CITY OF UNIVERSITY PLACE

Shoreline Master Program

Effective October 28, 2013

Critical Area Amendments

University Place Municipal Code

Chapter 17.10 General Requirements
Chapter 17.15 Geologically Hazardous Areas
Chapter 17.25 Fish and Wildlife Habitat Areas
Chapter 17.35 Wetlands

University Place Planning and Development Services

Shoreline Master Program Update
SMP Critical Area Consistency Amendments
October 28, 2013

General Requirements
17.10.005 Definitions.

For the purpose of this title, the following definitions shall apply:

"Activity" means any use conducted on a site.

“Agricultural activities” means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW and WAC Title 222 are not included in this definition.

"Animal containment area" means a site where three or more animal units are kept per acre, and/or where a high volume of waste material is deposited in quantities capable of impacting ground water resources.

"Animal unit" means the equivalent of 1,000 pounds of animal.

"Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development on a site.

"Aquifer" means a saturated geologic formation that will yield a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge area" means areas where the prevailing geologic conditions allow infiltration rates, which create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.

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

"Best Management Practices" means systems of practices and management measures that:

1. control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins;

2. control the movement of sediment and erosion caused by land alteration activities;

3. minimize adverse impacts to surface and ground water quality, flow and circulation patterns; and

4. minimize adverse impacts to the chemical, physical and biological characteristics of a critical area.

"Buffer" means an area contiguous with a ~~l~~Landslide hazard area, erosion hazard area, fish and wildlife habitat area or wetland, which ~~that~~ is required for the integrity, maintenance, function, and structural stability of the above referenced area.

"Building footprint" means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and/or accessory buildings on a lot.

"Class" means one of the wetland classes in the United States Fish and Wildlife Service (USFWS) December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.

"Classification" means defining value and hazard categories to which critical areas will be assigned.

“Clearing” means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth’s surface of the site.

"Compensatory mitigation" means mitigation to compensate for loss of critical area functions due to regulated activities occurring within critical areas.

"Creation" means producing or forming a wetland through artificial means from an upland (non-wetland) site.

"Creek" means surface waters that flow into or become connected to other surface waters no less frequently than once per year. Creeks include natural waterways modified by man. Creeks do not include irrigation or roadside ditches, canals, operational spillways, storm or surface water runoff facilities or other entirely artificial watercourses, unless they are used by salmonids, are used to convey naturally occurring creeks or result from modification to a natural watercourse.

“Critical areas” means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, geologically hazardous areas and associated buffer areas.

“Degraded” means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.

“Delineation” means a wetland study conducted in accordance with the Washington State Wetland Identification and Delineation Manual.

"Delineation report" means a written document prepared by a wetland specialist, which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.

"Department" means the city of University Place planning and development services department ~~of community development~~.

"Development" means any manmade change to improved or unimproved real estate including but not limited to buildings or other structures, placement of manufactured homes/mobile homes, mining, dredging, clearing, filling, grading, stockpiling, paving, excavation, drilling, or the subdivision or short subdivision of property.

"Director" means the director of the planning and development services department ~~of community development~~ or duly authorized designee.

"Drastic" means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.

"Enhancement" means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or solid waste).

"Erosion hazard areas" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

"Existing" means those uses legally established prior to incorporation whether conforming or nonconforming.

"Fill/fill material" means a deposit of earth material, placed by human or mechanical means.

"Filling" means the act of placing fill material on any surface, including temporary stockpiling of fill material.

"Fish and wildlife habitat areas" means:

A. Areas which have a primary association with federally listed endangered, threatened or candidate species, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term, or

B. Areas that have been documented by WDF&W as habitat for state listed endangered or threatened species, or

C. Creeks listed in UPMC 17.25.040.

“Fisheries biologist” means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years’ professional experience as a fisheries biologist.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters; and/or

B. The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood hazard areas” means areas of land located in floodplains that are subject to a one- percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

“Floodplain” means the total area subject to inundation by the base flood, including the flood fringe and the floodway areas.

“Floodway” means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.

“Geological assessment” means an assessment that details the surface and subsurface conditions of a site and delineates the areas of a property that might be subject to specified geologic hazards.

“Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, or other geological events, may pose a risk to the siting of commercial, residential, or industrial development consistent with public health, environmental or safety concerns.

“Geotechnical report” means a report evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.

“Grading” means any excavating, filling, clearing, or creating of impervious surfaces or combination thereof.

“Ground water” means all water found beneath the ground surface, including slowly moving subsurface water present in aquifers and recharge areas.

“Habitat assessment” means a report that identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.

“Habitat management plan” means a report that discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

“Hazardous substance(s)” means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.

“Hazardous substance processing or handling” means use, manufacture, storage or treatment authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Chapter 173-303 WAC and any pertinent local ordinances, such as sewer discharge standards.

“Hazardous waste” means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

“Hydrogeologic assessment” means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of ground water supplies.

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

“In-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics, functions and values are required to replicate those destroyed or degraded by a regulated activity.

“Interdunal wetlands” means wetlands that are located in small interdunal depressions to extensive deflation plains behind stabilized foredunes.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a land spreading disposal facility.

“Landslide hazard areas” means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

“Mitigation” means to avoid, minimize or compensate for adverse critical area impacts.

“Ordinary high water mark” means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of the ordinance codified in this chapter or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the city, state or federal regulatory agency. Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining

salt water shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Out-of-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.

“Permeable surfaces” means sand, noncompacted gravel, and other penetrable deposits on the ground which permit movement of ground water through the pore spaces, and which permit the movement of fluid to the ground water.

“Person” means an individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons, however organized.

“Regulated activities” means creation of lots or building sites, construction or alteration of any structure or improvement or alteration of the condition of any land, water or vegetation that could adversely affect any critical area.

“Restoration” means the re-establishment of a viable wetland from a previously filled or degraded wetland site.

“Riparian habitat areas” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems, which mutually influence each other.

“Seismic” means subject to, or caused by an earthquake or earth tremor.

“Site” means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed, in progress or completed.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

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

“Sludge land application site” means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

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

A. Sites of less than one acre with an application rate of less than 10 dry tons of sludge per acre per five-year period.

B. Sites with an application rate of less than 20 dry tons of sludge per acre per 10-year period or less than an annual application of two dry tons of sludge per acre.

C. Sites with an application rate of more than 20, but less than 43, dry tons of sludge per 10-year period or 4.3 dry tons per acre per year.

D. Sites with one-time applications greater than 43 dry tons per acre and cumulative limits for metals greater than state designated practices for agricultural cropland application.

E. Sites that are permanent landfill disposal facilities.

“Stockpiling” means the placement of material with the intent to remove it at a later time.

“Toe of slope” means a distinct topographic break in slope at the lower-most limit of the landslide or erosion hazard area.

“Top of slope” means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

“Underground tank” means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

“Utility line” means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, telecommunications, cable television and sanitary sewers.

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

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

A. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Washington State Wetlands

Identification and Delineation Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or

B. Four years of related work experience and training, with a minimum of two years' experience delineating wetlands using the Washington State Wetlands Identification and Delineation Manual and preparing wetland reports and mitigation plans;

C. The person should also be familiar with the city site development regulations, the city wetland management policies, and the requirements of this title.

"Wildlife biologist" means a professional with a degree in wildlife, or certification by the Wildlife Society, or with five years' professional experience as a wildlife biologist.

General Requirements

17.10.035 Exemptions.

The following activities are exempt from the provisions of this title. Such activities are not exempt from the shoreline master program requirements in UPMC Title 18 unless explicitly named as an exempt activity under WAC 173-27-040, in accordance with UPMC 18.15.030.

A. Existing agricultural activities. The activities cease to be existing when the area on which they were conducted has been converted to a non-agricultural use or has lain idle more than five years or so long that modifications to the hydrological regime are necessary to resume agricultural activities. Land registered in a federal or state soils conservation program shall meet the criteria for this exemption.

B. Reconstruction, repair or maintenance of existing roads, paths, bicycle ways, trails, bridges, and storm drainage facilities; provided, that reconstruction does not involve expansion of facilities, and provided that work is conducted pursuant to BMP's. This exemption shall not apply to reconstruction that is proposed as a result of structural damage associated with a critical area, such as, but not limited to slope failure in a landslide hazard area.

C. The following utility line activities, when undertaken pursuant to BMPs to avoid impacts to critical areas:

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

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

3. Installation or construction in improved city road rights-of-way, and replacement, operation, relocation or alteration of all electric facilities, lines, equipment, or appurtenances with an associated voltage of 55,000 volts or less. Substations shall not be considered exempt.

D. Regular maintenance of existing structures.

E. Remodeling of an existing structure provided there is no further intrusion into the critical area.

F. Reconstruction or repair of an existing structure unless the reconstruction or repair is necessitated by structural damage occurring as a result of landsliding, slumping or related earth movement.

G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities, provided that large construction vehicles are not used, and provided disturbed areas are restored to their pre-existing condition immediately following completion of work.

H. Emergency action necessary to prevent serious environmental degradation: imminent threat or danger to public health or safety, or imminent threat to public or private property. The department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken. Permits may be required subsequently.

I. Control of invasive species, including but not limited to, Scotch Broom, Himalayan Blackberry and Evergreen Blackberry, and noxious weeds, that are included on the state noxious weed list. Control may be by clipping, pulling, digging, or by an alternative plan, such as an integrated pest management plan, upon approval of a plan by the department.

J. Activities undertaken to comply with a United States Environmental Protection Agency administrative superfund enforcement order or a Washington Department of Ecology administrative enforcement order pursuant to the Model Toxics Control Act, including the following activities:

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

K. A residential building permit for a lot which was subject to previous reports and assessments as required under this title; provided that the impacts associated with the current development proposal are addressed and provided the permit is issued subject to the mitigation recommendations of said reports or assessments.

Geologically Hazardous Areas
17.15.030 Exemptions.

Exemptions. In addition to the exemptions contained in UPMC 17.10.035, the following activities shall be exempt from the requirements of this chapter.

A. Trimming and limited cutting of trees. Any person wishing to engage in clearing activity pursuant to this exemption shall arrange a site visit with department staff. Staff shall issue a letter of exemption if the proposed activity is consistent with the intent of this chapter and provided;

1. The applicant can clearly demonstrate the activity will not result in a detrimental impact to the landslide or erosion area on or off site;
2. Groundcover shall be retained and the ground surface shall not be disturbed;
3. The clearing activity does not exceed the provisions of the city zoning code.
4. The trimming and cutting of trees is consistent with the vegetation conservation requirements specified in 18.25.100.F.6 for properties subject to the shoreline master program provisions in UPMC Title 18.

Fish and Wildlife Habitat Areas
17.25.030 Regulation.

A. Development proposals shall consolidate habitat and vegetated open space in linked corridors to provide connectivity to offsite wildlife habitat.

B. Where habitat for federally listed endangered or threatened species is present, development proposals must comply with the provisions of ESA. Consultation with federal agencies may be required. Development proposals in such areas shall be denied unless the applicant can show conclusively that the project would not result in the taking of a federally listed species.

C. Protection of fish and wildlife habitat shall not be required where such habitat is isolated or severely fragmented due to previous development and urbanization. Where an applicant can demonstrate to the satisfaction of the director, through submittal of a habitat assessment, that protection of on-site fish and wildlife habitat would not result in a viable long-term population, such protection measures shall not be required. For proposals subject to the shoreline master program provisions in UPMC Title 18, the director may not waive the requirement for protection of fish and wildlife habitat unless the proposal demonstrates how it will comply with the mitigation sequencing requirements per Section 18.25.070.C.3 and achieve no net loss of shoreline ecological function.

The above language does not apply in the case of federally listed endangered and threatened species and habitat areas that must be preserved pursuant to subsection (B) above.

D. All projects may be conditioned based on agency comments and the director's evaluation of impact to fish and wildlife habitat and species. Projects may be denied if the proposal will result in extirpation or isolation of a regulated fish or wildlife population, species or habitat area.

E. Habitat assessments, habitat management plans and the provisions of this section shall not be required for fish habitat areas where all development is outside of prescriptive creek and/or wetland buffers per section 17.25.040.

F. Additional laws and procedures used to implement this chapter shall include, but not be limited to the Washington State Environmental Policy Act (Chapter 43.21C RCW), the city's environmental regulations, the Shorelines Management Act (Chapter 90.58 RCW), the City Shoreline Master Program and Use

Regulations, the Federal Endangered Species Act and UPMC Title 22, Administration of Development Regulations.

G. Impacts to fish and wildlife habitat shall be considered and addressed during SEPA environmental review, if required.

Wetlands

17.35.0230 Wetland categories. (renumbered from 17.35.030)

Wetland categories shall be determined based upon the Washington State Wetland Rating System for ~~,~~ Western Washington, current edition ~~version, current addition published by DOE~~. Wetlands shall be generally categorized as follows:

A. Category I wetlands are:

1. relatively undisturbed estuarine wetlands larger than 1 acre;
2. wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands;
3. bogs;
4. mature and old-growth forested wetlands larger than 1 acre;
5. wetlands in coastal lagoons; and
6. wetlands that perform many functions well (scoring 70 points or more).

These wetlands:

1. represent unique or rare wetland types;
2. are more sensitive to disturbance than most wetlands;
3. are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
4. provide a high level of functions.

~~Category I wetlands are those regulated wetlands that:~~

~~1. provide a life support function for a threatened or endangered species that has been documented and the wetland is on file in databases maintained by state agencies;~~

~~2. represent a high quality example of a rare wetland type;~~

~~3. are rare within a given region; or~~

~~4. are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, if at all. Category I wetlands are not common and would constitute a small percentage of wetlands statewide.~~

B. ~~Category II wetlands are:~~

~~1. those regulated wetlands that provide habitat for very sensitive wildlife or plants;~~

~~2. are either difficult to replace; or~~

~~3. provide very high functions, particularly for wildlife habitat. These wetlands occur more commonly than category I wetlands, but still need a high level of protection.~~

Category II wetlands are:

1. estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre;
2. interdunal wetlands larger than 1 acre; or
3. wetlands with a moderately high level of functions (scoring between 51 and 69 points).

C. Category III wetlands are:

1. wetlands with a moderate level of functions (scoring between 30 and 50 points); and
2. interdunal wetlands between 0.1 and 1 acre.

Wetlands scoring between 30 and 50 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.

~~Category III wetlands are those regulated wetlands that provide important functions. They are important for a variety of wildlife species and occur more commonly throughout the state than either category I or II wetlands. Generally these wetlands are smaller, less diverse, and/or more isolated in the landscape than category II wetlands. They are somewhat difficult to replace and require a moderate level of protection.~~

D. ~~Category IV wetlands are those regulated wetlands of ordinary resource value based on monotypic vegetation of similar age and class, lack of special habitat features, small size and isolation from other aquatic systems. These wetlands do provide important functions and should to some degree be protected.~~

Category IV wetlands have the lowest levels of functions (scoring less than 30 points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases to improved upon. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Wetlands

17.35.03~~2~~0 Exemptions. (renumbered from 17.35.020)

In addition to the activities and uses listed in UPMC 17.10.035, the following activities are exempt from the provisions of this chapter: Such activities are not exempt from the shoreline master program requirements in UPMC Title 18 unless explicitly named as an exempt activity under WAC 173-27-040, in accordance with UPMC 18.15.030.

A. Subject to BMPs, construction or reconstruction of single-family, duplex or condominium units on a lot that was platted, or approved pursuant to a planned development district (PDD), prior to adoption of the ordinance codified in this chapter. Structures shall be located outside of buffers in effect when the lot was created and shall be subject to the wetland regulations in effect at that time. A completed building permit application for the construction or reconstruction must be submitted within five years of final plat or PDD approval, or this exemption does not apply.

B. Pursuant to BMPs, construction of a one-family dwelling and regulated activities accessory to a one-family dwelling on a lot of record that was legally created prior to the effective date of this regulation shall be allowed in the buffer if all of the following provisions are met:

1. Development outside the buffer is not feasible.
2. The applicant demonstrates to the department that adverse impacts to wetlands will be mitigated to the greatest extent possible.
3. The residence and accessory structures are located to minimize intrusion into the buffer to the greatest extent possible.

C. Activities in artificial wetlands, except those artificial wetlands intentionally created for replacement, enhancement or similar purposes.

D. Activities affecting~~:~~. isolated Category III and IV wetlands less than 1,000 square feet that:

1. Are not associated with riparian areas or buffers.
2. Are not part of a wetland mosaic.
3. Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance identified by the City.

~~1. Category II wetlands which are less than 1,000 square feet.~~
~~2. Category III wetlands which are less than 2,500 square feet;~~
~~3. Category IV wetlands which are less than 10,000 square feet.~~

E. Placement of access roads, utility lines and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative and if construction activity is conducted in accordance with BMPs.

F. For legally established gardens and landscaped areas existing on the effective date of this regulation, activities to maintain their existing condition and appearance. Activities may include, but are not limited to, mowing lawns, weeding, harvesting and replanting of garden crops, pruning and planting of vegetation. Use of pesticides and chemical fertilizers is prohibited.

G. Activities designed for protection, maintenance and enhancement of wetlands, if approved by the director.

H. Pursuant to BMP's, activities undertaken on the site of an existing holding pond, water quality facility or similar facility, intended to improve water quality, flow control or other primary function of the facility.

I. Public stormwater retention/detention facilities and stormwater conveyance facilities such as bioswales, open trenches and culverts, not designed to drain wetlands may be constructed within Category II, III and IV wetland buffers; provided, that the following conditions are met:

1. Nno untreated stormwater is released from the facility into the wetland or buffer;
2. Tthe applicant demonstrates that water levels within the wetland will be maintained at pre-existing levels;
3. Wwater levels are monitored annually to ensure that pre-existing functions of the wetland are not significantly lost through fluctuations in wetland hydrology;
4. Mmaintenance activity is limited to removal of invasive vegetation and/or removal of sediment accumulation at inflow structures in a manner acceptable to the Department;
5. Aall construction activity is conducted in accordance with accepted BMP's. This conditional exemption would not apply in situations where there are threatened or endangered species, or sensitive plants, unless approved by the State Department of Fish and Wildlife or Department of Natural Resources, respectively. All permits from other regulatory agencies must be obtained.
6. In shoreline jurisdiction, stormwater facilities shall not be located within the buffer of Category II wetlands unless there is no other feasible option. In Category III and IV wetland buffers within shoreline jurisdiction, these facilities shall be limited to the outer 25% of the buffer unless there is no other feasible option.

J. A utility line may be placed in an underground trench within a Category II, III or IV wetland or its buffer, although generally, boring is preferred to trenching unless infeasible for a specific proposal. Such activities are not exempt from the provisions of this chapter when located in an associated wetland as defined in UPMC 18.10.020. These activities should be discouraged where there is a high water table and be limited to the outer 25% of buffers unless there is no feasible alternative. Boring and trenching should not be permitted in Category II wetlands or their buffers unless there is no other option, due to the lengthy recovery time from disturbance in such wetlands. There must be no resulting changes in pre-construction contours, and trench excavation materials that are temporarily sidecast must be stabilized to prevent erosion and sedimentation. All sidecast materials shall be replaced within the trench or removed after 90 days, unless the Department grants an extension. The trench shall be the minimum size required to construct the utility line. The top 12 inches of the trench shall be backfilled with topsoil from the trench excavation. Trenches in wetlands shall be backfilled with wetland topsoil from the excavation. Trench excavation should be restricted to the dry season. All permits from other regulatory agencies must be obtained.

K. Subject to BMP's, placement of utility lines which do not require excavation or utility poles, in any part of a buffer for a category III or IV wetland. They may be placed in a buffer for a category I or II wetland; provided they are not located closer than one half the buffer width from the edge of the wetland.

L. Public park improvements, including construction of public trails and associated viewing platforms, subject to BMP's, provided no net loss of wetlands occurs.

Wetlands
17.35.035 Establishing buffers.

A. Buffers shall be measured perpendicularly to the wetland edge. Buffer widths shall be determined according to table 3 and the provisions of this section:

Table 3 - Wetland Buffer Widths

	Category I	Category II	Category III	Category IV
High Impact Land Use	200' Buffer	150' Buffer	75' Buffer	50' Buffer
Low Impact Land Use	150' Buffer	100' Buffer	50' Buffer	35' Buffer

B. The Director shall determine that a use is either high impact or low impact based upon the following performance standards. A proposed use must satisfy 5 of the following 7 criteria to be considered low impact. All other uses shall be considered high impact.

1. No more than 30% of the site may be covered with impervious surfacing.
2. Pier, piling or pin foundation systems or other measures that reduce on-site soil compaction shall be used where appropriate.
3. A minimum of 60% of the site shall be retained in an undisturbed naturally vegetated state.
4. Permeable paving systems shall be implemented where appropriate.
5. Measures shall be taken to ensure that use of pesticides, herbicides and fertilizers incompatible with wetland functions does not occur.
6. Bio-retention features shall be employed. Examples include rain gardens, roof gardens, tree filter boxes and similar vegetated systems.
7. Roads, driveways and parking areas shall be minimized. Roads and driveways shall primarily run perpendicular to the wetland edge. Parking areas shall be located the maximum distance feasible from the buffer edge.

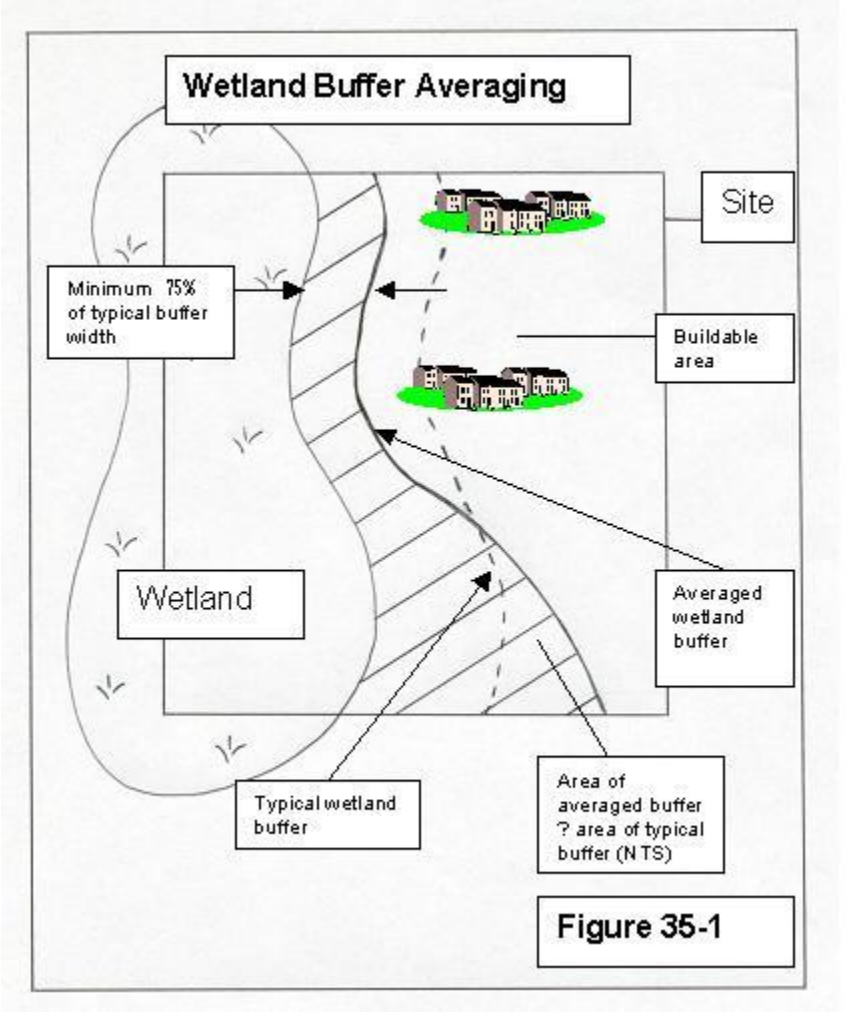
C. An applicant may propose an alternative plan for achieving low impact development. The director and the city wetland specialist shall review the plan. If the alternative plan is determined to provide greater than or equal benefit to wetland functions than could be achieved by following the provisions of subsection B, development activity implemented subject to such plan shall be considered low impact and a low impact buffer, per Table 3, shall be permitted.

D. Buffer widths may be modified by averaging or reducing. Buffer averaging and buffer reduction shall not be applied to the same wetland.

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

    a. The wetland contains variations in sensitivity due to existing physical characteristics; and
    b. Width averaging will not adversely impact the wetland; and
    c. The total buffer area after averaging is no less than the buffer area prior to averaging; and

d. The minimum buffer width will not be less than 75~~50~~ percent of the width established in subsection (A) of this section. See Figure 35-1 below.

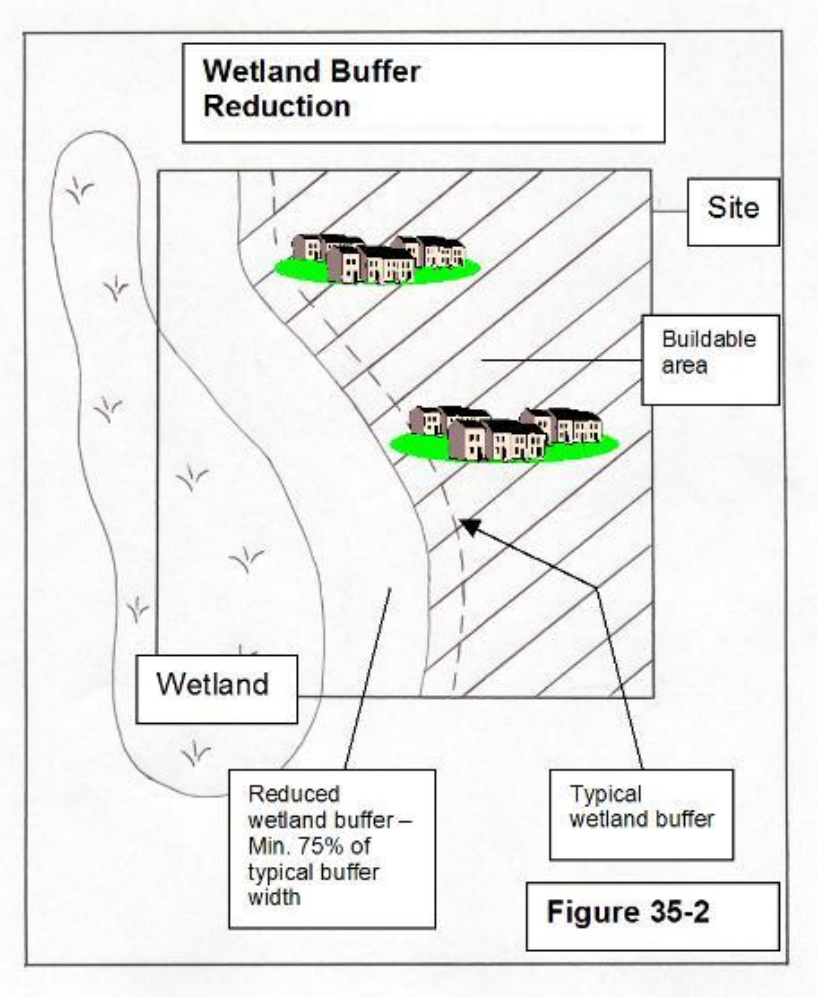


2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a 25 percent reduction in the buffer width established in subsection (A) of this section. See Figure 35-2 below.

a. The proposed buffer area is extensively vegetated and has less than 15 percent slopes, and the reduction will not result in adverse impacts to the wetland; or

b. The project includes a buffer enhancement plan, as part of the mitigation required by UPMC 17.35.045. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or

c. The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan that ensures the reduction will not result in adverse impacts to the wetland.



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

1. A larger buffer is necessary to maintain viable populations of existing species; or

2. The wetland is used by species listed by the federal government or the state as endangered or threatened species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas; or

3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

4. The adjacent land has minimal vegetative cover or slopes greater than 15 percent.

Wetlands

17.35.045 Mitigation.

Regulated activities within wetlands and buffers shall be mitigated pursuant to this chapter. Where SEPA environmental review is required, a threshold determination may not be made prior to department review of the mitigation plan.

A. All activities in wetlands and/or buffers shall be mitigated according to this section and the Department of Ecology manual: ~~Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, current edition, as published by DOE~~ *Wetland Mitigation in Washington State*, *Part 1: Agency Policies and Guidance* (Version 1, Publication #06-06-011a, March 2006) and *Wetland Mitigation in Washington State*, *Part 2: Developing Mitigation Plans* (Version 1, Publication #06-06-011b, March 2006). Except as specifically exempted, regulated activities shall not be permitted within wetlands and/or buffers unless an applicant demonstrates that all reasonable attempts have been made to avoid impacts to the wetland and/or buffer. Mitigation is considered in order of preference as noted below with (1) being most preferable and (5) being the least preferable. Applicants must establish that mitigation has been considered in order of preference prior to permit issuance. There may be circumstances when an alternative mitigation strategy is preferable.

1. Avoiding the impact altogether by not taking a certain action or parts of actions within the wetland and/or buffer;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing or providing substitute resources or environments. Mitigation for individual actions may include a combination of the above measures. Monitoring may be a part of one or more of the above measures.

B. Regulated activities which occur in buffers, and which will not eliminate wetland habitat, shall be mitigated according to a mitigation plan approved by the department. A mitigation plan for regulated activities in buffers shall contain the following components:

1. General goals of the mitigation plan;
2. Approximated site topography before and after alteration;
3. Location of proposed mitigation area;
4. General hydrologic patterns on the site before and after construction;
5. General plant selection and justification, planting instructions, and approximate planting sequencing and schedule;
6. A maintenance plan;
7. A monitoring and contingency plan.

8. A financial guarantee to ensure maintenance and/or implementation of the contingency plan. The financial guarantee must be equal or greater than 20% of the estimated cost of the mitigation work, but in no case shall be less than is necessary to implement the contingency plan.

C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands. Compensatory mitigation shall be accomplished per the Department of Ecology manual: Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, current addition. The above referenced document was developed jointly by six agencies including the Washington State Department of Ecology and Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These agencies, together with the city, have regulatory authority over wetland filling and related mitigation. Consistency with the above referenced document will ensure that submitted plans are adequately detailed for review by all responsible agencies. Replacement ratios for compensatory mitigation shall be pursuant to the subsection below.

1. When regulated activities occur in wetlands, the applicant shall preserve, restore, create, or enhance equivalent areas of wetlands. Equivalent areas shall be determined according to acreage, functional value, type, location, time factors, and projected success. No overall net losses shall occur in wetland acreage, functions and/or values, and any restored, created, or enhanced wetland shall be as persistent as the wetland it replaces. Buffers pursuant to 17.35.035 shall be provided for created, restored or enhanced wetlands.

2. When an applicant proposes to alter or eliminate wetland, the applicant shall replace, restore and/or enhance acreage at the following ratios:

Table 4 - Wetland Mitigation Replacement Ratios*

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement	Preservation
Category I: Bog, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

	~~Creation and Restoration~~	~~Enhancement~~
~~Category I~~	~~6:1~~	~~12:1~~
~~Category II and III~~		
~~•Forested~~	~~3:1~~	~~6:1~~
~~•Other~~	~~2:1~~	~~4:1~~
~~Category IV~~	~~1.25:1~~	~~2.5:1~~

*Ratios read as follows: Acreage replaced: Acreage lost

3. Ratios provided are for proposed projects with in-kind replacement that occurs prior to regulated activities on the site. Replaced, restored or enhanced wetlands must be located within the same drainage basin as the filled wetland, but are not required to be located on the same property. The department may increase the ratios under the following circumstances:

a. Uncertainty as to the probable success of the proposed restoration, enhancement or creation; or
b. Significant period of time between destruction and replication of wetland functions; or
c. Projected losses in wetland functional value; or
d. Out-of kind compensation.

4. The department may allow the minimum acreage replacement ratio to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise, which demonstrate that, no net loss of wetland function or value results from the decreased ratio. In no case shall the department approve a ratio less than 1:1.

5. In-kind compensation shall be provided except where the applicant demonstrates that:

a. Greater functional and habitat values can be achieved through out-of-kind mitigation; or
b. The wetland system is already significantly degraded; or
c. Problems such as the presence of exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation infeasible; or
d. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

D. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance *"Wetland Mitigation in Washington State Parts I and II"*(Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the administrator 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: Operational Draft,"* (Ecology Publication #10-06-011, Olympia, WA, February 2011, or as revised).

ED. Financial guarantees. Mitigation shall be accomplished prior to the start of any regulated activity that impacts wetland area.

1. If development permits are issued prior to completion of mitigation work, financial guarantees shall be required to ensure mitigation is completed. Financial guarantees shall be 125% of the estimated cost of implementation of the mitigation plan.

2. Appropriate financial guarantees shall be in place to ensure that maintenance; monitoring and/or contingency plans shall be accomplished. Financial guarantees for contingency plans should be 20% of the cost of implementation of the mitigation plan.

FE. Wetland mitigation banking may be permitted as a flexible alternative to standard compensatory mitigation. Wetland mitigation banking shall be conducted per the requirements of 173-700 WAC. The department may adopt additional administrative rules to administer wetland mitigation banking.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
   a. The bank is certified under state rules;
   b. The Administrator 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.

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

3. 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.

G. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with state and federal rules. The program should address:

1. The identification of sites within the City that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion, and

2. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

H. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to state and federal rules.

I. Alternative Mitigation Plans. The Administrator may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The Administrator shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publication #09-06-32, Olympia, WA, December 2009.)

2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;

3. Mitigation according to Section E is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;

4. There is clear potential for success of the proposed mitigation at the proposed mitigation site;

5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in Section I;

6. The plan shall be reviewed and approved as part of overall approval of the proposed use; *Wetlands Guidance for Small Cities Western Washington Version Page A-23*

7. A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative;

8. Mitigation guarantees shall meet the minimum requirements as outlined in Section.I.a.viii;

9. Qualified professionals in each of the critical areas addressed shall prepare the plan;

10. The City may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

J. Monitoring program and contingency plan.

1. If the wetland mitigation plan includes compensatory mitigation, a monitoring program shall be implemented to determine the success of the compensatory mitigation project.

2. Specific criteria shall be provided for evaluating the mitigation proposal relative to the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

3. A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails.

4. Requirements of the monitoring program and contingency plan are as follows:

a. During monitoring, use scientific procedures for establishing the success or failure of the project;

b. For vegetation determinations, permanent sampling points shall be established;

c. Vegetative success equals 80 percent per year survival of planted trees and shrubs and 80 percent per year cover of desirable understory or emergent species;

d. Submit monitoring reports of the current status of the mitigation project to the Administrator. The reports are to be prepared by a qualified wetland specialist and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:

i. At time of construction;
ii. Thirty days after planting;
iii. Early in the growing season of the first year;
iv. End of the growing season of first year;
v. Twice the second year;
vi. Annually;

e. Monitor a minimum of three and up to 10 growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;

f. If necessary, correct for failures in the mitigation project;

g. Replace dead or undesirable vegetation with appropriate plantings;

h. Repair damages caused by erosion, settling, or other geomorphological processes;

i. Redesign mitigation project (if necessary) and implement the new design;

j. Correction procedures shall be approved by a qualified wetland specialist and the City's environmental official.

Wetlands

17.35.055 Alternative review process, Corps of Engineers Section 404 individual permits.

When an Army Corps of Engineers Section 404 permit is required for a project involving wetlands, the Army Corps permitting process may be substituted for the city permitting process, except when the project is located within an associated wetland as defined in UPMC 18.10.020. If a proposal reviewed and conditioned by the Corps satisfies the intent of this chapter, no further wetland review shall be required by the city. All permits and approvals required by other city development regulations shall be required.