162.070 A.

4. Activities within that area of a buffer in which a direct line to the wetland is obstructed by an existing substantial improvement such as an improved road or a permanent structure, the presence of which significantly reduces the likely impact of the proposed activity on the wetland.

A zoning certification, building permit, and/or site development permit shall not be issued for these regulated activities until the applicant demonstrates to the satisfaction of the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100.

D. Reasonable Use Exception- Category I and II Wetlands: Regulated activities in Category I and II wetlands and/or buffers for Category I and II wetlands may be allowed only if, following a public hearing, the Hearing Examiner determines that a reasonable use exception is warranted pursuant to LMC Section 14A.142.080, and the following criteria are met:

1. No reasonable use with less impact on the wetland is possible; and
2. There is no feasible on-site alternative to the proposed activities, including phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning and density considerations, that would allow a reasonable economic use with less adverse impacts to wetlands; and
3. The proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and
4. The disturbance of wetlands has been minimized by locating any necessary activities outside the wetland to the extent possible; and
5. The proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats; and
6. The proposed activities will not cause significant degradation of groundwater or surface water quality; and

7. The proposed activities comply with all state, local and federal laws, including, but not limited to, those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal; and
8. Any and all regulated activities in wetlands and buffers will be mitigated according to Section 14A.162.100. The Examiner may require the preparation of a formal mitigation plan; and
9. There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
10. The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this Chapter.

E. Reasonable Use Provision, Categories III and IV Wetlands: If an applicant for a regulated activity on a Category III or IV wetland and/or associated buffer cannot obtain permission through the procedures described in 14A.162.090 A. and 14A.162.090 C., the activity may be allowed if, following a public hearing, the Hearing Examiner determines the criteria of 14.162.090 D. are met.

14.162.100 Mitigation.

A. All activities in wetlands and/or buffers shall be mitigated according to this Section. Usually, mitigation is considered in order of preference, however there may be circumstances when an alternative mitigation strategy is preferable.

The order of preference for mitigation is:

1. Avoiding the impact altogether by not taking a certain action or parts of actions, and providing specified buffers and setbacks. Provision of specified buffers and setbacks is the expected method of mitigation unless an activity is listed as exempt, a reasonable use exception has been granted according to the provisions of this Chapter, or an appropriate alternative mitigation program has been approved through a formal mitigation plan.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to reduce impacts;
3. The following types of mitigation (no order of preference):
 - a. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - b. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

c. Compensating for the impact by replacing or providing substitute resources or environments, however compensatory mitigation shall not be required for reasonable use exceptions;

4. Monitoring the impact and compensation and taking appropriate corrective measures.

5. Mitigation for individual actions may include a combination of the above measures.

B. Regulated activities which occur in buffers or within Category III and IV wetlands shall be mitigated according to a mitigation plan approved by the Department. See Appendix D for specific requirements of this mitigation plan. Where environmental review is required, a threshold determination may not be made prior to Department review and approval of the mitigation plan.

C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands (except where the filling or other regulated activity has been found to be necessary to provide for reasonable use of a property through the reasonable use exception process). Compensatory mitigation programs shall meet the following minimum requirements:

1. A wetland specialist shall develop a compensatory mitigation plan that provides for construction, maintenance, and monitoring of any replacement wetlands;

2. The applicant and/or applicant's representatives shall demonstrate to the Department sufficient scientific expertise to carry out the compensation project;

3. The compensation area shall be provided with permanent protection and management to avoid further degradation and to provide for the long term persistence of the compensation area as designed.

4. The compensatory mitigation plan shall be completed in two phases, a conceptual phase and a detailed phase.

a. Conceptual Phase. The applicant shall submit to the Department a conceptual mitigation plan for compensatory mitigation. Where environmental review is required, the Department shall not make a threshold determination prior to Department review of the conceptual mitigation plan. See Appendix E for specific requirements of the conceptual mitigation plan.

b. Detailed Phase. Following the Department's approval of the conceptual mitigation plan, the applicant shall submit a detailed mitigation plan for compensatory mitigation to the Department. See Appendix F for specific requirements of the detailed mitigation plan.

5. The detailed mitigation plan shall be signed by the wetland specialist to indicate that the plan is according to specifications determined by the

wetland specialist. A signed original mitigation plan shall be submitted to the Department.

6. Approval of the detailed mitigation plan shall be signified by a notarized memorandum of agreement signed by the applicant and Department Director or designate, and recorded with the County Auditor. The agreement shall refer to all requirements for the mitigation project.

7. The mitigation project shall be completed according to a schedule agreed upon between the Department and the applicant.

8. Wetland mitigation shall occur according to the approved wetland mitigation plan, and shall be consistent with provisions of this Chapter.

9. On completion of construction for the wetland mitigation project, the wetland specialist shall notify the Department. The Department will inspect and review the construction project prior to acceptance.

14.162.110 New Agricultural Activities.

An applicant may use the following procedure to initiate agricultural activities:

A. Where the Department determines that a regulated wetland may be present within 150 feet of the proposed activity, the applicant shall select one of the following options:

1. The applicant shall provide the Department with a report prepared by a wetland specialist which recommends the appropriate wetland category and includes rationale for the recommendation. The Department will review and approve the wetland category and buffer as follows:

<u>Wetland Category</u>	<u>Buffer</u>
<u>I</u>	<u>150 feet</u>
<u>II</u>	<u>100 feet</u>
<u>III</u>	<u>50 feet</u>
<u>IV</u>	<u>25 feet</u>

2. Alternatively, the Department, upon request, shall determine the appropriate wetland category. The buffer width shall be according to the table in 14A.162.110.A.1

B. The Department will determine whether the activity would intrude into the buffer, the wetland, or both.

1. If the Department determines that the proposed activity may intrude into the wetland and/or buffer, the applicant shall prepare a delineation report subject to approval by the Department; or

2. If the Department determines that the proposed activity may intrude only into the buffer, the Department, upon request, shall delineate the wetland.

C. Following approval of the delineation report or the Department's completion of the delineation, the applicant shall place permanent, clearly visible markers on-site at the edge of the buffer. Placement of markers by a licensed surveyor is not required. No regulated activities shall occur within the wetland and/or buffer except as allowed in 14A.162.110.D. Temporary intrusion into the buffer necessary for construction activities may be allowed if the buffer can be adequately restored. Livestock shall be fenced from the wetland and buffer, unless requirements of 14A.162.110.D are met.

D. Agricultural activities may be initiated:

1. In a buffer, if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated.
2. In the wetland after Department approval of the following reports, which shall be prepared by a wetland specialist obtained by the applicant:
 - (a) A report which recommends the appropriate wetland category and includes rationale for the recommendation, unless the category has already been determined by the Department; and
 - (b) A wetland delineation report, unless a delineation has already been approved by the Department; and
 - (c) A Best Management Plan developed by the Pierce County Conservation District or U.S.D.A. Soil Conservation Service. A wetland specialist shall review the plan and specify mitigation for all impacts to wetlands, other than water quality impacts reviewed by the Conservation District or Soil Conservation Service; and
 - (d) A report prepared by a wetland specialist which demonstrates that the proposed activity:
 - (1) Will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats;
 - (2) Will not cause significant degradation of groundwater or surface water quality; and
 - (3) Will not damage public or private property and will not threaten public health or safety.

14.162.120 Alternative Review Process, Corps of Engineers Section 404 Individual Permits.

- A. The alternative review process outlined below will be used in cases where a Section 404 individual permit is required from the U.S. Army Corps of Engineers. (Refer to 33 CFR § 320.1, § 323.2(g), and § 325.5(b)(1)).
 1. The applicant shall notify the Department when the applicant applies for the Section 404 permit or contacts the Corps concerning a specific project. The applicant shall apprise the Department of the Corps' permitting process, including notifying the Department of all hearings or meetings scheduled to discuss the applicant's project, potential mitigation or approval. The review process of the Corps will substitute for the review process outlined in Section 14A.162.130. The City participation in the Corps' review process does not constitute approval of the applicant's project by the City. The substantive provisions of this Chapter are still applicable and authorization of regulated activities will be approved or denied by the Department based upon those provisions. However, the Department shall consider the mitigation requirements as set forth by the commenting agencies during the Corps' review process and shall concur with that mitigation, if it is functionally equivalent with the requirements of this Chapter.
 2. The applicant shall submit the information specified in Section 14A.162.070 and 14A.162.100 to the Department when filing for

the Corps permit. The Department may also require the submittal of any additional information deemed necessary.

3. Notice of Application: A notice of application will be required for any permit applications subject to LMC 18A.02.670.

14A.162.130 Wetland Review Procedure, Fees, and Title Notification.

- A. **Procedure.** The provisions of this section regarding wetlands regulation shall be incorporated and integrated into other City permitting requirements including, but not limited to , the review and issuance of zoning certifications, site development permits, clearing and grading permits, building permits, environmental reviews under SEPA, administrative and conditional use permits, shoreline permits and subdivisions.
- B. **Fees.** Each applicable fee shall be payable at the time the applicant submits an application or document to which a fee applies according to the City's Fee Schedule.
- C. **Notice on Title.** When the City determines that activities not exempt from this Chapter are proposed, the property owner shall file for record with the Pierce County Auditor a notice approved by the Department in a form substantially as set forth below. The notice shall provide notice in the public record of the presence of a wetland or buffer, the application of this Chapter to the property, and that limitations on actions in or affecting such wetlands and buffers may exist. The notice shall be notarized and shall be recorded prior to approval of any land use proposal for the site.

Notice on title is not required for utility line easements on lands not owned by the jurisdiction conducting the regulated activity.

Form of notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Tax Parcel Number: _____

Name: _____

Address: _____

Legal Description: _____

NOTICE: This property contains wetlands or wetland buffers as defined by the City Code 14.162. Restrictions on use or alteration of the wetlands or wetland buffers may exist due to natural conditions of the property and resulting regulations.

Signature of owner _____

Date: _____

(NOTARY ACKNOWLEDGMENT)

D. Wetland Tract.

1. Prior to final approval of any development application on a property containing a wetland or wetland buffer, the part of the wetland and/or buffer which is on the site shall be placed in a separate wetland tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the City. All wetland tracts, protective easements, land trust dedications and other similarly preserved areas shall remain undeveloped in perpetuity, except as they may be allowed to be altered pursuant to this Chapter.
 2. Prior to final approval of any development application on a property containing a wetland or wetland buffer, the common boundary between a wetland tract, protective easement, land trust dedication, or other similarly preserved area and the adjacent land shall be permanently identified with permanent signs. Sign locations, wording, and size and design specifications shall be as required by the Department.
 3. At any time after a wetland tract, protective easement, land trust dedication, or other similarly preserved area has been established, the owner may submit a delineation report to the Department. If the Department determines that a boundary change has occurred, or that a wetland no longer exists, the wetland tract, protective easement, land trust dedication, or other similarly preserved area may be altered or eliminated, as appropriate. If the Department determines that wetland boundaries have changed or that a wetland has been eliminated due wholly or in part to illegal activity, a change or elimination of wetland tract, protective easement, land trust dedication, or other similarly preserved area shall not be permitted.
 4. A wetland tract, protective easement, land trust dedication, or other similarly preserved area is not required for utility lines in easements on lands not owned by the jurisdiction conducting the regulated activity.
- E. **Review and Approval.** Provisions for the protection of wetlands in conjunction with regulated activities shall be reviewed and approved by the Department. Approval shall be granted upon a determination that the wetland analysis report and mitigation plan meet all applicable requirements of this Chapter, and that the monitoring program and contingency plan are tied to an acceptable financial guarantee to assure that the requirements will be complied with.
- F. **Expiration.** Approvals shall be valid for a period of three years from the date of issue unless a longer or shorter period is specified by the Department. An extension of an original approval may be granted upon submittal of a written request to the Department prior to expiration. Prior to the granting of an extension, the Department may require updated studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the applicant failed to abide by the terms of the original approval.



14A.165 Definitions.

For the purpose of this Title, the following definitions shall apply:

"Abutting" means bordering upon, to touch upon, in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

"Activity" means any use conducted on a site.

"Agricultural activities" means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW, Title 222 WAC are not included in this definition.

"Alluvial geologic unit" means geologically recent stream, lake, swamp and beach deposits of gravel, sand, silt and peat.

"Animal Containment Area" means a site where two or more animal units of large animals per acre or .75 of an animal unit of small animals per acre are kept, and where a high volume of waste material is deposited in quantities capable of impacting groundwater resources.

"Animal Unit" means the equivalent of 1000 pounds of animal.

"Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development on a site.

"Aquifer" means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge area" means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater with potential to be used for potable water. For the purposes of this Title, all of the area located within the Clover/Chambers Creek Basin boundary or the two highest DRASTIC zone boundaries is included in the aquifer recharge area.

"Aquifer Susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

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

"Best management plan" means a plan developed for a property which specifies best management practices for the control of animal wastes, stormwater runoff, and erosion.

"Buffer" means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.

"Building footprint" means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

"Class" means one of the wetland classes used to categorize wetlands by their attributes and characteristics. Wetlands shall be rated using the latest adopted version of the *Washington State Wetland Rating System for Western Washington* published by the Washington State Department of Ecology.

"Class I Injection Well" means a well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within 1/4 mile of the well bore, and underground source of drinking water.

"Class II Injection Well" means a well used to inject fluids: Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewater's from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection. For enhanced recovery of oil or natural gas; or for storage of hydrocarbons that are liquid at standard temperature and pressure.

"Class III Injection Well" means a well used for extraction of minerals, including but not limited to the injection of fluids for: In-situ production of uranium or other metals that have not been conventionally mined; Mining of sulfur by Frasch process; or Solution mining of salts or potash.

"Class IV Injection Wells" means a well used to inject dangerous or radioactive waste fluids.

"Class V Injection Wells" means all injection wells not included in Classes I, II, III, or IV.

"Classification" means defining value and hazard categories to which critical areas and natural resource lands will be assigned.

"Clearing" means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site. In addition to the above, clearing is an activity which does not require reforestation per an approved Forest Practices Application/notification issued by the Department of Natural Resources.

"Cliff" means a steep vertical or overhanging face of rock or earth greater than 25 feet in height.

"Compensatory mitigation" means mitigation to compensate for loss of wetland habitat due to filling of wetlands or other regulated activities in wetlands.

"Confined aquifer" means an aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer.

"Confining Formation" means the relatively impermeable formation immediately overlying an artesian aquifer.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally or occurs at concentrations and duration as to be injurious to human health or welfare or shown to be ecologically damaging.

"Critical Aquifer Recharge Area" means areas that are determined to have a critical recharging effect on aquifers used as a source for potable water, and are vulnerable to contamination from recharge.

"Critical areas" means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, and geologically hazardous areas as defined in this chapter.

"Critical facilities" means those facilities occupied by populations or which handle dangerous substances including but not limited to hospitals, medical facilities; structures housing, supporting or containing toxic or explosive substances; covered public assembly structures; school buildings through secondary including day-care centers; buildings for colleges or adult education; jails and detention facilities; and all structures with occupancy of greater than 5,000 people.

"Degraded" means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.

"Delineation" means a wetland study conducted in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989 edition (Unified Federal Manual) and the Washington State Wetlands Identification and Delineation Manual, March 1997 Edition (DOE Publication 96-94).

"Delineation report" means a written document prepared by a wetland specialist which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.

"Department" means the City of Lakewood Department of Community Development.

"Designation" means taking formal legislative and/or administrative action to adopt classifications, inventories, and regulations.

"Developed Lot" means any lot developed with a primary use and structure(s), not generally subject to further development with additional units or other primary uses.

"Development" means any human-induced change to improved or unimproved real property including, but not limited to, the construction of buildings or other structures, placement of manufactured home/mobile, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, or the subdivision of property.

"Director" means the Director of the Department of Community Development or his/her designee.

"DRASTIC" means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.

"**Ecotone**" means a transition area between two adjacent vegetation communities.

"**Erosion**" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"**Erosion hazard areas**" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

"**Earth/earth material**" means naturally occurring rock, soil, stone, sediment, or combination thereof.

"**Enhancement**" means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing non-indigenous plant or animal species, removing fill material or solid waste).

"**Excavation**" means the mechanical removal of earth material.

"**Existing**" means those uses legally established prior to incorporation whether conforming or nonconforming.

"**Extirpation**" means the elimination of a species from a portion of its original geographic range.

"**Fill/fill material**" means a deposit of earth material, placed by human or mechanical means.

"**Filling**" means the act of placing fill material on any surface, including temporary stockpiling of fill material.

"**Fish and wildlife habitat areas**" means those areas identified as being of critical importance to maintenance of fish, wildlife, and plant species, including: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, or private organization; state natural area preserves and natural resource conservation areas.

"**Fisheries biologist**" means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years professional experience as a fisheries biologist.

"**Flood or Flooding**" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or

2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Floodfringe" means the area subject to inundation by the base flood, but outside the limits of the floodway, and which may provide needed temporary storage capacity for flood waters.

"Flood hazard areas" means areas of land located in floodplains which are subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

"Floodplain" means the total area subject to inundation by the base flood, including the floodfringe and the floodway areas.

"Floodway" means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.

"Geological assessment" means an assessment prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or prepared by a professional geologist, hydrologist, or soils scientist, who has earned the related bachelor's degree from an accredited college or university, or equivalent educational training, and has a minimum of five (5) years experience assessing the relevant geologic hazard. A geological assessment must detail the surface and subsurface conditions of a site and delineate the areas of a property that might be subject to specified geologic hazards.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, may pose a risk to the siting commercial, residential, or industrial development consistent with public health or safety concerns.

"Geotechnical report" means a report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering, evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.

"Grading" means any excavating, filling, clearing, creating (or combination thereof) of impervious surfaces.

"Ground amplification" means an increase in the intensity of earthquake induced ground shaking which occurs at a site whereby thick deposits of unconsolidated soil or surficial geologic materials are present.

"Groundwater" means all water found beneath the ground surface, including slowly-moving subsurface water present in aquifers and recharge areas.

"Groundwater Management Area" means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

"Groundwater management program" means a comprehensive program designed to protect ground water quality, to assure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state

objectives, policies and authorities within a designated ground water management area or subarea and developed pursuant to Chapter 173-100 WAC.

"Habitat assessment" means a report prepared by a professional wildlife biologist or fisheries biologist, which identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.

"Habitat management plan" means a report prepared by a professional wildlife biologist or fisheries biologist, which discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

"Habitat of local importance" means an area, range or habitat within which a species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. Examples include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These areas may also include habitats that are of limited availability or high vulnerability to alteration. The Lakewood City Council may designate specific Habitats of Local Importance by ordinance or resolution.

"Hazardous Substance(s)" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in Chapter 173-303-090 or 173-303-100 WAC.

"Hazardous Substance Processing or Handling" means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five (5) gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Ch. 173-303 WAC, and any pertinent local ordinances, such as sewer discharge standards.

"Hazardous waste" means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

1. "Dangerous waste" means any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

- a. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
- b. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

2. "Extremely hazardous waste" means any waste which:

- c. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard

and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife, and

- d. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

"Hazardous Waste Treatment and Storage Facility" means a facility that treats and stores hazardous waste and is authorized pursuant to Ch. 70.105 RCW, Ch. 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste. Treatment includes using physical, chemical, or biological processing of hazardous wastes to make such waste non-dangerous or less dangerous and safer for transport, amenable for energy or material resource recovery. Storage includes the holding of waste for a temporary period but not the accumulation of waste on the site of generation as long as the storage complies with applicable requirements of Ch. 173-303 WAC.

"Hydrologically isolated wetland" means a wetland which:

1. Is not contiguous to any 100-year floodplain of a lake, river or stream; and
2. Has no contiguous surface hydrology, hydric soil or hydrophytic vegetation between the wetland and any other wetland or stream system.

"Hydrogeologic Assessment" means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of groundwater supplies.

"Hydrologic soil groups" means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups: A, with low runoff potential and a high rate of water transmission; B with moderate infiltration potential and rate of water transmission; C, with a slow infiltration potential and rate of water transmission; and D, with a high runoff potential and very slow infiltration and water transmission rates.

"Impervious Surface" means natural or human-produced material on the ground that does not allow surface water to penetrate into the soil. Impervious surfaces may consist of buildings, parking areas, driveways, roads, sidewalks, and any other areas of concrete, asphalt, plastic, etc.

"Infiltration" means the downward entry of water into the immediate surface of soil.

"In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.

"Lakes" means impoundments of open water 20 acres or larger in size.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

"Landslide" means the abrupt downslope movement of soil, rocks, or other surface matter on a site. Landslides may include, but are not limited to, slumps, mudflows, earthflows, rockfalls, and snow avalanches.

"Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

"Large Animal" means an animal with an average weight of 100 pounds or more.

"Liquefaction" means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.

"Long-term commercial significance" means the growing capacity, productivity, and soil composition of land which makes it suitable for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land.

"Minerals" means gravel, sand, and valuable metallic substances.

"Mineral resource lands" means lands primarily devoted to the extraction of minerals or which have known or potential long-term commercial significance for the extraction of minerals.

"Mitigation" means to avoid, minimize or compensate for adverse environmental impacts. "Mitigation" includes:

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

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

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

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

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

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

"Natural resource lands" means mineral resource lands which have long-term commercial significance.

"Oregon White Oak" means the species *Quercus Garryana*, also known as a Garry Oak. All references to Oak trees in this Chapter refer to Oregon White Oak. See also "*Priority Oregon White Oak Woodland*".

"Old growth forests" means stands of at least 2 tree species, forming a multi-layered canopy with occasional small openings; with at least 20 trees/ha (8 trees/acre) > 81 cm (32 in) dbh or > 200 years of age; and > 10 snags/ha (4 snags/acre) over 51 cm (20 in) diameter and 4.6 m (15 ft) tall; with numerous downed logs, including 10 logs/ha (4 logs/acre) > 61 cm (24 in) diameter and > 15 m (50 ft) long. High elevation stands (> 762m [2500ft]) may have lesser dbh [> 76 cm (30 in)], fewer snags [> 0.6/ha (1.5/acre)], and fewer large downed logs [0.8 logs/ha (2 logs/acre) that are > 61 cm (24 in) diameter and > 15 m (50 ft) long

"Ordinary high water" means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this Chapter or as it may naturally change thereafter. Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the mean high water.

"Out-of-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.

"Perched ground water" means ground water in a saturated zone is separated from the main body of ground water by unsaturated rock.

"Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance and/or deposition of earth, turbidity or pollutants after development, construction, or restoration.

"Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer and is independent of the force causing movement.

"Permeable Surfaces" mean sand, gravel, and other penetrable deposits on the ground which permit movement of groundwater through the pore spaces, and which permit the movement of fluid to the groundwater.

"Person" means an individual, firm, company, partnership, association, corporation, or other legal entity.

"Ponds" means naturally occurring impoundments of open water less than 20 acres in size and larger than 2,500 square feet which maintain standing water throughout the year.

"Potable water" means water that is safe and palatable for human use.

"Prairies" means open areas predominated by native, drought-resistant, grasses, forbs (flowering non-woody plants) and herbs. In Pierce County, prairies are an unusual vegetation regime found in areas of extremely well-drained soils.

"Priority Oregon White Oak Woodland" means forested areas of pure oak, or of oak/conifer associations 1 acre or larger, and all oak trees located within, where oak canopy coverage of the area is at least 25%. Stands of oaks less than 1 acre in size may also be considered priority habitat when found to be particularly valuable to fish

and wildlife (i.e.: they contain many cavities, have a large diameter at breast height (dbh), are used by priority species, or have a large canopy).

"Private organization" means a nonprofit corporation organized pursuant to RCW 24.03, which includes the planting of game fish among its purposes for organizing as a nonprofit corporation.

"Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

"Qualified ground water scientist" means a hydrogeologist, geologist, engineer, or other scientist who meets all the following criteria:

- A. Has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and
- B. Has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, profession certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water vulnerability.

"Recharge" means the process involved in the absorption and addition of water to ground water.

"Regolith" means any body of loose, noncemented particles overlying and usually covering the bedrock.

"Restoration" means the re-establishment of a ecological and/or habitat resources and features from a previously disturbed or degraded critical area site.

Regulated activities" include, but are not limited to, any activities which are directly undertaken or originate in a regulated critical area or resource land or their buffer that require any of the following entitlements from the City: building permit; commercial or residential; binding site plan; boundary line adjustment; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; large lot subdivision, short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit; variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter. Regulated activities also include those specific activities listed in Section 14A.142.060.

"Recessional outwash geologic unit" means sand and gravel materials deposited by melt-water streams from receding glaciers.

"Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

"Short subdivision" or "short plat" means the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

"Site" means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed.

"Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

"Slump" means the downward and outward movement of a mass of bedrock or regolith along a distinct surface of failure.

"Snag-rich areas" means forested areas which contain concentrations of standing dead trees, averaging ten snags or greater per acre, and averaging greater than 15 inches in diameter at breast height.

"Soil Survey" means the most recent National Cooperative Soil Survey for the local area or county by the Soil Conservation Service, United States Department of Agriculture.

"Sole Source Aquifer" means an area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply 50% or more of the drinking water for an area without a sufficient replacement available.

"Species of local importance" means species that are of local concern due to their population status or their sensitivity to habitat manipulation.

"Stockpiling" means the placement of material with the intent to remove it at a later time.

"Subdivision" or "formal subdivision" means the division or redivision of land into five (5) or more lots, tracts, parcels, sites, or division for the purpose of sale, lease, or transfer of ownership.

"Substrate" means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of a wetland.

"Temporary erosion control" means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.

"Toe of slope" means a distinct topographic break in slope at the lower-most limit of the landslide or erosion hazard area.

"Top of slope" means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

"TPCHD" means the Tacoma-Pierce County Health Department.

"Underground Tank" means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground.

"Unconfined aquifer" means an aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing ground water under pressure approximately equal to that of the atmosphere. This term is synonymous with the term "water table aquifer".

"Utility line" means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications and sanitary sewers.

"Vadose Zone" is the distance between the land surface and the uppermost aquifer. This distance is also defined as the "depth to water" zone or unsaturated zone.

"View corridor" means an area which affords views of lakes, mountains, or other scenic amenities normally enjoyed by residential property owners.

"Wellhead Protection Area" means the surface and subsurface area surrounding a well or well field that supplies a public water systems through which contaminants are likely to pass and eventually reach the water well(s) as designated under the Federal Clean Water Act.

"Water table" means that surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

"Well" means a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

"Urban governmental services" include those governmental services historically and typically delivered by cities, and includes storm and sanitary sewer systems, domestic water systems, street cleaning services, and other public utilities associated with urban areas and normally not associated with non-urban areas.

"Urban growth" refers to growth that makes intensive use of the land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. `Characterized by urban growth' refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

"Wetland" or "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands generally do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the City.

"Wetland specialist" means a person with experience and training in wetlands issues, and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

1. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or,

2. Four years of related work experience and training, with a minimum of two years experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans.

The person should be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, The City Site Development Regulations, The City Wetland Management Policies, and the requirements of this Chapter.

"Wildlife biologist" means a professional with a degree in wildlife, or certification by The Wildlife Society, or with five years professional experience as a wildlife biologist.

Section 4. That Lakewood Municipal Code Section 18A.40.230 be amended to read as follows:

18A.40.230 - Development Standards - Riparian Overlay

Within the RO, the development standards shall be those of the underlying zoning district. For example, the R2 development standards are applied to property in the R2 zone that falls within the RO. In addition to zoning district standards, the following standards shall apply:

A. Habitat Protection for Rivers and Streams.

1. A buffer, consisting of undisturbed natural vegetation, shall be required along all applicable streams.
2. The buffer shall extend landward as measured horizontally from the ordinary high water mark of the water body and shall include that entire area between the ordinary high water mark and the top of stream bank. The top of the stream bank shall be that line along the highest elevations at the top of a slope above a channel or stream, where the slope changes to less than ten (10) percent.
3. The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact that the proposed activities would have on the river or stream.
4. The buffer shall also include that area within the creek's or stream's:
 - a. One hundred (100) year flood zone.
 - b. Associated wetland boundaries and buffers.
 - c. Other related wildlife habitat areas of the creek or stream, not subject to the state Shoreline Management Act.

B. Critical Fishery Rivers and Streams.

Chambers Creek has been identified by the Puyallup Tribe as being critical to anadromous fish and therefore requiring a larger buffer protection. The buffer for this critical fishery stream is one hundred fifty (150) feet from the ordinary high water mark or the top of the streambank as defined in LMC 18A.40.230.A.2, whichever is greater.

C. Building setbacks shall not be less than the following:

1. For Chambers Creek the building setback shall not be less than 150 feet from the ordinary high water mark.
2. For Clover Creek, the buffer width shall be fifty (50) feet from the ordinary high water mark or the top of the streambank, whichever is greater.
3. For ~~Clover Creek~~, Flett Creek, Leach Creek, and Ponce de Leon Creek the buffer width shall be thirty-five (35) feet from the ordinary high water mark or the top of the streambank, whichever is greater.

Section 5. That the Community Development Director is hereby authorized to develop and maintain an Administrator's Manual consisting of appendices as referenced in the proposed Critical Areas Regulations, a copy of which is maintained by the Community Development Department and shall be made available to the public upon request.

Section 6. That if any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 7. That this Ordinance shall be in full force and effect on January 1, 2005, and at least five (5) days after publication of the Ordinance Summary, as required by law.

ADOPTED by the City Council this 15th day of November, 2004.

CITY OF LAKEWOOD

Attest:

Douglas G. Richardson, Mayor

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Heidi Ann Wachter, City Attorney