

# PLANNING COMMISSION MEETING AGENDA



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## *City of Lake Stevens Vision Statement*

*We are a thriving community that promotes a vibrant economy, preserves natural beauty, and supports an exceptional quality of life for all.*

June 17, 2026 - 6:00 PM

**Hybrid - In-person at The Mill or Remote via Zoom**

**[Join Zoom Meeting:](#)**

**or call in at: 253-215-8782 Meeting ID: 82383424323 Passcode: 298763**

- 1. Call to Order**
- 2. Roll Call**
- 3. Guest Business**
- 4. Action Items**
  - A. Approve Planning Commission Meeting minutes of May 6, 2026
- 5. Discussion Items**
  - A. Critical Areas Ordinance (CAO) Update - Revised Draft Code Language David Levitan
- 6. Commissioner Report**
- 7. Planning Director's Report**
  - A. Overview of Upcoming Meetings Russ Wright
- 8. Adjourn**

### ***THE PUBLIC IS INVITED TO ATTEND***

*The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact Human Resources, City of Lake Stevens ADA Coordinator, (425) 622-9400, 48 hours prior to this council meeting if any accommodations are needed. For TDD users, please use the state's toll-free relay service, (800) 833-6384, and ask the operator to dial the City of Lake Stevens City Hall number.*

# PLANNING COMMISSION STAFF REPORT



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**Agenda Date:** 6/17/2026

**Subject:** Approve Planning Commission Meeting minutes of May 6, 2026

**Contact Person/Department:** , Community Development

**Budget Impact:**

**Legal Review:** No

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**RECOMMENDATION(S)/ACTION REQUESTED:**

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**SUMMARY/BACKGROUND:**

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**APPLICABLE CITY POLICIES:**

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**ATTACHMENTS:**

1. 5-6-26 Planning Commission Minutes

# PLANNING COMMISSION MEETING MINUTES



HYBRID/REMOTE AND IN-PERSON AT THE MILL

May 6, 2026

CALL TO ORDER: 6:05 PM by Chair Bruce Morton

MEMBERS PRESENT: Chair Bruce Morton, Commissioner Connor Davis, Commissioner Jennifer Davis, Commission Janice Huxford, and Council Liaison Ryan Donaghue (remotely)

MEMBERS ABSENT: Commissioner Amy Lewandowski, Vice-Chair Mike Duerr

STAFF PRESENT: Planning & Community Development Director Russ Wright, Planning Manager Christi Schmidt, Administrative Assistant Dawn Erickson

OTHERS PRESENT: None

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Chair Morton called the meeting to order at 6:05 p.m. and led the Pledge of Allegiance.

Roll Call: As noted above. Commissioner Huxford moved and Commissioner Connor Davis seconded, a motion to excuse Commissioner Lewandowski and Vice-Chair Duerr; the motion passed unanimously.

Guest business: None. Chair Bruce Morton announced that Commissioner Sauls has tendered his Planning Commission resignation, effective immediately.

Approval of Minutes: The April 1, 2026 meeting minutes were unanimously approved as written, with Commissioner Jennifer Davis moving and Commissioner Huxford seconding.

Public Hearing: Chair Morton opened the Public Hearing. With no one in the audience and no online attendees, Commissioner Huxford moved to close the Public Hearing. Commissioner Connor Davis seconded the motion, and it was passed unanimously.

Discussion Items: Planning Manager Schmidt summarized the Commission's work to date on the Comprehensive Plan text amendments for the 2025 docket. She requested that the Commissioners forward a signed recommendation to approve to City Council for consideration at their May 26, 2026 meeting, and opened the floor to questions/comments. After discussion about waiting for Commissioner Lewandowski's and Vice-Chair Duerr's comments/questions, it was decided that they would still have an opportunity to make any comments that they wish at the May 26<sup>th</sup> Council meeting. Chair Morton moved, and Commissioner Connor Davis seconded, that the Planning Commission recommend that the docket be approved, with the names of those present and those absent at this Planning Commission meeting. The motion passed unanimously.

Planning Manager Schmidt also advised the Commissioners that the city is proposing a ban on roosters and eliminating lifetime licenses for pets, although these are not items under the Commission's purview.

Commissioner Reports:

The Commissioners expressed their appreciation for former Commissioner Saul's service and wished him well. Commissioner Connor Davis implored the city to consider a pedestrian right-of-way education campaign. It was also noted that this year's Farmer's Market will be held on Tuesdays, rather than Wednesdays, making it unnecessary for Planning Commission to move to Monday meetings throughout the summer.

Director's Report

Director Wright provided the 2026 Q1 report for Planning & Community Development for the Commissioners' review.

Adjourn: Commissioner Huxford moved, and Commissioner Connor Davis seconded, to adjourn the meeting. The vote was unanimous, and the meeting was adjourned at 6:55pm.

Respectfully,

Dawn Erickson, Administrative Assistant

# PLANNING COMMISSION STAFF REPORT



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**Agenda Date:** 6/17/2026

**Subject:** Critical Areas Ordinance (CAO) Update - Revised Draft Code Language

**Contact Person/Department:** David Levitan, Community Development

**Budget Impact:**

**Legal Review:** No

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## **RECOMMENDATION(S)/ACTION REQUESTED:**

No formal action is required. Staff will provide an overview of an updated draft of the city's Critical Areas Ordinance (CAO) Update, which was last reviewed by the Planning Commission on January 21. Following additional public outreach in June and July, the Planning Commission is scheduled to hold a public hearing later this summer.

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## **SUMMARY/BACKGROUND:**

At the Planning Commission's [January 21, 2026 meeting](#), staff introduced an initial draft of required updates to the Critical Areas Ordinance ([Chapter 14.88 LSMC](#)), which are needed to comply with the Growth Management Act (GMA). Highlighted changes included new regulations for critical aquifer recharge areas (CARAs; Chapter 14.88.700-740); updated stream buffer widths to reflect best available science (BAS); and changes to buffer reductions and averaging.

Since that time, staff has undertaken additional BAS analysis and mapping of critical areas and received additional input from state agencies, which have been incorporated into a second draft of the CAO Update (Attachment 1), which is presented in track changes format. At the June 17 meeting, staff will provide an overview of the recent changes, including:

- Several new definitions in Chapter 14.08 (Definitions).
- A hybrid approach for stream buffer widths for Type F (fish-bearing) streams in Section 14.88.430(b). Staff previously discussed increasing the existing 100-foot

Type F buffer to 150-foot, and is now proposing that as the baseline standard, while potentially requiring a larger buffer width of up to 239 feet based on site potential tree height (SPTH<sub>200</sub>) when certain conditions exist within the riparian area adjacent to the stream. Staff believes this approach reflects BAS, while maintaining the proposed 100-foot buffer for non-fish bearing streams.

- New language related to functionally disconnected buffers, which are areas within a delineated buffer that no longer provide buffer function due to existing legal development, such as structures, roads or driveways (Section 14.88.296).
- General structural changes and consolidation of sections to remove repetitive and redundant language. Staff continues work in this area, including standardizing the use of the active tense, so the final formatting will look slightly different.

### *Next Steps*

In the coming weeks, staff will be meeting with the Surface Water Division of the Public Works Department to discuss alignment between the CAO Update and the [Salmonids Basin Plan](#), as well as briefing the City Council on the proposed change. This will be followed by issuance of the 60-day notice of intent to amend the development code to the state in late June or early July, during which time the city will receive comments from state agencies such as the Department of Fish and Wildlife and Department of Ecology. Staff will also be engaging and seeking input from local tribes, organizations, and the general public via a variety of public engagement efforts, including online maps and attendance at community events such as Aquafest. Staff anticipates that the required Planning Commission public hearing will occur in late August or early September, which will be followed by a public hearing with the City Council to consider the Planning Commission's recommendation.

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### **APPLICABLE CITY POLICIES:**

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### **ATTACHMENTS:**

1. Attachment 1 - Draft Changes to Chapter 14.88 and Associated Sections

## Chapter 14.08

### DEFINITIONS (NEW AND REVISED DEFINITIONS)

**Aquifer Recharge Area:** Areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

**Channel Migration Zone:** The area within which a stream or river channel is likely to move laterally over a specified period as part of natural processes.

**Fish and Wildlife Habitat Conservation Areas (of Local Importance):** Areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species (WAC 365-190-030). ~~A seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of relative density or species richness, breeding habitat, winter range, and movement corridors. These also include habitats of limited availability or high vulnerability to alteration, such as cliffs and wetlands.~~

**Frequently Flooded Area:** Lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface (WAC 365-190-030).

**Functionally Disconnected Buffer Area:** Portions of protective buffers that are functionally and effectively disconnected and isolated from the associated wetland or stream by an existing significant development and which no longer provide buffer function, as detailed in LSMC 14.88.296.

**Hazardous Tree:** Trees with significant structural defects that are likely to lead to failure.

**No Net Loss:** As it relates to critical areas, the finding that proposed activities or development would not alter or modify the physical limits of an existing critical area or their buffers or result in an overall reduction in ecosystem functions and values within critical areas and their buffers.

**Priority Habitats:** ~~Areas that support diverse, unique, and/or abundant communities of fish and wildlife, as determined by the Washington Department of Fish and Wildlife Map Products 2006. A habitat type with unique or significant value to many species. An area identified and mapped as priority habitat has one or more of the following attributes: comparatively high fish and wildlife density, comparatively high fish and wildlife species diversity, important fish and wildlife breeding habitat, important fish and wildlife seasonal ranges, important fish and wildlife movement corridors, limited availability, high vulnerability to habitat alteration, and unique or dependent species.~~

**Priority Species:** ~~Wildlife species of concern due to their population status and their sensitivity to habitat alteration.~~ Fish and wildlife species requiring protective measures and/or management actions to ensure their survival. A species identified and mapped as priority species fit one or more of the following criteria: State-listed candidate species, vulnerable aggregations, and Species of recreational, commercial, and/or Tribal importance.

~~**Riparian Habitat Zone:** The riparian habitat zone includes those watercourses within the special flood hazard area.~~

~~**Riparian Management Zone:** The area that has the potential to provide full riparian functions, which for non-forest zones is defined as the greater of the outermost point of the riparian vegetative community or the pollution removal function at 100 feet.~~

## Chapter 14.48

### 14.48.045 Accessory Structures.

(a) In single-family residential zones, accessory structures must meet the following conditions:

- (1) The gross floor area of all accessory structures shall not exceed 200 square feet without a building permit;
- (2) The height of the accessory structure shall not exceed 12 feet without a building permit; and
- (3) The accessory structure may be set back five feet from rear and side property lines but shall be no closer to the front property line than the front setback of the underlying zoning district. Accessory dwelling units shall adhere to the setbacks of the underlying zoning district unless otherwise permitted or authorized in Section [14.44.045](#). (Ord. 1179, Sec. 14, 2024; Ord. 1080, Sec. 8, 2020)

~~(4) For sites with critical areas or their buffers as defined in Chapter 14.08 LSMC and described in Chapter 14.88 LSMC, accessory structures may not be located within 10 feet of a critical area, critical areas tract or easement, per Section 14.88.285. Other site improvements identified in Section 14.88.285 may be located within the building setback area.~~

### 14.48.050 Exceptions to Building Setback Requirements.

(a) The following modifications to the setback requirements identified in Section [14.48.040](#) shall be allowed, ~~so long as they are compliant with Section 14.88.285 when a site contains critical areas or their buffers:~~

- (1) In all single-family residential zones, the building setbacks from the street of the underlying zone may be reduced by five feet for living portions of the principal house or open porches. This reduction does not apply to garages or carports.
- (2) Exterior mechanical equipment including air conditioners, heat pumps and similar may extend up to 32 inches into the required side setback provided emergency access is not impaired.
- (3) Eaves and other minor architectural features may project into the required setback up to 18 inches. (Ord. 1080, Sec. 8, 2020; Ord. 1063, Sec. 2 (Exh. B), 2019; Ord. 903, Sec. 39, 2013; Ord. 811, Sec. 56, 2010; Ord. 741, Sec. 7, 2007; Ord. 676, Sec. 45, 2003; Ord. 666, Sec. 9, 2002; Ord. 595, 1999; Ord. 468, 1995)

## Chapter 14.88

### CRITICAL AREAS

Sections:

Part I. Purpose and Intent

14.88.010 Purpose and Intent

Part II. Definitions

14.88.100 Definitions

Part III. General Provisions

14.88.200 Applicability

14.88.210 Regulated Activities

14.88.220 Allowed Activities

14.88.230 Compliance

14.88.235 Best Available Science

14.88.240 Classification as a Critical Area

14.88.250 Procedures

14.88.260 Submittal Requirements

14.88.270 Site/Resource-Specific Reports

14.88.275 Mitigation/Enhancement Plan Requirements

14.88.276 Alternative Mitigation

14.88.277 Mitigation Monitoring

14.88.278 Bonding (Security Mechanism)

14.88.280 Maps and Inventory

14.88.283 Pesticide Management

14.88.285 Building Setbacks

14.88.287 Fencing and Signage

14.88.290 Critical Areas Tracts and Easements

14.88.295 Permanent Protection for Streams, Wetlands and Buffers

~~14.88.296~~ Functionally Disconnected Buffer Areas

14.88.297 Limited On-Site Density Transfer for Critical Areas

14.88.298 Innovative Development Design

14.88.300 Dedication of Land and/or Easements in Lieu of Park Mitigation

14.88.310 Demonstration of Denial of All Reasonable Economic Uses

14.88.320 Allowance of Regulated Use in a Critical Area Where Denial of All Economic Use Is Demonstrated

14.88.330 Nonconforming Activities

14.88.340 Assessment Relief

Part IV. Fish and Wildlife Conservation Areas

14.88.400 Classification

14.88.410 Determination of Boundary

14.88.415 Species/Habitats of Local Importance

~~14.88.420~~ Allowed Activities

14.88.430 Stream Buffer Requirements and Allowed Modifications

14.88.440 Mitigation

Part V. Frequently Flooded Areas

- 14.88.500 Classification
- 14.88.510 Determination of Boundary
- ~~14.88.520 Allowed Activities~~
- 14.88.530 Requirements
- 14.88.540 Mitigation

Part VI. Geologically Hazardous Areas

- 14.88.600 Classification
- 14.88.610 Determination of Boundary
- ~~14.88.620 Allowed Activities~~
- 14.88.630 Geological Assessment Requirements
- 14.88.640 Setback Buffer Requirements
- 14.88.650 Allowed Alterations
- 14.88.660 Prohibited Alterations
- 14.88.670 Mitigation

Part VII. ~~Streams, Creeks, Rivers, Lakes and Other Surface Water~~ Critical Aquifer Recharge Areas

- 14.88.700 ~~Repealed~~ Designation, Mapping and Rating
- 14.88.710 ~~Repealed~~ Performance Standards – General Requirements
- 14.88.720 ~~Repealed~~ Performance Standards – Specific Uses
- 14.88.730 ~~Repealed~~ Performance Standards – Prohibited Uses
- 14.88.740 ~~Repealed~~ Critical Area Report Requirements

Part VIII. Wetlands

- 14.88.800 Purpose
- 14.88.805 Identification and Rating
- 14.88.810 Determination of Boundary
- ~~14.88.820 Allowed Activities~~
- 14.88.825 Exemptions
- 14.88.830 Wetland Buffer Requirements and Allowed Modifications
- 14.88.840 Mitigation

Part IX. Transfer of Development Rights

- 14.88.900 Definitions
- 14.88.910 Intent and General Regulations of Transferring Development Rights (TDR)
- 14.88.920 Qualifications for Designation of Land as a Critical Area Sending or Receiving District
- 14.88.930 Designation Process
- 14.88.940 Designation Revocation
- 14.88.950 Calculating Transferable Development Rights

Part X. Mitigation Plan Requirements

- 14.88.960 *Repealed*
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Part I. Purpose and Intent

**14.88.010 Purpose and Intent.**

The purpose of this chapter is to designate, classify, and protect the critical areas, as defined by RCW 36.70A.030(12), of the Lake Stevens community by establishing regulations and standards for development and use of properties which contain or adjoin critical areas for protection of the public health, safety, and welfare. ~~The purpose and intent of this chapter is also~~ It also provides a regulatory framework to ensure that there is no net loss of ~~the acreage, or functions and or~~ values of critical areas regulated by this chapter.

This chapter serves to:

(a) ~~Establish the mitigation sequencing hierarchy by which Aa project proponent projects and activities shall make~~ are evaluated for making all reasonable efforts to avoid and minimize impacts to critical areas and buffers, in the following sequential order of preference:

(1) Avoidance: Avoiding impacts altogether by not taking a certain action or parts of an action; ~~or~~

(2) Minimization: When avoidance is not possible, minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocations, or timing, to avoid or reduce impacts ~~and mitigating for the affected functions and values of the critical area;~~ and

(3) Rectification: Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

~~(4)~~ Reduction: Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the action.

~~(5)~~ Compensation: Compensating for unavoidable impacts by replacing, enhancing or providing substitute resources or environments; and

(6) Monitoring: Monitoring the impact and taking appropriate corrective measures.

(b) Protect the public from personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence.

(c) Protect against publicly financed expenditures due to the misuse of critical areas which cause:

(1) Unnecessary maintenance and replacement of public facilities;

(2) Publicly funded mitigation of avoidable impacts;

(3) Cost for public emergency rescue and relief operations where the causes are avoidable;

(4) Degradation of the natural environment.

(d) Protect aquatic resources.

(e) Protect unique, fragile, and valuable elements of the environment, including wildlife and its habitat.

(f) Alert appraisers, assessors, owners, potential buyers, or lessees to the development limitations of critical areas.

(g) Provide City officials with sufficient information to adequately protect critical areas when approving, conditioning, or denying public or private development proposals.

- (h) Give guidance to the development of Comprehensive Plan policies ~~in regard to~~about the natural systems and environment of the Lake Stevens Watershed~~;~~ and
- (i) Provide property owners and developers with succinct information regarding the City's requirements for property development. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 903, Sec. 51, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

## Part II. Definitions

### 14.88.100 Definitions.

The definitions related to critical areas are included in Chapter 14.08. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 855, Secs. 3, 23, 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007; Ord. 590, 1998; Ord. 468, 1995)

## Part III. General Provisions

### 14.88.200 Applicability.

The provisions of this chapter apply to all lands, land uses and development activity within the City. No person shall take action ~~No action shall be taken by any person~~ which results in any alteration of any critical areas except as consistent with the purposes, objectives, and goals of this chapter. The provisions of the current Lake Stevens Shoreline Master Program Appendix B apply to shoreline critical areas within Lake Stevens. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

### 14.88.210 Regulated Activities.

(a) For any regulated activity identified in subsection (b), a critical areas report ~~that meets~~meeting the requirements of LSMC 14.88.270 shall be prepared ~~is required to support the requested activity~~. All land use and/or development activities on lands containing critical areas are subject to this chapter and are prohibited unless:

- (1) The use or activity is found to be exempt by the Planning and Community Development Director or designee per the "allowed activities" sections (14.88.220) of this chapter; or
- (2) The use or activity meets the performance standards found in the "requirements" sections of this chapter; or
- (3) It can be demonstrated that the denial of authorization of such an activity would deny all reasonable economic uses, as demonstrated per Section 14.88.310. In such a case, approval in writing shall be issued by the Planning and Community Development Director or designee. Approval of a reasonable economic use must be attached to another type of development permit obtained from the City of Lake Stevens prior to undertaking the regulated activity in the critical area or its buffer.

(b) Land use and development activities include, but are not limited to, the following activities:

- (1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
- (2) The dumping, discharging, or filling with any material.
- (3) The draining, flooding, or disturbing of the water level or water table.
- (4) The driving of pilings.
- (5) The placing of obstructions.
- (6) The construction, reconstruction, demolition, or expansion of any structure.
- (7) The destruction or alteration of vegetation in a critical area through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a critical area.

(8) Class IV – General Forest Practices under the authority of Chapter 14.50, Part II (Forest Practices) and the 1992 Washington State Forest Practices Act Rules and Regulations per WAC 222-12-030, or as thereafter amended.

(9) Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of water sources, including quantity, or the introduction of pollutants.

(10) Land that is located wholly within a critical area or its buffer may not be subdivided, unless specifically allowed elsewhere in this chapter. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.220 Allowed Activities.**

Unless specifically prohibited elsewhere in this chapter, the following uses are allowed in any critical area or buffer; provided, that a site/resource-specific report is prepared when the activity may result in a loss of functions and values, that describes the environmental limitations of and proposed mitigation for the site, shall be submitted, reviewed, and approved by the City prior to permit issuance or land use approval:

(a) Existing and ongoing agricultural activities; provided, that they implement applicable best management practices (BMPs) contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or develop a farm conservation plan in coordination with the local conservation district. BMPs and/or farm plans should address potential impacts from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. BMPs and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations and wildlife habitat.

(b) Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class IV – General Forest Practice Permits (conversions) as defined in Chapter 76.09 RCW and Chapter 222-12 WAC.

(c) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of existing topography, water conditions, or water sources.

(d) Enhancement of a wetland-critical area or its buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved mechanical, biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(e) Educational and scientific research activities.

(f) Public and Private Pedestrian Trails.

(1) Existing trails may be maintained subject to subsection (i).

(2) ~~New~~ trails may be constructed within the outer 25 percent of the critical area buffers to wetlands and fish and wildlife conservation areas, when mitigation for impacts is provided in accordance with this chapter.

(3) ~~except that~~ New trails may be located within the remainder of the critical area buffer when it is demonstrated through the site/resource-specific report that:

- (i) No other alternative for the trail location exists which would provide the same educational and/or scientific research opportunities; and
- (ii) The critical area functions and values will not be diminished as a result of the trail, and mitigation for proposed impacts are provided in accordance with this chapter; and
- (iii) The materials used to construct the trail will not harm the critical area; and
- (iv) Raised boardwalks using nontreated pilings may be acceptable; and
- (v) Land disturbance is minimized to the greatest extent possible including removal of significant trees; and
- (vi) Where possible, the number of trails allowed in critical area buffers shall be limited.

~~(42)~~ Trails proposed in geologically hazardous areas shall be constructed in a manner that does not increase the risk of landslide or erosion in accordance with an approved geotechnical report.

- (g) Navigation aids and boundary markers.
- (h) Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored.
- (i) Normal maintenance, repair, or operation of existing structures, facilities, or improved areas.
- (j) Installation or construction of City road right-of-way; or installation, replacement, operation, repair, alteration, or relocation of all water, natural gas, cable communication, telephone, or other utility lines, pipes, mains, equipment or appurtenances, not including substations or other buildings, only when required by the City and approved by the Planning and Community Development Director or designee and when avoidance of critical areas and impact minimization has been addressed during the siting of roads and other utilities and a detailed report/mitigation plan is submitted, reviewed, and approved by the City prior to permit issuance or land use approval.
- (k) Minor expansion of uses or structures existing at the time of adoption of this code, and which are in compliance with all other chapters of this title; provided, that the applicant obtains all required local, State, and Federal permits, including but not limited to a Department of Fish and Wildlife Hydraulic Permit and a Clean Water Act 404 Permit, and the expansion does not create a loss of critical area and functions nor pose a significant threat to water quality. A site/resource-specific report and mitigation plan shall be prepared to describe the critical area, function, and water quality and submitted to the City for review and approval prior to permit issuance. For the purposes of this subsection, "minor expansion" refers to an addition to or alteration of a use or structure and shall be limited to a maximum of 1,000 square feet of impervious area.
- (l) Stormwater Management Facilities. Dispersion outfalls, bioswales and other low impact facilities may be allowed within the outer 25 percent of the buffer to wetlands and fish and wildlife and conservation areas, when the location of such facilities will not degrade the function or values of the critical area based on the recommendation of a qualified professional for the specific critical area type. Stormwater management facilities in geologically hazardous areas shall be constructed in a manner that does not increase the risk of landslide or erosion in accordance with an approved geotechnical report. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, runoff treatment or flow control BMP if the following criteria are met:
  - (1) There will be "no net loss" of functions and values of the wetland;
  - (2) The wetland does not contain a breeding population of any native amphibian species;

- (3) The hydrologic functions of the wetland can be improved;
- (4) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing;
- (5) All regulations regarding stormwater and wetland management are followed, including but not limited to local and State wetland and stormwater codes, manuals, and permits;
- (6) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.
- (7) Stormwater LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

(m) Emergency Activities. Those activities that are necessary to prevent an immediate threat to public health, safety, or welfare or pose an immediate risk of damage to private property, and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter.

(n) Development when the subject property is functionally and effectively separated from a critical area or its buffer by preexisting, intervening, and lawfully created structures, public roads, or other substantial improvements. Per LSMC 14.88.296, tThe preexisting improvements must be found to separate the subject property from the critical area or impair the delivery of buffer functions. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

(o) Hazardous tree removal, subject to the mitigation and replacement requirements in Section 14.88.295(b) and evaluation of the tree as critical habitat.

(p) Activities consistent with the species located within fish and wildlife conservation areas and all applicable State and Federal regulations regarding the species, when the requirements of Section 14.88.430 have been met and mitigation adequate to alleviate any other impacts has been proposed, as determined by the Planning and Community Development Director or designee, who may consult with other resource agencies as to their recommendations.

(q) Bridges and other crossings over streams for public and private rights-of-way, when the requirements of Section 14.88.430 have been met and mitigation adequate to alleviate any other impacts has been proposed. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

(r) For frequently flooded areas, those activities allowed per Section 14.64.030, when the requirements of Section 14.88.530 have been met and mitigation adequate to alleviate any other impacts has been proposed.

(s) For critical aquifer recharge areas, those activities that meet the performance standards in Sections 14.88.710 and .720, and which are not prohibited by Section 14.88.730.

(t) For wetlands, conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland, when the requirements of Sections 14.88.830 and 14.88.840 have been met and mitigation adequate to alleviate any other impacts has been proposed.

#### **14.88.230 Compliance.**

All land uses or development applications shall be reviewed to determine whether or not a critical area exists on the property for which the application is filed, what the action's impacts to any existing critical area would be, and what actions are required for compliance with this chapter. No construction activity, including land clearing

or grading, shall be permitted until the information required by this section is reviewed and a plan is approved by the City. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### 14.88.235 Best Available Science.

~~(a) **Criteria for Best Available Science.** The City shall use best available science (as defined in Chapter 14.08.010) is that scientific information applicable to the critical area prepared by local, State or Federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals, when developing and implementing policies and development regulations to protect the functions and values of critical areas, as defined in RCW 36.70A.172 and –that is consistent with criteria established in WAC 365-195-900 through 365-195-925.~~

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

~~(c) **Lack of Scientific Information.** Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function or permitting an alteration of or impact to the critical area, the City shall:~~

~~(1) **Take a precautionary or no risk approach that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and**~~

~~(2) **Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberative scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, the City hereby commits to:**~~

~~(i) **Address funding for the research component of the adaptive management program;**~~

~~(ii) **Change course based on the results and interpretation of new information that resolves uncertainties; and**~~

~~(iii) **Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)**~~

#### 14.88.240 ~~Classification as a Critical Area.~~

~~Criteria for classification as a critical area will be listed under the applicable sections of this chapter. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~

#### 14.88.250 Procedures.

Prior to fulfilling the requirements of this chapter, the City of Lake Stevens shall not grant any approval or permission to conduct development or use in a critical area that requires a land use permit as identified in Chapter 14.16A or a building permit as regulated by Chapter 14.80. The Planning and Community Development Director or designee is authorized to adopt administrative procedures for the purpose of carrying out the provisions of this chapter. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### 14.88.260 Submittal Requirements.

To enable the City to determine compliance with this chapter, at the time of application submittal, the applicant shall file a SEPA Environmental Checklist (if use is subject to SEPA per Title 16 LSMC), site/resource-specific reports as specified in Section 14.88.270, and any other pertinent information requested by the Department of Planning and Community Development. The applicant shall utilize the city's adopted critical areas maps (inventory) as a screening tool to determine the potential presence of critical areas. The Planning and

Community Development Director or designee may waive any of these submittal requirements if supported by best available science and deemed unnecessary to make a compliance determination.

The following critical areas information is required prior to making a determination of completeness per Chapter 14.16A.230(c) or issuing a building permit per Chapter 14.80.030(b):

- (a) A site-specific critical areas report, as detailed in Section 14.88.270;
- (b) A mitigation plan (when impacts to critical areas or their buffers are proposed), as detailed in Section 14.88.275;
- (c) A SEPA environmental checklist for projects that ~~don't~~ do not meet the exemption thresholds in Chapter 16.04.050, or for projects proposed on lands covered by water;
- (d) Any supplemental reports (geotechnical reports, drainage reports, etc.) necessary to determine the proposal's compliance with this chapter.

(Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.270 Site/Resource-Specific Reports.**

Unless waived per Section 14.88.260, all applications for land use, building or development permits proposed on properties containing or adjacent to critical areas or their defined setbacks or buffers shall include site/resource-specific reports prepared to describe the environmental limitations of the site. These reports shall conform in format and content to guidelines prepared by the Department of Planning and Community Development, which is hereby authorized to do so. The report shall be prepared by a qualified professional as defined in Chapter 14.08 who is a biologist or a geotechnical engineer as applicable with experience preparing reports for the relevant type of critical area, and must have been prepared within five years of the application date. The report and conclusions present in the critical area report shall be based on best available science and include mitigation sequencing analysis as established by Section 14.88.010(a). (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

- (a) When required for geologically hazardous areas (Part VI), geotechnical studies shall be consistent with the requirements of LSMC 14.88.630(d).
- (b) When required for activities within critical aquifer recharge areas (Part VII), hydrogeologic reports shall be consistent with LSMC 14.88.740(b).
- (c) If channel migration zones are present, a channel migration zone report shall be prepared that assesses potential channel migration as well as riparian function.

#### **14.88.275 Mitigation/Enhancement Plan Requirements.**

~~In the event that~~When best available science and a mitigation sequencing analysis determines that mitigation and/or enhancement is required, the Department of Planning and Community Development shall require the applicant to provide a mitigation plan for approval and a performance and maintenance bond in a form and amount acceptable to the City in accordance with Section 14.88.278. The plan shall provide information on land acquisition, construction, maintenance and monitoring of the replaced critical area that creates a no-net-loss area in function of the original area in terms of acreage, function, habitat, geographic location and setting. All mitigation plans shall include the following items, which shall be submitted by the applicant or a qualified biologist, civil or geotechnical engineer professional for the applicable critical area type:

- (a) Data collected and synthesized for the critical area and/or the newly restored site:
  - (1) Description of existing site conditions, critical areas and proposed buffers;
  - (2) Description of proposed impacts to critical areas and buffers and proposed plans to mitigate those impacts; and
  - (3) Documentation of best available science or site criteria supporting the proposed mitigation plan;

- (b) Specific goals and objectives describing site function, target species, selection criteria and measures to avoid and minimize impacts shall include:
- (1) Reducing or eliminating the impact over time by preservation and maintenance operations;
  - (2) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
  - (3) Enhancing significantly degraded critical areas and buffers in combination with restoration or creation of wetlands and fish and wildlife conservation areas. Such enhancement should be part of a mitigation package that includes replacing the impacted area by meeting appropriate ratio requirements; and
  - (4) Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on site, or in-kind and within the same stream reach, subbasin, or drift cell. Mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except as specifically provided for in Sections 14.88.440 and 14.88.840;
- (c) Performance standards, which shall include criteria for assessing project specific goals and objectives and whether or not the requirements of this chapter have been met;
- (d) Contingency plans which clearly define the course of action or corrective measures needed if performance standards are not met;
- (e) A legal description and a survey prepared by a licensed surveyor of the proposed development site and location of the critical area(s) on the site;
- (f) A scaled site plan that indicates the proposed timing, duration and location of construction in relation to zoning setback requirements and sequence of construction phases including cross-sectional details, topographic survey data (showing percent slope, existing and finished grade elevations at two-foot intervals or less), mitigation area, and water table elevation with sufficient detail to explain, illustrate and provide for:
- (1) Soil and substrate conditions, topographic elevations, scope of grading and excavation proposal, erosion and sediment treatment and source controls needed for critical area construction and maintenance;
  - (2) Planting plans specifying plant species, types, quantities, location, size, spacing, or density. The planting season or timing, watering schedule, and nutrient requirements for planting, and where appropriate, measures to protect plants from destruction; and
  - (3) Contingency or mid-course corrections plan and a minimum five-year monitoring and replacement plan establishing responsibility for removal of exotic and nuisance vegetation and permanent establishment of the critical area and all component parts. The monitoring plan is subject to the provisions of Sections 14.88.277 and 14.88.278;
- (g) A clearly defined approach to assess progress of the project, including the measurement of the success of a mitigation project by the presence of native species and an increase in the coverage of native plants over the course of the monitoring period;
- (h) The plan must indicate ownership, size, type, and complete ecological assessment including flora, fauna, hydrology, functions, etc., of the critical area being restored or created; and
- (i) The plan must also provide information on the natural suitability of the proposed site for establishing the replaced critical area, including water source and drainage patterns, topographic position, wildlife habitat opportunities, and value of existing area to be converted. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.276 Alternative Mitigation.**

The Director or designee may approve the establishment and use of a mitigation bank or in-lieu fee mitigation program to provide mitigation required by this chapter. The approval may allow deviations from the requirements of Parts IV and VIII of this chapter with respect to the treatment of wetlands and fish and wildlife habitat conservation areas or buffers.

(a) Credits from a mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands and fish and wildlife habitat conservation areas or buffers when:

- (1) Criteria in Sections 14.88.440 and 14.88.840 are met;
- (2) The bank is certified under Chapter 173-700 WAC;
- (3) The Department determines that the mitigation bank provides appropriate compensation for the authorized impacts and that at minimum all proposals using a mitigation bank shall have made reasonable efforts to avoid and minimize impacts to wetlands, fish and wildlife habitat conservation areas and buffers through sequencing;
- (4) The proposed use of credits is consistent with the terms and conditions of the bank's certification;
- (5) The compensatory mitigation agreement occurs in advance of authorized impacts;
- (6) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification; and
- (7) The use of the mitigation bank will result in equivalent treatment of the functions and values of the critical area or buffer to offset the impacts on the project site such that the total net impact will be no net loss of critical area functions and values in the watershed in which the impacts will occur.

(b) In-lieu fee mitigation shall be established in accordance with the guidance contained in "Guidance on In-lieu Fee Mitigation" (Washington State Department of Ecology, December 2012, or latest edition, Publication No. 12-06-012) based upon the following order of preference:

- (1) A City or County approved program that gives priority to sites that will expand or improve habitat for Lake Stevens and associated tributaries;
- (2) A City or County approved program that utilizes receiving mitigation sites within the same subbasin as the approved impact; and
- (3) A City or County approved program that gives priority to sites within the same subbasin and/or a predefined service area that includes the City of Lake Stevens. (Ord. 984 Sec. 3 (Exh. C), 2019)

**14.88.277 Mitigation Monitoring.**

(a) All compensatory mitigation projects shall be monitored for the period necessary to establish that performance standards have been met, but in no event for less than five years following the acceptance of the installation/construction by the Planning and Community Development Director or designee.

(b) Monitoring reports on the status of the mitigation project shall be submitted to the Planning and Community Development Department. The reports shall be prepared by a qualified consultant and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation. Reports shall be submitted in accordance with the following schedule:

- (1) At the time of construction;
- (2) Thirty days after planting;
- (3) Early in the growing season of the first year;

- (4) End of the growing season of the first year;
- (5) Twice the second year (at the beginning and end of the growing season); and
- (6) Annually thereafter, to cover a total monitoring period of at least five growing seasons.

(c) The Planning and Community Development Director or designee shall have the authority to extend the monitoring and surety period and require additional monitoring reports and maintenance activities beyond the initial five-year monitoring period for any project that involves one or a combination of the following factors:

- (1) Creation or restoration of forested wetland or buffer communities;
- (2) Failure to meet the performance standards identified in the mitigation plan;
- (3) Failure to provide adequate replacement for the functions and values of the impacted critical area; or if
- (4) Additional monitoring is warranted. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008)

**14.88.278 Bonding (Security Mechanism).**

(a) If the development proposal is subject to compensatory mitigation, the applicant shall enter into an agreement with the City to complete the mitigation plan approved by the City and shall post a mitigation performance surety to ensure mitigation is fully functional.

(b) The surety shall be in the amount of 150 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on a detailed, itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring and all other costs.

(c) The surety shall be in the form of an assignment of funds, bond, security device, or other means acceptable to the City Finance Director in consultation with the City Attorney.

(d) The performance surety authorized by this section shall remain in effect until the City determines, in writing, that the permit conditions, code requirements and/or standards bonded for have been met. Once the mitigation installation has been accepted by the Director or designee, the bond may be reduced to 20 percent of the original mitigation cost estimate and shall become a maintenance surety. Said maintenance surety shall generally be held by the City for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods under Section 14.88.277(c).

(e) Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant to complete required mitigation, maintenance, monitoring, or restoration.

(f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default. Upon notice of any default, the City may demand immediate payment of any financial guarantees or require other action authorized by the City code or any other law.

(h) Any funds paid or recovered pursuant to this section shall be used to complete the required mitigation or other authorized action.

- (i) The Director or designee may authorize a one-time temporary delay, up to 180 days, in completing mitigation activities when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation. The request for the temporary delay shall include a written justification documenting the environmental constraints that preclude implementation of the mitigation plan and shall include a financial guarantee. The justification shall be verified by the City before approval of any delay.
- (j) The provisions of Section 14.16A.180 (Security Mechanisms) shall also apply if necessary to ensure adequate protection of the public interest. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 811, Sec. 73, 2010; Ord. 773, Sec. 2, 2008)

#### **14.88.280 Maps and Inventory.**

The approximate location and extent of critical areas in the City are displayed on various inventory maps available at the Department of Planning and Community Development. More data will be included as inventories are completed in compliance with the requirements of the Growth Management Act. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist in the City and are protected under all the provisions of this chapter. ~~In the event that~~If any of the designations shown on the maps or inventory lists conflict with the criteria set forth in this chapter, the criteria and site-specific conditions shall control. Other mapping sources may include:

- (a) Washington Department of Fish and Wildlife Priority Habitat and Species maps.
- (b) Washington State Department of Natural Resources official water type reference maps, as amended.
- (c) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission.
- (d) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.
- (e) Washington State Department of Natural Resources Natural Heritage Program mapping data.
- (f) Lake Stevens and/or Snohomish County maps. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.283 Pesticide Management.**

Pesticide use is not allowed in critical areas, including critical area buffers, unless it is determined by the Planning and Community Development Director or designee that there is no alternative to controlling invasive species using integrated pest management practices. If pest control is being proposed as mitigation measures to control invasive species, a pesticide management plan must be submitted to the Planning and Community Development Department. The pesticide management plan must be part of the critical areas report required in Section 14.88.270 for any development proposal, and shall include why there is no other alternative to pesticide use, mitigation of pesticide use, planned application schedules, types of pesticides proposed for use, and a means to prevent or reduce pesticide movement to groundwater and surface water. Any pesticides used within 25 feet of a wetland (100 feet if spraying) have to be listed in the MSDS as nontoxic to fish and aquatic invertebrates. The report shall be prepared by a qualified specialist. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.285 Building Setbacks.**

Buildings and other structures shall maintain the standard building setbacks ~~per for~~ the underlying zoning district as established by Chapter 14.48.040-050, depending on the site orientation, from all critical area buffer tracts or easements. ~~If no buffers are present or required, the minimum setback from the edge of critical areas or 10 feet from the edges of all critical areas, if no buffers are required shall be 10-feet,~~ to ensure adequate width for construction staging, maintenance and repair of primary buildings and accessory structures and use of improvements without disturbing the critical area buffer or critical area.

The following may be allowed in the building setback area:

- (a) Uncovered decks no higher than two (2) feet above grade;
- (b) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area;
- (c) Impervious ground surfaces, such as driveways and patios; provided that such improvements may be subject to water quality regulations as adopted;
- (d) Accessory structures less than 200 square feet may be set back five-10 feet; and
- (e) Fences and walls are exempt when the fence or wall further separates incompatible uses outside of the critical area and its associated buffer and when any temporary or permanent impacts are mitigated according to this chapter and in compliance with other provisions of this title, based on the recommendation of a qualified professional for the specific critical area type. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.287 Fencing and Signage.**

Permanent fencing and signage adjacent to a regulated wetland or stream corridor shall be required. Permanent signage may be required for geologically hazardous areas and setback buffers not approved for alteration under Section 14.88.670.

- (a) Fencing.
  - (1) The applicant shall install permanent fencing so as to not interfere with species migration, including fish runs, and fencing shall be constructed in a manner that minimizes impacts to the critical areas and associated buffer;
  - (2) The fence shall be designed and constructed to clearly demarcate the buffer from the developed portion of the site and to limit access of landscaping equipment, vehicles, or other human disturbances. Standard details for fencing shall be kept on file at the Planning and Community Development Department; and
  - (3) No pressure treated posts and rails will be used for signage or fencing, unless shown to be inert and have no negative impact on the critical area or buffer.
- (b) Signs designating the presence of a critical area shall be posted along the buffer boundary. ~~The signs shall be posted~~ at a minimum rate of one sign for every 100 lineal feet, or one per lot, whichever provides more coverage. Standard details for signage shall be kept on file at the Planning and Community Development Department. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.290 Critical Areas Tracts and Easements.**

- (a) Unless otherwise required in this chapter, native growth protection areas shall be used in all development proposals to delineate and protect the following critical areas and buffers:
  - (1) All geologically hazardous areas not approved for alteration and associated setback buffers;
  - (2) All wetlands and buffers; and
  - (3) All fish and wildlife habitat conservation areas and buffers.
- (b) Native growth protection areas created pursuant to this chapter shall be designated on the face of the plat, short plat or other recorded drawing pursuant to Sections 14.16C.105 and 14.18.040 and shall be protected by one of the following methods:
  - (1) Development proposals for subdivisions, short subdivisions, binding site plans and similar land use actions that segregate property shall use separate critical area tracts to delineate and protect native growth

protection areas. The critical area tract shall be held by each lot owner in the development in an undivided interest or held by a homeowner's association or other legal entity, which assures the ownership, maintenance, and protection of the tract; or

(2) For development proposals that do not segregate lots, the permit holder shall record a native growth protection area easement with the Snohomish County Auditor stating the location of and the limitations associated with all of the critical areas and associated buffers or mitigation sites on the property, prior to release of the associated permit. Restrictions and limitations shall be stated on the face of the deed applicable to the property and recorded with the Snohomish County Auditor.

(c) Such easements or tracts shall cover the critical area as delineated by its defined boundaries and buffers. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.295 Permanent Protection for Streams, Wetlands and Buffers.**

All streams and wetlands under this chapter and their required buffers shall be permanently protected by designating them as native growth protection areas (NGPAs) in accordance with Section 14.88.290. NGPAs are to be left permanently undisturbed in a substantially or environmentally enhanced natural state. No clearing, grading, filling, building construction or placement, or road construction is allowed except the following:

(a) On a case by case basis when supported by a critical areas assessment study report consistent with 14.88.270, crossings for underground utility lines which utilize the shortest alignment possible and for which no alignment that would avoid such a crossing is feasible.

(b) Removal of hazardous trees by the property owner, when based on a recommendation by a qualified arborist and an assessment of hazardous tree risk study and when approved by the City.

(1) Any trees removed in an established NGPA, ~~a~~ critical area or its buffer shall be replaced at a 3:1 ratio or at a 1.5:1 ratio when four-to-six-foot-tall native evergreen trees are planted with the total count being rounded up to the next whole number. Replacement trees shall be native to the specific habitat type and be planted within six months of project approval, unless otherwise recommended by a qualified professional or arborist and approved by the city.

(2) Any tree removed should only be cut to a point that it does not present a danger to adjacent properties or structures but can provide wildlife habitat.

(c) Existing legally (ongoing) established structures with no expansion in building footprint, and nonnative or ornamental landscaping, including, but not necessarily limited to, gardens, yards, pastures, and orchards, are not required to be designated as NGPAs. (Ord. 1179, Sec. 22, 2024; Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.297 Limited On-Site Density Transfer for Critical Areas.**

On-site density transfers may be permitted when critical areas are located on the property subject to the following provisions:

(a) Only the area contained in the following critical areas and their associated buffers are eligible to be used in the density transfer calculation:

- (1) Category II, III, and IV wetlands;
- (2) Fish and wildlife conservation areas; and
- (3) Geologically hazardous areas, not approved for alteration.

(b) The development must be proposed to connect to sewer service and sewer service must be available.

- (c) The base density shall be consistent with the densities set forth in Chapter 14.36 for the zoning districts. The site density shall be calculated using the area of the subject property divided by the minimum lot size of the applicable zone.
- (d) The overall density of the proposed site may be transferred from the undevelopable portion to the developable part of the site and the development when the development is not using other allowed reductions or modifications to critical areas and buffers defined in this chapter.
- (e) The development shall meet applicable policies, setbacks and other standards of the City except:
- (1) The minimum lot size of the underlying zoning district may be reduced by 30 percent in order to accommodate the transfer in densities;
  - (2) Lot widths of Chapter 14.48, Table 14.48-I may not be less than 40 feet;
  - (3) The front setbacks specified in Chapter 14.48, Table 14.48-I may be reduced by five feet, but in no instance may the garage setback be less than 19 feet;
  - (4) The proposed development must be compatible with the character of the area and adjacent uses; and
  - (5) The area to which density is transferred must not be constrained by other critical areas. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008)

#### **14.88.298 Innovative Development Design.**

A project permit applicant may request approval of an innovative design, which addresses wetland, fish and wildlife habitat conservation area or buffer treatment in a manner that deviates from the standards set forth in Sections 14.88.400 through 14.88.440, Fish and Wildlife Conservation Areas, and Sections 14.88.800 through 14.88.840, Wetlands.

- (a) An innovative development design will be considered in conjunction with the primary land use project approval or building permit approval, when the project is consistent with subsection (b) of this section and utilizes the mitigation sequencing standards in Section 14.88.010(a) and provides any necessary mitigation. An applicant may include the innovative development design proposal in the project pre-application review packet for review.
- (b) The applicant shall demonstrate in a site/resource-specific report required pursuant to Section 14.88.270 how the innovative development design complies with the following requirements, as well as those identified in Section 14.88.440 (for streams) and 14.88.840 (for wetlands):
- (1) The innovative development design will achieve protection equivalent to or better than the treatment of the functions and values of the critical areas that would be obtained by applying the standard prescriptive measures contained in this chapter;
  - (2) ~~Applicants for innovative development design must consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies which address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this chapter;~~
  - (23) The innovative development design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property; and
  - (34) ~~Applicants for~~The innovative development design ~~are encouraged to consider measures prescribed in the Puget Sound Action Team 2012 Technical Guidance Manual for Low Impact Development or as amended~~utilizes low impact design. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008)

**14.88.300 Dedication of Land and/or Easements in Lieu of Park Mitigation.**

The dedication of critical areas and their buffers as open space may not be used to satisfy park mitigation requirements. ~~Park land must be dedicated or fees in lieu of dedication must be paid as set forth in this title. However, if an applicant provides recreation amenities in buffers as allowed under this chapter, the cost of those amenities may be subtracted from the total park mitigation calculated for a given project with prior approval of the Planning and Community Development Director.~~ (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.310 Demonstration of Denial of All Reasonable Economic Uses.**

In order to conduct a regulated activity in a critical area where the applicant is claiming that denial of authorization of such an activity would deny all reasonable economic uses of the property, the applicant must demonstrate that such is the case and include a mitigation sequencing analysis per Section 14.88.010(a). If a regulated activity is allowed within a critical area, it must minimize impacts per the “requirements” sections, below. If the Planning and Community Development Director or designee determines that alteration of a critical area is necessary and unavoidable, written findings addressing each of the items listed in this section shall be placed in the official project file. Demonstration of denial of all reasonable economic uses shall be accomplished as follows:

- (a) An applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.
- (b) For water-dependent activities, unavoidable and necessary impact can be demonstrated where there are no practicable alternatives which would not involve a wetland or fish and wildlife conservation area or which would not have less adverse impact on a wetland or fish and wildlife conservation area, and would not have other significant adverse environmental consequences.
- (c) Where non-water-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:
  - (1) The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on regulated critical areas;
  - (2) A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a critical area or its buffer will not accomplish the basic purpose of the project; and
  - (3) In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 903, Sec. 52, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.320 Allowance of Regulated Use in a Critical Area Where Denial of All Economic Use is Demonstrated.**

If an applicant for an activity or development proposal demonstrates to the satisfaction of the Planning and Community Development Director or designee that application of these standards would deny all reasonable economic use of the property as provided by Section 14.88.220, development, as may be conditioned, shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the Director:

- (a) If proposed in a wetland, stream, creek, river, lake or other surface water, that the proposed project is water-dependent or requires access to the wetland as a central element of its basic function; or
- (b) If proposed in a critical area not listed in subsection (a) of this section, that it is not water-dependent but has no practicable alternative; and

- (c) That no reasonable use with less impact on the critical area and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);
- (d) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the critical area and its buffer;
- (e) That the proposed activities will result in minimum feasible alteration or impairment to the functional characteristics of the critical area and its existing contours, vegetation, fish and wildlife resources, hydrological, and geologic conditions;
- (f) That disturbance of the critical area has been minimized by locating any necessary alteration in buffers to the extent possible;
- (g) That an analysis of surrounding properties within ¼ mile with similar physical and regulatory constraints has been completed and demonstrates that the request is consistent with the reasonable use criteria.
- (hg) That the proposed activities will not jeopardize the continued existence of endangered, threatened, or sensitive species as listed by the Federal Government or the State of Washington. An applicant is required to confirm with the State of Washington that special conditions or recommendations are not required for candidate or monitor species;
- (ih) That the proposed activities will not cause significant degradation of groundwater or surface water quality;
- (j) That the proposed activities comply with all State, local and Federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
- (j) That any and all alterations to critical areas and their buffers will be adequately mitigated;
- (k) That 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;
- (l) That 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; and
- (m) That deliberate measures have been taken to minimize the impacts. Minimizing impacts shall include but not be limited to:
  - (1) Limiting the degree or magnitude of the prohibited activity;
  - (2) Limiting the implementation of the prohibited activity;
  - (3) Using appropriate and best available technology;
  - (4) Taking affirmative steps to avoid or reduce impacts;
  - (5) Sensitive site design and siting of facilities and construction staging areas away from critical areas and their buffers;
  - (6) Involving resource agencies early in site planning;
  - (7) Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures; and

(8) Scheduling the prohibited activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 903, Sec. 53, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.330 Nonconforming Activities.**

A regulated use or activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to Chapter 14.32, including the following:

- (a) No such activity shall be expanded, modified, or substituted in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter;
- (b) Except for cases of discontinuance as part of normal agricultural practices, if a nonconforming activity is discontinued for 180 days, any resumption of the activity shall conform to this chapter;
- (c) If a nonconforming use or activity is destroyed by human activities or a natural occurrence, it shall not be resumed except in conformity with the provisions of this chapter;
- (d) Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.340 Assessment Relief.**

~~The Snohomish County Assessor's office considers~~The presence of critical area regulations may be considered when~~in~~ determining the fair market value of land. ~~Any owner of an~~Owners of undeveloped critical area who ~~has~~ves dedicated an easement or entered into a perpetual conservation restriction with the City of Lake Stevens or a nonprofit organization to permanently control some or all regulated activities in that portion of land assessed consistent with these restrictions ~~shall~~may be considered for exemption from special assessments to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. The final determination shall be made by the Snohomish County Assessor's office. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part IV. Fish and Wildlife Conservation Areas

**14.88.400 Classification.**

Fish and wildlife conservation areas include:

- (a) Lands containing priority habitats and species, including plant and/or animal species listed on Federal or State threatened or endangered species lists.
- (b) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals, detention facilities, waste-water treatment facilities, farm ponds, temporary construction ponds (of less than three years' duration), and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.
- (c) Waters of the State, as defined in WAC Title 222, Forest Practices Rules and Regulations. Waters of the State shall be classified using the system in WAC 222-16-030. In classifying waters of the State as fish and wildlife habitats the following shall be used:
  - (1) Species are present which are endangered, threatened or sensitive;
  - (2) Existing surrounding land uses are incompatible with salmonid and other game fish habitat;
  - (3) Presence and size of riparian ecosystem;

(4) Existing water rights.

- (d) Lakes, ponds, and streams planted with game fish (defined at RCW 77.08.020), including those planted under the auspices of Federal, State, local, or tribal programs, or which support priority fish species as identified by the Department of Fish and Wildlife.
- (e) State natural area preserves and natural resource conservation areas.
- (f) Habitats or species of local importance. Such habitats or species may be locally listed per the process elucidated in Section 14.88.415.
- (g) Streams shall be classified according to the stream type system as provided in WAC 222-16-030, Stream Classification System, as amended.

(1) Type S Stream. Those streams, within their ordinary high water mark, as inventoried as shorelines of the State under Chapter 90.58 RCW and the rules promulgated pursuant thereto.

(2) Type F Stream. Those streams ~~that are not Type S streams and are either perennial or intermittent and have fish use or the potential to support fish use. segments within the ordinary high water mark that are not Type S streams, and which are demonstrated or provisionally presumed to be used by fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and have a gradient of 16 percent or less for basins less than or equal to 50 acres in size, or have a gradient of 20 percent or less for basins greater than 50 acres in size, are provisionally presumed to be used by fish. A provisional presumption of fish use may be refuted at the discretion of the Planning and Community Development Director where any of the following conditions are met:~~

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

~~(ii) It is demonstrated to the satisfaction of the City that the stream segment in question has confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;~~

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

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

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

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

(4) Type Ns Stream. Those stream segments within the ordinary high water mark that are not Type S, Type F, or Type Np streams. These include seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any

~~stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters. seasonal streams in which surface flow is not present for at least some-portion-of-a-year-of-normal-rainfall that are not located downstream from any Type Np stream segment.~~  
(Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 903, Sec. 54, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.410 Determination of Boundary.**

(a) The boundaries of fish and wildlife conservation areas shall be determined by the Planning and Community Development Director or designee, who may rely on a Departmental approved biological resources survey prepared by a qualified ~~wildlife biologist per the Department's Biological Resources Survey Guidelines~~ professional. Such a report would be supplied by the applicant of a permit.

(b) The boundary of the creek, stream, river, lake, or other surface water shall be determined by the Planning and Community Development Director or designee, relying on a delineation by a licensed surveyor or other comparable expert. Such boundary shall be contiguous with the 100-year floodplain designations as adopted by the City, or where such a designation has not been adopted by the City, the 100-year floodplain designation of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program where it has been delineated (shown on Flood Insurance Rate Maps (FIRM)). Where this information does not exist, the boundary determination shall be made by a licensed surveyor and based upon the same criteria used by FEMA. This determination shall be confirmed by the City Engineer. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.415 Species/Habitats of Local Importance.**

(a) Species or habitats may be listed as a species or habitat of local importance by the City Council according to the following process:

(1) An individual or organization must:

(i) Demonstrate a need for special consideration based on:

- a. Declining populations;
- b. Sensitivity to habitat manipulation; or
- c. Commercial or game value or other special value, such as public appeal.

(ii) Propose relevant management strategies considered effective and within the scope of this chapter.

(iii) Provide species or habitat location(s) on a map.

(2) Submitted proposals will be reviewed by the Planning and Community Development Director or designee and forwarded to the Departments of Fish and Wildlife and Natural Resources, and/or other local, State, Federal, or tribal agencies or experts for comment and recommendation regarding accuracy of data and effectiveness of proposed management strategies.

(3) The City Council will hold a public hearing for proposals found to be complete, accurate, potentially effective, and within the scope of this chapter. Approved nominations will become designated a species or habitat of local importance and will be subject to the provisions of this chapter.

(b) Species or habitats of local importance include:

(1) [None adopted as of May 1, 1995] (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**~~14.88.420 Allowed Activities.~~**

~~Except where regulated by other sections of this or any other title or law, the following uses shall be allowed within fish and wildlife conservation areas when the requirements of Section 14.88.430 have been met and mitigation adequate to alleviate any other impacts has been proposed:~~

~~(a) Those activities listed in Section 14.88.220.~~

~~(b) Activities consistent with the species located there and all applicable State and Federal regulations regarding the species, as determined by the Planning and Community Development Director or designee, who may consult with other resource agencies as to their recommendations.~~

~~(c) Bridges and other crossings over streams for public and private rights of way. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~

**14.88.430 Stream Buffer Requirements and Modifications.**

(a) Except as provided in this subsection, a 10050-foot buffer shall be required ~~for all regulated activities~~ adjacent to fish and wildlife conservation areas, as best available science shows this is the minimum necessary width to provide adequate biofiltration and infiltration of runoff for water quality pollutant protection and achieves the majority of ecological function provided by a riparian management zone. All buffers shall be measured from the fish and wildlife conservation area boundary as surveyed in the field. The width of the buffer may be increased depending on the habitat value and the proposed land use.

(b) Buffer widths may be increased beyond those identified in Table 14.88-I based on:

(1) recommendations by the Department of Fish and Wildlife based on their Management Recommendations for Priority Habitats and Species; or

(2) For Type F streams, conditions exist within the adjacent buffer that warrant expanding the buffer to reflect the site potential tree height (SPTH<sub>200</sub>), as described in the Washington Department of Fish and Wildlife's "Guidelines for Determining Site Potential Tree Height" (2025) and measured in the Site Potential Tree Height Calculator tool. The assessment of whether to utilize SPTH shall be made by the Planning and Community Development Director or their designee following a review of the critical areas report, and shall factor in the presence of:

(i) Steep slopes that could lead to increased runoff and erosion;

(ii) Vegetation that is degraded, non-native or sparse;

(iii) Inadequate areas for pollutant removal and water quality treatment;

(iv) Sensitive species that require upland habitat function;

(v) Unstable stream channels;

(vi) Compacted or poorly infiltrative soils; or

(vii) Inadequate tree canopy or height to provide necessary shade.

Should SPTH<sub>200</sub> be required, the critical areas report shall be revised to reflect the updated stream buffer widths.

(c) To retain the natural functions of streams and stream corridors and provide adequate buffer protection and function, the following streamside buffers shall be maintained:

(1) For ravines with banks greater than 10 feet in depth, maintain the existing or native vegetation within the ravine and a strip 25 feet from the top of the bank;

(2) Where there is no ravine or the bank is less than 10 feet in depth, maintain existing or native vegetation on both sides of the stream as measured from the ordinary high water mark (OHWM), in accordance with Table 14.88-I, which sets forth the required buffer widths based on classification of stream types:

**Table 14.88-I: Stream Buffer Width**

<b>Stream Type</b>	<b>Buffer</b>
S	150 feet
F	<del>100-150</del> feet
Np	<del>50-100</del> feet
Ns	<del>50-100</del> feet

(d) Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of the bank if the ordinary high water mark cannot be identified, or from the outer edge of the channel migration zone when present.

(e) The Planning and Community Development Director may modify the buffer widths in the above table in accordance with the following:

(1) Buffer widths may be increased as necessary to fully protect riparian functions. For example, the buffer may be extended to the outer edge of the floodplain or windward into an area of high tree blow-down potential as determined by an arborist.

(2) Buffer widths may be reduced (to a minimum of 100 feet) in exchange for restoration and enhancement of degraded areas in accordance with an approved plan, or for buffer averaging in accordance with Section 14.88.275 and subsection (e)(4) of this section.

(3) If the stream enters an underground culvert or pipe, and is unlikely to ever be restored aboveground, the Planning and Community Development Director may waive the buffer along the undergrounded stream; provided, that where the stream enters and emerges from the pipe the opposite outer edges of the buffer shall be joined by a radius equal to the buffer width, with said radius projecting over the piped stream.

(4) Stream buffer widths may be modified by averaging. In no instance shall the buffer width be reduced by more than 25 percent of the standard buffer, to a minimum of 100 feet. Stream buffer width averaging shall only be allowed when the applicant demonstrates the following:

(i) A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science as described in Section 14.88.235; and

(ii) A buffer enhancement plan is proposed that would significantly improve the functions and values of the stream buffer(s); and

(iii) The averaging will not impair or reduce the habitat, water quality purification and enhancement, stormwater detention, groundwater recharge, shoreline protection and erosion and other functions and values of the stream and buffer.

(5) Buffer widths may be modified if the subject property is separated from the stream channel by preexisting, intervening, and lawfully created structures, public roads, or other substantial preexisting intervening improvements, as identified in Section 14.88.296. The intervening structures, public roads, or other substantial improvements must separate the subject upland property from the stream channel by height or width, preventing or impairing the delivery of biological or hydrological buffer functions to the stream channel. ~~In such cases, the reduced buffer width shall reflect the buffer functions that can be delivered to the stream channel.~~

(6) Functionally and effectively disconnected areas may be excluded from the buffer area, per LSMC 14.88.296.

(f) Development in the shorelines of State-wide significance is regulated under Appendix B of the City's State-approved Shoreline Master Program (SMP).

(g) To protect the natural functions and aesthetic qualities of a stream and stream buffer, a detailed temporary erosion control plan which identifies the specific mitigating measures to be implemented during construction to protect the water from erosion, siltation, landslides and hazardous construction materials shall be required. The City shall review the plan with the appropriate State, Federal and tribal agencies and any adjacent jurisdiction. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 898, Sec. 8, 2013; Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.440 Mitigation.**

~~In order to~~ To avoid significant environmental impacts, the applicant for a land use or development ~~permit may consider performing~~ must perform the following actions, listed in order of preference. What is considered adequate mitigation will depend on the nature and magnitude of the potential impact as determined in accordance with Section 14.88.275.

(a) Dedicate an exclusive open space easement or tract for the protection of wildlife and/or habitat, creeks, streams, rivers, lakes, or other surface water over the creeks, streams, rivers, lakes, or other surface water and a buffer consistent with the standards listed in Section 14.88.430. Where such mitigation leads to or would in the opinion of the Planning and Community Development Director lead to a court finding of a taking, the below listed mitigation may be considered.

(b) Where on-site protection is not possible, dedicate an exclusive easement for the protection of an equivalent (in type and value) waterway over the waterway and a 1050-foot buffer on an off-site waterway at a 2:1 ratio. The location of any off-site waterway shall be located as near to the site as possible, in accordance with the following preferred order:

- (1) Contiguous to the impacted waterway;
- (2) Within the same drainage basin;
- (3) Elsewhere within the City;
- (4) Within the Lake Stevens UGA;
- (5) Within the region.

(c) The applicant may propose innovative site design based on the best available science and pursuant to Section 14.88.298 if the innovative development design will achieve protection equivalent to or better than the standard provisions of this chapter. Approval of the innovative site design will be considered in combination with criteria listed in Section 14.88.298 if the design achieves the following:

- (1) The site design avoids all impacts to the critical area and minimizes buffer impacts; or

(2) The site design increases the functions and/or values of the stream channel and buffer with a combination of the following measures:

- (i) Increasing canopy-cover shade in the riparian zone to maintain cool stream temperatures and regulate micro-climates in the stream-riparian corridor;
- (ii) Reducing fine sediment input in the stream system through hydrologic retention, filtration and stream bank protection;
- (iii) Stabilizing stream banks, and minimizing stream bank erosion;
- (iv) Filtering and reducing potential of impact pollutants from groundwater and surface water runoff;
- (v) Increasing large woody debris and coarse particulate matter into the stream channel for habitat and to moderate stream flow;
- (vi) Increasing critical wildlife habitat along stream-associated migration corridors;
- (vii) Increasing in-stream habitat for aquatic, amphibian, invertebrate and resident and/or anadromous fish species. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part V. Frequently Flooded Areas

**14.88.500 Classification.**

Classification for flood zones shall be consistent with the regulatory floodplain designations as adopted by the City per Chapter 14.64, or where such a designation has not been adopted by the City, by the special flood hazard area designations of the Federal Emergency Management Agency and the National Flood Insurance Program. Any such designations adopted by the City shall consider the following criteria if and when designating and classifying these areas:

- (a) Flooding impact to human health, safety, and welfare and to public facilities and services; and
- (b) Documentation including Federal, State and local laws, regulations and programs, local maps and federally subsidized flood insurance programs. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.510 Determination of Boundary.**

The boundary of a flood zone shall be contiguous with the regulatory floodplain as adopted by the City, per Chapter 14.64, or where such a designation has not been adopted by the City, the special flood hazard area designations of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program where it has been delineated [shown on Flood Insurance Rate Maps (FIRM)]. Where this information does not exist, the boundary determination shall be made by a licensed engineer and based upon the same criteria used by FEMA. The Planning and Community Development Director or designee shall confirm this determination. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

~~**14.88.520 Allowed Activities.**~~

~~Except where regulated by other sections of this or any other title or law, the following uses shall be allowed within the regulatory floodplain when the requirements of Section 14.88.530 have been met and mitigation adequate to alleviate any other impacts has been proposed:~~

- ~~(a) Those activities allowed per Section 14.88.220.~~

~~(b) — Those activities allowed per Section 14.64.030. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~

**14.88.530 Requirements.**

All land uses and development proposals shall comply with the applicable provisions of the Lake Stevens Municipal Code for general and specific flood hazard protection (see Chapter 11.06, Stormwater Management).

(a) Development shall not reduce the effective flood storage volume. Reduction of the floodwater storage capacity due to grading, construction, or other regulated activities shall provide compensatory storage per Section 14.64.055(b).

(b) The final recorded subdivision plat or site plan shall include a notice that the property contains land within the regulatory floodplain including special flood hazard areas and protected areas, as applicable. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.540 Mitigation.**

If potential flooding impacts from development cannot be avoided by design or if the use is not an allowed or exempt use, the applicant shall provide a habitat impact assessment and/or habitat mitigation plan to mitigate impacts on Federal, State or locally protected species and habitat, water quality and aquatic and riparian habitat, per Section 14.64.055(c) and (d). (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part VI. Geologically Hazardous Areas

**14.88.600 Classification.**

(a) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquakes, liquefaction, or other geological events. Geologically hazardous areas shall be classified based upon the history or existence of landslides, unstable soils, steep slopes, high erosion potential or seismic hazards. In determining the significance of a geologically hazardous area the following criteria shall be used:

- (1) Potential economic, health, and safety impact related to construction in the area;
- (2) Soil type, slope, vegetative cover, and climate of the area;
- (3) Available documentation of history of soil movement, the presence of mass wastage, debris flow, rapid stream incision, stream bank erosion or undercutting by wave action, or the presence of an alluvial fan which may be subject to inundation, debris flows, or deposition of stream-transported sediments.

(b) The different types of geologically hazardous areas are defined as follows:

(1) Erosion hazard areas are as defined by the USDA Soil Conservation Service, United States Geologic Survey, or by the Department of Ecology Coastal Zone Atlas. The following classes are high erosion hazard areas:

- (i) Class 3, class U (unstable) includes severe erosion hazards and rapid surface runoff areas;
- (ii) Class 4, class UOS (unstable old slides) includes areas having severe limitations due to slope;  
and
- (iii) Class 5, class URS (unstable recent slides).

(2) Landslide hazard areas shall include areas subject to severe risk of landslide based on a combination of geologic, topographic and hydrologic factors. Some of these areas may be identified in the Department of Ecology Coastal Zone Atlas, or through site-specific criteria. Landslide hazard areas include the following:

- (i) Areas characterized by slopes greater than 15 percent; and impermeable soils (typically silt and clay) frequently interbedded with permeable granular soils (predominantly sand and gravel) or impermeable soils overlain with permeable soils; and springs or groundwater seepage;
  - (ii) Any area which has exhibited movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that epoch;
  - (iii) Any area potentially unstable due to rapid stream incision, stream bank erosion or undercutting by wave action;
  - (iv) Any area located on an alluvial fan presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments;
  - (v) Any area with a slope of 40 percent or greater and with a vertical relief of 10 or more feet except areas composed of consolidated rock;
  - (vi) Any area with slope defined by the United States Department of Agriculture Soil Conservation Service as having a severe limitation for building site development; and
  - (vii) Any shoreline designated or mapped as class U, UOS, or URS by the Department of Ecology Coastal Zone Atlas.
- (3) Slopes.
- (i) Moderate slopes shall include any slope greater than or equal to 15 percent and less than 40 percent.
  - (ii) Steep slopes shall include any slope greater than or equal to 40 percent.
- (4) Seismic hazard areas shall include areas subject to severe risk of earthquake damage as a result of seismic induced settlement, shaking, slope failure or soil liquefaction. These conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow groundwater table. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.610 Determination of Boundary.**

Determination of a boundary of a geologically hazardous area shall be made by the Planning and Community Development Director, relying on a geotechnical or similar technical report and other information where available and pertinent. Such reports or information shall be provided by an applicant for an activity or permit at the request of the City. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **~~14.88.620 Allowed Activities.~~**

~~Except where regulated by other sections of this or any other title or law, the following uses shall be allowed within geologically hazardous areas when the requirements of Section 14.88.630 have been met and mitigation adequate to alleviate any other impacts has been proposed:~~

~~(a) Those activities allowed per Section 14.88.220.~~

~~(b) Any other use allowed per the zone; provided, that it meets the requirements of Section 14.88.630 and will not have a detrimental impact on the health, safety, and welfare of the public, or will not negatively impact neighboring properties. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~

#### **14.88.630 Geological Assessment Requirements.**

Development proposals on or within 200 feet of any areas which are designated as geologically hazardous, or which the City has reason to believe are geologically hazardous based on site-specific field investigation, shall be required to submit a geological assessment.

- (a) The geological assessment shall be submitted with the minimum required content as set forth in subsection (d) of this section and in the format established by the Planning and Community Development Director, and shall be consistent with the following:
- (1) A geotechnical letter is required when the geologist or geotechnical engineer finds that no active geological hazard area exists on or within 200 feet of the site.
  - (2) A geotechnical report is required when the geologist or geotechnical engineer finds that an active geological hazard area exists on or within 200 feet of the proposed project area.
- (b) The Department shall review the geological assessment and either accept or reject the assessment and require revisions or additional information. When the geological assessment has been accepted, the Department shall issue a decision on the land use permit application.
- (c) Per Section 14.88.270, Aa geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during the five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.
- (d) A geological assessment shall include the following minimum information and analysis:
- (1) A field investigation that may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.
  - (2) An evaluation of any areas on the site or within 200 feet of the site that are geologically hazardous as set forth in Section 14.88.600.
  - (3) An analysis of the potential impacts of the proposed development activity on any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope whether the slope is part of the subject property or starts off site. Where slope instability is a concern, the city may require that the analysis include subsurface exploration (borings and test pits), reasonable groundwater monitoring and slope stability calculations.
  - (4) Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long term basis. The mitigation plan shall include recommendations regarding any long term maintenance activities that may be required to mitigate potential hazards.
  - (5) The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments, or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.
  - (6) The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.
- (e) Geological assessments shall be prepared under the responsible charge of a geologist or geotechnical engineer, and shall be signed, sealed, and dated by the geologist or geotechnical engineer. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.640 Setback Buffer Requirements.**

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

(1) If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

(2) The City may require increased setback buffer widths under any of the following circumstances:

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

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

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

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

(c) The City may impose seasonal restrictions on clearing and grading within 200 feet of any geologically hazardous areas. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.650 Allowed Alterations.**

Unless associated with another critical area, the Planning and Community Development Director or designee may allow alterations of an area identified as a geologically hazardous area or the setback buffers specified in the IBC if an approved geotechnical report demonstrates that:

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

(b) The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

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

(d) The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;

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

(f) The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;

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

(h) The improvements are certified as safe as designed and under anticipated conditions by a geologist or geotechnical engineer. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.660 Prohibited Alterations.**

Modification of geologically hazardous areas shall be prohibited under the following circumstances:

- (a) Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alterations of the slopes are not permitted, except as allowed in Section 14.88.220. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than 25 feet from the top of slopes of 25 percent and greater.
- (b) Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on or off site shall be prohibited.
- (c) No new development or creation of new lots is allowed that would cause foreseeable risk from geological conditions to people or improvements during the life of the development (WAC 173-26-221(2)(c)(ii)(B)).
- (d) No new development is allowed that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. (WAC 173-26-221(2)(c)(ii)(C)). (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.670 Mitigation.**

(a) In addition to the other requirements of this chapter, as part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by this section:

- (1) The City shall require:
  - (i) Geologically hazardous areas not approved for alteration and their setback buffers shall be placed in a native growth protection area as set forth in Section 14.88.290.
  - (ii) Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the City Attorney. Such document shall identify any limitation placed on the approved alterations.
- (2) The City may require:
  - (i) The presence of a geologist on the site to supervise during clearing, grading, filling, and construction activities which may affect geologically hazardous areas, and provide the City with certification that the construction is in compliance with the geologist's or geotechnical engineer's recommendations and has met approval of the geologist or geotechnical engineer, and other relevant information concerning the geologically hazardous conditions of the site.
  - (ii) Vegetation and other soil stabilizing structures or materials be retained or provided.
  - (iii) Long term maintenance of slopes and on-site drainage systems.

(b) If potential geologic impacts cannot be avoided by adhering to the above requirements and the other requirements of this chapter, other forms of mitigation may be considered. Applicants must provide mitigation plans exploring and analyzing any proposed mitigation measures. What is considered adequate mitigation will depend on the nature and magnitude of the potential impact. For example, some potential risk due to construction in geologically hazardous areas may be reduced through structural engineering design. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part VII. Streams, Creeks, Rivers, Lakes and Other Surface Water Critical Aquifer Recharge Areas (CARAs)

**14.88.700 ~~Classification, Designation, Mapping and Rating.~~**

(a) Areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2) are hereby designated critical areas and shall be subject to the provisions of this chapter.

(b) The approximate location and extent of known or suspected critical aquifer recharge areas are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be continuously updated as new critical areas are identified. It is the responsibility of project proponents to determine whether a site contains a regulated CARA and is regulated pursuant to this chapter. The department will verify on a case-by-case basis the presence of critical aquifer recharge areas identified by project proponents.

(c) For purposes of this chapter, CARAs include the following:

(1) Areas within the 10-year travel zone of Group A wellhead protection areas, determined in accordance with delineation methodologies specified by the Washington Department of Health under authority of chapter 246-290 WAC.

(2) Areas of high, medium, low sensitivity to groundwater contamination, based on depth to groundwater and in accordance with The Ground-Water System and Ground-Water Quality in Western Snohomish County, Washington (United States Geological Survey, Water Resources Investigations, Report #96-4312, 1997).

(3) Sole source aquifers designated by the U.S. Environmental Protection Agency in accordance with the Safe Drinking Water Act of 1974

(4) Maps, if any, as provided by the city, Snohomish County Public Utility District and Washington State Department of Health

*Repealed by Ord. 741.*

**14.88.710 ~~Allowed Activities, Performance Standards – General Requirements.~~**

(a) Impact Avoidance and Minimization

(1) Project proponents shall make all reasonable efforts to avoid and minimize impacts to CARAs in the following sequential order of preference:

(i) Avoiding impacts altogether by refraining from specific actions or portions of actions that would affect CARAs;

(ii) Minimizing impacts by reducing the scale or intensity of the action, utilizing appropriate technology, or implementing design modifications, relocation, or timing adjustments to reduce potential harm;

(iii) Where avoidance is not feasible, mitigating impacts to CARAs through approved mitigation measures consistent with this chapter.

(b) Prohibited Impacts in Group A Wellhead Protection Areas

(1) Any activity or use listed in LSMC 14.88.730 that occurs within a Group A wellhead protection area and results in unavoidable impacts to CARAs shall not be approved. Mitigation is not permitted for such activities due to the necessity of protecting public drinking water sources.

(c) Activities listed in LSMC 14.88.730 shall comply with:

(1) All regulated activities within CARAs shall implement Best Management Practices (BMP) appropriate to the scale, type, and potential risk of the proposed use. BMPs may include, but are not limited to:

- (i) Spill prevention and containment systems for hazardous materials.
- (ii) Secondary containment for above ground and underground storage tanks.
- (iii) Stormwater management systems shall be designed to prevent infiltration of contaminants.
- (iv) Use of non-toxic or low-toxicity substances in industrial or commercial processes.
- (v) Proper handling, storage, and disposal of chemicals, fertilizers, and waste.
- (vi) Employee training programs for pollution prevention and emergency response.

(2) Where a hydrogeologic report is required under LSMC 14.88.740, the applicant shall:

- (i) Identify potential pathways for contaminant migration to the aquifer.
- (ii) Quantify the risk to groundwater quality and quantity.
- (iii) Propose mitigation measures that reduce or eliminate identified risks.
- (iv) Demonstrate that mitigation measures are feasible, effective, and enforceable.
- (v) Include monitoring protocols and contingency plans for system failure or unexpected impacts.

(d) In addition to BMPs and mitigation plans, applicants shall comply with:

- (i) Reporting and documentation standards outlined in the Critical Area Report requirements.
- (ii) Any site-specific conditions imposed by the City based on vulnerability ratings or proximity to public water supply wells.
- (iii) Applicants shall comply with applicable provisions of the Washington Administrative Code (WAC) and Revised Code of Washington (RCW), including WAC 173-200 (Groundwater Quality Standards) and RCW 90.48 (Water Pollution Control Act).
- (iv) Any additional conditions or performance standards adopted by the City through administrative rules or technical guidance documents.

**14.88.720 Requirements, Performance Standards – Specific Uses.**

(a) The following uses and development activities, proposed within designated CARA, shall be subject to special conditions to ensure protection of groundwater resources. These conditions shall be based on:

- (1) Applicable state and federal regulations;
- (2) Recommendations from a hydrogeologic report prepared in accordance with LSMC 14.88.740; or
- (3) Input from affected Group A public water systems, where applicable.

(b) The following uses are subject to review and conditioning when proposed within CARAs:

Table 14.88.720(b)

<u>Activity/Uses</u>	<u>Applicable Regulations and Guidance</u>
<u>Animal feedlots</u>	<u>Chapter 173-216 WAC; Chapter 173-220 WAC</u>
<u>Animal feeding operations / Concentrated animal feeding operations</u>	<u>40 CFR Parts 122, 123, 412</u>
<u>Automobile washing facilities</u>	<u>Chapter 173-216 WAC; Ecology BMPs (WQ-R-95-56)</u>
<u>Chemical treatment, storage, disposal</u>	<u>WAC 173-303</u>
<u>Dangerous waste handling</u>	<u>RCW 70.105; Chapter 173-303 WAC; Snohomish County Board of Health Ordinances</u>
<u>Junk yards and salvage yards</u>	<u>WAC 173-304, 173-350, 173-351; BMPs for Vehicle and Metal Recyclers (Washington State Department of Ecology Publication No. 94-146, or latest edition)</u>
<u>Pesticide, herbicide, fertilizer use/storage</u>	<u>Chapter 15.54 RCW; Chapter 17.21 RCW; Chapters 16-200 through 173-232 WAC</u>
<u>Reclaimed water for recharge</u>	<u>RCW 90.46; WAC 173-218</u>
<u>Petroleum processing/recycling</u>	<u>40 CFR 443, 419; RCW 70A.224, 90.56</u>
<u>Sawmills</u>	<u>Chapter 173-303 WAC; Chapter 173-304 WAC; Industrial Stormwater General Permit Implementation Manual for Log Yards (Washington Department of Ecology Publication No. 04-10-031, or latest edition)</u>
<u>Solid waste handling/recycling</u>	<u>Chapter 173-304 WAC; Chapter 173-350 WAC; Chapter 173-351 WAC</u>
<u>Storage tanks, above ground</u>	<u>WAC 173-303-640</u>
<u>Storage tanks, below ground</u>	<u>Chapter 173-360A WAC; Chapter 90.76 RCW; RCW 43.131.394</u>
<u>Surface mining</u>	<u>Chapter 332-18 WAC</u>
<u>Wastewater application to land surface</u>	<u>Chapter 173-216 WAC; Chapter 173-200 WAC</u>

**14.88.730 Determination of Boundary Performance Standards – Prohibited Uses.**

(a) The following activities and uses are prohibited in sole source aquifers, Group A wellhead protection areas, and critical aquifer recharge areas with high or medium sensitivity:

- (1) Landfills, outdoor storage facilities, or outdoor recycling centers for: hazardous or dangerous waste, electronic waste, contaminated soil or dredged materials, municipal solid waste, special waste, wood waste, or inert and demolition waste;

- (2) Underground injection control (UIC) wells prohibited in Washington State under WAC 173-218-040;
- (3) Mining of metals and hard rock;
- (4) Wood treatment facilities located over permeable surfaces (natural or manmade); and
- (5) Facilities that store, process, or dispose of radioactive substances.

**14.88.740 ~~Mitigation~~ Critical Area Report Requirements**

(a) A hydrogeologic report prepared by a qualified professional is required for any development proposal within a designated CARA when:

- (1) The proposed activity is listed in LSMC 14.88.720 and occurs within a CARA of any sensitivity level.
- (2) The proposed activity is located within a Group A wellhead protection area, sole source aquifer, or a CARA rated as high or moderate vulnerability, except for residential development that:
  - (i) Does not involve on-site sewage disposal systems;
  - (ii) Does not include private wells or groundwater withdrawals;
  - (iii) Does not store or use hazardous materials in quantities regulated under WAC 173-303;
  - (iv) Does not exceed 10,000 square feet of impervious surface per parcel; or
  - (v) Is not located within a Group A wellhead protection area or sole source aquifer boundary, unless the Director determines that site-specific conditions indicate elevated risk to groundwater quality or quantity, in which case a hydrogeologic report may still be required.
- (3) The proposed activity does not meet the non-endangerment standards outlined in WAC 173-218-080 through 173-218-100.
- (4) The City determines that the proposed activity, although not specifically listed, has the potential to impair groundwater quality or quantity.

(b) The hydrogeologic report shall include the following information relevant to CARAs, at minimum:

- (1) Site Characterization
  - (i) Location and extent of CARAs on or adjacent to the site.
  - (ii) Soil permeability and unsaturated zone characteristics.
  - (iii) Depth to groundwater, flow direction, and gradient.
- (2) Nearby Water Resources
  - (i) Currently available data on wells and springs within one fourth mile of the site;
  - (ii) Currently available information on the location of surface waters within one fourth mile of the site;
- (3) Historic water quality data for the area to be affected by the proposed activity or use compiled for at least the previous five-year period, if available;
- (4) Impact Analysis

- (i) Predictive evaluation of groundwater withdrawal effects.
- (ii) Predictive evaluation of contaminant transport modeling for potential releases.
- (iii) Recharge potential including transmissivity and permeability.
- (iv) Water source description or confirmation from a purveyor.
- (5) Best management practices relevant to the proposed activity or use;
- (6) Monitoring and Spill Response
  - (i) Groundwater monitoring protocols.
  - (ii) Spill prevention and response plan that identifies equipment and structures that could fail, resulting in an impact to the critical aquifer recharge area. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment with the potential to fail, and a remediation plan should clean-up become necessary. The plan shall include provisions for regular inspection, repair, and replacement of equipment.
- (7) Evaluation of consistency with protection standards in LSMC 14.88.710 and applicable state regulations.
- (8) If the hydrogeologic report identifies impacts to critical aquifer recharge areas, the project applicant will be required to:
  - (i) Identify and provide an analysis of alternatives by which such impacts could be avoided or prevented; and
  - (ii) When mitigation is allowed, provide a detailed mitigation plan for any unavoidable impacts. The mitigation plan should include preventative measures, monitoring, process control and remediation, and a contingency plan, as appropriate.
- (9) Recommendations for implementation and operation of activities, including size limitations, monitoring, reporting and BMPs
- (10) An evaluation of potential nitrate and nitrite impacts on the aquifer, including cumulative impacts of adjacent or surrounding developments and activities, and provide recommendations for monitoring and BMP of nitrate and nitrite generating activities; and
- (11) Any other data or analysis necessary to determine compliance with this chapter as determined by the Director.

Part VIII. Wetlands

**14.88.800 Purpose.**

The purposes of this chapter are to:

- (a) Recognize and protect the beneficial functions performed by wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.

- (b) Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout Lake Stevens.
- (c) Establish review procedures for development proposals in and adjacent to wetlands.
- (d) Compliance with the provisions of the chapter does not constitute compliance with other federal, State, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 855, Sec. 24, 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.805 Identification and Rating.**

(a) Identification and Delineation. Wetlands, buffers and their boundaries shall be identified and delineated in accordance with the approved Federal wetland delineation manual and applicable regional supplement. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date, the City shall determine whether a revision or additional assessment is necessary. Sources used to identify designated wetlands include, but are not limited to:

- (1) United States Department of the Interior, Fish and Wildlife Service, National Wetlands Inventory.
- (2) Areas identified as hydric soils, soils with significant soil inclusions and wet spots with the United States Department of Agriculture/Soil Conservation Service Soil Survey for Snohomish County.
- (3) Washington State Department of Natural Resources, Geographic Information System, Hydrography and Soils Survey Layers.
- (4) City of Lake Stevens Critical Areas Inventory Maps.

(b) Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update Version 2.0 (Ecology Publication No. 2314-06-00929, or as revised and approved by Ecology) and in accordance with WAC 173-22-035, which contains the definitions and methods for determining whether the criteria below are met.

- (1) Category I. Category I wetlands represent unique or rare wetland types; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of functions. In Lake Stevens Category I wetlands may include:
  - (i) Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;
  - (ii) Bogs;
  - (iii) Mature and old-growth forested wetlands larger than one acre; and
  - (iv) Wetlands that perform many functions well (scoring 23 points or more).
- (2) Category II. In Lake Stevens Category II wetlands may include wetlands with a moderately high level of functions (scoring between 20 and 22 points) that are difficult though not impossible to replace and provide high levels of some functions.
- (3) Category III. In Lake Stevens Category III wetlands may include:

- (i) Wetlands with a moderate level of functions (scoring between 16 and 19 points);
- (ii) Can often be adequately replaced with a well-planned mitigation project; and
- (iii) Wetlands scoring between 16 and 19 points generally 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.

(4) Category IV. In Lake Stevens Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that functions may be replaced, or in some cases improved. These wetlands may provide some important functions, and should be protected to some degree.

(c) Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge. (Ord. 984 Sec. 3 (Exh. C), 2019)

**14.88.810 Determination of Boundary.**

(a) The Planning and Community Development Director or designee, relying on a field investigation supplied by an applicant and applying the wetland definition provided in this chapter, shall determine the location of the wetland boundary. Qualified professional and technical scientists shall perform wetland delineations as part of a wetland identification report in accordance with WAC 173-22-035. Criteria to be included in a required wetland identification report may be found in Section 14.88.275, Mitigation/Enhancement Plan Requirements. The applicant is required to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

(b) When the applicant has provided a delineation of the wetland boundary, the Planning and Community Development Director or designee shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning and Community Development Director shall, at the applicant's expense, obtain expert services to render a final delineation.

(c) The Planning and Community Development Director, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The Planning and Community Development Director or designee shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant will be charged for the costs incurred. Where the City performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 855, Sec. 25, 2011; Ord. 797, Sec. 6, 2009; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.820 Allowed Activities.**

Except where regulated by other sections of this or any other title or law, and provided they are conducted using best management practices, the following uses and activities shall be allowed and regulated within wetlands and their buffers when the requirements of Sections 14.88.830 and 14.88.840 have been met and mitigation adequate to alleviate any other impacts has been proposed:

(a) Those uses listed in Section 14.88.220.

(b) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

(c) Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, runoff treatment or flow control BMP if the following criteria are met:

- (1) The location of the stormwater management facility is restricted to the outer 25 percent of the buffer around the wetland;

- (2) There will be “no net loss” of functions and values of the wetland;
- (3) The wetland does not contain a breeding population of any native amphibian species;
- (4) The hydrologic functions of the wetland can be improved;
- (5) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing;
- (6) All regulations regarding stormwater and wetland management are followed, including but not limited to local and State wetland and stormwater codes, manuals, and permits;
- (7) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.
- (8) Stormwater LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

#### **14.88.825 Exemptions.**

The following wetlands may be exempt from the requirement to avoid impacts and they may be filled if the impacts are fully mitigated based on the remaining actions, pursuant to State and Federal requirements. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank.

- (a) All isolated Category IV wetlands less than 4,000 square feet:
  - (1) Not associated with riparian areas or their buffers;
  - (2) Not associated with shorelines of the State or their associated buffers;
  - (3) Not part of a wetland mosaic;
  - (4) Do not score six or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology); and
  - (5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain Federally listed species or their critical habitat, or species of local importance.
- (b) Wetlands less than 1,000 square feet that meet the above criteria and do not contain Federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter. (Ord. 984 Sec. 3 (Exh. C), 2019)

#### **14.88.830 Wetland Buffer Requirements and Allowed Modifications.**

- (a) Buffers. Wetland buffers shall be required for all regulated activities adjacent to regulated wetlands as provided in Table 14.88-II, unless modified elsewhere in this chapter.
  - (1) Any wetland created, restored, or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer zone shall be determined according to wetland category and the proposed land use.
  - (2) To facilitate long-range planning using a landscape approach, the Planning and Community Development Director or designee may pre-assess wetlands using the rating system and establish

appropriate wetland buffer widths for such wetlands. The Administrator will prepare maps of wetlands that have been pre-assessed in this manner.

(3) All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated ~~in order to~~ be included in buffer area calculations. ~~Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.~~

(4) Functionally and effectively disconnected areas may be excluded from the buffer area, per LSMC 14.88.296.

(b) The buffer widths in Table 14.88-II assume that the standard buffer is vegetated with a native plant community appropriate for the ecoregion or includes a habitat corridor and impact minimization measures. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should be planted to create the appropriate plant community, or the nonmitigated buffer should be widened to ensure that adequate functions of the buffer are provided.

**Table 14.88-II Wetland Buffer Requirements**

Wetland Category	Buffer Condition*	Buffer width in feet based on habitat scores		
		3 – 5	6 – 7	8 – 9
Category I	Standard	75	110	225
	No Mitigation	100	150	300
Category I (High Value)	Standard	190		225
	No Mitigation	250		300
Category II	Standard	75	110	225
	No Mitigation	100	150	300
Category III	Standard	60	110	225
	No Mitigation	80	150	300
Category IV	Standard	40		
	No Mitigation	50		

\* The buffer condition directly affects the required buffer width. A standard buffer width is to be used when the buffer is vegetated or will be planted to comply with Section 14.88.830(b) and Table 14.88-III; otherwise, the buffer is considered to have no mitigation and an increased buffer is required when limited vegetation exists or no mitigation is proposed to enhance buffer functions.

**Table 14.88-III Required Measures to Minimize Impacts to Wetlands (measures are required if applicable to a specific proposal)**

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland

Disturbance	Required Measures to Minimize Impacts
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use low intensity development techniques (for more information refer to the drainage ordinance and manual)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>

(c) **Increased Wetland Buffer Widths.** The Planning and Community Development Director shall require increased standard buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a permit condition and shall demonstrate that:

- (1) The wetland is used by a State or Federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- (2) The adjacent land is susceptible to severe erosion, and erosion control measures will not effectively prevent adverse wetland impacts; or
- (3) The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

(d) **Wetland Buffer Averaging.** Wetland buffer widths may be modified by averaging. In no instance shall the buffer width be reduced by more than 25 percent of the standard buffer. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following as demonstrated in accordance with an approved critical areas report:

- (1) The averaging will not impair or reduce the habitat, water quality purification and enhancement, stormwater detention, groundwater recharge, shoreline protection, erosion protection, and other functions and values of the wetland and buffer;
  - (2) The buffer is increased adjacent to the higher functioning area and decreased adjacent to lower functioning area; and
  - (3) The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging.
- (e) Buffer Conditions. Except as otherwise specified, wetland buffers shall be retained in their natural condition.
- (1) Where buffer disturbance may or has occurred during construction, revegetation with native wetland vegetation may be required appropriate for the ecoregion or with vegetation performing similar functions.
  - (2) If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer ~~should be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided~~ shall comply with subsection (b).
- (f) Buffer Reductions. Buffer reductions may be allowed for Category III or IV wetlands, provided the applicant demonstrates the proposal meets the criteria in subsections (f)(1) through (4) of this section and either subsection (f)(5) or (6) of this section. Buffer width reduction proposals that meet the criteria as determined by the Planning and Community Development Director or designee shall be reduced by no more than 25 percent of the required buffer. Buffer reductions are distinct from functionally disconnected buffer areas as identified in Section 14.88.296, which may apply to all wetland categories.
- (1) The buffer area meets buffer area planting requirements in Section 14.88.275 and has less than 15 percent slopes; and
  - (2) A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science as described in Section 14.88.235; and
  - (3) Buffer width averaging as outlined in subsection (d) of this section is not being used; and
  - (4) A buffer enhancement plan is proposed that would significantly improve the function and value of a degraded wetland and buffer, specifically the required buffer enhancement plan should improve the ability of a degraded buffer to protect the water quality and hydrologic functions even if the width of the buffer is reduced, subject to mitigation requirements of Section 14.88.840; and either
  - (5) The subject property is separated from the wetland by preexisting, intervening, and lawfully created structures, public roads, or other substantial improvements. The preexisting improvements must be found to separate the subject upland property from the wetland by height or width that prevents or impairs the delivery of buffer functions to the wetland. In such cases, the reduced buffer width shall reflect the buffer functions that can be delivered to the wetland; or
  - (6) The wetland scores five or less points for wildlife habitat in accordance with the rating system applied in Section 14.88.800, and mitigation is provided based on Section 14.88.840(b) and Table 14.88-III, when determined appropriate based on the evaluation criteria in Sections 14.88.275 and 14.88.276.
- (g) Buffers may be modified when approved for the purpose of implementing innovative development design in accordance with Section 14.88.298. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.840 Mitigation.**

The mitigation sequence set forth in this section should be applied after impact avoidance and minimization measures have been taken, and should follow the mitigation preference hierarchy established by 2008 Federal Mitigation Rule (33 CFR Part 332.3[b] and 40 CFR Part 230.93[b]).

(a) Location and Timing of Mitigation.

(1) Restoration, creation, preservation or enhancement actions should be undertaken on or adjacent to the site, or, where restoration, creation, preservation or enhancement of a former wetland is proposed, within the same watershed. In-kind replacement of the impacted wetland is preferred for creation, restoration, preservation or enhancement actions. The City may accept or recommend restoration, creation, or enhancement which is off site and/or out-of-kind, if the applicant can demonstrate that on-site or in-kind restoration, creation, or enhancement is unfeasible due to constraints such as parcel size or wetland type, or that a wetland of a different type or location is justified based on regional needs or functions;

(2) Whether occurring on site or off site, the mitigation project shall occur near an adequate water supply with a hydrologic connection to the wetland to ensure a successful wetlands development or restoration;

(3) Any approved proposal shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule has also been approved by the Planning and Community Development Department;

(4) Wetland acreage replacement ratios shall be as specified in Table 14.88-IV;

(5) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands.

(i) This provision may be used when:

a. The bank is certified under Chapter 173-700 WAC;

b. The Planning and Community Development Director or designee determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(ii) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

(iii) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

(b) Mitigation Performance Standards.

(1) All reasonable measures shall be taken to avoid and reduce impacts. When such avoidance and reduction is not reasonable, adverse impacts to wetland functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in Section 14.88.010(a). Proposals which include less preferred or compensatory mitigation shall demonstrate that:

(i) All reasonable measures will be taken to reduce impacts and losses to the original wetland;

(ii) No overall net loss will occur in wetland functions, values and acreage; and

(iii) The restored, created or enhanced wetland will be as persistent and sustainable as the wetland it replaces.

(c) Wetland Replacement Ratios.

(1) Where wetland alterations are permitted by this chapter, the applicant shall restore or create equivalent areas of wetlands in order to compensate for wetland losses. Equivalent areas shall be determined according to size, function, category, location, timing factors, and projected success of restoration or creation.

(2) Where wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.

(3) The following acreage replacement ratios shall be used as targets. The Planning and Community Development Director may vary these standards if the applicant can demonstrate and the Planning and Community Development Director or designee agrees that the variation will provide adequate compensation for lost wetland area, functions and values, or if other circumstances as determined by the Planning and Community Development Department justify the variation.

(4) The qualified scientific professional in the wetlands report may, where feasible, recommend that restored or created wetlands shall be a higher wetland category than the altered wetland.

(d) The Planning and Community Development Director may increase the ratios under the following circumstances:

- (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
- (2) A significant period of time will elapse between impact and replication of wetland functions.

(e) All wetland restoration, creation, preservation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared in conformance to the requirements of Section 14.88.275, Mitigation/Enhancement Plan Requirements.

(f) Mitigation ratios for the replacement of impacted wetlands shall be as listed in Table 14.88-IV. However, Table 14.88-IV shall not apply to bogs, because it is not possible to create or restore bogs due to their unique chemistry and hydrology. Therefore, impacts to bogs are considered to be a loss of functions and shall be avoided.

**Table 14.88-IV: Wetland Mitigation Ratios**

Affected Wetland  Category	Mitigation Type and Ratio			
	Re-establishment or Wetland Creation	Rehabilitation	<u>Preservation</u>	Enhancement Only
Category IV	1.5:1	3:1	<u>6:1</u>	<del>6:1</del> <u>Not considered an option</u>
Category III	2:1	4:1	<u>6:1</u>	<del>8:1</del> <u>Not considered an option</u>
Category II	3:1	6:1	<u>12:1</u>	<del>12:1</del> <u>Not considered an option</u>
Category I – Forested	6:1	12:1	<u>24:1</u>	24:1

Affected Wetland	Mitigation Type and Ratio			
	Re-establishment or Wetland Creation	Rehabilitation	<u>Preservation</u>	Enhancement Only
Category I – Score Based	4:1	8:1	<u>16:1</u>	16:1 ( <u>Limited circumstances</u> )
Category I – Bog	Not considered possible	N/A	<u>24:1</u>	N/A

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

(h) The applicant may propose innovative site design based on the best available science and pursuant to Section 14.88.298 if the innovative development design will achieve protection equivalent to or better than the standard provisions of this chapter. Approval of the innovative site design will be considered in combination with criteria listed in Section 14.88.298 if the design achieves the following:

- (1) The site design avoids impacts to the critical area; or
- (2) The site design increases the functions and/or values of the wetland and buffer with a combination of the following measures:
  - (i) Improving water quality functions and values of the wetland and buffer by reducing fine sediment and pollutant input in the watershed by increasing hydrologic retention and filtration;
  - (ii) Improving the hydrologic functions and values of the wetland and buffer by providing increased flood control adjacent to a stream channel or by improving water storage ability in the wetland system to increase groundwater recharge potential; and
  - (iii) Increasing habitat for aquatic, amphibian and invertebrate species and associated wetland bird and mammal species.

(i) Credit/Debit Method. As an alternative to the mitigation ratios found in the joint guidance Wetland Mitigation in Washington State Parts I and II (Ecology Publication Nos. 2021-06-003 and 06-06-011a-b or as amended, Olympia, WA, March 2006), the Director or designee may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised). (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part IX. Transfer of Development Rights

**14.88.900 Definitions.**

- (a) “Development rights” are those rights granted to a property owner under a particular zoning district.
- (b) “Transferable rights” include dwelling unit equivalents (density) and commercial/industrial square footage. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.910 Intent and General Regulations of Transferring Development Rights (TDR).**

- (a) The purpose in allowing the transfer of density is:
  - (1) To allow for the transfer of development rights out of critical areas into buildable areas; and

(2) To allow a property owner to recover a portion of the development value from property that may be used for a public purpose.

(b) TDR is not a guarantee that full development value can be recovered from a parcel of land designated as a sending area. Certain market forces may limit demand for density transfers including limitations placed on critical area receiving district capacities; particularly where all such districts are built out. Value of development rights shall be determined by the market for said rights and shall in no way be the responsibility of the City of Lake Stevens.

(c) All transfers must be consistent with the policies of the City's Comprehensive Plan and the provisions of this chapter. In particular, land developed within a critical area receiving district through the transfer of development rights shall comply with all use, dimensional, parking, screening, etc., requirements as set forth in this title.

(d) Development rights may be transferred out of areas designated as critical area sending districts and only into areas designated as critical area receiving districts. They may be transferred within or across ownership boundaries.

(e) When development rights are transferred off site, the property owners shall provide and enter into a contract with one another which, at a minimum, shall acknowledge their participation and acceptance. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.920 Qualifications for Designation of Land as a Critical Area Sending or Receiving District.**

(a) All areas classified as a critical area by this chapter shall be considered critical area sending districts. Additionally, land that does not qualify as a critical area but which has been determined by City Council to be land suitable for a public purpose may be designated as critical area sending districts by the Planning and Community Development Director with the concurrence of the majority ownership of the land.

(b) Any parcel or portion of a parcel on which development can occur per this title may be designated as a critical area receiving district by the Planning and Community Development Director with the concurrence of the majority ownership of the land. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.930 Designation Process.**

(a) Critical area sending or receiving districts are considered overlay zones allowed per Section 14.88.920, Qualifications for Designation of Land as a Critical Area Sending or Receiving District. Designation as a critical area sending or receiving district is the equivalent of a rezone and shall be accomplished by the same process as specified in Section 14.16C.090.

(b) Underlying land use and zoning designations may be changed by the legislative authority granted to the City through its normal Comprehensive Plan amendment or rezoning procedures. However, the land will retain the critical area sending district designation until that designation is specifically removed.

(c) Land designated as a critical area sending or receiving district shall be shown as an overlay district on the Official Zoning Map. The map shall be modified upon each designation or revocation.

(d) Designation or revocation as a critical area sending or receiving district shall be recorded with the Snohomish County Recorder's Office and shall run with the land. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 903, Sec. 55, 2013; Ord. 811, Sec. 74, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.940 Designation Revocation.**

(a) Land that has been designated as a critical area sending district shall retain its designation:

(1) Until all development rights calculated for that parcel have been transferred; or

(2) For a period of three years, whereby the designation may be reviewed for reconsideration. The designation may be continued upon all of the following findings being met:

- (i) The property retains the same characteristics that qualified it as a critical area receiving district in the first place.
- (ii) The owner(s) of the property desire a continuation of the designation.
- (iii) It is still in the public interest to continue the designation.

(b) Land that has been designated a critical area receiving district shall retain its designation until the property has yielded its development potential.

(c) The Council may reconsider designation revocation of a noncritical area when it determines that the property is no longer suitable for public use.

(d) Revocation of a critical area sending or receiving district designation shall not affect the underlying land use designation or zone. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

**14.88.950 Calculating Transferable Development Rights.**

(a) Maximum transferable development rights shall be calculated for each parcel or portion of a parcel by calculating the theoretical development capacity were the land not classified as a critical area. Theoretical development capacity is calculated based on the requirements of this title, in particular Chapter 14.48, Density and Dimensional Regulations, but also taking into account the requirements of all other chapters (e.g., parking, screening, fire code, building code, etc.).

(b) Only like development rights may be transferred, and may only be transferred to a zone allowing a similar use, e.g., commercial square footage may be transferred out of a commercial district and into another commercial district or an industrial district that allows commercial uses. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part X. Mitigation Plan Requirements

**14.88.960 Criteria.**

*Repealed by Ord. 741. (Ord. 468, 1995)*

# PLANNING COMMISSION STAFF REPORT



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**Agenda Date:** 6/17/2026

**Subject:** Overview of Upcoming Meetings

**Contact Person/Department:** Russ Wright, Community Development

**Budget Impact:**

**Legal Review:** No

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**RECOMMENDATION(S)/ACTION REQUESTED:**

No action is required. Staff will provide an overview of upcoming Planning Commission meeting agendas and discussion items.

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**SUMMARY/BACKGROUND:**

Upcoming agenda items include:

- Draft changes to the city's three subarea plans, with Lake Stevens Center being the first (July 1)
- Updates to the Permissible Uses chapter (Chapter 14.40 LSMC) and associated chapters to reflect the consolidation of the city's two industrial zoning districts.
- Review and approval of the 2026 Annual Docket

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**APPLICABLE CITY POLICIES:**

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**ATTACHMENTS:**

None