

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: Public Hearing Amending Critical Areas Regulations (CAR)

DATE: March 8, 2007

SUBJECT: Approval of Amendment to Chapter 16.80 Critical Areas Regulations (CAR) Section 16.80.110 Regulation of Small Wetlands Subsections (C), (C) (1) (a) and (C) (2) (e) by Deleting the word "Stream" in each of the subsections.

Note the Petition for Review with the Central Puget Sound Growth Management Hearings Board identified a change to subsection (C) (2) (d) to delete the word Stream. The word Stream does not appear in this subsection therefore proposed Ordinance Number 947-07 has be amended to reflect this correction. Mr. Heydrick was advised of the correction on February 28, 2007

CONTACT PERSON: Rick Cisar, Director of Community Development

SUMMARY: The City Council on October 26, 2006 adopted a new Municipal Code Chapter 16.80 to be known as the City of Sultan's Critical Areas Regulations (CAR). The proposed amendment to the CAR is scheduled for a Public Hearing and First reading of the Ordinance this evening March 8 and second reading of the Ordinance on March 22, 2007 as agreed by the Hearing Board, Petitioners and City on February 5, 200.

On February 20, 2007 the Planning Board conducted a Public Hearing to consider the proposed amendments to Section 16.80.110 deleting the word Stream in three subsections.

The Planning Board, after closing the Public Hearing and Board discussion, voted unanimously to approve the amendment as recommended by Staff.

Public comments during the public hearing were in favor of the change. No one spoke in opposition of removing the word Stream from the identified sections.

BACKGROUND:

On December 27, 2006 a Petition for Review was filed before the Central Puget Sound Growth Management Hearings Board (CPSGMHB) and had two issues with the new Critical Areas Regulations. (1) The petition cited specific examples of language that combined regulations for streams and wetlands under the heading of Small Wetland Regulations SMC 16.80.110 (page 10). The petitioners

contend that the inclusion of the language regulating streams in this Section creates confusion, ambiguity and inconsistency.

(2) Petitioners contest the regulatory 35 minimum wetland buffers per 16.80.110 (C) (1) (c) and (2) (d) on the basis of adequacy and the lack of Best Available Science (BAS).

In consideration of council's previous direction, a hearing has been scheduled with CPSGMHB to defend the reduced buffers widths as supported by the Department of Ecology (DOE).

Proposed Amendment to the Critical Areas Ordinance

Section 16.80.110 Regulation of Small Wetlands

After reviewing the current code and past versions of the code that have been generated over the past year, the city found the source of the word "stream" in the section referring to small wetlands less than 4,000 square feet.

In the original Sultan CAO there was a section called "Allowed Development Activities in Wetlands, Streams, and Buffers" under 16.80.080 C(l)(c) Buffer Averaging and C(2)(d) Buffer Reductions where the buffer will not be less than 50% of the required buffer or 25 feet, whichever is greater.

In the January 31, 2006 version of the code, this section was split into two sections - one for allowed development activities in *streams* and another for allowed development activities in *wetlands*, and these particular sub-sections on averaging and reducing wetlands buffers was deleted from "Allowed activities in wetlands" and moved to the new section on "Regulation of Small Wetlands" which had not previously existed. When the section was split in two and part of it was moved, the language contained in the body of the code was not changed to reflect the new section which only applies to small wetlands, and is separate from streams.

This new section (Section 16.80.110) is intended only for small wetlands and not streams, so the minimum standard *stream* buffer allowed would be 50 feet as found in 16.80.150 A(4) and (5). Since Section 16.80.110 does apply to small wetlands, buffer reductions would be allowed down to 35 feet under very specific criteria.

In a letter from the Department of Ecology dated April 13, 2006, they supported buffer reductions in small category III and IV wetlands (less than 4,000 square feet) that meet certain criteria such as not decreasing the functional values of the wetland. This letter from the Department of Ecology is attached.

SUMMARY:

On February 5, 2007 a prehearing conference was held with the Central Puget Sound Growth Management Hearings Board, the Petitioners and the City of Sultan. The City advised the Hearings Board at this Pre-Hearing Conference the reference to Streams in Section 16.80.110 was an editing error and the Ordinance (Number 947-07) would be amended by the end of March, 2007. The Petitioners and Board concurred with the amendment and schedule.

The schedule to amend the Critical Areas Ordinance contemplates a Public Hearing before the Planning Board on February 20, 2007, a Public Hearing before the City Council on March 8, 2007. First Reading of the Amending Ordinance Number 947-07 on March 8, 2007, and Second Reading of Ordinance Number 947-07 on February 22, 2007. Publication of the Ordinance in the Everett Herald is scheduled for February 26, 2007.

Staff has attached for the City Council's consideration:

- (1) Ordinance No. 918-06 adopting Chapter 16.80 , City of Sultan Critical Areas Regulations (CAR),
- (2) The Petition for Review (Case Number 06-3-0037) and;
- (3) Ordinance Number 947-07 Amending Section 16.80.110 by deleting the word "Stream" in three subsections. The Ordinance includes legislative markup up to indentify the proposed changes.

The Amendment again corrects an error in the Final Draft of the Critical Areas Regulations.

ALTERNATIVE ACTIONS AND ANALYSIS:

1. Conduct a Public Hearing on March 8, 2007 and thereafter Approve Ordinance Number 947-07 on First Reading and pass it on for Second Reading and adoption on March 22, 2007.
2. Conduct a Public Hearing and defer action on the Amendment to the City Council's March 22, 2007 Meeting. Have First and Second Reading on March 22, 2007

Alternative 1. would allow the City to comply with the schedule agreed to by the Hearing's Board, Petitioners and City to complete the Amendment process by the end of March 2007.

Alternative 2. would defer adoption of the Amendment and raise the issue of noncompliance with the agreed upon schedule to complete the Amendment process.

RECOMMENDATION:

ACTIONS (2):

(1) Conduct the Public Hearing on the Amendment to Chapter 16.80 Critical Areas Regulations (CAR) Section 16.80.110 Regulation of Small Wetlands Subsections (C), (C) (1) (a) and (C) (2) (e) by deleting the word "Stream" in each of the subsections and;

(2) Approved Ordinance Number 947-07 on First Reading, with or without Amendments, and pass it on Second Reading and Adoption on March 22, 2007 under Action Item A-1 of the Agenda.

ATTACHMENTS:

1. Ordinance No. 918-06 Critical Area Regulations (CAR)
2. Petition for Review Case No.: 06-3-0037
3. Ordinance No. 947-07 amending the Critical Areas Regulations
4. April 13, 2006 Department of Ecology Letter

CITY OF SULTAN
ORDINANCE NO. 918-06

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING CHAPTER 16.80 STREAMS AND WETLANDS, SULTAN MUNICIPAL CODE, AND COMBINING CHAPTER 16.68 HILLSIDE DEVELOPMENT AND GEOLOGICALLY HAZARDOUS AREA PERFORMANCE STANDARDS AND CHAPTER 16.84 FISH AND WILDLIFE HABITAT INTO A NEW CHAPTER 16.80 AND ADOPTING THE NEW CHAPTER 16.80 TO BE KNOWN AS THE CITY OF SULTAN'S CRITICAL AREAS REGULATIONS (CAR)

WHEREAS, the City of Sultan is required under RCW 36.70A.170 to review, and if needed, revise its development regulations to ensure they comply with the Growth Management Act (GMA); and

WHEREAS, RCW 36.70A.172 requires revisions to critical area codes to incorporate Best Available Science to protect the functions and values of critical areas; and

WHEREAS, the city has revised Chapter 16.80 of Sultan Municipal Code (SMC), entitled Streams and Wetlands regulations to incorporate Best Available Science and also (SMC) Chapters 16.68 Hillside Development and Geologically Hazardous Area Performance Standards and Chapter 16.84 Fish and Wildlife Habitat into a new Chapter 16.80 to be known as the Critical Areas Regulations (CAR): and

Public Involvement, communication and coordination

WHEREAS, the City provided for public participation and coordinated with affected agencies per Ecology Guidelines (WAC 173-26-100), the provisions of the GMA (RCW 36.70A.035, 36.70A.130, and 36.70A.140), and the plan adoption and amendment procedures set forth in City code; and

WHEREAS, a public City Council workshop was held on February 21, 2006 at the Sultan City Hall. This workshop provided an overview of the Critical Area Regulations (CAR) and the objectives of the CAR update; and

WHEREAS, the City Council conducted a Public Hearing on March 23, 2006 to receive public comment on the proposed CAR update; and

WHEREAS, the City Council continued the March 23, 2006 Public Hearing to April 13, 2006 to receive additional public comments on the proposed CAR update; and

WHEREAS, the City Council conducted a continued Public Hearing on April 13, 2006 to receive public comments on the proposed CAR update; and

WHEREAS, timely and effective notice was provided for each City Council Meeting and Workshop. Notice was published in the official news paper, posted at City Hall and U.S. Post Office, placed on the Public Access Channel 21 and posted on the city website; and

WHEREAS, the City worked with state Department of Ecology (DOE) and Washington Department of Fish and Wildlife (WDFW) agency staff throughout the update process.

WHEREAS, the Department of Ecology (DOE) and Washington Department of Fish and Wildlife (WDFW) staff reviewed and provided comments on the Sultan draft CAR; and

WHEREAS, the Department of Ecology (DOE) staff attended the February 21, 2006 City Council Public Workshop and April 13, 2006 public hearing to assist in the review of the proposed CAO; and

WHEREAS, the City provided copies of the Critical Areas Regulations to the State Department of Growth Management Services Department of Community, Trade and Economic Development on January 5, 2006 and received no comments after their 60-day review.

Environmental Review

WHEREAS, an environmental checklist was prepared for the action of adopting the proposed amendments according to the State Environmental Policy Act; and

WHEREAS, the SEPA Responsible Official for Sultan issued a Declaration of Non-Significance pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) on February 24, 2006. The Determination of Non-Significance (DNS) was determined to be final on March 10, 2006; and

WHEREAS, the SEPA official received no comments from reviewing agencies or the public on the DNS issued for the proposal; and

WHEREAS, the Growth Management Act requires the protection of critical areas, including but not limited to habitat, wetlands and geologically hazardous areas; and

GMA Consistency

WHEREAS, the draft Sultan CAR is consistent with the land use designations and goals of the Sultan Comprehensive Plan. The City of Sultan plans to review and update the policies of the Comprehensive Plan and related development regulation to acknowledge adoption of the CAR and ensure continued consistency; and

WHEREAS, the City finds that the amendments to Chapter 16.80 City of Sultan, Streams and Wetlands Regulations, as set forth herein and now known as a new Chapter 16.80 City of Sultan Critical Areas Regulations (CAR) and incorporated herein by this reference, are necessary to implement the Critical Areas Regulations, and to ensure consistency between the Critical Areas policies contained within the Land Use Element of the Sultan Comprehensive Plan and the City's Implementing Regulations;

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF SULTAN AS FOLLOWS:

Section 1. SMC Chapter 16.80, Streams and Wetlands is hereby amended to read as follows and incorporated into a new SMC Chapter 16.80, Critical Areas Regulations (CAR):

**Chapter 16.80
CRITICAL AREAS REGULATIONS (CAR)**

Sections:

- 16.80.010 Purpose**
- 16.80.020 Objectives**
- 16.80.030 Applicability**
- 16.80.040 Appeals**
- 16.80.050 Exemptions**
- 16.80.060 Critical area markers, signs and fencing.**
- 16.80.070 Notice of title.**
- 16.80.080 Critical area tracts and designations on site plans**
- 16.80.090 Building Setbacks**
- 16.80.100 Classification of streams and wetlands**
- 16.80.110 Regulation on small wetlands.**
- 16.80.120 Single-family residence on existing legal lots with streams or wetlands.**
- 16.80.130 Critical area study content requirements fro streams or wetlands.**
- 16.80.140 Mitigation plan requirements for streams or wetlands**
- 16.80.150 Buffer requirements for streams and wetlands**
- 16.80.160 Allowed development activities in streams, wetlands, and buffers.**
- 16.80.170 Review criteria for development activities in streams, wetlands, and buffers.**
- 16.80.180 Stream and wetland performance standards.**
- 16.80.190 Erosion hazard areas-Development standards and permitted alterations.**
- 16.80.200 Landslide hazard areas-Development standards and permitted alterations.**
- 16.80.210 Habitat management plan.**
- 16.80.220 Reasonable use allowance.**
- 16.80.230 Density/floor area calculations and transfer of density/floor area.**

16.80.010 Purpose.

It is the purpose of this chapter to promote the public health and general welfare by designating wetlands, streams, habitat areas, and geologically hazardous areas, and regulating development activity in these areas. Additionally, it is the intent of this chapter to adopt development regulations, required in RCW 36.70A.060, precluding land uses or development that is incompatible with critical areas designated under RCW 36.70A.170.

16.80.020 Objectives.

The objectives of this chapter are to: A. Protect human life and health; B. Further the public interest in the conservation and wise use of our lands; and C. Assure the long-term conservation of resource lands.

16.80.030 Applicability.

A. The provisions of this chapter shall apply to all land uses in the City of Sultan, and all persons within the City shall comply with the requirements of this chapter.

B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.

C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

D. When any provision of any other chapter of the Sultan Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision that provides more protection to environmentally critical areas shall apply unless specifically provided otherwise in this chapter or unless such provision conflicts with federal or state laws or regulations.

16.80.040 Appeals.

Any decision to approve, condition, or deny a development proposal based on the requirements of this chapter may be appealed according to and as part of the appeal procedure for the permit or approval involved.

16.80.050 Exemptions.

The following are exempt from the provisions of this chapter:

A. Alterations in response to emergencies that threaten the public health, safety, and welfare or that pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the department immediately. Mitigation may be required following the emergency to protect the health, safety, welfare and environment and to repair any resource damage;

B. Public water, electric, and natural gas distribution, public sewer collection, cable communications, telephone utility, and related activities undertaken pursuant to City-approved best management practices, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency that approves the new location of the facilities and only when all other alternative sites have been examined and determined to be infeasible, mitigation will be required;
3. Replacement, operation, repair, modification, installation, or construction in existing developed utility corridors, an improved City street right-of-way or City-

authorized private street of all electric facilities, lines, equipment, or appurtenances, not including substations;

4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances, only when required by a local governmental agency that approves the new location of the facilities and only when all other alternative sites have been examined and determined to be infeasible, mitigation will be required;

5. Replacement, operation, repair, modification, installation, or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances when such facilities are located within an improved public right-of-way or authorized private street;

C. Maintenance, operation, repair, modification, or replacement of publicly improved streets as long as any such alteration does not involve the expansion of streets or related improvements into previously unimproved rights-of-way or portions of rights-of-way;

D. Maintenance, operation, or repair of parks, trails and publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved areas or new clearing of native vegetation beyond routine pruning and related activities.

16.80.060 Critical area markers, signs and fencing.

The city may require fencing, signs and survey markers as need to delineate and protect critical areas. If found to be necessary, permanent fencing shall be required at the edge of the critical area or buffer. Fencing installed in accordance with this section shall be designed to not interfere with fish and wildlife migration and shall be constructed in a manner that minimizes critical areas impacts.

16.80.070 Notice on title.

The owner of any property containing critical areas or buffers on which a development proposal is submitted or any property on which mitigation is established as a result of development, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the City with the county property records office. The required contents and form of the notice shall be determined by the city. The notice shall inform the public of the presence of critical areas, buffers or mitigation sites on the property, of the application of this chapter to the property and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land.

16.80.080 Critical area tracts and designations on site plans.

A. Critical area tracts shall be used to protect those critical areas and buffers listed below in development proposals for subdivisions, short subdivisions, planned unit developments or binding site plans and shall be recorded on all documents of title of record for all affected lots:

1. All landslide hazard areas and buffers that are one acre or greater in size;
2. All wetlands and buffers; and
3. All streams and buffers.

B. Any required critical area tract shall be held in an undivided interest by each owner of a building lot within the development with this ownership interest passing with the ownership of the lot or shall be held by an incorporated homeowner's association or other legal entity which assures the ownership, maintenance, and protection of the tract, or dedicated to the City, at the City's discretion.

16.80.090 Building setbacks.

Unless otherwise provided, building setbacks shall be located a distance of 10 feet from the edges of a required critical area buffer.

16.80.100 Classification of streams and wetlands.

A. Stream Classifications. Streams are classified based on the water typing criteria in WAC 222-16-031 and are summarized below:

1. **Type 1 Water** – All waters, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, but not including those waters associated wetlands as defined by Chapter 90.58 RCW.
2. **Type 2 Water** – Segments of natural waters that are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:
 - a. Are diverted for domestic use by more than one hundred (100) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty (50%), or whichever is less;
 - b. Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality.
 - c. Are within a federal, state, local or private campground having more than thirty (30) camping units: provided that the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within one hundred (100) feet of a camping unit.

- d. Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:
 - 1. Stream segments having a defined channel twenty (20) feet or greater within the bankfull width and having a gradient of less than four percent (4%).
 - 2. Lakes, ponds, or impoundments having a surface area of one (1) acre or greater at seasonal low water; or
- e. Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
 - 1. The site must be connected to a fish bearing stream and be accessible during some period of the year; and
 - 2. The off-channel water must be accessible to fish through drainage with less than a five percent (5%) gradient.

3. Type 3 Water – Segments of natural waters that are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

- 1. Are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty percent (50%), whichever is less;
- 2. Are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the State Forest Practices Board Manual, Section 13. If fish use has not been determined:
 - a. Waters having the following characteristics are presumed to have fish use:
 - 1. Stream segments having a defined channel of two (2) feet or greater within the bankfull width and having a gradient of sixteen percent (16%) or less.
 - 2. Stream segments having a defined channel or two (2) feet or greater within the bankfull width and having a gradient greater than sixteen percent (16%) and less than or equal to twenty percent (20%), and having greater than fifty (50) acres in contributing basin size, based on hydrographic boundaries.
 - 3. Ponds or impoundments having a surface area of less than one (1) acre at seasonal low water and having an outlet to a fish stream;
 - 4. Ponds or impoundments having a surface area greater than one half (0.5) acre at seasonal low water.
 - b. The Department of Natural Resources shall waive or modify the characteristics in (a) of this Subsection where:

1. Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish
 2. Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or
 3. Sufficient information about a geomorphic region is available to support a departure from the characteristics in (a) of this Subsection, as determined in consultation with the Department of Fish and Wildlife, Department of Ecology, affected tribes and interested parties.
4. **Type 4 Water** – All segments of natural waters within the bankfull width of defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, non-technical observations (see State Forest Practices Board Manual, Section 23), then Type 4 Waters begin at a point along the channel where the contributing basin area is:
1. At least thirteen (13) acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);
 2. At least fifty two (52) acres in other locations in Western Washington;
5. **Type 5 Waters** – All segments of natural waters within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 1, 2, 3, or 4 Waters.

B. Wetlands Categories. All determinations of wetlands rating will be based on the entire extent of the wetlands, unrelated to property lines or ownership patterns. Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, as revised). This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below:

- Category 1.** Category 1 wetlands include those that receive a score of greater than or equal to 70 based on functions, or those that are rated Category 1 based on Special Characteristics as defined in the rating form.
- Category 2.** Category 2 wetlands include those that receive a score of 51 through 69 based on functions, or those that are rated Category 2 based on Special Characteristics as defined in the rating form.

Category 3. Category 3 wetlands include those that receive a score of 30 through 50 based on functions.

Category 4. Category 4 wetlands score less than 30 points based on functions.

16.80.110 Regulation of small wetlands.

Small wetlands are those that are less than 4,000 square feet.

A. Wetlands less than 1,000 square feet are exempt where it has been shown by the applicant that the wetland is not associated with a riparian corridor, they are not part of a larger wetland system, and do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

B. Wetlands between 1,000 and 4,000 square feet are to be evaluated using the 2004 Western Washington Wetland Rating System and the below criteria when determining whether or not to exempt these smaller wetlands:

1. Category III and IV wetlands between 1,000 and 4,000 square feet may be exempt if the following requirements are met:

a. The wetland is not associated with a riparian corridor; and

b. The wetland is not part of a larger wetland system; and

c. The wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System; and

d. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife.

e. Surface water impacts are mitigated pursuant to an approved mitigation plan or the Department of Ecology Storm Water Management Manual when necessary.

C. Buffers of a small wetland may be altered only when the alteration and design will result in a net improvement of the functional value of the stream or wetland and their buffer.

1. Averaging Buffer Widths. The width of a buffer of a small wetland may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, if all of the following requirements are met:

a. Averaging will not impair or reduce the habitat, water quality purification and enhancement, storm water detention, groundwater recharge, shoreline protection and erosion protection, and other functions of the stream, wetland, or buffer;

b. The total area of the buffer on the subject property is not less than the buffer which would be required if averaging were not allowed; and

c. No part of the width of the buffer is less than 75 percent of the required width or 35 feet, whichever is greater.

2. Buffer Width Reduction. Buffer widths of a small wetland may be reduced if the buffer is enhanced in accordance with the following requirements:

a. Buffers, or buffers required after buffer averaging, will have a minimal functional value due to existing physical characteristics;

- b. The applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functional value of the buffer when compared with the functional value of the standard buffer;
- c. The applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this chapter, as part of the critical area study required by SMC 16.80.060;
- d. The buffer width is not reduced below 50 percent of the standard buffer width, or 35 feet, whichever is greater, and the total buffer area reduction is not less than 75 percent of the total standard buffer area required by 16.80.120 (A) or (B) before reduction; and
- e. The functional values of the stream or wetland protected by the buffer are not decreased.

16.80.120 Single-family residence on existing legal lots with streams or wetlands.

The applicant may develop a single-family residence and ordinary residential improvements in a wetland, wetland buffer, or stream buffer on an existing legal lot if all the following requirements are met:

- A. There is no alternate location for the single family residence and ordinary residential improvements on the subject property outside the wetland, wetland buffer or stream buffer;
- B. All new structures on the subject property are constructed in areas that will minimize disruption to the critical area and buffer;
- C. Impacts to the wetland, wetland buffer, or stream buffer from the development are mitigated and restored to the maximum extent possible;
- D. When necessary to ensure the effectiveness of mitigation or restoration, the City may require annual monitoring reports to be provided to the City by the property owner until the mitigation and/or restoration has been in place for up to 10 years and the success standards have been met.
- E. The construction and use of the single-family residence and ordinary residential improvements are consistent with all other applicable law, including, but not limited to this title; and
- F. Low impact development techniques that allow for a greater amount of stormwater to infiltrate into the soil should be encouraged to reduce run-off.
- G. All development activities on the subject property are consistent with a site development plan approved by the City which may include requirements to reduce the impact on the critical area and buffer from the construction and use of the single-family residence and ordinary residential improvements.

16.80.130 Critical area study content requirements for streams or wetlands.

A critical area study is required to be prepared by a qualified professional with experience with the relevant type of habitat for any development activity allowed under SMC 16.80.050 or 16.80.080. Depending on the characteristics of the site and the information submitted by the applicant, the City may require any or all of the following as part of the critical area study:

A. A map drawn to scale or survey showing the following information:

1. The edge of the wetland based on the State Manual for Identifying and Delineating Jurisdictional Wetlands;
2. The wetlands characteristics and plant communities based on the U.S. Fish and Wildlife Service Classification of Wetlands and Deep Water Habitats in the U.S.;
3. Stream corridors, name (if named), and stream type based on the State Department of Natural Resources' Official Water Type Maps; and
4. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that make use of the area including, but not limited to, nesting, breeding, and feeding areas.

B. A description of the streams and wetlands within 200 feet of the subject development, including buffers, drainage systems entering and leaving the site, a list of observed and documented plant and wildlife species, a description of the relative abundance of documented plant and wildlife species, and a description of the method used for flagging the wetlands edge, stream corridor, and buffers.

C. A description and illustration of proposed development activities allowed under SMC 16.80 within streams, wetlands, or buffers.

D. A description of any previous disturbances to the streams, wetlands, or buffers.

E. A summary of the methodology used to conduct the study.

F. A proposed classification of the streams and wetlands based on SMC 16.80.100 and an explanation or rationale for the proposed rating.

G. A mitigation plan which meets the requirements of SMC 16.80.140.

H. A stream relocation plan which meets the requirements of SMC 16.80.160(A)(7), if applicable.

I. A discussion of existing functional values of the stream(s), wetland(s), and buffers.

J. A discussion of the changes to stream, wetland, and buffer functional values resulting from the proposed development activity. The city will assist landowners applying for permits to develop a single-family home in gathering the required information.

K. A detailed discussion of direct and indirect potential impacts on habitat by the project, including water quality impacts.

16.80.140 Mitigation plan requirements for streams or wetlands.

A. Unless otherwise provided by this chapter, mitigation shall be required for loss of area or functional value of wetlands, streams, and buffers. When mitigation is required by this chapter, it shall address restoration, rehabilitation, and compensation in accordance with the following requirements:

1. Restoration is required when a wetland, stream, or buffer has been altered prior to project approval, unless the alteration was authorized by law; or when streams, wetlands, and/or buffers are temporarily affected by construction or any other temporary phase of a project;
2. Mitigation is required when a wetland, stream, or buffer is permanently altered as a result of project approval or activity;
3. Wetland acreage shall be replaced at a ratio of 6:1 for Category 1 wetlands, 3:1 for Category 2 wetlands, 2:1 for Category 3 wetlands, and 1.5:1 for Category 4 wetlands, to compensate for the loss of functional values over time, and the unproven nature of wetland creation/restoration projects;
4. On-site mitigation is preferred so as to assure, to the greatest extent feasible, that the plan results in mitigation for direct impacts resulting from the alteration;
5. Off-site mitigation within the same drainage basin will be preferred to on-site mitigation when the results can achieve greater benefits or functions than on-site mitigation, or would restore or enhance functions that are limiting or important to the health of the watershed.
6. Mitigation shall be completed prior to the completion and final approval of any development activity for which mitigation measures have been required.

B. The mitigation plan shall include:

1. A baseline study that analyzes the existing functional values of the critical area and buffer, functional values that will be lost, and the system's functional values after mitigation;
2. Specific goals and objectives, performance standards, and monitoring and maintenance measures;
3. Specify how lost functional values will be replaced;
4. Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;

5. Contingency provisions if the performance standards are not met by the end of the monitoring period for the mitigation area for at least five years for plant installation and ten years for woody vegetation to determine whether the plan was successful;

6. Provisions for a bond or a series of bonds to assure that work is completed in accordance with the plan, and that restoration or rehabilitation is performed if any portion of the mitigation project fails within three years of implementation; and

7. Address the need for and, when appropriate, determine the width of the buffer adjacent to any altered wetland edge.

C. Mitigation plans shall be approved prior to any development activity.

16.80.150 Buffer requirements for streams and wetlands.

Buffers shall be required for all streams and wetlands regulated by this chapter. Required stream and wetland buffer widths are as stated in this section.

A. Standard required widths for stream buffers are as follows:

1. For a Type 1 stream: 150 feet;
2. For a Type 2 stream: 150 feet;
3. For a Type 3 stream: 100 feet;
4. For a Type 4 stream: 50 feet; and
5. For a Type 5 stream: 50 feet.

B. Standard required widths for wetland buffers are as follows:

1. For Category 1 wetlands: 150 feet;
2. For Category 2 wetlands: 100 feet;
3. For Category 3 wetlands: 50 feet; and
4. For Category 4 wetlands: 50 feet.

C. Measurement. For streams and wetlands, the buffer shall be measured horizontally in a landward direction from the ordinary high water mark or wetland edge, respectively.

D. The Standard required widths for wetland buffers shall be increased for each category of wetland to the following widths if the habitat function scores meet the following thresholds:

1. For Category 1 wetlands: 225 feet if the habitat function score is 29 or greater;
2. For Category 2 wetlands: 225 feet if the habitat function score is 29 or greater;
3. For Category 3 wetlands: 110 feet if the habitat function score is 20 or greater; and
4. For Category 4 wetlands: there is no increase regardless of habitat function score.

E. Where increased buffers to streams or wetlands are adjacent to erosion or landslide hazard areas, the buffer shall include such areas. Where the horizontal distance of the area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank.

F. Where a legally established and constructed public roadway transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the roadway if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland. If the resulting buffer distance is less than 50% of the standard buffer for the applicable wetland category, no further reduction shall be allowed.

16.80.160 Allowed development activities in streams, wetlands, and buffers.

The following development activities may occur in streams, wetlands, and buffers, if no other feasible location exists, provided that such activities are designed to minimize impacts, includes a critical area study, which meets the requirements of SMC 16.80.130, and are mitigated per the requirements of SMC 16.80.140.

A. Allowed development activities in streams:

1. Utility lines, hydroelectric power generating facilities, and other utility facilities;
2. Public and private roadway crossings;
3. Bridge construction and culvert installations;
4. Bank protection and flood protection, including flow control structures for regional retention/detention systems;
5. In-stream fish and/or wildlife habitat enhancement;
6. Activities and mitigation authorized by this chapter including stream restoration, enhancement, and relocation that increases functional value;
7. Stream relocation when a plan is submitted as part of the critical areas study which demonstrates that the following criteria are met:
 - a. The relocation will improve water quality, fish or wildlife habitats, wetland recharge (if hydrologically connected to a wetland);
 - b. The plan must contain and show the following information: a topographic survey showing existing and proposed topography and location of the new stream channel; provisions for filling and revegetating the prior channel, if appropriate;
 - c. Relocation will maintain or improve hydrologic function;
 - d. Natural materials and vegetation normally associated with the stream will be utilized;
 - e. Spawning, rearing, and nesting areas will be created, if applicable;
 - f. Fish populations will be reestablished, if applicable; and
 - g. Water flow characteristics compatible with fish habitat areas will be restored;
8. Water dependent and water related development activities allowed by the Shoreline Management Master Program, when adopted in areas subject to the Shoreline Management Act, Chapter 90.58 RCW.

B. Allowed development activities in wetlands:

1. Utility lines and facilities, when no other feasible route is available;
2. Public and private roadways, including bridge construction and culvert installation;
3. Wildlife management or viewing structures;

4. Outdoor scientific or interpretive facilities;
5. Other activities and mitigation authorized by this chapter;
6. Enhancement projects where no loss of functional values result; and
7. Up to one acre of non-riparian Category 3 or 4 wetlands can be filled per site if loss of wetland functions is mitigated per 16.80.140 SMC.

C. Allowed Development Activities in Buffers.

1. Pedestrian walkways or trails when designed as part of an overall site development plan;
 - a. Trails shall be limited to permeable surfaces no more than five feet in width;
 - b. Trails should be located in the outer 25% of a wetland buffer, where feasible;
 - c. Wetland buffer widths must be increased to compensate for loss due to the width of the trail.
2. Wildlife management and viewing structures;
3. Fishing access areas, where vehicular parking is provided outside the buffer and foot trails are constructed with natural permeable materials;
4. Outdoor interpretive and scientific study areas;
5. Utility lines and facilities installation, where no reasonably feasible location is available outside the buffer area;
6. Public and private roadways, only if no other reasonably feasible access alternative exists;
7. Development activities allowed by the city's adopted shoreline management master program in areas subject to the Shoreline Management Act, Chapter 90.58 RCW; and
8. Single-family residence and ordinary residential improvements on an existing legal lot in accordance with requirements of SMC 16.80.120.

16.80.170 Review criteria for development activities in streams, wetlands, and buffers.

A. The city shall evaluate each proposed development activity in a stream, wetland, or buffer in accordance with the following hierarchy of goals: avoid impacts; minimize impacts; repair and restore impacts; reduce impacts over time; or mitigate impacts through replacement, restoration, or enhancement of functions.

B. To utilize the provisions set forth in SMC 16.80.160, applicants must submit a critical area study. The city will review the critical area study and proposed development activity in accordance with the following criteria:

1. The development activity will not:
 - a. Adversely affect water quality;
 - b. Destroy, damage, or disrupt a fish and wildlife habitat area;
 - c. Adversely affect drainage or storm water detention capabilities; or
 - d. Lead to unstable earth conditions or erosion;
2. The impacts are the minimum necessary to accommodate the development activity and are fully mitigated in accordance with SMC 16.80.140;
3. Any disruption to a critical area will occur in the least sensitive area; and
4. Critical areas or buffers temporarily disrupted during construction will be restored.

16.80.180 Stream and wetland performance standards

Development on sites with a wetland, stream or buffers shall incorporate the following performance standards in design of the development, as applicable:

- A. Lights shall be directed away from the wetland or stream.
- B. Activity that generates noise such as parking lots, generators, and residential uses, shall be located away from the wetland or stream, or any noise shall be minimized through use of design and insulation techniques.
- C. Toxic runoff from new impervious areas shall be routed away from the wetlands or stream, and shall be 100% contained.
- D. Runoff from other impervious surfaces shall be infiltrated into the buffer.
- D. The outer edge of the wetland or stream critical area buffer shall be planted with dense vegetation to limit pet or human use

16.80.190 Erosion hazard areas – Development standards and permitted alterations.

A. Land clearing, grading, filling, and foundation work in an erosion hazard area is allowed only from May 1st to September 30th, except that:

- 1. Construction outside of this seasonal development limitation may be authorized if the City determines that the hazard area will not be adversely impacted by the proposed construction work or the applicant demonstrates that erosion hazards will be fully mitigated.
- 2. The City may require geotechnical study of the site, grading, structural improvements, hydrology, soils and storm water retention studies, erosion control measures, restoration plans, and/or an indemnification/release agreement.
- 3. Timber harvest may be allowed pursuant to an approved forest practice permit issued by the Washington Department of Natural Resources.

B. All development proposals on sites containing erosion hazard areas shall include a temporary erosion control plan consistent with this section and the adopted surface water design manual or as otherwise specified by the department prior to receiving approval.

C. All subdivisions, short subdivisions, planned unit developments or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:

- 1. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;
- 2. If any vegetation on the lots is damaged or removed during construction of the site infrastructure, the applicant shall be required to submit a restoration plan to the city for review and approval. Following approval, the applicant shall be required to implement the plan;
- 3. Clearing of vegetation on lots will only be allowed when the City determines that:
 - a. Such clearing is a necessary part of a large scale grading plan;
 - b. It is not a reasonable alternative to perform such grading on an individual lot

basis; and

c. Drainage from the graded area will meet water quality standards established by the adopted surface water design manual.

D. Where the City determines that erosion from a development site poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water or the sensitivity of the receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet adopted water quality standards established by law, the City may suspend further development work on the site until such standards are met.

16.80.200 Landslide hazard areas – Development standards and permitted alterations.

A development proposal containing or within 50 feet of a landslide hazard area shall meet the following requirements:

A. A minimum buffer of 50 feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a landslide hazard or as otherwise necessary to protect the public health, safety, and welfare.

B. The buffer may be reduced to a minimum of 15 feet if, based on a geotechnical study, the City determines that the reduction will adequately protect the proposed development and other properties, the hazard area and other critical areas.

1. For single-family residential building permits only, the City may waive the geotechnical study requirement if other development in the area has already provided sufficient information or if such information is otherwise readily available.

2. The geotechnical study for a landslide hazard area shall include:

- a. A description of the extent and type of vegetative cover;
- b. A description of subsurface conditions based on data from site-specific explorations;
- c. Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
- d. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
- e. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;
- f. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
- g. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
- h. Recommendations for building siting limitations; and
- i. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

3. The city may waive or modify the requirement for a study if the applicant shows that critical areas are located off-site and access to applicable off-site property is restricted.

4. If the development proposal will affect only a part of the development proposal site, the city may limit the scope of the required study to include only that area that is affected by the development proposal.

5. If necessary to ensure compliance with this chapter, the city may require additional information from the applicant, separate from the geotechnical study.

6. A development proposal may be allowed to utilize past studies from neighboring properties, if confirmed that the study findings remain accurate and applicable to proposed development.

C. Unless otherwise provided herein or as part of an approved alteration, removal of any vegetation from a landslide hazard area or buffer shall be prohibited, except for limited removal of vegetation necessary for surveying purposes and for the removal of hazard trees determined to be unsafe by the City. The City may require the applicant to submit a report prepared by a certified arborist to confirm hazard tree conditions. Notice to the City shall be provided prior to any vegetation removal permitted by this subsection;

D. Vegetation on slopes within a landslide hazard area or buffer that has been damaged by human activity or infested by noxious weeds may be replaced with native vegetation pursuant to an enhancement plan approved by the City. The use of hazardous substances, pesticides, and fertilizers in landslide hazard areas and their buffers may be prohibited by the City; and

E. Alterations to landslide hazard areas and buffers may be allowed only as follows:

1. A landslide hazard area located on a slope 40 percent or steeper may be altered only if the alteration meets the following standards and limitations:

a. Approved surface water conveyances, as specified in the applicable City-adopted storm water requirements, may be allowed in a landslide hazard area if they are installed in a manner to minimize disturbance to the slope and vegetation;

b. Public and private trails may be allowed in a landslide hazard area subject to the standards and mitigations contained in this chapter 16.80.160 and 16.80.170 and requirements elsewhere in the SMC, when locating outside of the hazard area is not feasible;

c. Utility corridors may be allowed in a landslide hazard area if a critical areas study shows that such alteration will not subject the area to the risk of landslide or erosion;

d. Limited trimming and pruning of vegetation may be allowed in a landslide hazard area pursuant to an approved vegetation management plan for the creation and maintenance of views if the soils are not disturbed;

- e. Stabilization of sites where erosion or landslides threaten public or private structures, utilities, roads, driveways or trails, or where erosion and landslides threatens any lake, stream, wetland, or shoreline. Stabilization work shall be performed in a manner that causes the least possible disturbance to the slope and its vegetative cover; and
- f. Reconstruction, remodeling, or replacement of an existing structure upon another portion of an existing impervious surface that was established pursuant to City ordinances and regulations may be allowed provided:
 - i. If within the buffer, the structure is located no closer to the landslide hazard area than the existing structure; and
 - ii. The existing impervious surface within the buffer or landslide hazard area is not expanded as a result of the reconstruction or replacement;

2. A landslide hazard area located on a slope less than 40 percent may be altered and no buffers shall be required only if the alteration meets the following requirements:
- a. The development proposal will not decrease slope stability on contiguous properties; and
 - b. Mitigation based on the best available engineering and geological practices is implemented that either eliminates or minimizes the risk of damage, death, or injury resulting from landslides; and

F. Point discharges from surface water facilities in erosion hazard areas and onto or upstream from landslide hazard areas shall be prohibited except as allowed in the adopted surface water design manual.

G. The following are exempt from the provisions of this section:

- 1. Slopes that are 40 percent or steeper with a vertical elevation change of up to 20 feet if no adverse impact will result from the exemption based on the City's review of and concurrence with a soils report prepared by a geologist or geotechnical engineer; and
- 2. The approved regrading of any slope that was created through previous legal grading activities.

16.80.210 Habitat Management Plan.

- A. A habitat management plan is required when the priority habitats and species maps or natural heritage program maps maintained by the zoning and Building Official (City, or other information, indicates the presence of the following on the site:
- 1. Habitat for any critical species listed as endangered or threatened; or
 - 2. Habitat for any critical species not already protected pursuant to Chapter 16.80 SMC.
- B. All habitat management plans shall be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical species listed as endangered or threatened shall be reviewed by the Department of Fish and Wildlife .
- C. The City may assist Applicants seeking to develop a single-family home on an existing legal lot in preparing a habitat management plan to satisfy the requirements of subsection (A)(2) of this section.

D. Habitat Management Plan Content Requirements. Based on the characteristics of the site and information submitted by the applicant, the building and zoning official may require that all or a portion of the following be included in a habitat management plan:

1. A map drawn to scale or survey showing the following information:
 - a. All lakes, ponds, streams, and wetlands on, or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream type or wetland category consistent with SMC 16.80.100(A) and (B);
 - b. The location and description of the fish and wildlife habitat area on the subject property, as well as any potential fish and wildlife habitat within 200 feet of the subject property as shown on maps maintained by the City; and
 - c. The location of any observed evidence of use by a critical species;
2. An analysis of how the proposed development activities will affect the fish and wildlife habitat area and any critical species;
3. Provisions to reduce or eliminate the impact of the proposed development activities on any fish and wildlife habitat area and critical species; and
4. The habitat management plan should also address the following issues:
 - a. Prohibition or limitation of development activities within the fish and wildlife habitat area;
 - b. Establishment of a buffer around the fish and wildlife habitat area;
 - c. Retention of certain vegetation or areas of vegetation critically important to the critical species;
 - d. Limitation of access to the fish and wildlife habitat area and buffer;
 - e. Seasonal restrictions on construction activities on the subject property;
 - f. Clustering of development on the subject property; and
 - g. The preservation or creation of a habitat area for the critical species.

16.80.220 Reasonable use allowance.

A. General. If the application of Chapter 16.80 SMC pertaining to fish and wildlife habitat or stream/wetlands will prevent the applicant from making any economically viable use of the subject property, the applicant may apply for a reasonable use allowance with the Director of Community Development.

B. Criteria for Granting. The Director of Community Development shall grant a reasonable use allowance only when the following criteria are met:

1. The applicant demonstrates that the application of this chapter will deny all economically viable use of the subject property otherwise allowed by applicable law;
2. The development activities involve the least intrusion into and disruption of the critical area necessary to allow an economically viable use of the subject property;
3. The development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety, or welfare;
4. The applicant's inability to make economically viable use of the subject property has not resulted from any of the following:

- a. Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise;
- b. Prior actions taken in violation of this chapter or any local, state, or federal law, or regulation; and
- c. Natural constraints on the subject property that would otherwise preclude the proposed development activities.

C. The City may assist applicants in providing the information required in subsection (B) of this section.

D. Critical area impacts allowed under this section shall be mitigated to the extent reasonably feasible.

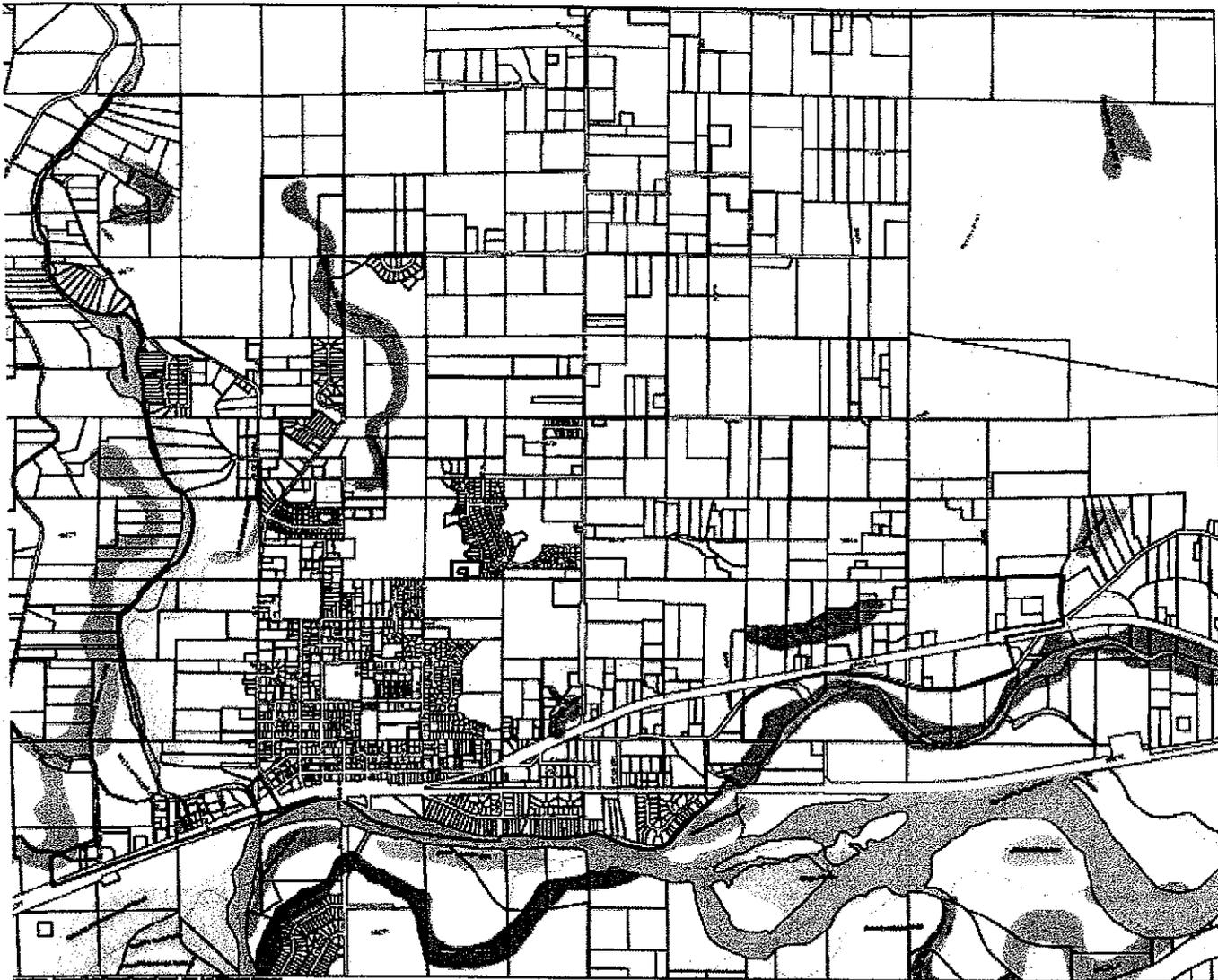
E. Appeals. The Applicant may appeal a decision of the Director of Community Development on a reasonable use allowance application to the hearings examiner pursuant to the provisions of SMC 16.120.100.

F. The development activities authorized by a reasonable use allowance shall not constitute a significant adverse environmental impact under Chapter 17.04 SMC to the critical area(s) for which the allowance is granted.

16.80.230 Density/floor area calculations and transfer of density/floor area.

A. An owner of a site or property in the low/moderate (LMD), moderate (MD) and high density (HD) zoning districts containing critical areas shall be entitled to transfer the residential density attributable to the critical area(s), including buffers, on the property to the unconstrained portion of the same property zoning districts subject to compliance subject to the requirements of this code for residential planned unit developments, and cluster subdivisions.

B. An owner of a site or property in the urban center (UC), highway-oriented development (HO), and economic development (ED) zoning districts containing critical areas shall be entitled to transfer the floor area attributable to the critical area(s) including buffers to the unconstrained portion of the same property subject to the requirements of the Table of Dimensional and Density Requirements footnoted as "Buildable Area Calculation – Transfer of Floor Area" in SMC 16.12.040, 16.12.050 and 16.12.060.



Potent Habitata Areas

- Legend**
- City Boundary
 - Urban Growth Area
 - Water Bodies
 - Water Courses

1" = 1000'

THIS MAP IS BEST REPRODUCED BY PHOTOCOPYING. ANY REPRODUCTION OF THIS MAP FOR ANY PURPOSE, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF SULTAN, WASHINGTON, IS PROHIBITED. THE CITY OF SULTAN, WASHINGTON, IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS MAP.

15th Biennial Update Complete: March 2012
MAP DATE: APRIL 2012



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Section 2. SMC Chapter 16.68, Hillside Development and Geologically Hazardous Area Performance Standards is hereby repealed.

Section 3. SMC Chapter 16.84 Fish and Wildlife Habitat is hereby repealed.

Section 4. The Department of Community Development is directed to forward the CAR to the all affected reviewing agencies.

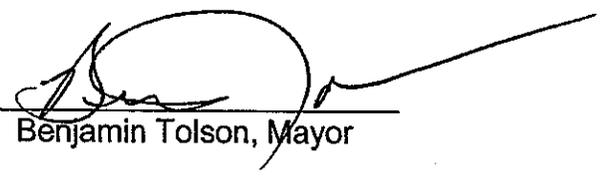
Section 5. The Department of Community Development is directed to review, conduct a public participation process and propose necessary revisions to the City's land use planning documents, maps, and development regulations to improve consistency with the Critical Areas Ordinance (CAR).

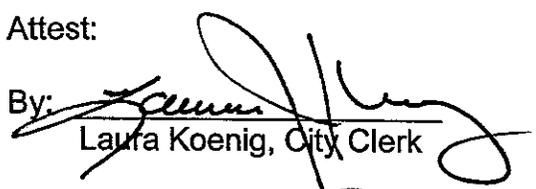
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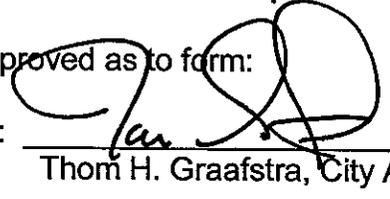
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Passed by the City Council and approved by the Mayor this 26th day of October, 2006.

City of Sultan

By: 
Benjamin Tolson, Mayor

Attest:
By: 
Laura Koenig, City Clerk

Approved as to form:
By: 
Thom H. Graafstra, City Attorney

Published: October 30, 2006

A1-25

1 **Before the Central Puget Sound**
2 **Growth Management Hearing Board**
3 **State of Washington**
4

RECEIVED
DEC 28 2006
CITY OF SULTAN *AW*

5 **Judy and Stan Heydrick**
6 **P.O. Box 352**
7 **Sultan, WA 98294**
8 **(425) 233 – 7927**
9

10
11 **Judy and Stan Heydrick, Kerry Ourada,**
12 **Plaintiffs,**
13 **Vs.**
14
15 **City of Sultan,**
16 **Respondent**
17

Case No.:

Petition For Review

18
19 **I. PETITIONERS**

20 Petitioners are Judy and Stan Heydrick and Kerry Ourada. The Heydricks will represent
21 themselves. The Heydricks own property in Snohomish County just outside of Sultan
22 City limits. The mailing address for the Heydricks is P.O. Box 352, Sultan, Wa. 98294,
23 Phone (425) 233-7927. Mr. Ourada will represent himself. Mr. Ourada is a resident of
24 Snohomish County residing within the City limits of the City of Sultan. The mailing
25 address for Mr. Ourada is 1107 Dyer Road, Sultan, Wa. 98294, Phone (360) 793-8590.
26

27 **II ACTIONS FOR WHICH REVIEW IS SOUGHT.**

28 On October 26, 2006 the City of Sultan adopted by Ordinance No. 918-06 a new
29 Municipal Code Chapter 16.80 to be known as the City of Sultan's Critical Area
30 Regulations. The adoption was published in the Legal Section of the Everett Herald on

1 October 30, 2006. Petitioners take issue with the Critical Area Regulations, specifically
2 Sultan Municipal Code 16.80.110, the subsection that regulates Small Wetlands,
3 defined as those wetlands that are less than 4,000 square feet.
4

5 Embedded in SMC 16.80.110, the subsection regulating Small Wetlands, are three
6 separate references to streams. Wetlands and streams are entirely different type of
7 critical areas requiring different set of regulations and protections.
8

9 Petitioners contend that the inclusion of language regulating streams in a subsection on
10 Small Wetlands creates confusion, ambiguity and inconsistency. The City of Sultan has
11 five separate streams within its City limits and UGA. The linking of regulations for
12 wetlands and streams under the heading of Small Wetlands can have unintended
13 consequences for Sultan's streams.
14

15 Specific examples of language that combines regulations for streams and wetlands
16 under the of heading of Small Wetland Regulations SMC 16.80.110 include:
17

18 *16.80.110(C) Buffers of a wetland may be altered only when the alteration and design*
19 *will result in a net improvement of the functional value of the stream or wetland and their*
20 *buffer.*

21
22 *SMC 16.80.110 (C) (1) (a) Averaging will not impair or reduce habitat, water quality*
23 *purification and enhancement, storm water detention, groundwater recharge, shoreline*
24 *protection and erosion protection, and other functions of the stream, wetland or buffer.*
25
26

27 *SMC 16.80.110 (C) (2) (d)(e) The buffer is not reduced below 50 percent of the*
28 *standard buffer width, or 35 feet, whichever is greater, and the total buffer area*
29 *reduction is not less than 75 percent of the total standard buffer area required by*

1 16.80.120(A) or (B) before reduction; and the functional values of the stream or wetland
2 protected by the buffer are not decreased

3
4 Petitioners contest the regulatory 35 foot minimum wetland buffers per SMC
5 16.80.110(C) (1) (c) and (2) (d) on the basis of adequacy and the lack of BAS.

6
7 Petitioners seek relief on the basis that the City adopted development regulations that
8 lack clarity and adequate wetland and stream protections. Without the proper planning
9 tools, the City cannot regulate development or adequately protect Critical Areas.

10 11 III. ISSUES

12 1. Did the City violate RCW 36.70A.020(10), 36.70A.060, 36.70A.130, 36.70A.172 and
13 36.70A.175 by failing to adequately protect streams in SMC 16.80.110, the Critical Area
14 Regulation subsection regulating Small Wetlands under 4,000 square feet?

15
16 2. Did the City violate RCW 36.70A.020(10), 36.70A.060, 36.70A.130, 36.70A.172 and
17 36.70A.175 by offering less than BAS protections for all small wetlands in SMC
18 16.80.110 by providing inadequate buffer widths?

19 20 IV. GMA STANDING

21 Judy and Stan Heydrick are property owners in Snohomish County and are State of
22 Washington residents. Judy and Stan Heydrick have participated in public meetings and
23 submitted comments to the City of Sultan regarding Critical Area Regulations. Kerry
24 Ourada is a property owner and residing within the city limits of the City of Sultan and is
25 a State of Washington resident.

26
27 Thurston County Superior Court decision in 1993 ruled that all wetlands "bigger than
28 puddles" are waters of the State. As State of Washington residents, petitioners share a
29 strong desire to protect wetlands, streams and associated wildlife.

30

1 **V. ESTIMATED LENGTH OF THE HEARING**

2 The estimated length of the hearing is one hour.

3
4 **VI. RELIEF SOUGHT**

5 The petition requests that the Board:

- 6
- 7 • Issue findings and conclusions that SMC section 16.80.110 fails to comply with
8 the Growth Management Act by failing to adequately protect streams.

9

 - 10 • Issue findings and conclusions that the City of Sultan combined regulatory
11 language pertaining to both stream buffer averaging and reduction in the same
12 subsection that regulates small wetlands under 4,000 square feet (16.80.110)
13 thereby creating confusion, ambiguity and inconsistency.

14

 - 15 • Issue findings that 35-foot minimum wetland buffers in SMC 16.80.110 (C)(1)(c)
16 regulating buffer averaging and SMC 16.80.110 (2) (d) regulating buffer
17 reduction, offer inadequate protections for small wetlands and is noncompliant
18 with the Growth Management Act.

19

 - 20 • Enter findings of non-compliance.

21

 - 22 • Enter findings of invalidity.

23

 - 24 • Recommend the Governor apply appropriate sanctions and/or enter a finding of
25 non-compliance and/or invalidity with respect to those provisions found not to
26 comply with the GMA in the event the City fails to come into compliance with the
27 GMA by the scheduled compliance date.

28

 - 28 • Schedule a compliance hearing shortly after the City's compliance date.

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VII. VERIFICATION

The undersigned petitioners state that we have read this Petition for Review and believe its contents to be true.

Respectfully submitted on this 27th day of December, 2006

By: _____

Judy Heydrick
P.O. Box 352
Sultan, WA. 98294

By: _____

Stan Heydrick
P.O. Box 352
Sultan, WA. 98294

By: _____

Kerry Ourada
1107 Dyer Road
Sultan, WA. 98294

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CITY OF SULTAN
ORDINANCE NO. 947- 07

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING CHAPTER 16.80 CRITICAL AREAS REGULATIONS (CAR) SECTION 16.80.110 REGULATION OF SMALL WETLANDS SUBSECTIONS (C), (C) (1) (a) and (C) (2))(e) BY DELETING THE WORD STREAM IN EACH OF THE SUBSECTIONS

WHEREAS, there was an error the use of the term stream in Section 16.80.110 Regulation of Small Wetlands of Chapter 16.80 Critical Areas Regulations: and

WHEREAS, the City of Sultan desires to correct this error in a timely manner by revising Section 16.80.110 Regulation of Small Wetlands to delete the reference to stream.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF SULTAN AS FOLLOWS:

Section 1. SMC Chapter 16.80.110 Regulations of small wetlands is hereby amended to read as follows:

16.80.110 Regulation of small wetlands.

Small wetlands are those that are less than 4,000 square feet.

A. Wetlands less than 1,000 square feet are exempt where it has been shown by the applicant that the wetland is not associated with a riparian corridor, they are not part of a larger wetland system, and do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

B. Wetlands between 1,000 and 4,000 square feet are to be evaluated using the 2004 Western Washington Wetland Rating System and the below criteria when determining whether or not to exempt these smaller wetlands:

1. Category III and IV wetlands between 1,000 and 4,000 square feet may be exempt if the following requirements are met:

a. The wetland is not associated with a riparian corridor; and

b. The wetland is not part of a larger wetland system; and

c. The wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System; and

- 1 d. The wetland does not contain habitat identified as essential for local populations
- 2 of priority species identified by Washington Department of Fish and Wildlife and;
- 3 e. Surface water impacts are mitigated pursuant to an approved mitigation plan or
- 4 the Department of Ecology Storm Water Management Manual when necessary.

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6 C. Buffers of a small wetland may be altered only when the alteration and design will result
7 in a net improvement of the functional value of the wetland and their buffer.

8 1. Averaging Buffer Widths. The width of a buffer of a small wetland may be averaged,
9 thereby reducing the width of a portion of the buffer and increasing the width of another
10 portion, if all of the following requirements are met:

- 11 a. Averaging will not impair or reduce the habitat, water quality purification and
- 12 enhancement, storm water detention, groundwater recharge, shoreline protection
- 13 and erosion protection, and other functions of the wetland or buffer;
- 14 b. The total area of the buffer on the subject property is not less than the buffer
- 15 which would be required if averaging were not allowed; and
- 16 c. No part of the width of the buffer is less than 75 percent of the required width or
- 17 35 feet, whichever is greater.

18 2. Buffer Width Reduction. Buffer widths of a small wetland may be reduced if the buffer is
19 enhanced in accordance with the following requirements:

- 20 a. Buffers, or buffers required after buffer averaging, will have a minimal functional
- 21 value due to existing physical characteristics;
- 22 b. The applicant demonstrates that proposed buffer enhancement, together with
- 23 proposed buffer width reduction, will result in an increase in the functional value of
- 24 the buffer when compared with the functional value of the standard buffer;
- 25 c. The applicant includes a comparative analysis of buffer values prior to and after
- 26 enhancement, and demonstrates compliance with this chapter, as part of the critical
- 27 area study required by SMC 16.80.060;
- 28 d. The buffer width is not reduced below 50 percent of the standard buffer width, or
- 29 35 feet, whichever is greater, and the total buffer area reduction is not less than 75
- 30 percent of the total standard buffer area required by 16.80.120 (A) or (B) before
- 31 reduction; and
- 32 e. The functional values of the wetland protected by the buffer are not decreased.

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34 Passed by the City Council and approved by the Mayor this _____ day of
35 _____, 2006.

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37 City of Sultan

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40 By: _____
41 Benjamin Tolson, Mayor

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43 Attest:

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45 By: _____
46 Laura Koenig, City Clerk

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1 Approved as to form:

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By: _____
Thom H. Graafstra, City Attorney



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

April 13, 2006

Honorable Ben Tolson, Mayor
Honorable Councilmembers
City of Sultan
PO Box 1199
Sultan, WA 98294-1199

Dear Mayor Tolson and Councilmembers:

**RE: Response to Comments received by City of Sultan at Public Hearing March 23, 2006
regarding Proposed Update to Critical Areas Regulations**

The Department of Ecology (Ecology) reviewed the City of Sultan's April 4, 2006 draft update to the Critical Areas Ordinance (CAO) as it relates to wetland protection. We continue to be pleased that the City has considered the scientific literature in updating the regulations to protect wetlands. The April 4, 2006 draft incorporates most of Ecology's recommendations from our earlier comment letters.

We would like to respond to some of the comments received by the City at the March 23, 2006 public hearing on the CAO update.

The Master Builders Association of King and Snohomish Counties provided a comment letter dated March 15, 2006, addressing several issues. The Master Builders argue that although the City is required to "include the best available science in developing policies and regulations to protect the functions and values of critical areas", the City is not required to adopt regulations consistent with BAS. Ecology disagrees with this interpretation, and cites that the purpose of the BAS requirement is to ensure that the critical areas regulations accurately designate critical areas and effectively protect their functions and values. *Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 533, 979 P.2d 864 (1999). In the context of critical areas protection, science is not just another consideration to be balanced against all other kinds of information available to a city. Science is essential information, without which a city cannot ensure that it has identified and designated areas that truly constitute critical areas under the GMA. *HEAL*, 96 Wn. App. at 533. Without science, a city cannot determine what regulatory approaches effectively and meaningfully protect the functions and values of critical areas such as wetlands. A City must substantively consider the best available science when developing and adopting regulations to protect critical areas. *HEAL*, 96 Wn. App. at 532; *Whidbey Environmental Action Network (WEAN) v. Island County*, 122 Wn. App. 156, 172, 93 P.3d 885 (2004), *review denied*, 153 Wn. 2d 1025 (2005). A city "cannot ignore the best available science in favor of the science it prefers simply because the latter supports the decision it wants to make" *HEAL*, 96 Wn. App. at 534. Neither can a city ignore the best available science in favor of the GMA goals it prefers simply because the latter supports the decision it wants to make. Simply put, the City's obligation to balance competing GMA goals is not a license to



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ignore the GMA's explicit requirements. See *Quadrant Corporation v. Growth Management Hearings Board*, 154 Wn. 2d 224, 245-47, 110 P.3d 1132 (2005) (rejecting argument that GMA goals impose substantive requirements; holding instead that GMA goals are to be used "exclusively for the purpose of guiding the development of comprehensive plans and development regulations" (emphasis by the Court)).

The Master Builders contend that the proposed CAO regulations would increase uncertainty for property owners and developers in the land development process. On the other hand, Ecology points out that these regulations add flexibility to the land development process and enable more site-specific evaluation of development impacts and compensatory mitigation for loss of wetland functions. This can benefit individual property owners and developers where the functions of wetlands that would be impacted by a proposed land use may require less protection through smaller width buffers or could be replaced at a lower mitigation ratio than more significant wetlands.

The Master Builders claim that Ecology's updated wetland rating system is onerous. However, King County and most other cities in that County, as well as most cities in Snohomish County, have adopted the new four-tier rating system. This demonstrates that many other jurisdictions have found it to be a reasonable, practical, and science-based method of rating wetlands. The Master Builders indicate that it is often difficult to gain access to adjacent property; in which case Ecology would find it appropriate to use aerial photos and approximate information for wetlands that extend beyond development property boundaries. Contrary to the statement that there is no apparent reason for changing wetland classification methodology, Ecology's 1993 rating system was based primarily on wetland habitat functions, and with new scientific information the new rating system considers water quality and hydrologic functions as well. To demonstrate a loss of wetland functions due to development, Ecology refers the Master Builders to *Wetlands in Washington, Volume 1 – A Synthesis of the Science* (2005), a compilation and evaluation of the scientific literature (the best available science) regarding wetlands.

The use of a Notice on Title applies to all types of land development, including single family residences. Critical areas are only required to be placed in separate tracts in Section 16.80.080 where the land development is a subdivision, planned unit development, or binding site plan. Thus the requirement for a Notice on Title provides information to a broader component of the public regarding the presence of critical areas on individual tax parcels than would placement in a separate tract.

Ecology's *Wetlands in Washington, Volume 1 – A Synthesis of the Science* (2005), Chapter 6, addresses the science and effectiveness of wetland mitigation. This document, along with Ecology's *Wetland Mitigation Evaluation Studies, Phases 1 and 2* (2000 and 2002), show that compensatory mitigation has not been very successful over the past several years, and therefore larger mitigation ratios are needed to assure the replacement of wetland functions lost to development.

Wetlands in Washington, Volume 2 – Guidance for Protecting and Managing Wetlands, published by Ecology in 2005, contains recommendations based on the synthesis of the scientific literature in Volume 1. *Appendix 8-C to Volume 2, Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System*, recommends that wetland buffers for Category IV wetlands should range from 25 feet where adjacent to low-intensity land uses such as open space, to 50 feet adjacent to high intensity land uses such as commercial and residential development. The City of Sultan is proposing 40 foot buffers for Category IV wetlands, a width appropriate for moderate intensity land uses, but appropriate because they are also adopting additional measures to minimize impacts to wetlands from adjacent land uses. This same document includes recommendations on when it is acceptable to reduce wetland buffers.

Mayor Tolson and Councilmember's
April 13, 2006
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The Snohomish County-Camano Association of Realtors faxed comments to the City on March 23, 2006. The letter is primarily concerned with the requirement for a Notice on Title in the Section 16.80.070 of the CAO update. The real estate disclosure Form 17 that is filled out by property sellers allows for a Don't Know response and does not provide any standard of accuracy for the information on that form. A recorded notice on property title provides an extra level of information for property purchasers to inform

them of the presence of critical areas on a tax parcel. For the City to notify all affected property owners of CAO limitations, as suggested by the Realtors, would require an extensive and expensive inventory of all critical areas within Sultan, with updates every few years.

Futurewise provided comments dated March 17, 2006. In general, Ecology concurs with many of the comments in Futurewise' letter. However, we would like to clarify that the wetland buffer widths proposed by Sultan are considered adequate by Ecology, based on our review of the scientific literature, because the City also incorporates into Section 16.80.180 additional mitigating measures such as directing lights away from wetlands. Ecology also supports the City's proposed ratios for wetland compensatory mitigation. Ecology's suggested language regarding the minimum size for wetland regulation has been written into Sultan's CAO.

Thank you for the opportunity to work with you in updating Sultan's Critical Areas Ordinance. If you'd like to discuss Ecology's comments, please call Erik Stockdale (425) 649-7061 or send an email to esto461@ecy.wa.gov.

Sincerely,



Laura Casey
Wetlands Specialist
Shorelands and Environmental Assistance Program

LC:cja

cc: Aubin Phillips, Berryman & Henigar
David Andersen, Department of Community, Trade and Economic Development
Donna Bunten, Ecology CAO Review Coordinator
Geoff Tallent, Section Manager, Shorelands & Environmental Assistance Program
David Pater, Shoreline Planner
Erik Stockdale, 401/Wetlands Supervisor

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