

Title 14

ENVIRONMENTAL REGULATIONS¹

Chapters:

- 14.01 General Provisions**
- 14.05 Surface Water Management**
- 14.10 Environmental Policy**
- 14.15 Critical Area Regulations**

¹ Prior legislation: Ords. 1273, 1330, 1441, 1471, 1636, 1640, 1681, 1708, 1709, 1799 and 1839.

Chapter 14.01
GENERAL PROVISIONS

Sections:

- 14.01.010 Title.
- 14.01.020 Application.
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14.01.010 Title.

This title shall be called “Environmental Regulations.” This chapter shall be called “General Provisions.” (Ord. 1853 § 2 (Exh. B), 2018).

14.01.020 Application.

This title shall be applicable as is set forth in the following chapters. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.030 Purpose.

The purpose of this title is to include all regulations concerning the protection of the environment and critical areas. The specific chapters included are General Provisions, Surface Water Management, Environmental Policy, and Critical Area Regulations. The shoreline master program is adopted separately as BMC Title 18, Shoreline Master Program. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.040 Authority.

This title is authorized by the general provisions of chapters 35A.63 and 36.70A RCW, the specific authority set forth in each chapter and other applicable laws and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.050 Adoption by reference.

Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.060 Definitions.

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this title, shall be as defined in chapters 173-303 and 173-340 WAC, the International Building Code or the International Fire Code. Words used in the singular include the plural, and words used in the plural include the singular.

Additional defined terms applicable to chapter 14.10 BMC, Environmental Policy, can be found in that chapter or adopted WAC provisions found at WAC 197-11-700 through 197-11-799.

“A”

“Agency” means any governmental entity or its subdivision.

“AKART” means all known, available, and reasonable methods of prevention, control, and treatment. See also the State Water Pollution Control Act, RCW 90.48.010 and 90.48.520.

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine water body.

“Area of shallow flooding” means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. Also referred to as the sheet flow area.

“Area of special flood hazard” means the land in a floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on the flood insurance rate map (FIRM) as zone A, AO, AH, A1-30, AE, A99, or AR (V, VO, V1-30, VE). “Special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard.”

“Aquifer recharge areas, critical” refers to areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of water.

“B”

“Base flood” means a flood event with a one percent chance of being equaled or exceeded in any given year. This term may be used interchangeably with the term “100-year flood.”

“Base flood elevation” means the elevation to which floodwater is projected to rise during a base flood event.

“Basement” means any area of the building having its floor subgrade (below ground level on all sides).

“Basin plan” means a plan to manage the quality and quantity of stormwater in a drainage basin as described in the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

“Best management practice (BMP)” means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Burlington Hill Special Management Area” means those portions of Burlington Hill with a ground elevation 40 feet or more above sea level as shown on the most current USGS 7.5 minute topographic quadrangle map.

“Nonstructural best management practices” are those which require modified or additional operational or behavioral practices, such as sweeping a parking lot or having spill response equipment on site.

“Structural best management practices” are those which require the construction of a structure or other physical modification on the site.

“Buffer, critical area” is an area which provides a reasonable margin of safety through protection of slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters; or an area which is an integral part of a stream or wetland ecosystem and which provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife, and protection from harmful intrusion necessary to protect the public from losses suffered when the functions and values of aquatic resources are degraded.

“C”

“Cause or contribute” to a violation includes acts or omissions that create a violation, that increase the duration, extent, or severity of a violation, and that aid or abet a violation.

“Certificate of occupancy” means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official,

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the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.

“City engineer” means the Burlington director of public works.

“Civil engineer, licensed” means a person who is licensed by the state of Washington to practice civil engineering.

“Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

“Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.

“Community development director” means the city administrator or designee.

“Compensatory mitigation” is replacing project-induced critical area losses or impacts, and includes, but is not limited to, restoration, creation, or enhancement.

“Complete application” or “completed application” means an application that contains all of the materials and information required by Burlington Municipal Code in accordance with the requirements of this title.

“Critical areas” include the following areas and ecosystems:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas.

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

“D”

“Damages” means monetary compensation for harm, loss, costs, or expenses incurred by the city including, but not limited to, costs of abating violations of this title or public nuisances; fines or penalties by the city incurred as a result of a violation of this title; and costs to repair or clean the public drainage control system as a result of a violation. For the purposes of this title, it does not include compensation to any person other than the city.

“Delineation” is the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the most recently adopted Washington State Wetlands Identification and Delineation Manual, Washington State Department of Ecology Publication.

“Design storm” means a rainfall event used in the analysis and design of drainage facilities.

“Designated receiving waters” means the Skagit River, Padilla Bay and other receiving waters designated by the public works director as having the capacity to receive drainage discharges.

“Detention” refers to temporary storage of drainage water.

“Developed parcel” means a parcel of real property which has been altered by developmental coverage.

“Development” means any manmade change to the land or improvements occurring after the effective date of the ordinance codified in this chapter including structures, mining, dredging, drilling, filling, grading, paving or excavation, storage of equipment and materials, clearing, and the removal of vegetation. Where a project is

dividable into parts, the entire scope of such changes or improvements constituting an integral, functional project should be considered the development for purposes of determining whether such development is allowed or requires a permit.

“Developmental coverage” means all areas within a site planned to be developed or redeveloped including, but not limited to, rooftops; driveways; carports; accessory buildings; parking areas; areas in which soils, slopes and vegetation have been altered; and roadways and other pervious and impervious surfaces.

“Director” means the community development director.

“Discharge point” means the location to which drainage water from a specific site is released.

“Discharge rate” means the rate at which drainage water is released from a specific site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

“Drainage basin” means the tributary area through which drainage water is collected, regulated, transported, and discharged to receiving waters.

“Drainage control” means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

“Drainage control facility” means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural components that handle surface water.

“Drainage control plan” means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities. The plan shall contain information as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

“Drainage control system” means a system to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

“Drainage water” means stormwater, snow melt, surface water, surface and irrigation runoff, water from footing drains and other drains approved by the public works director or installed in compliance with this title and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in BMC 14.05.070 shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

“Dredging” means the excavating of earth materials from land covered by water. The term shall include dredging which maintains an established water depth.

“E”

“Elevation certificate” means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a request for a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F)

“Equivalent service unit” means a configuration of impervious surface estimated to contribute an amount of runoff to the city’s surface water management system which is approximately equal to that created by the average single-family residential developed parcel in Burlington. One equivalent service unit (ESU) is equivalent to 2,400 square feet of impervious surface area. For purposes of computation of rates, the number of equivalent service units shall be rounded to the nearest tenth.

“Erosion” means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water and/or ice.

“F”

“FEMA” means the Federal Emergency Management Agency and its predecessor and successor agencies.

“Fish and wildlife habitat conservation areas” is as defined in the critical areas code, chapter 14.15 BMC.

“Flood” or “flooding” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides, or mudflows, caused, or precipitated by, flooding as defined in subsection (1)(b) of this definition resulting in a river of liquid and flowing mud across normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)(a) of this definition.

“Flood elevation study” or “flood insurance study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide or erosion hazards.

“Flood fringe” means those portions of the floodplain other than floodways and special flood risk zones.

“Flood insurance rate map” means an official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones. A flood insurance rate map available digitally is called a “digital flood insurance rate map.”

“Flood protection elevation” means the elevation to which development must be protected against flooding and flood damage. Methods for determining the required flood protection elevation are identified in Chapter 14.15 BMC.

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“Floodplain management area” means floodplains and other related areas as defined in BMC 14.15.400.

“Floodplain” or “frequently flooded areas” are lands subject to a one percent or greater chance of flooding in any given year, which means all lands that would be covered by the 100-year flood (A zones), together with all B zones, as established by FEMA in the “Flood Insurance Study, City of Burlington,” dated July 3, 1984, and any revisions thereto, with accompanying flood insurance rate map (FIRM), dated January 3, 1985. That document is on file at Burlington City Hall, 833 South Spruce Street.

“Floodplain administrator” means the official designated to administer and enforce the city’s floodplain regulations. The floodplain administrator shall be the community development director or designee.

“Floodprone area” is as defined in the critical areas code, BMC 14.15.390.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot. Floodways in Burlington consist of all areas riverward of the riverward toe of dikes and levees along the Skagit River.

“G”

"Gages Slough Special Management Area" means the open water areas of Gages Slough together with all associated wetlands, deep-water habitat, wetland buffers, and special flood risk areas.

"Geologically hazardous areas" are areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

"Ground water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

"H"

"Habitats of local importance" include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hearing examiner" means a person who reviews and interprets land use regulations, conducts hearings, makes decisions and recommendations on land use applications, hears administrative appeals on permits, decisions or determinations made by city officials, and reviews and hears other matters.

The hearing examiner serves in a role similar to that of a judge. The hearing examiner ensures that parties receive proper due process; and issues final decisions on some land use applications and makes recommendations to the city council on others. The hearing examiner for the city of Burlington shall be the person designated under chapter 17.120 BMC.

"Highest adjacent grade" means the highest natural surface elevation adjacent to the walls of a proposed structure. The highest adjacent grade shall be measured using preconstruction conditions.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior.

"Hyperchlorinated" means water that contains more than 10 milligrams per liter of chlorine.

"I"

"Illicit connection" means any manmade conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains, footing drains, and other similar type connections that convey any material not composed entirely of stormwater. Examples of illicit connections include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

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“Illicit discharge” means any direct or indirect non-stormwater discharge to the city’s storm drain system as expressly defined by BMC 14.05.070.

“Impervious surface” means any surface from which most water runs off including, but not limited to, paved streets, graveled or paved areas such as driveways, parking areas, packed earth material, oiled macadam or other treated surfaces, walkways, roof surfaces, patios and formal planters.

“Inspector” means the city inspector, inspection agency, or licensed civil engineer performing the inspection work required by this title.

“L”

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include but are not limited to demolition, clearing, grading, filling and excavation.

“Land use action” means an action taken by the appropriate city of Burlington review authority concerning the development or use of land or street right-of-way including project permits as defined in BMC 14A.01.060.

“Low impact development” or “LID” means a stormwater and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design. Low impact development features, practices, and techniques include bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated or green roofs, minimum excavation foundations, and water reuse.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this title found in BMC 14.15.430(B)(5).

“M”

“Manufactured home” means a single-family dwelling unit built in accordance with regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) and RCW 43.22.335. This term includes modular homes as defined in this chapter but does not include mobile homes. This term also does not include recreational vehicles, park models, trailers, and other similar vehicles which are licensed for use on public roads, capable of being licensed for use on public roads, or designed and constructed to be licensed for use on public roads. Only structures which are certified by the state of Washington or federal government for use as a permanent habitable dwelling are included in this definition.

“Manufactured home park” means an area of land occupied or designed for the occupancy of two or more manufactured homes.

“Mean sea level” means the average height of the sea for all stages of tide; also equals National Geodetic Vertical Datum.

“Mobile home” means a factory built dwelling unit that does not meet current state or federal standards for factory built dwellings, modular homes, or manufactured homes. This definition does not include manufactured or modular homes as defined in this chapter or site built homes constructed in accordance with city building code requirements. Mobile homes may not be placed within the city of Burlington; however, existing legally established mobile homes shall be considered a nonconforming use and shall be subject to the nonconforming standards set forth in chapter 17.100 BMC.

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

(1) owned or operated by the city of Burlington; (2) designed or used for collecting or conveying stormwater; (3) which is not part of a publicly owned treatment works (POTW).

“N”

“National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit” means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 U.S.C. 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general areawide basis.

“New construction” means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial flood insurance rate map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the start of construction commenced on or after the effective date of applicable floodplain management regulations and includes any subsequent improvements to such structures.

“New development” means any of the following activities:

1. Structural development, including construction of a new building or other structure;
2. Expansion or alteration of an existing structure that results in an increase in the footprint of the building or structure;
3. Land disturbing activities;
4. Creation or expansion of impervious surface;
5. Demolition;
6. Subdivision and short subdivision of land as defined in BMC Title 16, Land Divisions and Adjustment; or
7. Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.

No other forest practices or commercial agriculture are considered new development.

“Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“NPDES” means National Pollutant Discharge Elimination System, the national program for controlling discharges under the Federal Clean Water Act.

“O”

“One-hundred-year flood” means that flood having a one percent chance of being equaled or exceeded in any given year, as established by FEMA.

“Owner” means any person having title to and/or responsibility for a building or property, including a lessee, guardian, receiver or trustee and the owner’s duly authorized agent.

“P”

“Parcel” means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

“Party of record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application, made oral comments in a formal public hearing conducted on the application, or requested in

writing to be a "party of record." In all cases the permit applicant and property owner shall be considered parties of record. Notwithstanding any of the foregoing, no person shall be a party of record who has not furnished an accurate post office mailing address.

"Person" means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual's or entity's heirs, successors and assigns.

"Plan" means, for the purposes of this title, and unless a different meaning is set forth or clearly required, a graphic or schematic representation with accompanying notes, schedules, specifications and other related documents.

"Plot plan" is a scaled map of a site and adjacent public rights-of-way showing locations and dimensions of various existing and proposed features, such as buildings, curbs, driveways, sidewalks, trees, grades and drainage patterns.

"Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; flotables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"POTW" or "publicly owned treatment works" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

"Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

"Primary drainage system" means a drainage system serving a watershed of 20 acres or greater.

"Private storm drain" means the part of a private drainage control system which is wholly or partially piped, is owned or operated by a private entity, and is designed to carry only drainage water.

"Project permit" means a land use action subject to the provisions of chapter 36.70B RCW and applicable provisions of BMC Title 14A, and as defined in BMC 14A.01.060.

"Public drainage control system" means a drainage control system owned or used by the city of Burlington serving city streets and adjacent property.

"Public facilities" includes streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

"Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

"Public storm drain" means the part of a public drainage control system which is wholly or partially piped, is owned or operated by a public entity, and is designed to carry only drainage water.

"Public works director" means the director of public works or designee.

"Q"

"Qualified expert" means a person having substantial demonstrated experience as a practicing specialist and who has a degree in a related field from an accredited college or university or who has equivalent training.

"R"

"Reasonably safe from flooding" means development that is designed and built to be safe from flooding based on consideration of current flood elevation studies, historical data, high water marks and other reliable data known to the community. In unnumbered A zones where flood elevation information is not available and cannot be obtained

by practicable means, “reasonably safe from flooding” means that the lowest floor is at least two feet above the highest adjacent grade.

“Recreational vehicle” or “RV” means a structure or vehicle containing living space intended to provide short-term accommodations for recreational purposes and licensed for use on public roads, designed to be licensed for use on public roads, or capable of being licensed for use on public roads. This term includes trailers, campers, motor homes, park models, and other similar vehicles but does not include manufactured homes as defined in this chapter. A recreational vehicle shall not be considered a dwelling unit and shall not be used as a permanent place of habitation.

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

“Residential health care facilities” means facilities caring for elderly or infirm persons wherein clients are partly or entirely residents or detainees thereof. They include hospitals, convalescent homes and homes for the elderly where some supervision or health care is provided.

“Responsible party” means all of the following persons: (1) owners and occupants of property within the city of Burlington; and (2) any person causing or contributing to a violation of the provisions of this title.

“Riparian corridor” is as defined in the critical areas code, chapter 14.15 BMC.

“Rules” means administrative rules promulgated by the public works director in accordance with the State Administrative Procedures Act.

“S”

“Secondary drainage system” means a drainage system serving a watershed less than 20 acres in size or a watershed with a runoff of three cubic feet per second or less for a storm with a five-year frequency.

“Seismic hazard areas” are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction. The city of Burlington is located in Seismic Zone 3 and construction is required to comply with the International Building Code seismic standards.

“Serve” or “service,” when used regarding a document, means the procedures set forth in BMC 1.34.040 and 1.44.060.

“Service drain” means a privately owned and maintained drainage control facility or system which carries only drainage water. Service drains include, but are not limited to, conveyance pipes, catch basin connections, downspout connections, pipes, and subsurface drain connections.

“Shoreline district” means all land regulated by the Shorelines Management Act of 1971 (chapter 90.58 RCW). See BMC Title 18, Shoreline Master Program.

“Single-family residential parcel” means a parcel which has been actually developed with a single-family residence.

“Site” means any lot, parcel of land, street or highway right-of-way, or contiguous combination thereof, where a permit for new development, redevelopment, land disturbing activity, or grading has been issued or where any such work is proposed or performed.

“Skagit River Corridor Special Management Area” means the Skagit River and associated shorelines, floodways, dikes, levees, or other flood control structures, and a strip of land extending inland 300 feet from the landward toe of the dikes and levees along the Skagit River.

“Special flood risk zone” means the following areas:

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1. Gages Slough, including wetlands and deep water habitat areas; or
2. Areas with a ground elevation three feet or more below the base flood elevation that are hydraulically connected to Gages Slough through a channel, watercourse, or other topographical feature that provides a continuous path capable of conveying floodwaters with an elevation three feet or more below the base flood elevation; or
3. Areas within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

“Species of local importance” are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

“Standard design” is a design approved by the Burlington public works department for drainage and erosion control for a typical site.

“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The “actual start” means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the “actual start of construction” means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Steep slope areas” are areas with slopes greater than 15 percent.

Storm Drain. See “private storm drain,” “public storm drain” and “service drain.”

“Storm drainage system” means publicly owned facilities, including the city’s municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable. The plan shall contain elements as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

“Structure” means a walled and roofed building or mobile home, or gas or liquid storage tank that is principally above ground.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure; provided, that the alteration will not preclude the structure's continued designation as a historic structure.

“U”

“Uncontaminated” means, for the purposes of this title, not containing sediment or other pollutants or contaminants above natural background levels when referring to surface or ground water, and not containing pollutants or contaminants in levels greater than city-supplied drinking water when referring to potable water.

“Undeveloped parcel” means any parcel of real property which has not been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel.

“Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural produce, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

“W”

“Watercourse” means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks, or sides, in which surface waters flow, including lakes, bogs, streams, sloughs, and intermittent artificial components (including ditches and culverts) but not including receiving waters.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include these artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the city. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

14.01.070 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.080 Minimum requirements.

The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this title imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this title shall prevail.

Approvals and permits granted under this title are not waivers of the requirements of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.090 Violations and penalties.

All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.100 Appeal.

Decisions made pursuant to this title are appealed in the manner set forth in BMC Title 14A. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.110 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title. (Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.05
SURFACE WATER MANAGEMENT

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- 14.05.020 Application.
- 14.05.030 Purpose.
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- 14.05.050 Authority of the public works director/city engineer.

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14.05.010 Title.

This chapter shall be called "Surface Water Management." (Ord. 1853 § 2 (Exh. B), 2018).

14.05.020 Application.

This chapter applies to:

- A. All grading, drainage, and erosion control, whether or not a permit is required; and
- B. All new development, redevelopment, land disturbing activities, and construction sites, whether or not a permit is required; and
- C. All new and existing discharges directly or indirectly to a public drainage control system; and
- D. All new and existing land uses. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.030 Purpose.

The provisions of this chapter shall be liberally construed to accomplish its remedial purposes, which are:

A. To protect, to the greatest extent practical, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards whether from natural causes or from human activity;

B. To protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;

C. To protect surface waters, ground waters and other receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging and ground water, or endanger aquatic and benthic life within these surface waters and receiving waters of the state;

D. To meet the requirements of state and federal law and comply with regulatory standards for the city's municipal storm water; and

E. To fulfill the responsibilities of the city as trustee of the environment for future generations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.040 Authority.

This chapter is authorized by the provisions of chapters 35A.63 and 36.70A RCW, the Western Washington Phase II Municipal Stormwater Permit and other applicable laws and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.050 Authority of the public works director/city engineer.

A. The public works director is authorized to issue, monitor, stop work or require modifications of storm water permits and inspections for the construction, capping, alterations, or repairs of privately owned and operated drainage control systems as more specifically set forth in BMC 14.05.120; require modification of drainage control facilities and associated project designs during construction and approve and file approved drainage control plans as more specifically set forth in BMC 14.05.130; and accept and approve when appropriate storm sewer permits for the construction or alteration of all storm water systems as more specifically set forth in BMC 14.05.240. Any powers granted or duties imposed upon the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency.

B. The public works director is authorized to take actions necessary to implement the provisions and purposes of this title in their respective spheres of authority, including, but not limited to: promulgating and amending rules and regulations, which may include prescribing best management practices ("BMPs"); establishing and conducting inspection programs; establishing and conducting or, as set forth in BMC 14.05.070, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage control system, or surface water; taking enforcement action; abating nuisances; promulgating guidance and policy documents under this title. The public works director shall also have the authority to review and approve or disapprove required submittals and applications for approvals and permits as set forth in this title. Any powers granted or duties imposed upon the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency as designated by the public works director.

The public works director is further authorized to develop drainage basin plans for managing surface water, drainage water, and erosion within individual subbasins. Compliance with an adopted drainage basin plan may, when approved by the public works director, modify requirements of this title, provided the level of protection for human health, safety, and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. (Ord. 1853 § 2 (Exh. B), 2018).

Part I. Storm Water, Drainage and Erosion Control

14.05.060 Scope.

BMC 14.05.060 through 14.05.130 are applicable to:

A. General. All new and existing discharges subject to this title as set forth in BMC 14.05.030, all land uses and all new development, redevelopment, and grading shall comply with all requirements of this title unless explicitly exempted by this title or exempted by the public works director pursuant to the authority granted in BMC 14.05.050 and as specifically set forth in this chapter.

B. Exemptions. The following land uses are exempt from the provisions of this title.

1. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade;
2. Forest practices regulated under WAC Title 222, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses;
3. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with the standards found in chapter 173-270 WAC, the Puget Sound Highway Runoff Program; and
4. Any additional exemptions as set forth in Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.070 Prohibited discharges.

A. Storm Water Discharges to Sanitary and Combined Sewers. In consultation with the local sewage treatment agency, the public works director may approve discharges of storm water to a public combined sewer or sanitary sewer if other methods of controlling pollutants in the discharge are not adequate or reasonable, and the discharging party certifies that the discharge will not harm the environment and will not overburden or otherwise harm the public combined sewer or sanitary sewer systems. The public works director shall condition approval of such a discharge on compliance with local pretreatment regulations.

B. Discharges Prohibited to Public Drainage Control Systems. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants other than storm water. It is unlawful to make illicit discharges, as defined in subsection (C) of this section, either directly or indirectly to a public drainage control system.

C. Illicit Discharges Defined. Except as provided in subsection (D) of this section, all discharges which are not composed entirely of storm water are illicit discharges, as defined in BMC 14.01.060.

The following is a partial list, provided for informational purposes only, of common substances which are illicit discharges when allowed to enter a public drainage control system:

1. Trash or debris.
2. Construction materials.
3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil.
4. Antifreeze and other automotive products.
5. Metals in either particulate or dissolved form.
6. Flammable or explosive materials.
7. Radioactive material.
8. Batteries.
9. Acids, alkalis or bases.

10. Paints, stains, resins, lacquers or varnishes.
11. Degreasers and solvents.
12. Drain cleaners.
13. Pesticides, herbicides or fertilizers.
14. Steam cleaning wastes.
15. Soaps, detergents or ammonia.
16. Swimming pool backwash.
17. Chlorine, bromine and other disinfectants.
18. Heated water.
19. Domestic animal wastes.
20. Sewage.
21. Recreational vehicle waste.
22. Animal carcasses.
23. Food wastes.
24. Bark and other fibrous materials.
25. Collected lawn clippings, leaves, or branches.
26. Silt, sediment or gravel.
27. Dyes.
28. Chemicals not normally found in uncontaminated water.
29. Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.
30. Any other process-associated discharge except as otherwise allowed in this section.
31. Any hazardous material or waste not listed above.

D. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows.
2. Rising ground water.
3. Uncontaminated ground water infiltration.
4. Uncontaminated pumped ground water.
5. Foundation drains.
6. Air conditioning condensation.

7. Irrigation water from agricultural sources that is commingled with urban storm water.
8. Springs.
9. Water from crawlspace pumps.
10. Footing drains.
11. Flows from riparian habitats and wetlands.
12. Non-storm water discharges authorized by another NPDES or state waste discharge permit.
13. Discharges from emergency firefighting activities.

E. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system;
2. Lawn watering and other irrigation runoff is permitted but shall be minimized;
3. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water;
4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
5. Other non-storm water discharges. The discharges shall be in compliance with the requirements of a storm water pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

F. Testing for Illicit Discharges. When the public works director has reason to believe that any discharge is an illicit discharge, the public works director or designee may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the public works director may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

G. Illicit Connections Prohibited. Any connection identified by the public works director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.080 Requirements for existing discharges and land uses.

A. General. For all existing discharges directly or indirectly to a public drainage control system, responsible parties shall implement and maintain nonstructural best management practices as specified in rules promulgated by the public works director. Nonstructural best management practices shall include, but not be limited to, maintenance and source control housekeeping practices such as cleaning of catch basins and detention facilities, sweeping of parking

lots, storing oil barrels and other contaminant sources out of the rain, covering material stockpiles, and proper use and storage of hazardous materials.

If the public works director or designee determines that discharges from a drainage facility are causing or contributing to a water quality problem, such as discharges that cannot be adequately addressed by nonstructural best management practices, including, but not limited to, areas with recurrent spills such as discharges from vehicle maintenance shops or gas stations, then the director may require the responsible party to undertake more stringent or additional best management practices. These best management practices may include structural best management practices or other action necessary to cease causing or contributing to the water quality problem. Structural best management practices include but shall not be limited to constructed facilities such as detention tanks, wet ponds, oil/water separators, grassed swales, roofing and berming of container storage areas, and revised piping systems.

B. Spill Prevention Required. All responsible parties shall take measures to prevent spills or other accidental introduction of illicit discharges into a public drainage control system. Such measures shall include:

1. Establishment and implementation of plans and procedures to prevent spills and other accidental releases of materials that may contaminate storm water;
2. Implementation of procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of storm water; and
3. Provision of necessary containment and response equipment on site, and training of personnel regarding the procedures and equipment to be used.

The provisions of this subsection may be satisfied by a storm water pollution prevention plan prepared in compliance with the NPDES industrial storm water permit for the site.

The responsible parties shall make the plans and procedures required by this subsection available to the public works director or designee when requested.

C. Release Notification Requirements. A responsible party must, at the earliest possible time, but in any case within 24 hours of discovery, report to the public works department a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage control system. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.

D. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

E. Obstruction of Watercourses. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, sediment, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. Watercourses shall not be obstructed. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.090 Storm water, drainage, and erosion control requirements.

A. Stormwater Management Manual Adopted. The city of Burlington hereby adopts as a technical reference manual, hereafter referred to as the "storm water manual," the 2014 State Department of Ecology Stormwater Management Manual for Western Washington, as amended by Sections 1 through 6 of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, August 1, 2013, modified January 16, 2015, as now or hereafter amended. The city hereby further adopts the thresholds, definitions, minimum requirements, and exceptions, adjustments and variance criteria found in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit as the city of Burlington's minimum storm water regulations.

B. Thresholds for Minimum Technical Requirements for Storm Water Control.

1. All new development, redevelopment, and construction sites, regardless of type and regardless of whether or not a permit is required, that meet or exceed the threshold conditions set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit must comply with the minimum technical requirements of

said Appendix 1, including the mandatory incorporated provisions of the 2014 Ecology Stormwater Management Manual for Western Washington.

2. The city of Burlington requires that all projects, even those that result in land disturbance of less than one acre, adhere to the minimum requirements for erosion and storm water control set forth in Appendix 1 and Appendix 7 of the Western Washington Phase II Municipal Stormwater Permit.
3. For those projects meeting the review thresholds set forth in this section, the applicant shall submit a site assessment and analysis along with a drainage control plan or storm water site plan pursuant to requirements in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.
4. The city of Burlington allows applications for an erosivity waiver as specified in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

C. Standards and Definitions. Unless otherwise specified in this chapter, all standards, definitions, and requirements shall be in accordance with the storm water manual.

D. Flood Prone Areas. Sites within flood prone areas must employ measures to minimize the potential for flooding on the site and for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Burlington Municipal Code and rules promulgated thereunder, including but not limited to the critical areas code, chapter 14.15 BMC, and in rules promulgated by the public works director to meet the purposes of this subsection.

E. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

F. Obstruction of Watercourses. Watercourses shall not be obstructed.

G. Low Impact Development. The city requires a site analysis and technical evaluation to ensure that all sites meeting the minimum qualifications shall utilize low impact development (LID) best management practices (BMPs), as an alternative to conventional storm water management systems that rely on detention ponds and closed conveyances, when such measures are feasible. Low impact development is intended to manage runoff close to the source of generation and to mimic predeveloped hydrologic condition of a site. Low impact development is accomplished through minimizing the impervious surface coverage and loss of vegetation and by managing runoff through dispersion, infiltration, evapotranspiration, or a combination of these approaches. Use of LID BMPs may reduce or eliminate the need for conventional detention facilities but does not remove the obligation to comply with the minimum requirements of the storm water manual. A variety of BMPs to minimize impervious surfaces and to manage storm water have been developed and tested for use in Western Washington. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.100 Scope of drainage control review and application requirements.

A. Scope of Review. Where drainage and approval are required by BMC 14.05.090, the scope of this review shall at least include the following:

1. Applications for Building and Other Permits. The public works director shall review any application for a building permit or other permit, other than land use permit applications, for compliance with BMC 14.05.090 and to determine whether improvements to the public drainage control system shall be required.
2. The public works director shall review all storm water plans for proposed development activities in accordance with the site planning process and best management practice selection and design criteria as set forth in the storm water manual.

B. Application and Approval Requirements. Drainage control plans for projects subject to review under BMC 14.05.090 shall be reviewed by the public works director or designee. The public works director or designee may approve those plans which comply with the provisions of this title and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this title. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the

above-listed permits. A storm sewer permit shall be issued to construct on-site and off-site drainage control facilities based on the approved plans. See BMC 14.05.240, Storm sewer permits required.

The public works director may disapprove plans which do not comply with the provisions of this title and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

C. Submittal Requirements.

1. Applications shall be prepared and submitted in accordance with provisions of this section, with this chapter (public storm sewers) and with associated rules and regulations adopted by the public works director.
2. The public works director or designee may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this title and other laws and regulations, including the critical areas code, chapter 14.15 BMC. The public works director or designee may also require appropriate information about adjoining properties which may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
3. Where an applicant simultaneously applies for more than one of the permits listed in subsection (A) of this section for the same property, the application shall comply with the requirements for the permit which are the most detailed and complete. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.110 Drainage control plan registry.

The public works director shall maintain a permanent file of all approved drainage control plans. Each plan shall be cataloged according to the property address, legal description of the property and the storm sewer permit number for which the plan is required. See BMC 14.05.240, Storm sewer permits required. Where a drainage control plan covers more than one property, the approved plan shall be cataloged for each property covered by the plan. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.120 Installation of drainage control facilities.

All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage control system, shall be considered storm sewers and shall be subject to this title, the public works department director's rules promulgated under this title, and the public works department's design and installation specifications and permit requirements for storm sewer and drainage control systems.

Storm sewer permits and inspections shall be required for construction, capping, alterations, or repairs of privately owned and operated drainage control systems as provided in this title. When the work is ready for inspection, the permittee shall notify the public works director. If the work is not in accordance with plans approved under this title and in accordance with the department of community development design and installation specifications adopted by administrative rule, the public works director may order the work stopped by written notice to the persons engaged in performing the work or causing the work to be done, and may require modifications as provided in this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.130 Modifications of drainage control facilities during construction.

During construction the public works director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be modified if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather-generated problems, or changes in the design of the improved areas. Modifications shall be submitted to the public works director for approval prior to implementation.

Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the community development director. (Ord. 1853 § 2 (Exh. B), 2018).

Part II. Storm Water and Surface Water Inspection and Maintenance

14.05.140 Scope.

BMC 14.05.140 through 14.05.200 are intended to:

A. Provide for the inspection and regulation of public or private storm and surface water system control or detention facilities in order to provide for a properly functioning city storm and surface water drainage system and to protect the public health, safety and welfare;

B. Authorize the storm and surface water utility to inspect storm and surface water system control and drainage control facilities and to require owners of such systems to maintain, operate and repair such systems in conformity with the code and the utility standards and regulations; and

C. Authorize the storm and surface water utility to investigate the source of suspected illicit discharges, dumping, and/or illicit connections. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.150 Compliance.

Each owner or person responsible for the maintenance, operation or repair of detention facilities within the city shall maintain, operate and repair said detention facilities in compliance with the requirements of this code and in compliance with the utility standards and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.160 Responsibility for inspection and maintenance.

Drainage control facilities required by this title and by the rules adopted hereunder shall be maintained by the owner or other responsible party. The owner or responsible party shall inspect permanent drainage control facilities at least annually, and shall inspect temporary drainage control facilities and other temporary best management practices or facilities on a schedule sufficient for the facilities to function at design capacity. When an inspection identifies a need for maintenance as defined by standards found in chapter 4 of Volume V of the storm water manual, maintenance shall be performed in accordance with the following schedule:

A. Within one year for typical maintenance of facilities, except catch basins.

B. Within six months for catch basins.

C. Within two years for maintenance that requires capital construction of less than \$25,000. The public works director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.170 Inspection program.

The public works director shall establish inspection programs to ensure compliance with the requirements of this title and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; visual inspection of catch basins and detention/retention ponds; video inspection of pipe system; sampling discharges, surface water, ground water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.180 Entry for inspection and abatement purposes.

A. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage control system, or sanitary sewer, the property owner shall obtain approval from the public works director. The property owner shall grant the city the right to enter the property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant to BMC 14.05.170, and to enter the property when the city has a reasonable basis to believe

that a violation of this title is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this title.

B. The public works director or designee, whenever implementing the provisions of the utility's inspection program or whenever he/she has cause to believe that a violation of this code or the utility standards and regulations has been or is being committed, is authorized to inspect during regular working hours and at other reasonable times all drainage control facilities within the city to determine compliance with the provisions of this code and the utility standards and regulations. If a property owner has not granted right of entry under subsection (A) of this section, prior to making any inspection the director shall present identification credentials, state the reason for the inspection, and request entry.

1. If said property or any building or structure on said property is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portion thereof and request entry.
2. If, after reasonable effort, the public works director or designee is unable to locate the owner or such other person(s) having charge or control of the property, and he/she has reason to believe the condition of the detention facility creates an imminent hazard to persons or property, he/she may make entry.
3. Unless entry is consented to by the owner or person(s) in control of said property or portion thereof or unless conditions are reasonably believed to exist which create an imminent hazard, the public works director, prior to entry, shall obtain a search warrant as authorized by the laws of the state.
4. The public works director or designee may inspect the drainage control facility without obtaining a search warrant pursuant to subsection (B)(3) of this section if said inspection can be conducted while he/she remains on public property or on other property on which he/she has permission to be. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.190 Disposal of waste from maintenance activities.

Disposal of waste from maintenance of drainage and storm water control facilities shall be conducted in accordance with federal, state and local regulations, including the minimum functional standards for solid waste handling, chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, dangerous waste regulations, chapter 173-303 WAC, including any subsequent amendments to these provisions. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.200 Records of installation and maintenance activities.

When a new drainage control facility is installed, the party having the facility installed shall obtain a copy of the as-built plans from the public works director. Responsible parties shall make records of the installation and of all maintenance and repair and shall retain the records for at least 10 years. These records shall be made available to the public works director during inspection of the facility and at other reasonable times upon request of the public works director. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.210 Exceptions to requirements.

A. General. The purpose of this chapter is to administer and enforce all requirements set forth in this title. Requests for exceptions to the requirements of this title shall be made according to this section and Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. Exceptions shall include alternative requirements, waivers, reductions, or modifications of the requirements. An exception shall only be granted to the extent necessary to meet the criteria set forth in this section. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met. The director may require an applicant to submit an engineer's report or analysis with a request for an exception. When an exception is granted, the director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

B. Public Notice. Public notice of an application for an exception under the criteria set forth in this section shall comply with Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. (Ord. 1853 § 2 (Exh. B), 2018).

Part III. Public Storm Sewers

14.05.220 Plans required.

Storm sewers and drainage improvements shall require a storm sewer permit with approved engineering plans with the following information:

- A. Plan map properly dimensioned and drawn to scale showing the location of the proposed storm sewer, drainage ditches and sewer appurtenances within the street right-of-way. Sewers and drainage ditches shall be stationed and all manholes, catch basins, and appurtenances shall be numbered;
- B. Location of existing above and below ground utilities in road right-of-way or adjacent easements;
- C. Location and dimensions of utility and drainage easements and location of all existing watercourses, ditches, trunk storm sewers, ponds and retention facilities connected with or adjacent to the proposed drainage facilities;
- D. Profiles of storm drains and drainage ditches with the following information:
 1. Location and number of all manholes, catch basins and appurtenances,
 2. Profile of existing and proposed ground surface and storm drain,
 3. Size, slope and length of storm sewers between consecutive manholes, and
 4. Sewer, manhole, and catch basin invert elevations;
- E. Suitable title plate on each drawing with street or sewer name, name and address of the developer, scale, date and the name, address and telephone number and stamp of the registered engineer responsible for the plan preparation;
- F. Structural details of any special manholes, catch basins, and appurtenances including drop manholes, retention control manholes, outlet structures, pumping stations, diversion structures, etc. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.230 Design criteria.

- A. Storm sewers and drainage facilities shall be designed for a projected life span of 30 years without excessive maintenance. All trunk sewers and collector sewers shall be designed and stamped by a civil engineer registered in the state of Washington unless otherwise approved by the public works director. Accepted engineering practices shall be employed in the design of all drainage facilities.
- B. Storm drainage facilities shall be designed per specifications in the storm water manual. All drainage facilities in public rights-of-way or easements shall have an outfall into an approved drainage system.
- C. The minimum requirements for storm drainage facilities shall be as follows:
 1. Catch basins or inlets shall be spaced a maximum of 200 feet apart along any street, alley or avenue;
 2. The minimum catch basin lateral pipe size shall be 12 inches in diameter and the minimum storm main size shall be 12 inches in diameter;
 3. Manholes on trunk sewers shall have a maximum spacing of 400 feet; and
 4. Construction materials and methods shall be in accordance with Standards and Specifications for Municipal Public Works Construction prepared by the American Public Works Association, latest edition. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.240 Storm sewer permits required.

A. A storm sewer permit shall be obtained for the construction or alteration of all storm sewer systems, including on-site and off-site installations. Applications for storm sewer permits shall be processed as Type I decisions in accordance with the provisions of BMC Title 14A.

B. To obtain a storm sewer permit, an application shall be filed with the community development department. Applications for storm sewer permit approval shall be made on forms provided by the community development director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

1. A detailed description of the work to be covered by the permit;
2. A description of the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed project or work;
3. Any plans, diagrams, computations and specifications, or other data as required in this title;
4. Any applicable fees in accordance with the fee schedule established by the city council; and
5. Applications must be signed by the applicant, or the applicant's authorized agent.

C. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the public works director. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the public works director finds that the work described in an application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this title and other pertinent laws and ordinances, and that the fees specified in the current fee resolution have been paid, the public works director shall issue a permit therefor to the applicant.

When the public works director issues the permit where plans are required, the public works director shall endorse in writing or stamp the plans and specifications "APPROVED." Such approved plans and specifications shall not be changed, modified or altered without authorization from the public works director, and all work regulated by this title shall be in accordance with the approved plans. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.250 Fees.

Fees for drainage control plan review, recordkeeping or other activities pursuant to this title shall, unless otherwise provided for in this title, be prescribed by resolution. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.260 Financial assurance and covenants.

As a condition precedent to issuance of any permit or approval provided for in this title, the director may require an applicant for a permit or approval to submit financial assurances as provided in this section.

A. Insurance.

1. The director may require the owner(s), or contractor to carry liability and property damage insurance against damage, naming the city as an additional insured. The amount shall be commensurate with the risks as determined by the director.
2. The director may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the city as an additional insured. The policy shall be in an amount which the director determines to be commensurate with the risks. It shall cover a period of not more than 10 years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the director before issuance of a certificate of occupancy or finalization of a permit for any single-family dwelling or duplex.
3. The insurance policy shall provide that the city will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. **Surety Bond.** The director may require that the owner or contractor deliver to the director for filing in the office of the city clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in the state of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.

The bond will be exonerated one year after a determination by the director that the requirements of the permit or approval have been met.

For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination. For grading, completion of the final grading inspection and submittal of required final reports in accordance with BMC 14.05.240 shall be such a determination.

2. **Assurance in Lieu of Surety Bond.** In lieu of a surety bond, the owner may elect to file a cash deposit or instrument of credit with the director in an amount equal to that which would be required in the surety bond and in a form approved by the director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The director may require a covenant between the owner(s) of the property and the city. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the city. The covenant shall include:

- a. A legal description of the property; and
- b. A description of the property condition making this subsection applicable; and
- c. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks; and
- d. The application date, type, and number of the permit or approval for which the covenant is required; and
- e. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the city by reason of or arising out of issuance of this permit or approval by the city for the development on the property, except only for such losses that may directly result from the negligence of the city.

2. The covenant shall be filed by the director with the Skagit County auditor's office, at the expense of the owner, so as to become part of the Skagit County real property records. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.270 Date of initial enforcement.

The public works director shall not enforce provisions of this code which require existing discharges and land uses to adopt operational and nonstructural best management practices until six months after adoption of rules identifying the best management practices to be required. The director shall not enforce the provisions of this code which require existing discharges and land uses to install structural best management practices until one year after adoption of rules identifying the best management practices to be required. (Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.10

ENVIRONMENTAL POLICY

Sections:

- 14.10.010 Title.
- 14.10.020 Application.
- 14.10.030 Purpose.
- 14.10.040 Authority.
- 14.10.050 Basic requirements and adoption by reference.
- 14.10.060 Additional definitions.
- 14.10.070 Designation of responsible official.
- 14.10.080 Lead agency determination and responsibilities.
- 14.10.090 Transfer of lead agency status to a state agency.
- 14.10.100 Additional consideration in time limits applicable to the SEPA process.
- 14.10.110 Categorical exemptions and threshold determinations, purpose and adoption by reference.
- 14.10.120 Flexible threshold for categorical exemptions.
- 14.10.130 Use of exemptions.
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- 14.10.160 Environmental impact statements (EIS) – Purpose and adoption by reference.
- 14.10.170 Preparation of EIS – Additional considerations.
- 14.10.180 Additional elements to be covered in an EIS.
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- 14.10.260 Planned action.
- 14.10.270 Notice/statute of limitations.
- 14.10.280 Definitions – Purpose of this part and adoption by reference.
- 14.10.290 Agency compliance, purpose and adoption by reference.
- 14.10.300 Form – Adoption by reference.

14.10.010 Title.

This chapter shall be called “Environmental Policy.” (Ord. 1853 § 2 (Exh. B), 2018).

14.10.020 Application.

The provisions of this chapter shall apply to all proposals as defined in chapter 197-11 WAC where the city is presented with an application or has a goal and is actively preparing to make a decision on the means of accomplishing that goal and environmental impacts can be reasonably identified.

Application of this chapter shall be implemented in a manner consistent with WAC 197-11-055. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.030 Purpose.

The purpose of this chapter is to establish uniform requirements for compliance with chapter 43.21C RCW and chapter 197-11 WAC, in a manner that is consistent with the provisions of WAC 197-11-020 and 197-11-030. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.040 Authority.

A. The city adopts the ordinance codified in this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, chapter 197-11 WAC, chapter 36.70A RCW, and other applicable laws and regulations.

B. This chapter contains the city's SEPA procedures and policies.

C. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.050 Basic requirements and adoption by reference.

This part contains the basic requirements that apply to the SEPA process. This city adopts the following sections of chapter 197-11 WAC by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 SEPA/GMA project review – Reliance on existing plans, laws, and regulations.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated SEPA/GMA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 SEPA/GMA integration documents.
- 197-11-238 SEPA/GMA monitoring.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA actions.

197-11-268 MTCA interim actions.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.060 Additional definitions.

In addition to those definitions contained within WAC 197-11-220 and 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

A. "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.

B. "SEPA rules" means chapter 197-11 WAC adopted by the Department of Ecology.

C. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

D. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures). (Ord. 1853 § 2 (Exh. B), 2018).

14.10.070 Designation of responsible official.

A. For those proposals for which the city is the lead agency, the responsible official shall be the community development director.

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in BMC 14.10.050.

C. The city shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.56 RCW. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.080 Lead agency determination and responsibilities.

A. If the city receives an application for or initiates a proposal that involves a nonexempt action, the city shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the city is aware that another agency is in the process of determining the lead agency.

B. When the city is not the lead agency for a proposal, the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The city shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

C. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

D. The city is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any city department that will incur responsibilities as the result of such agreement approve the agreement.

E. The city, in making a lead agency determination for a private project, shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?).

F. When the city/county is lead agency for a MTCRA remedial action, the Department of Ecology shall be provided with an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCRA documents are issued together with one public comment period under WAC 197-11-253(6). The city/county shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.090 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the city's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.100 Additional consideration in time limits applicable to the SEPA process.

Time estimates contained in this section (expressed in calendar days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies. The actual time may vary with the complexity of the project, availability of staff, cooperation of agencies with jurisdiction or expertise, etc. The time estimates contained herein shall not be construed to be mandatory. Time periods for making threshold determinations shall commence upon payment of fees.

A. Categorical Exemptions. The city will normally identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.

1. For project actions involving the issuance of a city license or permit the city shall make a threshold determination on a completed application using the optional DNS process provided for in WAC 197-11-355 unless the responsible official determines the proposed action is unusually complex or significant uncertainties exist with respect to potential environmental impacts.

2. For projects where the optional DNS process is used the city shall issue a threshold determination together with the notice of application required by BMC Title 14A.

3. If the optional DNS process provided for in WAC 197-11-355 is not used, the city will normally complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within 15 days of the date an applicant's completed application and completed checklist are submitted.

4. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdictions:

- a. The city will normally request such further information within 15 days of receiving a completed application and completed environmental checklist;
- b. The city will normally wait no longer than 30 days for a consulted agency to respond;
- c. The responsible official will normally complete the threshold determination within 15 days of receiving the requested information from the applicant or the consulted agency.

5. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city will normally complete the studies within 30 days of receiving a completed application and a completed checklist.

6. The city will normally complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within 15 days of receiving a completed application and completed checklist. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.110 Categorical exemptions and threshold determinations, purpose and adoption by reference.

This part contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS (MDNS).
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiating of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.120 Flexible threshold for categorical exemptions.

Categorical exemptions are adopted by reference under BMC 14.10.110. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

- A. For residential dwelling units in WAC 197-11-800(1)(b)(i): nine units;
- B. For agriculture structures in WAC 197-11-800(1)(b)(ii): 10,000 square feet;
- C. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): 4,000 square feet and 20 parking spaces;
- D. For parking lots in WAC 197-11-800(1)(b)(iv): 20 parking spaces;
- E. For landfills and excavations in WAC 197-11-800(1)(b)(v): 100 cubic yards;
- F. Demolition of any structure or facility up to the maximum exempt level provided in WAC 197-11-800;
- G. Replacement, addition of up to 20 percent of gross floor area, alteration or modification of an existing commercial structure, up to 12,000 square feet. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.130 Use of exemptions.

A. Upon receiving an application for a license or, in the case of governmental proposals, the department initiating the proposal, the city shall determine whether the license and/or the proposal is exempt. The city's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the city shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the city shall determine the lead agency, even if the license application that triggers the city's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:
 - a. Any nonexempt action; or
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives; or
 - d. Any combination of exempt activities which when considered together would not be exempt.
2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved.
3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

D. Proposed short subdivision of land that is adjacent to previous short subdivisions or adjacent to land on which a subdivision is pending shall not be exempt if adjacent subdivisions share any improvements or access easements. In such cases, the proposed short plat will be considered physically or functionally related regardless of ownership. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.140 Environmental checklist.

A. Except as provided in subsection (C) of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; provided, that a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and if the city is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.150 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the city is lead agency; and
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 working days. The response shall:

1. Be written;
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When the applicant submits a changed or clarified proposal along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal.

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.
4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS is issued either under WAC 197-11-340(2), requiring a 14-day comment period and public notice, or under WAC 197-11-335, which may require no additional comment period beyond the comment period on the notice of application.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision –and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any issued license or permit.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (Withdrawal of DNS).

I. The city's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.160 Environmental impact statements (EIS) – Purpose and adoption by reference.

This part contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping (optional).
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.170 Preparation of EIS – Additional considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the city under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. A consultant selected by the applicant requires written approval by the city to ensure compliance with the provisions of chapter 43.21C RCW and chapter 197-11 WAC. (See WAC 197-11-420(1) through (4).) If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or

that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

D. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document.

E. The applicant shall be responsible for reimbursing or compensating the city for all costs associated with the preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS). Work shall not proceed on such documents until arrangements for all associated costs have been made and approved in writing by the city. (See WAC 197-11-420 and 197-11-914.) (Ord. 1853 § 2 (Exh. B), 2018).

14.10.180 Additional elements to be covered in an EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

- A. Economy of the area;
- B. Social policy analysis;
- C. Cost-benefit analysis;

D. Such other elements as may be required by the responsible official. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.190 Commenting, adoption by reference.

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-510 Public notice.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.200 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as required by chapter 14A.05 BMC.

B. Whenever the city issues a DNS or MDNS under WAC 197-11-355 the city shall combine the SEPA threshold determination notice and the notice of application required by BMC Title 14A and issue a single notice using the timelines and procedures prescribed by BMC Title 14A. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.210 Designation of official to perform consulted agency responsibilities for the city.

A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate city departments. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.220 Using existing environmental documents, purpose of this part and adoption by reference.

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

- 197-11-164 Planned actions – Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.
- 197-11-172 Planned actions – Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement – Procedures.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference – Procedures.
- 197-11-640 Combining documents.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.230 SEPA and agency decisions, purpose and adoption by reference.

This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.240 Substantive authority.

- A. The policies and goals set forth in this chapter are supplementary to those set forth in chapter 43.21C RCW and chapter 197-11 WAC and those identified in subsection (D) of this section.
- B. The city may attach conditions to a permit or approval for a proposal so long as:
1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 2. Such conditions are in writing; and
 3. The conditions or mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.
- C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
 2. A finding is made that no reasonable mitigation measures are capable of being accomplished that are sufficient to mitigate the identified impact; and
 3. The denial is based on one or more policies identified in subsection (D) of this section and identified in writing in the decision document. (Chapter 43.21C RCW and chapter 197-11 WAC.)
- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - e. Maintain, whenever possible, an environment which supports diversity and variety of individual choice;
 - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
 2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
 3. The city adopts by reference the policies in the following as they may be further amended:

- a. Burlington Municipal Code; ~~including all chapters contained in BMC Title 15, Buildings and Construction, as may be further amended;~~
- b. Burlington Comprehensive Plan ~~dated June 1994, and map, as may be further amended;~~
- c. Shoreline Management Act, ~~as may be further amended;~~
- d. Growth Management Act, ~~as may be further amended;~~
- e. Forest Practice Act and regulations; ~~as may be further amended. (Ord. 1853 § 2 (Exh. B), 2018);~~
- f. Washington State Environmental Policy Act (SEPA) (Chapter 43.21C RCW);
- g. Skagit County Countywide Planning Policies (CPPs).

14.10.250 SEPA appeals.

A. Any person may appeal the issuance of:

1. A determination of nonsignificance;
2. A determination of significance when issued in conjunction with a project permit; or
3. A final environmental impact statement.

The appeal of a SEPA decision not requiring a legislative decision, conditioning or denying a proposal, to the city council as set forth in RCW 43.21C.060, shall only be available where expressly provided for in this section.

B. An appeal must be filed in writing with the responsible official (WAC 197-11-680) within 14 calendar days of the date the decision becomes final. The appeal shall identify the decision, contain a summary of the grounds for the appeal and be accompanied by an appeal fee in an amount established by the adopted fee ordinance or applicable resolution. Following receipt of the appeal and the fee, the responsible official shall transmit a copy of the appeal to the hearing examiner, unless the decision is made by the hearing examiner, in which case an appeal shall go directly to city council or to whatever authority that has jurisdiction over the underlying action.

C. Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to the appeal of a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

D. Unless otherwise provided by this section:

1. Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.
2. Appeals of environmental determinations made or the lack thereof under this chapter shall be combined with and commenced within the time and in the manner required to appeal the governmental action which is subject to environmental review, pursuant to chapter 14A.05 BMC.
3. An appeal of a determination of significance may be filed as set forth above, prior to and separate from a final hearing and determination of a project action and a determination of nonsignificance of a nonproject action initiated by the city may also be made independent of the underlying action, in the manner set forth in subsection (B) of this section. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.260 Planned action.

A. A planned action, as provided for in subsection (B) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

Commented [BJ5]: BJ – 10-24-2022_ added to reflect current environmental policies and code that may be used to regulated development.

B. 1. For purposes of this section, a “planned action” means one or more types of project action that:

- a. Are designated planned actions by an ordinance or resolution adopted by a county, city or town planning under RCW 36.70A.040;
- b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (i) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (ii) a phased project;
- c. Are subsequent or implementing projects for the proposals listed in subsection (B)(1)(b) of this subsection;
- d. Are located within an urban growth area, as defined in RCW 36.70A.030;
- e. Are not essential public facilities, as defined in RCW 36.70A.200; and
- f. Are consistent with the comprehensive plan adopted under chapter 36.70A RCW.

2. The city shall limit planned actions to development or specific geographical areas that are less extensive than the jurisdictional boundaries of the city and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.270 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.280 Definitions – Purpose of this part and adoption by reference.

This part contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by BMC 14.10.060:

WAC

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-721 Closed record appeal.

- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- 197-11-742 Environmental checklist.
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.
- 197-11-766 Mitigated DNS.
- 197-11-768 Mitigation.
- 197-11-770 Natural environment.
- 197-11-772 NEPA.
- 197-11-774 Nonproject.
- 197-11-775 Open record hearing.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.

- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.290 Agency compliance, purpose and adoption by reference.

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions which do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference:

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licensing from more than one agency, when one of the agencies is county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.

The Burlington Municipal Code is current through Ordinance 1918, passed December 9, 2021.

- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.300 Form – Adoption by reference.

The city adopts the following forms and sections by reference:

WAC

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

(Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.15

CRITICAL AREA REGULATIONS

Sections:

- 14.15.010 Title.
- 14.15.020 Application.
- 14.15.030 Purpose.
- 14.15.040 Authority.
- 14.15.050 Jurisdiction and coordination.
- 14.15.060 Resource information and maps.
- 14.15.070 General requirements and authorizations required.
- 14.15.080 Public notice and records.
- 14.15.090 Application submittal requirements.
- 14.15.100 Administration.
- 14.15.110 Critical areas checklist, site assessment and conditions of approval.
- 14.15.120 Application of standards.
- 14.15.130 General construction and maintenance standards.
- 14.15.140 Reasonable use exception.
- 14.15.150 Critical area and buffer mitigation requirements – General provisions.
- 14.15.160 Protected critical area (PCA) requirements.
- 14.15.170 Incentives.

WETLANDS

- 14.15.180 Wetlands identification and rating.
- 14.15.185 Wetland buffers.
- 14.15.190 Wetlands initial project review.
- 14.15.200 Wetlands site assessment requirements.
- 14.15.210 Alteration of wetlands.
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AQUIFER RECHARGE AREAS

- 14.15.230 Aquifer recharge areas.
- 14.15.240 Aquifer recharge area designations.
- 14.15.250 Aquifer recharge applicability and prohibited activities.
- 14.15.260 Aquifer recharge initial project review.
- 14.15.270 Aquifer recharge site assessment report.
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GEOLOGICALLY HAZARDOUS AREAS

- 14.15.300 Geologically hazardous area designation.
- 14.15.310 Geologically hazardous area initial project review.
- 14.15.320 Geologically hazardous area site assessment requirements.
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FISH AND WILDLIFE HABITAT CONSERVATION AREAS

- 14.15.350 Fish and wildlife habitat conservation area designations.
- 14.15.360 Fish and wildlife habitat conservation areas initial project review.
- 14.15.370 Fish and wildlife habitat conservation area site assessment requirements.
- 14.15.380 Fish and wildlife habitat conservation area mitigation standards.

FREQUENTLY FLOODED AREAS

- 14.15.390 General.
- 14.15.400 Designation and mapping.
- 14.15.410 Flood development permits.
- 14.15.420 Development regulations.
- 14.15.430 Construction standards.
- 14.15.431 Habitat impacts and mitigation.
- 14.15.432 Records and documentation.
- 14.15.433 Penalties and enforcement.

COMPLIANCE

- 14.15.440 Compliance with critical area regulations.
- 14.15.450 Construction.
- 14.15.460 Severability.
- 14.15.470 State Environmental Policy Act.
- 14.15.480 Liability disclaimer.

14.15.010 Title.

This chapter shall be known as “Critical Area Regulations.” (Ord. 1853 § 2 (Exh. B), 2018).

14.15.020 Application.

A. This chapter shall apply to land use, development, and platting located in the city limits of Burlington, within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this chapter.

B. The following shall constitute critical areas:

1. Wetlands and riparian corridors, including Gages Slough. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this chapter to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetland functions and values;
2. Fish and wildlife habitat conservation areas. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats;
3. Frequently flooded areas. It is the purpose of this chapter to promote the public health, safety, and general welfare, minimize public and private losses due to flood conditions, and protect the ecological and hydrological functions of the floodplain;
4. Geologically hazardous areas. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

14.15.030 Purpose.

A. This chapter is adopted to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide protection for defined critical areas.

B. It is the purpose of this chapter to prevent contamination and depletion, avoid exorbitant cleanup costs, hardships and potential physical harm to people.

C. The ordinance codified in this chapter was developed under the directives of the Growth Management Act to conserve and protect critical areas pursuant to RCW 36.70A.172. "Critical areas" are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas, are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands, are critical because of their public value.

D. Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as part of the screening process for evaluating individual permit applications. Although a number of map resources are utilized in this chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes.

E. Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this chapter.

F. The ordinance codified in this chapter was drafted to provide regulatory structure for identification, designation and protection of critical areas. This chapter allows staff to provide site visits, preliminary reviews, and preapplication meetings to assist in the identification of critical areas.

G. These regulations are intended to:

1. Protect human life, property, and the public health and safety of the citizens of Burlington;
2. Minimize the expenditure of public money;
3. Maintain the city's flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;
4. Ensure that wetland and other critical area functions and values are protected to provide public benefits--
(~~Ord. 1853 § 2 (Exh. B), 2018~~);

5. Implement the Burlington Comprehensive Plan.

14.15.040 Authority.

The ordinance codified in this chapter is adopted under the authority of chapters 36.70 and 36.70A RCW, and Article II of the Washington State Constitution. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.050 Jurisdiction and coordination.

A. Relationship to Other Federal, State and County Jurisdictional Agencies' Regulations. Many state, federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:

- a. Clean Water Act, Section 401, 404;
- b. Coastal Zone Management Act;
- c. Endangered Species Act;

- d. Federal Water Pollution Control Act;
- e. Food Security Act – Swampbuster;
- f. National Environmental Policy Act;
- g. National Floodplain Insurance Program;
- h. River and Harbor Act, Section 10.

2. State regulations include:

- a. Chapter 43.21C RCW, State Environmental Policy Act;
- b. Chapter 75.20 RCW, Construction Projects in State Waters;
- c. Chapter 76.09 RCW, Forest Practices Regulations;
- d. Chapter 77.12 RCW, Powers and Duties;
- e. Chapter 78.44 RCW, Surface Mining Act;
- f. Chapter 86.16 RCW, Floodplain Management (Formerly flood control zones by state);
- g. Chapter 90.03 RCW, Water Code;
- h. Chapter 90.48 RCW, Water Pollution Control Act;
- i. Chapter 90.58 RCW, Shoreline Management Act of 1971.

3. Local regulations include:

- a. Chapter 14.10 BMC, Environmental Policy;
- b. Chapter 14.05 BMC, Surface Water Management;
- c. Skagit County shoreline management program.

B. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the director that the permit conditions satisfy the requirements of this chapter, those requirements may substitute for the requirements of this chapter. Such requirements shall be a condition of critical area approval and be enforceable under this chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service, the Swinomish Tribe, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife. The applicant shall be notified in writing when any such substitution is made. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.060 Resource information and maps.

A. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. All sites which contain or include critical areas, whether mapped or not, shall be subject to the provisions of this chapter.

B. Critical area maps, with the exception of the flood insurance rate map used to designate certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical area element in this chapter. Maps shall not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards

pursuant to the site-specific assessment requirements provided in this chapter is the controlling factor in determining the actual presence and extent of critical areas.

C. Critical area maps maintained by the department shall utilize the best information currently available and should be updated on a continual basis.

D. Critical areas mapped under the site assessment requirements of this chapter should be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this chapter to ensure long-term protection of critical areas.

E. The city will make interpretations where needed as to exact location of the boundaries of the areas of special flood hazard (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). If there is a disagreement about the location of the boundary, additional information from a licensed surveyor may be needed, and the application shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59-76). (Ord. 1853 § 2 (Exh. B), 2018).

14.15.070 General requirements and authorizations required.

A. In addition to any other requirements identified in this chapter, or otherwise imposed by the Burlington Municipal Code, all development occurring in critical areas, or critical area buffers, shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.

2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

B. With the exception of activities identified as exempt under BMC 14.15.120, any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt under BMC 14.15.120, shall be prohibited within a critical area or its required buffer, unless there is an approved buffer management plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Burlington Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

C. Procedures. No land use development permit, land division, development approval, or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.

2. Each proposal shall be reviewed by the director for consistency with the applicable regulations identified in this chapter and to ensure the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare. If not, conditions of approval shall be specified as necessary to ensure compliance with the provisions of this chapter. If there are no conditions under which the proposal could be approved, then the proposal shall be denied.

D. All land use actions shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied.

E. Conflicts with Other Provisions. If any provision of this chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically accepted in this chapter.

F. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to chapter 43.21C RCW, State Environmental Policy Act, and chapter 14.10 BMC, Environmental Policy.

G. SEPA Compliance. The goals, policies and purposes set forth in this chapter shall be considered policies of the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements.

H. Other Permits Required. It is recognized that many local, state, and/or federal permit conditions may apply to the proposed action, and that compliance with the provisions of this chapter may not necessarily constitute compliance with other such requirements. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.080 Public notice and records.

Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of BMC Title 14A, land use permit process. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.090 Application submittal requirements.

In addition to the application submittal requirements specified in other codes, a complete application for development subject to this chapter shall include the following additional information:

A. Surveyed Site Plan. A surveyed site plan shall be prepared by a state of Washington licensed surveyor and shall include the following, when required by the community development director:

1. Existing topography at two-foot contour intervals on site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
2. Terrain and drainage flow characteristics within the site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on site and on adjacent lands;
4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species;
5. Location and boundaries of all existing and proposed site improvements on the site and within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This

shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);

6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence, in progress or proposed within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements;

7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on site, on adjacent lands within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way, and proposed methods and locations for the proposed development to hook up to these services;

8. Such other additional site plan information as necessary to complete review of a project or waive specific submittal requirements when not necessary for project review.

B. Technical Reports. Technical reports shall be prepared and submitted as required by this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.100 Administration.

A. The director shall be responsible for the administration of this chapter, including:

1. Review applications for land use actions to verify compliance with this chapter, issue permit decisions, or make recommendations to the hearing examiner in accordance with the permit processing procedures identified in BMC Title 14A;

2. Review applications for land use actions to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

a. As-built elevation above mean sea level of the lowest floor including basement of all new and substantially improved structures requiring a floodplain approval and whether same structure contains a basement,

b. Certification by registered professional engineer or architect as required by this chapter,

c. Floodplain approvals and other actions pursuant to the administration of this chapter;

4. Notification to adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished;

5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways;

6. Issuance of development permits pursuant to BMC Title 14A, Land Use Decisions, and chapter 15.04 BMC, Uniform Codes, before construction or development begins within the city limits.

B. This chapter shall be administered in accordance with chapter 86.16 RCW and chapter 508-60 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

C. The administrative procedure for critical areas review shall be as follows:

1. ~~Determination that an Activity Requires Standard Review. Preliminary screening. All applications for approval of activities requiring written authorization pursuant to BMC 14.15.070 shall require the submission~~

of a critical areas checklist completed and filed by the applicant on the forms provided by the planning department. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, a determination shall be made as to whether or not the proposed activity fits within any of the exempt activities found in BMC 14.15.120. If the proposed activity is classified as exempt, and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary to ensure that any conditions for such an allowance are met in practice. This determination shall be made in writing and included in the application file.

Proposed activities identified under BMC 14.15.120 that do not meet the conditions for such an allowance or that may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review. Unless explicitly exempted from review under this chapter, all development proposals shall be screened for the presence of critical areas indicators, critical areas, and critical area buffers at the time of application. The City may employ the following preliminary screening methods:

2. Method for Initial Determination of Critical Areas. Upon determination that the proposed activity requires detailed critical areas review, and upon receipt of a completed critical areas checklist, the following method shall be used to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:

- a. Review the a critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this chapter prepared by the applicant; and
- b. Complete the critical areas staff checklist; and Review maps, critical area reports, permit records, or previous critical area studies;
- c. Inspect the site; and
- d. Complete the critical areas field indicator form; Review aerial photography, imagery, or remote sensing data;
- e. Review studies, inventories, mapping, and data compiled by state, federal and local government agencies;
- f. Other methods consistent with best available science;

3. Determination that Critical Areas Are Not Affected. If critical area indicators are not present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the review required pursuant to this chapter is complete, except as necessary to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. This determination shall be noted in the application file and provide written authorization shall be provided for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the requirements of this chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this chapter. The applicant shall acknowledge in writing that the determination regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (C)(4) of this section. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.

4. Reopening of Review Process.

- a. If at any time prior to completion of the public input process on the associated permit or approval, the city receives new evidence that a critical area may be present within 200 feet of the project area or within

~~a distance otherwise specified in this chapter, then the critical areas review process shall be reopened pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.~~

~~b. Once the public input process on the associated permit or approval is completed and the record is closed, then the city's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the critical areas review process may be reopened if it is determined that incomplete or incorrect information was provided by the applicant in the application or checklist. For the purposes of this subsection, "incomplete or incorrect information" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the city shall conduct a site visit. No critical areas review shall be reopened under this section unless it is determined, after the site visit, that incomplete or incorrect information was provided.~~

5. Determination that Critical Areas ~~may be present~~ Are Affected. If the city determines that critical area indicators, critical areas, or critical area buffers are present within 3200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the determination shall be recorded in the project file and the applicant shall provide a critical areas site assessment as specified in this chapter. Development of a site assessment may precede a site visit; provided, that no disturbance of vegetation or land surface occurs prior to authorization.

6. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the city shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) pursuant to this chapter and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If there are no conditions under which the proposed activity could be approved, then the community development director shall deny the proposal. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.110 Critical areas checklist, site assessment and conditions of approval.

~~A. Critical Areas Checklist Site Assessment Required. Every application for an activity that might alter or adversely affect a critical area or critical area buffer shall include a critical area checklist on a form provided by the director's site assessment. The checklist shall identify all critical area indicators and/or all known critical areas within 200 feet of the proposed activity or within a distance otherwise specified in this chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on information provided may be rescinded and the site restored to its original predevelopment condition.~~

~~B. Site Assessment Required. If, after a site visit, the city determines that the proposed activity area is within 200 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the city determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas site assessment shall be required. Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit, or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.~~

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land use restrictions and landowner management, maintenance and monitoring responsibilities. The city may require peer review or review by personnel from state and federal agencies with expertise. The cost of any required peer review shall be borne by the applicant in accordance with the City's adopted fee schedule.

D. Any site plans required by this chapter may be combined into a single site plan wherever possible.

Commented [BJ6]: 10-24-2022 – BJ – this code was copied years ago from Skagit County and reflects the complexity and controversy associated with regulating critical areas in a rural area. Revised for simplicity to reflect development conditions and permit procedures in Burlington.

Commented [BJ7]: BJ – 10-24-2022 – This process is not used by the City. It is used by Skagit County. This needs to be revised for clarity.

E. Critical Areas Determination and Conditions of Approval. After receiving a complete site assessment report, the city shall determine whether or not the proposed activity meets the requirements of this chapter and under what conditions. This determination shall utilize the information provided in the site assessment report and all other resource information available.

G. Critical area determinations shall be made in writing, contain findings addressing the requirements of this chapter, and shall identify any conditions of approval, land use prohibitions, and mitigation, management, monitoring and maintenance requirements. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.120 Application of standards.

This chapter shall apply to all public and private land use actions and development including, but not limited to, new structures, additions, land divisions, grading, and filling located on either public or private property. ~~The development activities listed below~~ Projects may be exempted from the detailed critical area review requirements of this chapter, provided that any development in a floodplain management area constituting a substantial improvement or substantial repair shall be subject to review, when the following situations and/or conditions apply:

Commented [BJ8]: BJ – 10-24-2022 – Revised to address department of ecology requirements/comments.

A. Emergencies that threaten the public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party (property owner or agent) shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.

B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with preexisting residential or commercial development, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

C. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase septic effluent, and does not adversely impact critical areas or their buffers.

E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.

F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources; and provided further, that the activity does not adversely impact critical areas or their buffers.

H. The operation and maintenance, construction and reconstruction of diking and drainage systems which protect life and property along the Skagit River.

I. Education and scientific research activities which do not adversely impact critical areas or their buffers.

J. Construction or modification of navigational aids and channels markers.

K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

L. Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation; provided, that the project is approved by the U. S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

N. ~~For d~~ Developments in floodplain management areas ~~other than the following:~~

1. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, ~~and accessways roads, paths, and sidewalks;~~
2. Maintenance and minor repair of existing improvements, provided such activities do not constitute "substantial repair" or "substantial improvement" as defined by this chapter.

O. All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. ~~An exemption from permit requirements is not an exemption from complying with the other requirements of this chapter.~~ Proponents of such activities shall be responsible for notifying the community development director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

14.15.130 General construction and maintenance standards.

All land use actions and development activities located in critical areas or critical area buffers shall be subject to the following general construction and maintenance standards:

A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.

B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, a vegetation and revegetation report prepared by a qualified professional with landscaping, plant ecology and botany education and experience may be required. All revegetation shall consist of trees, shrubs, and ground cover that is suitable for the location and does not require permanent irrigation systems for long-term survival.

C. When development is proposed in a critical area or critical area buffer, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site.

D. All drainage associated with the development shall be managed using an approved drainage control system in accordance with the provisions of this title.

E. Land use actions and development shall comply with the seismic design requirements identified in the building code adopted by, or referenced in, BMC Title 15.

F. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.

G. Construction activities shall adhere to a prepared schedule approved by the city prior to issuance of a building or development permit.

This schedule shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

H. Dumping or filling is prohibited in wetlands and special flood risk areas. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.140 Reasonable use exception.

If the application of this chapter would result in denial of reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this chapter, except for the flood hazard critical area where no exceptions are allowed. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this chapter. Reasonable use exceptions are intended as a “last resort” when no plan for mitigation can meet the requirements of this chapter and allow the applicant a reasonable economically viable use of their property. Reasonable use exceptions may only be granted under the following conditions:

A. The application of this chapter would deny all reasonable and economically viable use of the property and there is no reasonable and economically viable use with a lesser impact on the critical area than the use proposed; and

B. The proposed development does not pose a threat to the public health and safety; and any proposed modification to a critical area will be evaluated through consideration of a site assessment and mitigation plan prepared by the applicant’s qualified consultant pursuant to the requirements of this chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property; and

C. Reasonable use determinations may be issued with conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. Mitigation requirements may also be imposed to ensure that all impacts are mitigated to the maximum extent feasible. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.150 Critical area and buffer mitigation requirements – General provisions.

A. Buffers.

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed “required” or “standard” buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the city determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then subject to the provisions of this section, no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with the provisions of this section. The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, such additional mitigation requirements may be imposed, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.

3. If the applicant proposes to reduce buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate, based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.

4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall fully address the requirements of this chapter.

However, critical areas and/or buffers identified as protected critical areas (PCAs) as defined in this chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are, however, subject to periodic inspection by the director, upon prior notification to the landowner, to ensure long-term protection.

5. Protected Critical Areas (PCAs).

a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and city review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. (See BMC 14.15.160, Protected critical area (PCA) requirements.)

b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to ensure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. Open Space – Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site.

B. Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;
6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:
 - a. Description of proposed mitigations (critical areas lost/critical areas gained);
 - b. Analysis of avoidance, minimization, reduction, and compensation;
 - c. Functional analysis of mitigation/analysis of prevention of risk hazard;

- d. Proposed applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results; and
- e. Contingency plan.

D. Mitigation requirements shall be identified in written conditions of approval and shall be included in an approved mitigation plan.

E. Financial Assurance. The approved mitigation plan shall be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of \$4,000 or over, the financial assurance may be required to assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney, shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the city of Burlington. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring of Critical Areas Mitigation. On a regular basis, but no less frequently than once every two years, the city shall survey a sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the city council, and shall also be utilized for enforcement purposes. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.160 Protected critical area (PCA) requirements.

A. PCA Identification and Recording.

1. PCA Identification. Approval of development projects which trigger a development permit and other land use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the community development director. This section is intended to apply to unique critical area elements such as buffers or wellhead protection areas that can cause adverse impacts; location in the floodplain unless adjacent to a wetland or riparian corridor does not require recording of a PCA. PCAs shall include all critical areas and associated buffers on the proposed project site which have been identified through the site assessment process.
2. PCA Recording. All PCAs shall be recorded with the county auditor in accordance with the procedures established under this section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.
3. For each project or activity that requires recording of PCAs, the following information shall be recorded with the auditor and be readily available to the public upon request:
 - a. Recorded documents signed by the landowner and the director which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;
 - b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;
 - c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;

- d. Identification of any local responsibilities beyond those required by this chapter;
- e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent Buffer Edge Markers. Except as provided under subsection (A)(4)(a) of this section, the outer edges of all PCAs, with the exception of aquifer recharge areas, may be required, and if required shall be clearly marked on site ~~by the applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the director that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner. The Director shall have the authority to specify the size, spacing, and other required characteristics of critical area markers and may require that critical areas and buffers be surveyed.~~

~~a. The director may waive or modify the requirement for permanent buffer edge markers; provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. The determination shall be included in the permanent record.~~

~~b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line of sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.~~

Commented [BJ9]: BJ – 10-24-2022 – overly complex – in practice we simply specify the type of markers to be used.

B. Protected Critical Area (PCA) Designations for New Land Divisions.

1. For land divisions where site assessments have occurred pursuant to this chapter, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection (A) of this section. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust. Wetlands and buffers in the Gages Slough corridor may be donated to the city in exchange for park impact fee credit.

2. Recording. PCA designations shall be recorded with the auditor as part of the plat approval process.

The auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.

3. PCA Descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the community development director. Where more than one lot is involved, each lot shall carry independent labeling as described in subsection (D)(1) of this section.

4. Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the community development director or his or her agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this chapter, including the conclusions of the critical areas site assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Preexisting Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on preexisting lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the auditor as defined under subsection (A) of this section. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus five feet.

2. Ingress and Egress. The city shall be granted access to PCAs for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert. The delineated boundaries of critical areas, critical area buffers, and mitigation sites shall be surveyed. The director may waive this requirement for simple small scale projects or where access considerations make a complete survey infeasible.

2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the community development director or designee. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.

4. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the director shall be considered a violation of this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.170 Incentives.

The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this chapter and assist the city in achieving the goals of this chapter:

A. Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to chapter 84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in subsection (A) of this section.

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee. (Ord. 1853 § 2 (Exh. B), 2018).

WETLANDS

14.15.180 Wetlands identification and rating.

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, effective January 2015) or as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria below are met.

1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.

2. Category II. Category II wetlands are: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. 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. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.185 Wetland buffers.

A. Standard Wetland Buffer Widths. The standard buffer widths in Table 14.15.185-1 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State wetland rating system for western Washington.

1. Buffer Conditions.

a. These buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

b. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways,

driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

c. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter to the extent feasible. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

d. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

e. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the required maintenance and monitoring timeline, which ranges from five to 10 years depending on location.

Table 14.15.185-1. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses.

Category of Wetland	Land Use with Low Impact*	Land Use with Moderate Impact*	Land Use with High Impact* Required Buffer
IV	25 ft	40 ft	50 ft
III	75 ft	110 ft	150 ft
II	150 ft	225 ft	300 ft
I	150 ft	225 ft	300 ft

* See Table 14.15.185-2 below for types of land uses that can result in low, moderate, and high impacts to wetlands.

Commented [BJ10]: BJ – 10-24-2022 – as noted in critical areas report adopted by PC and CC this code was copied from Skagit county. Per department of ecology guidance all urban uses are high impact. As such, listing low and moderate impact buffers is misleading. Revised for clarity. All land uses in the City are high impact.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> ▲ Commercial ▲ Urban ▲ Industrial ▲ Institutional ▲ Retail sales ▲ Residential (more than 1 unit/acre) ▲ Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) ▲ High-intensity recreation (golf courses, ball fields, etc.) ▲ Hobby farms
Moderate	<ul style="list-style-type: none"> ▲ Residential (1 unit/acre or less) ▲ Moderate-intensity open space (parks with biking, jogging, etc.) ▲ Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) ▲ Paved trails ▲ Building of logging roads ▲ Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	<ul style="list-style-type: none"> ▲ Forestry (cutting of trees only) ▲ Low-intensity open space (hiking, bird watching, preservation of natural resources, etc.) ▲ Unpaved trails ▲ Utility corridor without a maintenance road and little or no vegetation management

B. Increased Wetland Buffer Widths. Buffer widths shall be increased on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
3. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

C. Decreased Wetland Buffer Widths. Buffer widths shall be decreased on a case-by-case basis as determined by the city. This determination shall be supported by appropriate documentation showing that it still protects the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:
 - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
 - b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
 - c. The total area of the buffer after averaging is equal to the area required without averaging.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

2. Buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.

c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever category is applicable.

D. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this chapter; provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

a. Walkways and trails; provided, that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.

5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water source.

6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

7. Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Storm water management facilities. Storm water management facilities are limited to storm water dispersion outfalls and bioswales. They may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

- a. No other location is feasible; and
- b. The location of such facilities will not degrade the functions or values of the wetland; and
- c. Storm water management facilities are not allowed in buffers of Category I or II wetlands; ~~and-~~
- d. The hydro-period of the wetland is not alternated.

9. Nonconforming Uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

E. Signs and Fencing of Wetlands and Buffers.

1. Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the community development director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the city may require the installation of permanent signs along the boundary of a wetland or buffer.

- a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the community development director:

Protected Wetland Area

No Dumping - Do Not Disturb

Thank you

- b. The provisions of subsection (E)(2)(a) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing.

- a. ~~The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site. Permanent fencing shall be required around wetland buffers. The Director may waive this requirement for large sites or situations where the installation of fencing is not feasible due to topography, a lack of access, or other site constraints.~~

- b. Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat. ~~(Ord. 1853 § 2 (Exh. B), 2018) The Director shall have the authority to specify appropriate standards for buffer fencing consistent with the requirements of this chapter.~~

14.15.190 Wetlands initial project review.

A. ~~If the preliminary screening indicates the potential presence of wetland indicators, wetlands, or wetland buffers, a site visit shall be conducted, professional site assessment shall be conducted to identify any wetland indicators listed in the critical areas checklist or identified on critical areas map references as being-~~

Commented [BJ11]: BJ- 10-24-2022 – revised to reflect current practices – we specify the type of fencing – reference to grazing animals is not applicable in an urban area – impacts are more likely to be caused by humans.

within 300 feet of a proposed project or activity. ~~A positive confirmation by the community development director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.~~

B. The following map references shall be used to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Department of Interior, Fish and Wildlife Service;
2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington, by the United States Department of Agriculture, Soil Conservation Service;
3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and
4. Wetlands previously identified through the methodology specified under this title for another project. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.200 Wetlands site assessment requirements.

If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 300 feet of the activity area, then no further study is required.

B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the applicant chooses to perform delineation instead of a wetland reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified under this title.

C. If the site of a proposed development includes, is likely to include, or is ~~adjacent to~~ within 300 feet of a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

D. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:
 - a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
 - b. A statement specifying the accuracy of the report and all assumptions made and relied upon.
 - c. Documentation of any fieldwork, performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
 - d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.
 - e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
 - f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per wetland ratings of this title; required buffers;

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.

h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas.

j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

m. An evaluation of flood and storm-water storage capacity, water quality functions, and an analysis of how the proposed development may impact these functions and values.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

b. A depiction of the proposed storm water management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.210 Alteration of wetlands.

A. A regulated wetland or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in BMC 14.15.220, Wetland mitigation standards.

B. Storm water discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, chapter 173-201A WAC, as required by state law and implemented in chapter 14.05 BMC, Surface Water Management. (Ord. 1853 § 2 (Exh. B), 2018).

Commented [BJ12]: BJ – 10-24-2022 – added to address department of ecology requirements as necessary to address biological opinion on floodplain development and the unique functions of wetland in Burlington related to flood and storm-water control.

C. Wetland alterations shall not result in a net loss of flood or storm-water storage capacity within the Burlington Urban Growth Area.

14.15.220 Wetland mitigation standards.

A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

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

B. Requirements for Compensatory Mitigation.

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. ~~Compensatory mitigation plans requirements shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009) Washington State Department of Ecology, U.S Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10 (2021) Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 2) (Ecology Publication #21-06-003), or as revised. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State: Part 2 – Developing Mitigation Plans Version 1, March 2006, Publicatoin #06-06-011b, or as revised.~~

2. Mitigation ratios shall be consistent with subsection (G) of this section.

3. Mitigation requirements may also be determined using the credit/debit tool described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection (H) this section.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (reestablishment and rehabilitation) of wetlands:

Commented [BJ13]: BJ – 10-24-2022 – Revised to reflect department of ecology guidance and reflect current documents.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

- a. The goal of reestablishment is returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
- b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

- i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
- ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;
- iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, storm water runoff, noise, light, or other impacts); and
- iv. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:

- a. How the proposed enhancement will increase the wetland's/buffer's functions;
- b. How this increase in function will adequately compensate for the impacts; and
- c. How all other existing wetland functions at the mitigation site will be protected.

4. Preservation. Preservation of high-quality, at-risk wetlands as compensation are generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

- a. The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:
 - i. Category I or II wetland rating (using the wetland rating system for western Washington).
 - ii. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands).

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

- iii. The presence of habitat for priority or locally important wildlife species.
- iv. Priority sites in an adopted watershed plan.
- b. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.
- c. There is no net loss of habitat functions within the watershed or basin.
- d. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.
- e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, or land in public ownership.
- f. The impact area is small (generally less than one-half acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

E. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same subdrainage basin and on the site of the alteration except when all of subsections (E)(1) through (4) of this section apply. In that case, mitigation may be allowed off site within the subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

1. There are no reasonable opportunities on site or within the subdrainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the subdrainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity).
2. On-site mitigation would require elimination of high-quality upland habitat.
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
4. Off-site locations shall be in the same subdrainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or
 - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or
 - c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

5. Wetland mitigation banks and off-site mitigation sites located outside of the City of Burlington's Urban Growth Area shall only be used if necessary to accommodate an essential public facility and only when no feasible alternatives exists.

The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not

Commented [BJ14]: BJ – 10-24-2022 – revise for consistency with updated comp plan (natural resources element) and critical areas report adopted by PC and CC. Wetlands in Burlington provide important flood and storm-water storage capacity. These functions are not replaced by wetland mitigation banks. Banks should be used only as needed in extreme situations for essential public facilities (freeway bridges etc.).

match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The community development director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that include implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

G. Wetland Mitigation Ratios¹:

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage Site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Forested I: Based on Functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

H. 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 No. 06-06-011a and b, Olympia, WA, March 2006), the community development director may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report” (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

I. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006, or as revised).

1. The written report must contain, at a minimum:

- a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

- b. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
- c. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings of this chapter.
- d. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions.
- e. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
- f. A description of the proposed mitigation construction activities and timing of activities.
- g. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
- h. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
- i. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- j. Identify flood and storm-water storage impacts, water quality impacts, and floodplain habitat impacts affecting ESA listed species. The mitigation report shall demonstrate how the proposed mitigation measures will prevent a net loss of floodplain habitat, water quality, and flood and storm-water storage functions and values.

2. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

- a. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
- b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be altered, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
- c. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
- d. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
- e. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter.

f. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.

g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.

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

K. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement or land in public ownership.

L. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for 10 years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

M. Wetland Mitigation Banks.

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 city 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 certified bank instrument;

d. The proposed development activity involves an essential public facility and there are no feasible mitigation alternatives to the use of wetland mitigation bank credits.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

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

N. In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when subsections (N)(1) through (6) of this section apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.

6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument.

O. 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 federal rules, state policy on advance mitigation, and state water quality regulations.

P. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity.

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under this title.

2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP permitting crossing of wetlands as part of road construction. (Ord. 1853 § 2 (Exh. B), 2018).

AQUIFER RECHARGE AREAS

14.15.230 Aquifer recharge areas.

A. Intent. This section establishes areas determined to be critical in maintaining both ground water quantity and quality. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this section is to:

1. Define minimum regulatory requirements to protect ground water quality and quantity for existing and future use; and

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Ensure adequate design, construction, management, and operations to protect ground water quality and quantity.

B. Existing and future beneficial uses of ground water shall be maintained and protected and degradation of ground water quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever ground waters are determined to be of a higher quality than the criteria established for said waters under this section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and

2. All contaminants proposed for entry into said ground water(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of chapters 90.48 and 90.54 RCW, and chapters 173-160, 173-200, 173-201A, 246-290 and 246-291 WAC, as the same may hereafter be amended. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.240 Aquifer recharge area designations.

Two categories are designated for aquifer recharge areas. These categories are designated to assist the city in determining the level of assessment necessary to evaluate specific proposed land use actions. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydrogeologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

A. Designation Categories.

1. Category I areas are those so designated because of the need to provide them special protection due to a specific preexisting land use, or because they are identified by the local, state or federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by ground water which have been designated as a "Sole Source Aquifer Area" under the Federal Safe Drinking Water Act; areas identified within a "closed" or "low-flow" stream watershed designated by the Department of Ecology pursuant to chapter 90.22 RCW; areas identified by the Department of Ecology as sea water intrusion areas; and areas designated as "Wellhead Protection Areas" pursuant to WAC 246-290-135(4) and the ground water contribution area in WAC 246-291-100(2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County health department, or plats served by five or more individual wells where the average lot size is equal to or less than two acres for which a wellhead protection plan has been completed and filed with the Skagit County health department. Category I areas are shown on the Aquifer Recharge Area map.

2. Category II is designated as areas not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.250 Aquifer recharge applicability and prohibited activities.

A. Applicability. All development projects are subject to the provisions of this section except for the following:

1. Existing activities that currently and legally exist at the time this chapter became effective. However, expansions or changes in use are subject to this section and the review process contained herein.

~~2. Single family residential building permits, including accessory building permits. The construction of a single detached dwelling, duplex, or related accessory uses on an existing legally established lot located, which are outside Category I areas.~~

~~3. Residential short plats outside Category I areas where each lot is two and one-half acres or greater.~~

~~4. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.~~

B. Prohibited Activities. The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on ground water:

1. Landfill activities as defined in chapters 173-304 and 173-351 WAC.

2. Class V injection wells, including:

a. Agricultural drainage wells;

- b. Untreated sewage waste disposal wells;
- c. Cesspools;
- d. Industrial process water and disposal wells; and
- e. Radioactive waste disposal.

3. Radioactive disposal sites. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.260 Aquifer recharge initial project review.

A. General Procedures. Applicants for all development projects not allowed under this title shall be required, through a site assessment report prepared pursuant to this title, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the city based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this section is to require applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required shall be based on an initial project review that may include staff from the county health department, State Health Department, State Department of Ecology, and a hydrogeologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in this title. Subsequent findings from the study or other information made available after the initial project review may obligate the applicant to additional evaluation, development of a mitigation plan, and/or development of a ground water monitoring plan. The following outlines the review process:

1. The required scope of the site assessment report shall be determined by the city following consultation with the county health department and appropriate state agencies. The scope of site assessment required may be conveyed to the applicant and/or his or her representative in writing.
2. The site assessment report shall be submitted and renewed by city. The city may consult with the county health department and appropriate state agencies as necessary and may approve the site assessment report as submitted, require additional evaluation, or require development of a mitigation plan. If additional information is required beyond the initial site assessment report, the applicant may be notified in writing.
3. When, to the satisfaction of the city, all information is provided and appropriate mitigation measures have been identified in accordance with the requirements of this chapter, the permit review process may move forward. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.270 Aquifer recharge site assessment report.

A. The scope of the site assessment report shall be based on the initial project review specified in this title. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The site assessment report shall be prepared by or under the direction of and signed by a professional engineer, licensed in the state of Washington, trained and qualified to analyze geologic, hydrologic, and ground water flow systems; or by a geologist or hydrogeologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four-year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and ground water flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the requirements of this code. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).
2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).
3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the health department for identified wells within 1,000 feet of the project property shall be included.
4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of ground water flow direction and patterns on the appropriate map.
5. Identification of the initial receptors of potential adverse impacts located hydraulically downgradient from the project within 1,000 feet or as otherwise required by the scoping process identified above.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.
2. Delineation of identified structural features such as faults, fractures, and fissures.
3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of ground water flow direction, velocity and patterns for the affected aquifer(s).
4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.
5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.
6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the ground water.
7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).
8. Determination of background or existing ground water quality underlying the project area.
9. Development of a ground water monitoring program to measure potential impacts of the development to underlying aquifer(s).
10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if ground water monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

11. The degree of continuity between ground water and nearby surface water including potential impact to “closed” or “low-flow” streams (as described in this title) from proposed ground water withdrawals, and potential impacts to surface water quality from site runoff or contaminated ground water discharge.

12. In conjunction with the Department of Ecology seawater intrusion policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level.

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds five mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.280 Aquifer recharge area mitigation.

A. The city in consultation with the county health department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the ground water quality below the standards described in chapter 173-200 WAC or Department of Ecology’s seawater intrusion policy.

B. Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the city and/or health officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the county health department and Public Utility District No. 1 shall jointly develop recommended mitigations, for review by the city, a summary of which shall be signed by the applicant and recorded with the applicant’s property title. All new development shall be required to connect to the Public Utility District No. 1 Water System. (Ord. 1853 § 2 (Exh. B), 2018).

GEOLOGICALLY HAZARDOUS AREAS

14.15.300 Geologically hazardous area designation.

A. Geologically hazardous areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in WAC 365-190-080(4).

B. Geologically hazardous areas shall be classified as “known or suspected risk,” or “unknown risk.” (Ord. 1853 § 2 (Exh. B), 2018).

14.15.310 Geologically hazardous area initial project review.

A site visit shall be conducted by the director to determine whether: (A) “Areas of known or suspected risk” identified below are or may be present within 300 feet of the project or activity; (B) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; (C) the proposed activity may result in or contribute to an increase in hazard; and (D) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. Areas of known or suspected risk:

A. Erosion Hazard Indicators.

1. Those project areas located within 300 feet of map unit delineations No. 51 Dystic Xerorthents, No. 99 Mundt and No. 117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989) or most currently adopted.

2. Those project areas that fall within any soil sloping greater than or equal to 30 percent.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

3. The project area falls within areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).

4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazard Indicators.

1. The project area falls within or 300 feet from areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

2. The project area falls within or 300 feet from slopes having the following characteristics: gradients of 15 percent or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or ground water seepage are present;

3. The project area falls within or 300 feet from any area having a 40 percent slope or steeper and with a vertical relief of 10 feet or more;

4. The project area falls within or 300 feet from any areas of historic failure such as areas designated as quaternary earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U.S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies;

5. The project area falls within or 300 feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this chapter;

6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch;

7. The project area falls within or 300 feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

8. The project area falls within or 300 feet from any slopes with a gradient greater than 80 percent and subject to rock fall during seismic shaking;

9. The project area falls within or 300 feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards. Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the International Building Code) proposed to be located in any of the areas described in subsection (A) or (B) of this section or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as identified on the U.S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington (1985 or most currently adopted), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this section apply. The building official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources or other documents authorized by government agencies, or as identified in the field.) All

developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards. The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

E. Other Geologic Hazard Indicators.

1. The project area falls within or 300 feet from an alluvial fan as designated on the Skagit County Alluvial Fan Study Orthophoto Maps;
2. The project area falls within or 300 feet from a mine hazard area as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 300 feet of any other current or historic mine operations determined to be geologic hazards as described in this title, geologically hazardous areas;
3. Areas of Unknown Geologic Hazards. As part of any development application where no current information is available to confirm that the items identified in this section are present on the project area, the critical areas review required by this chapter shall provide a description of the known and visible site features and be used by the city in evaluating whether a geologically hazardous area site assessment is required pursuant to this section. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.320 Geologically hazardous area site assessment requirements.

A. Site Visit Determination. A determination shall be made as follows:

1. No Site Assessment. Where the city determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off site, no additional site assessments shall be required prior to approval under the provisions of this chapter.
2. Site Assessment Required. If the city determines during the site visit that the proposed development activity falls within 300 feet of an "Area of Known or Suspected Risk" and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in subsection (B) of this section shall be required as part of the complete development permit application.

B. Geologically Hazardous Area Site Assessment. Site assessment reports shall be prepared by a qualified professional. Portions of the report relating to recommended design or mitigation shall be prepared under supervision of a licensed professional engineer. A qualified professional shall mean an engineer, licensed in the state of Washington, with training and experience analyzing geologic, hydrologic, and ground water flow systems in Washington State; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and ground water flow systems in Washington State, who has received a relevant degree from an accredited four-year institution of higher education.

The geologically hazardous area site assessment report shall classify the type of hazard in accordance with this title. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements. The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of ground water. The site plan shall also depict any evidence of surface water or storm water runoff;
2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s) is present on the subject site.

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professional's conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;
4. A description of load intensity including surface water and ground water conditions, public and private sewage disposal systems, fills and excavations and all structural development;
5. An assessment describing the extent and type of vegetative cover to include tree attitude;
6. For potential landslide hazards: estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the city;
7. Additional site assessment standards may be required if necessary to demonstrate compliance with this chapter.

C. Site Assessment Conclusions.

1. Where the qualified professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off site, no additional site assessments shall be required prior to approval under the provisions of this chapter. The qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel.
2. Properties containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Essential public facilities shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in geologically hazardous areas or their buffers that cannot be fully mitigated. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.330 Geologically hazardous area mitigation standards.

The mitigation plan shall be prepared by a professional engineer or geologist under supervision of a professional engineer and include a discussion on how the project has been designed to avoid and minimize the impacts. The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis required under this title. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the city and be implemented as a condition of project approval.

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards shall be included as components of a mitigation plan pursuant to the requirements of this title, site assessment report. Other mitigation standards, other than those listed below, may be required depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan prepared in accordance with the requirements of this title, surface water management, as amended.
2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water in accordance with the requirements of this title, surface water management, as amended.
3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the International Building Code.

4. Critical facilities shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas.)

5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.

6. All infiltration systems such as storm water detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.

7. Vegetation Removal and Replanting. Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.

8. A minimum buffer with a width of 30 feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the director that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the community development director for development adjacent to a ravine which is designated as unstable on the Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most current edition) or where a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds 30 feet). Normal nondestructive pruning and trimming of vegetation for maintenance purposes, or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.

9. Seismic Hazard Areas. Structural development proposals shall meet all applicable provisions of the International Building Code.

The city shall evaluate documentation submitted including the site assessment report, and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the Buffer and/or Geologically Hazardous Area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and
2. A site assessment report is submitted and certifies that:
 - a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified or the development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area;
 - b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;
 - c. The development will not decrease slope stability on adjacent properties; and

- d. Such alterations will not adversely impact other critical areas.

C. Noncompliance and Failed Mitigation Plans.

1. Projects found to be in noncompliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter.
2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.
3. Mitigation Plan Certification. Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the director. (Ord. 1853 § 2 (Exh. B), 2018).

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

14.15.350 Fish and wildlife habitat conservation area designations.

A. Fish and wildlife habitat conservation areas (HCAs) shall be designated and classified as provided for in the definition section of this chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.

B. In addition to the HCAs, additional species and habitats of local importance may be designated by the community development director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

C. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

1. Demonstrate a need for special consideration based on:
 - a. Declining population,
 - b. Sensitivity to habitat manipulation, or
 - c. Commercial or game value or other special value, such as public appeal.
2. Propose relevant management strategies considered effective and within the scope of this chapter; and
3. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the community development director and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other county and state agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing will be held for proposals found to be complete, accurate, and potentially effective and within the scope of this chapter. Approved nominations will become designated "Habitats/Species of Local Importance" and will be subject to the provisions of this chapter.

D. The following species and habitats have been designated on a site-specific basis according to the official Species and Habitats of Local Significance Map:

1. Great blue heron nest sites;
2. Vaux's swifts communal roosts;
3. Pileated woodpecker nest sites;
4. Osprey nest sites;

5. Townsend big-eared bat communal roosts;
6. Cavity nesting ducks breeding areas;
7. Trumpeter swan concentrations;
8. Harlequin duck breeding areas;
9. Waterfowl concentrations. ~~(Ord. 1853 § 2 (Exh. B), 2018);~~

10. Special Management Areas.

14.15.360 Fish and wildlife habitat conservation areas initial project review.

A. A site visit shall be conducted to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAa not previously identified are present within 3200 feet of the project or activity site.

B. Habitat conservation areas are designated by definition in this title and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;
2. A water of the state as defined under WAC 222-16-030;
3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;
4. Designated species and habitats of local importance including, but not limited to the Gages Slough, Burlington Hill, and Skagit River Corridor special management areas;
5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
6. Lakes, ponds, streams, and rivers planted with game fish by a government or tribal entity;
7. Areas with which anadromous fish species have a primary association; and
8. State Natural Arm Preserves and Natural Resource Conservation Areas.

C. If the director determines through the site visit described in subsection (A) of this section that a fish and wildlife habitat conservation area (HCA) may be present within 300 feet of the proposed project or activity area, then a site assessment/habitat management plan shall be required as part of the complete application. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.370 Fish and wildlife habitat conservation area site assessment requirements.

Site assessment/habitat management plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include, at a minimum, the following requirements:

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within 300 feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the administrative officer, surface and subsurface hydrologic analysis;

C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the fish and wildlife habitat conservation areas;

Commented [BJ15]: BJ – 10-24-2022 – added to implement revised comp plan (natural resources element) and critical areas report adopted by PC and CC.

D. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;

E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include but are not limited to: establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat area, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;

F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule;

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.380 Fish and wildlife habitat conservation area mitigation standards.

Fish and wildlife habitat conservation areas shall be protected in accordance with local determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include but not be limited to the Washington State Department of Fish and Wildlife (WDFW), Department of Ecology, federally recognized Indian tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and be made in consultation with the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources and federally recognized Indian tribes located in Skagit County. If it is determined that a proposed project may have an adverse effect on a fish and wildlife habitat conservation area, the applicant shall implement a habitat management plan including mitigation measures in conformity with the performance standards outlined below.

A. Riparian Performance Standards. Riparian buffer areas shall be established from the ordinary high water mark. The intent of riparian buffers is to protect five basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:

1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.
2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.
3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.
4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.
5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Buffers. Riparian areas have the following standard buffer requirements (Note: Riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees unless specifically exempt from Federal Vegetation Management requirements):

Water Type	Riparian Buffer
Type 1 and	200 feet

Water Type	Riparian Buffer
2 "S"	
Type 3 "F"	100 feet
Type 4 "Np" and " Ns " S	50 feet

Once buffers are established, they shall not be altered except as allowed below. Riparian buffers not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this chapter. In implementing buffer widths other than the standard riparian buffers identified above, the director shall provide opportunity for review and comment from appropriate federal, state or tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such nonstandard buffers.

1. Increasing Buffer Widths. The city may increase the standard buffer widths on a case-by-case basis, or to establish nonriparian buffer widths, when such buffers are necessary to protect priority fish or wildlife (e.g., great blue heron nesting colonies, osprey or cavity nesting ducks) using the HCA. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.
2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed only if the applicant demonstrates that all of the following criteria are met:
 - a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and
 - b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and
 - c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and
 - d. The buffer width shall not be reduced below ~~50-25~~ percent of the standard buffer width unless no other ~~reasonable alternative~~ feasible options exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the city.

C. Allowed Uses in HCAs or Buffers.

1. Docks. Docks designed to facilitate low-impact uses, such as education and/or private, noncommercial recreation may be permitted within fish and wildlife HCAs under the following conditions:
 - a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;
 - b. The activity will not significantly degrade surface water or ground water;
 - c. The intrusion into the fish and wildlife habitat conservation area and its buffers is fully mitigated; and
 - d. An opportunity for review and comment by federal, state and tribal natural resource agencies shall be provided.
2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer; provided, that all of the following are satisfied:

- a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;
- b. The access is limited to the minimum necessary to accomplish the recreational function;
- c. The access and the balance of the development is consistent with other requirements of the Burlington Municipal Code and the Burlington shoreline master program; and
- d. The proponent obtains a written approval from the city council for the limited access and associated mitigation.

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer's recovery to at least prealtered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water ~~dispersion outfalls and bioswales, management facilities such as grass-lined swales.~~

4. In the riparian buffer, removal of hazardous ~~that pose a threat to existing structures as determined by a certified arborist, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, chapter 76.09 RCW, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures~~ may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The community development director may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the director.

~~Performance-Based Riparian Standards²⁸~~

~~(These standards must be exceeded before additional activity can be permitted within the riparian zone)~~

~~Watertype Performance standards~~

~~Type 1 & 2~~

~~(Fish Bearing)~~

~~Maintain 95 percent of total LWD recruitment expected to enter the stream from a mature stand; and~~

~~Maintain 85 percent of the trees which are greater than 24 inch DBH within 100 feet of stream; and~~

~~Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge)~~

~~The applicant may further request some limited timber harvest of up to 30 percent of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:~~

- ~~a. Does not reduce the LWD and canopy requirements; and~~
- ~~b. The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50 percent of the total number of trees with 25 percent of the total trees left having a diameter at breast height (DBH — 4 1/2 feet) greater than 12 inches; and~~
- ~~c. No more than 50 percent of the dominant trees in the outer 100 feet may be harvested.~~

Type 3

(Fish Bearing)

Maintain 85 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 18 inch DBH within 100 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

Type 4 & 5

(Non fish Bearing)

Maintain 50 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 24 inch DBH within 50 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

~~*Note: Applicants electing to employ performance-based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.~~

Commented [BJ16]: BJ – 10-24-2022 – code copied years ago from Skagit county – this is not a program the city uses.

D. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292); a cooperative habitat management plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.

E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in this title, referencing increasing buffer widths. If the wetland buffer widths, standard buffer widths conflict with this section, the buffer widths providing the greatest protection shall apply.

F. All other fish and wildlife habitat conservation area, including habitats/species of local significance, shall be protected on a case-by-case basis by means of a habitat management plan based on the PHS program, initial project review and site assessment/habitat management plan.

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

FREQUENTLY FLOODED AREAS

14.15.390 General.

A. Purpose and Intent. The purpose of this section is to promote the public health, safety, and general welfare, and to protect the ecological functions of floodplains and riparian areas by managing, restricting, and regulating development in areas of the city designated as floodplains and in other areas which are important to maintaining the ecological and hydrologic functions of floodplains. Specifically, this section is intended to accomplish the following objectives:

1. Protect human life, health and property from the dangers of flooding;
2. Minimize the need for publicly funded and hazardous rescue efforts to save those who are isolated by floodwaters;
3. Minimize expenditure of public money for costly flood damage repair and flood control projects;
4. Minimize disruption of commerce and governmental services;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in the floodplain;

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

6. Maintain a stable tax base by providing for the sound use of floodprone areas so as to minimize future flood blight areas;
7. Encourage that those who occupy areas subject to flooding and channel migration assume responsibility for their actions;
8. Ensure the city's residents and property owners can obtain flood insurance through participation in the National Flood Insurance Program;
9. Maintain or improve the quality, availability, and ecological functions of rivers, streams, lakes, wetlands, ground water, estuaries, and other water resources;
10. Retain the natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species;
11. Prevent or minimize loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels.

B. Applicability. Except as explicitly exempt, this chapter shall apply to all development as follows:

1. Floodplain Management Areas. This chapter shall apply to all areas mapped as or meeting the definition of a floodplain management area.
2. Other Areas. For areas outside of, or not otherwise meeting the definition of, a floodplain management area, all new buildings, and substantial improvements to existing buildings, shall comply with the requirements of BMC 14.15.430 (Construction standards). (Ord. 1903 § 2 (Exh. A), 2021).

14.15.400 Designation and mapping.

A. Designation. The following areas and features are designated as floodplain management areas:

1. Flood hazard area. The flood hazard area, or floodplain, is the land subject to inundation by the base flood. Flood hazard areas are designated on flood insurance rate maps with the letters "A" or "V" including AE, AO, AH, A1-99, and VE.
2. Protected area. Includes lands that lie within the boundaries of a floodway, riparian habitat zone, or channel migration area.
3. Riparian habitat zone. The water body, and adjacent land areas, likely to support aquatic and riparian habitat. For purposes of administering this section, the riparian habitat zone shall be any water body capable of being classified as a type "S," "F," "Np," or "Ns" water body, together with its associated riparian buffer, as described in this chapter.
4. Floodway. Within the city of Burlington the floodway consists of the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.
5. Channel migration zone. Within the city of Burlington the channel zone shall be limited to the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.
6. Special flood risk zone. The special flood risk zone includes the following floodplain areas:
 - a. Gages Slough, including wetlands and deep water habitat areas; or
 - b. Areas with a ground elevation three feet or more below the base flood elevation that are hydraulically connected to Gages Slough through a channel, watercourse, or other topographical feature that provides a continuous path capable of conveying floodwaters with an elevation three feet or more below the base flood elevation; or

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

c. Areas within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

7. Other areas. Other areas may be designated as floodplain management areas if the director determines, based on credible evidence, they are at equivalent risk of flooding to mapped floodplain areas. In making such determinations the director shall consider elevation, survey, or hydrologic data affecting the potential of the area for flooding. Only information prepared by a licensed surveyor, or engineer, or otherwise meeting the criteria for best available science in chapter 365-195 WAC shall be considered.

B. Mapping. The director shall be responsible for maintaining the city's floodplain maps and data. The following maps, data sources, and procedures shall be used to identify floodplains and floodplain management areas:

1. Valid, adopted, and up-to-date flood insurance rate maps (FIRM). Presently the following maps provide information on the city of Burlington:

- a. The flood insurance rate map (FIRM) for the city of Burlington dated January 3, 1985, and identified by community panel number 530153 0001 B;
- b. The flood insurance rate map (FIRM) for Skagit County dated January 3, 1985, and identified by community panel number 530151 0250 C;
- c. The flood insurance rate map (FIRM) for Skagit County dated September 29, 1989, and identified by community panel number 530151 0235 D.

2. Any other valid, adopted, and up-to-date FIRM depicting areas within the city of Burlington may be used for purposes of complying with this chapter.

3. The flood insurance study (FIS) for the city of Burlington, Washington, Skagit County, dated July 3, 1984, and the flood insurance study for Skagit County, Washington Unincorporated Areas dated September 29, 1989. In the event an updated FIS depicting areas within the city of Burlington is adopted it may be used for purposes of complying with this chapter.

4. The director shall make interpretations where needed as to the exact location and boundaries of the floodplain management area and floodplain. Interpretations may be necessary where there appears to be a conflict between the mapped location of the floodplain management area or floodplain, and the actual field conditions based on ground elevations or base flood elevations.

5. Any approved FEMA "letter of map amendment" or "letter of map revision."

6. The base flood elevation for floodplain areas within the city of Burlington delineated as a "zone AH" or "zone AO" shall be the corresponding elevation (or depth) identified on the applicable FIRM. Where base flood depths are not available for areas identified as a "zone AO" the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

7. The flood protection elevation (FPE) shall be determined as follows:

- a. New structures and developments and substantial improvements to existing structures or developments: base flood elevation plus one foot of additional elevation;
- b. New critical facilities and substantial improvements to existing structures or developments: base flood elevation plus three feet of additional elevation.

8. The floodways shall be delineated as shown on the applicable FIRM. In all cases the floodway shall, at a minimum, include the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.

9. Where base flood elevation and floodway data have not been provided in floodplain areas, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or

state agency, or, in the absence of information from a federal or state agency, another relevant source provided such information is consistent with the criteria for best available science in chapter 365-195 WAC.

C. New Regulatory Data and Map Revisions.

1. All requests to revise or change floodplain mapping or hazard data, including requests for a letter of map revision and a conditional letter of map revision, shall be subject to the following:
 - a. Community acknowledgment forms shall not be signed for requests based on filling or other development, unless the filling or development was conducted in full compliance with the requirements of this chapter and all other applicable regulatory requirements;
 - b. Requests to revise or change a floodway delineation shall not be approved until FEMA has issued a conditional letter of map revision approving the change.
2. Site-specific base flood elevation data shall be generated for subdivision proposals involving more than 50 lots or five acres, whichever is less, if no applicable base flood elevation data or mapping is available.
3. If areas are added to the city of Burlington through annexation that are adjacent to the Skagit River, and if such areas do not meet the definition of a disconnected migration area as defined in WAC 173-26-221(3)(b), the floodway associated such areas shall include the Skagit River and one-half the mapped floodplain at any point.
4. All new hydrologic and hydraulic flood studies conducted pursuant to this section shall consider future conditions and the cumulative effects from anticipated land use changes in accordance with Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region 10, 2012.
5. In weighing conflicting official information sources regarding channel migration zones, floodways, future flood conditions, and the location of riparian habitat areas, the most restrictive data available at the time the decision is rendered shall be used.

D. All floodplain mapping, data, studies, regulations, and other information shall be maintained by the community development director and shall be available during regular city business hours, 833 South Spruce Street. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.410 Flood development permits.

A. Permit Required. Unless explicitly identified as exempt, a flood development permit shall be required for all development in a floodplain management area. An exemption from having to obtain a permit shall not be construed as an exemption from other applicable requirements. All development in a floodplain management area shall be subject to the requirements of this chapter unless explicitly exempt.

B. Exempt Development. The following development shall not require a flood development permit:

1. Routine maintenance of landscaping that does not involve grading, excavation, or filling;
2. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation;
3. Normal maintenance of structures, such as re-roofing and replacing siding, provided such work does not qualify as a substantial improvement;
4. Normal maintenance of above-ground utilities and facilities, such as replacing downed power lines and utility poles;
5. Normal street and road maintenance, including filling potholes, repaving, installing signs and traffic and traffic lights, but not including the expansion of existing paved areas;

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

6. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility are allowed in the regulatory floodplain without need for a floodplain development permit. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor;

7. Plowing and other normal farm practices (other than structures or filling) on farms in the floodplain management areas and in existence as of the effective date of the ordinance codified in this chapter do not require a floodplain development permit. Clearing additional land for agriculture after the date of the ordinance codified in this chapter will require a flood plain development permit; and

8. The placement or storage of a recreational vehicle on a lot or site for less than 180 days provided:

a. Recreational vehicles shall be used only for travel and recreational purposes. Recreational vehicles shall not be used as a dwelling unit or a place of permanent habitation and shall under no circumstances be occupied for periods of 30 days or more;

b. All recreational vehicles shall be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.

C. Application Requirements. Applications for flood development permits shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with this chapter and BMC Title 14A. A complete application shall, at a minimum, include:

1. One or more site plans, drawn to scale, showing:

a. The location, boundaries, dimensions, and elevations of the development site;

b. Names and location of all lakes, water bodies, watercourses, wetlands, rivers and drainage facilities within 300 feet of the development site;

c. The elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available;

d. The boundaries of the floodplain, special flood risk area, floodway, riparian habitat zone, and channel migration area;

e. The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities, and roads;

f. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;

g. All wetlands;

h. Designated fish and wildlife habitat conservation areas, and habitat areas identified for conservation or protection under state or federal or local laws or regulations (e.g., Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Growth Management Act, Shorelines Management Act, Priority Habitat and Species List);

i. Existing native vegetation, significant trees, and any proposed revegetation, planting, or mitigation areas.

2. If the development involves grading, excavation, or filling, the site plan shall include post-development elevation contours at one-foot intervals.

3. If the proposed development involves a new structure, substantial improvement to an existing structure, or repairs to a substantially damaged structure that will be elevated, the application shall include site elevation

data and the following additional elevations. All elevation data shall be provided in relation to mean sea level and shall be prepared using the datum and methods prescribed by FEMA. Elevation data shall be submitted on an approved elevation certificate form consistent with the requirements of this chapter.

- a. The top of bottom floor (including basement, crawlspace, or enclosure floor).
- b. The lowest elevation of any machinery, equipment, mechanical equipment, or HVAC systems servicing the structure.

4. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry floodproofed, the application shall include the FPE for the building site and the elevation to which the structure will be dry floodproofed. A certification prepared by a registered professional engineer or licensed architect shall be submitted and shall document that the dry floodproofing methods employed are consistent with the floodproofing criteria and requirements in this chapter.

5. The proposed project must be designed and located so that new structural flood protection is not needed.

6. The application shall include a description of the extent to which a stream, lake, watercourse, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development.

7. The application shall include documentation that the applicant will apply for all necessary permits required by federal, state, or local law. The application shall include written acknowledgment that the applicant understands that the final inspection or certificate of occupancy will be issued only if the applicant provides copies of the required federal, state, and local permits or letters stating that a permit is not required. The floodplain permit is not valid if those other permits and approvals are not obtained prior to any ground-disturbing work or structural improvements.

8. The application shall include acknowledgment by the applicant that representatives of any federal, state or local unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

9. Any other information requested by the director necessary to demonstrate compliance with the requirements of this chapter, other Burlington Municipal Code requirements, or any other applicable state or federal regulatory requirements.

D. Approval Criteria. Flood development permits shall be subject to the approval criteria and development regulations identified in this section. The city shall have the authority to condition floodplain permits in order to ensure full compliance with this section and to ensure all development is reasonable safe from flooding. No permit shall be issued or approved unless the proposal is consistent with the following requirements.

E. Review Process. Unless otherwise stated in this section, flood development permits shall be processed in accordance with the review procedures prescribed in BMC Title 14A.

F. Appeals. Flood development permit decisions may be appealed in accordance with the procedures prescribed in BMC Title 14A.

G. Time Limits. Flood development permits shall be subject to the following time limits:

1. Flood development permits associated with a building or grading permit shall be subject to the time limit and expiration date applicable to the building or grading permit.
2. Flood development permits associated with a land use permit or platting decision shall be subject to the time limit and expiration date applicable to the land use permit or platting decision.
3. For flood development permits not associated with another permit type, the development authorized by the permit shall begin within 180 days and all development shall be completed within two years. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.420 Development regulations.

A. Applicability.

1. Flood development permit applications shall be subject to compliance with the floodplain development regulations in this section unless:
 - a. All of the proposed development is outside the protected area; and
 - b. All of the proposed development is higher than the flood protection elevation.
2. If, based on the criteria above, a proposed development is exempt from compliance with the flood development regulations, written findings establishing why the development is exempt shall be included in the project file and the applicant shall be informed that the development may still be subject to flood insurance purchase requirements unless a letter of map amendment is approved by FEMA.

B. General Regulations.

1. All utilities providing services such as sanitary sewer, gas, electricity, and potable water shall located, designed, and constructed to prevent or minimize flood damage;
2. New development requiring potable water shall be connected to a public water supply system;
3. Private water systems and wells shall not be used as a source of potable water for new development. All wells within the floodplain management area shall be subject to the following:
 - a. Wells shall be located outside the floodway; and
 - ~~b. Wells shall be designed and constructed to prevent floodwaters from entering the well; and~~
 - c. Wells and associated water system components shall be protected to the flood ~~protection~~proof elevation to prevent floodwaters from entering the well;
4. New development that generates, or has the potential to generate, wastewater shall be connected to the municipal sewer system. New on-site waste disposal systems are prohibited in the floodplain;
5. Development shall not create a threat to public health, safety, or negatively affect water quality;
6. No construction, development, or substantial improvements shall be permitted if the cumulative floodwater displacement effect of the proposed development, combined with all other existing and proposed development, would cause the base flood elevation to increase by more than one foot at any location in the city. A displacement analysis, prepared by a licensed engineer, demonstrating compliance with this provision shall be submitted for any construction, development, or substantial improvement in flood zones A1-30 and AE.

C. Land Division. The following development regulations shall apply to all land divisions including short plats, subdivisions, and binding site plans:

1. Land divisions shall employ site design, engineering, or construction practices to minimize flood damage.
2. Applications for preliminary subdivision or binding site plan approval shall include a habitat assessment and mitigation plan consistent with the requirements of this chapter.
3. The layout and development density of proposed subdivisions and binding site plans must be consistent with the restrictions and mitigation measures identified in the habitat assessment and mitigation plan. The cluster development provisions identified in BMC Titles 16 and 17 shall be used when necessary to mitigate impacts to floodplain ecology and hydrology.

4. All final plats, short plats, and binding site plans shall include a note stating that the plat contains property within a floodplain management area. Notes shall also be included identifying any restrictions placed on the use or development of lots within the plat or BSP.

5. Stormwater management and drainage systems shall be provided consistent with the requirements of BMC Title 14 and shall incorporate LID measures in accordance with the requirements of BMC Titles 16 and 17.

6. For land divisions involving five acres or more or the creation of 50 or more lots site specific base flood elevation data shall be generated if base flood elevation data for the development site is not available from an authorized source.

Commented [BJ17]: BJ – 10-24-2022 – DOE requirement

D. Riparian Habitat Zone. The following regulations shall apply to all development in a riparian habitat zone or within 300 feet of a stream or river:

1. All development in the riparian habitat zone shall comply with the standards and regulations set forth in this chapter for fish and wildlife habitat conservation areas.

2. The site plan shall depict the location of the stream or river and the extent of the associated riparian buffer.

E. Site Design. The following site design regulations shall apply to all development on existing lots:

1. Structures and other development shall be located to avoid flood damage.

2. If a lot has a buildable area outside of the floodplain management area, all new structures shall be located in that area to the maximum extent possible.

3. If a lot does not have a buildable area outside of the regulatory floodplain, all new structures, pavement, and other development must be sited in the location that has the least impact on habitat by locating the structures as far from the water body as possible or placing the structures on the highest land on the lot.

4. A minimum setback of 15 feet from the protected area shall be required for all structures.

5. Unless the development is explicitly exempt from habitat assessment and mitigation requirements a habitat impact assessment, and if necessary a mitigation plan, shall be prepared in accordance with the requirements of this chapter.

6. All new development shall be designed and located to minimize the impact on flood flows, flood storage, water quality, and habitat.

7. Stormwater and drainage features shall incorporate low impact development techniques in accordance with the requirements of BMC Title 17.

8. If the development will create new impervious surfaces so that more than 10 percent of the portion of the lot in the regulatory floodplain is covered by impervious surface, the applicant shall demonstrate that there will be no net increase in the rate and volume of the stormwater surface runoff that leaves the site or that the adverse impact is mitigated, as required by this chapter.

9. The site plan shall account for surface drainage to ensure that:

a. Existing and new buildings on the site will be protected from stormwater runoff; and

b. The project will not divert or increase surface water runoff onto neighboring properties.

F. Hazardous Materials. These regulations shall apply to all development involving the storage, handling, disposal, processing, or production of hazardous materials.

G. Critical Facilities.

1. New critical facilities shall not be located in a floodplain management area unless:
 - a. No feasible site exists outside the floodplain management area; or
 - b. The critical facility is necessary to provide flood protection or drainage services.
2. If no feasible site exists outside the floodplain management area, than critical facilities may be established within the floodplain management area subject to the following:
 - a. Critical facilities shall have the lowest floor elevated four feet above the base flood elevation or to the height of the 500-year flood, whichever is higher. If no applicable 500-year flood data exists, information shall be developed by a qualified professional in accordance with FEMA mapping guidelines and included with the permit application.
 - b. Access to and from the critical facility shall be protected to the elevation of the 500-year flood to the extent feasible.

H. Floodway Development. The following regulations shall apply to all development in the floodway:

1. All development shall be prohibited in the floodway except as follows:
 - a. Utility outfall structures authorized by the Corps of Engineers; and
 - b. The construction and maintenance of dikes and levees for flood control purposes; and
 - c. Bridges and other river crossings for transportation or utility purposes as minimally necessary for purposes of permitting an essential public facility; and
 - d. Development which is explicitly exempt from floodplain development permit requirements by BMC 14.15.410.

2. The following information shall be included with any application for a permit for development in the floodway ~~All information shall be prepared by a licensed engineer;~~

a. A thorough hydraulic and hydrologic analysis prepared by a licensed engineer, in accordance with standard engineering practices, that the proposed development will not result in any increase in flood levels during the occurrence of the base flood discharge; and

~~b. A projection of anticipated changes to hydraulic and hydrologic conditions over the life of development. The required analysis shall be based on the best available science and shall address changes attributable to climate change and projected floodplain development. For the purpose of interpreting these requirements the term "life of the development" shall mean a period of at least 100 years;~~

~~c. An analysis of any impacts to flood protection structures such as dikes, levees, and outfalls;~~

~~d. An analysis of potential upstream and downstream flooding impacts;~~

~~e. Plans prepared by a licensed engineer for the structure or development in accordance with the hydraulic and hydrologic analysis required above;~~

~~f. any other information requested by the Director in order to demonstrate compliance with this Chapter and ensure the development is reasonably safe from flooding;~~

3. Approval criteria. Floodway development shall not result in any increase in flood levels during the occurrence of the base flood discharge. In addition above ground structures in the floodway shall be subject to the following:

a. The lowest horizontal element shall be three feet or more above the base flood elevation or the base flood elevation projected for the life of the development, whichever is greater;

b. The development shall not compromise flood protection improvements such as dikes and levees;

c. The structure shall allow for the unimpeded passage of floodwater and debris flows;

d. The structure shall be designed and constructed to minimize the number of vertical supports and fill placed in the floodway.

I. Alteration of Watercourses. Developments involving the alteration or relocation of a watercourse shall be subject to the following regulations:

1. The following documentation shall be provided with the flood development permit application:
 - a. A letter from FEMA stating that the proposed development does not require a conditional letter of map amendment; or
 - b. An approved conditional letter of map amendment.
2. If an approved conditional letter of map amendment is provided, any conditions, restrictions, or mitigation measures identified in the letter shall be included as conditions in the approved flood development permit.
3. Notification shall be provided to adjacent communities and the Department of Ecology prior to approving development, and shall submit evidence of such notification to FEMA.
4. Maintenance shall be provided within the portion of the watercourse that is altered or relocated so that the flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system shall be oversized at the time of construction to compensate for vegetation growth or any other natural factors that may necessitate future maintenance.

J. Development in the Special Flood Risk Zone. Development in the special flood risk zone shall be subject to the following regulations:

1. Development other than the following is prohibited in the special flood risk zone; provided, that nothing in this section shall be construed as authorizing construction or fill in wetlands:
 - a. Minor structures and additions for which a building permit is not required and which create no new residences;
 - b. Minor fills and excavations of less than 12 cubic yards or which will not raise the level of land above that of the surrounding area;
 - c. Normal maintenance, resurfacing and rebuilding at comparable grade of bridges, streets and access ways;
 - d. Underground improvements;
 - e. Maintenance, repair, alteration and like replacement of existing improvements;
 - f. Other minor development which causes no significant impoundment or displacement of floodwaters, such as signs and small unenclosed structures;
 - g. Elevated structures which allow floodwaters to flow underneath and which meet the following criteria:
 - i. All structures shall be elevated so that the lowest supporting member is located no lower than one foot above the 100-year flood elevation, with all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided below.

Commented [BJ18]: BJ – 10-24-2022 – added to ensure adequate review of bridge and other obstruction in the Skagit River. Projects of such magnitude and with such life spans should be subject to additional levels of review to ensure flood protection improvements aren't compromised and the structure don't put the city, or county residents at risk.

- ii. Solid walls are prohibited below the base flood elevation to keep the area free of obstruction unless they are designed to break away. A breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot.
 - iii. All structures shall be securely anchored on piling, columns, or foundation walls oriented to the axis of the flow path. Said support elements shall be certified by a registered professional engineer or architect as capable of withstanding all applied loads of the 100-year flood flow.
 - iv. There shall be no fill used for structural support.
2. Regardless of method of construction, operation, development, substantial improvement, or expansion of residential health care facilities is prohibited in the special flood risk zone.
3. New multifamily residential structures are prohibited in the special flood risk zone.
4. Land divisions, including short plats, subdivisions, and binding site plans, shall be subject to the following:
- a. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot, or restricting the use of the lot to flood control structures and improvements; and
 - b. Land within a floodway or special flood risk zone shall be placed within a separate tract or easement if required by BMC 14.15.200(B) and BMC Title 16.
5. New structures shall not be located within a special flood risk zone but yards and other nonstructural improvements that fully comply with all other applicable requirements identified in this chapter may extend into a special flood risk zone.
6. New structures shall be located so that the proposed project will not affect the hydrologic or hydraulic characteristics of a flooding source and must be certified by a registered professional engineer.
7. Proposed structures with an estimated value greater than \$250,000 shall be subject to the following:
- a. The proposed structure shall not have a significant adverse impact on flood hazards; and
 - b. There are no other physically feasible alternatives available.
8. Development for which a floodplain permit is required shall not be permitted riverward of a dike or levee or within 100 feet of the landward toe of a dike or levee except as follows:
- a. Improvements to dikes, levees, and flood control improvements; and
 - b. Interim uses involving no fill, asphalt, stockpiling of material, or permanent structures; and
 - c. Utility outfall structures authorized by the Corps of Engineers; and
 - d. The construction and maintenance of dikes and levees for flood control purposes; and
 - e. Bridges and other river crossings for transportation or utility purposes as minimally necessary for purposes of permitting an essential public facility.
 - f. Prior to authorizing any development riverward of a dike or levee or within 100 feet of the landward toe of a dike or levee the city shall consult with the dike district and shall incorporate conditions as necessary to protect the structural integrity of dikes, levees, and other flood control improvements and as necessary to permit emergency flood fighting efforts. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.430 Construction standards.

A. General. The following development activities shall be subject to the floodplain construction standards in this section:

1. Construction or placement of a new structure;
2. Reconstruction, rehabilitation, or other improvements that meet the definition of a “substantial improvement”;
3. Repairs to an existing building that has been substantially damaged;
4. Placing a manufactured home on a lot or site;
5. Placing a recreational vehicle or travel trailer on a lot or site for more than 180 days.

B. Residential Construction.

1. All new structures and substantial improvements shall have the lowest floor, including basement, elevated at or above the FPE.
2. The structure shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
3. All materials below the FPE shall be resistant to flood damage and firmly anchored to prevent flotation. Materials harmful to aquatic wildlife, such as creosote, are prohibited below the FPE.
4. Electrical, heating, ventilation, duct work, plumbing, and air-conditioning equipment and other service facilities shall be elevated above the FPE. Water, sewage, electrical, and other utility lines below the FPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding.
5. Fully enclosed areas below the lowest floor that are subject to flooding, including garages attached to residential structures where the floor slab is below the base flood elevation, shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the criteria below:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.
6. In zones V, V1-30 and VE, new structures and substantial improvements shall be elevated on pilings or columns so that:
 - a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated above the FPE.
 - b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
 - c. The areas below the lowest floor that are subject to flooding shall be free of obstruction.
 - d. The structure or improvement shall be located landward of the reach of mean high tide.

- e. The use of fill for structural support of a structure or addition is prohibited.
- f. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting these provisions.

C. Nonresidential Construction.

1. The structure shall not located in zones V, V1-30, or VE;
2. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated at or above the flood protection elevation, or the elevation required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or be installed at or above the flood protection elevation or the elevation required by ASCE 24, whichever is greater;
3. Fully enclosed areas below the lowest floor that are subject to flooding shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the criteria below:
 - a. A minimum of two openings with a total net area of at least one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;
4. As an alternative to the elevation and venting requirements identified in subsections (C)(2) and (3) of this section, new construction and substantial improvements may be dry floodproofed in accordance with the following standards:
 - a. All portions of the structure below the flood protection elevation, or the elevation required by ASCE 24, whichever is greater, shall be dry floodproofed with watertight walls substantially impermeable to the passage of water;
 - b. The structural components shall be capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. A registered professional engineer or licensed architect shall stamp the building plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans; and
 - d. A permit condition shall be included notifying the permit applicant that flood insurance premiums be determined based on an elevation that is one foot below the floodproofed elevation. For example, if the dry floodproofed elevation is one foot above the base flood elevation, flood insurance rates will be assessed as if the building is located at the base flood elevation; and
5. Mechanical equipment, HVAC systems, and utilities shall either be installed at or above the flood protection elevation, waterproofed, or located in an area that has been dry floodproofed in accordance with the requirements of this chapter.

D. Manufactured Homes. The placement of manufactured homes on a site or lot, substantial improvements to existing manufactured homes shall be subject to the following regulations:

1. A permanent foundation shall be provided; and

2. The foundation shall be elevated in accordance with the requirements of this section; and

3. The manufactured home shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to other applicable anchoring requirements for resisting wind forces.

4. Only manufactured homes meeting the definition of a “manufactured home” in BMC Title 17 shall be used as a dwelling unit or a place of permanent habitation. Recreational vehicles shall not be used as a dwelling unit or a place of permanent habitation.

E. Crawlspace. Buildings utilizing crawlspace construction, where any portion of the crawlspace is below the grade on all sides, shall meet the following requirements:

1. Crawlspace construction is not permitted in the V zones;

2. Crawlspace construction is not permitted in zones AO and A1-A30 where floodwater velocities could exceed five feet per second, unless it can be shown through an engineering analysis that the structural components will resist flotation, collapse, and lateral movement from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

3. The interior grade of the crawlspace shall not be more than two feet below the lowest adjacent grade;

4. The height of the crawlspace, measured from the interior grade of the crawlspace to the top of the foundation wall, shall not exceed four feet at any point and the height, measured from the crawlspace grade to the top of the next highest floor, shall not exceed five feet at any point;

5. An adequate drainage system shall be provided to remove floodwaters from the crawlspace in a reasonable amount of time after a flood event.

F. Accessory Structures. Accessory structures shall comply with all of the requirements in this section, except that accessory structures shall be exempt from elevation requirements provided they are:

1. Used only for parking or storage; and

2. Constructed and placed on the site or lot so as to offer minimum resistance to the flow of floodwaters; and

3. Anchored to prevent flotation which may result in damage to other structures; and

4. Constructed of flood-resistant materials below the flood protection elevation.

G. Certificate of Occupancy. No final inspection or occupancy shall be approved unless all of the following requirements have been met:

1. An elevation or floodproofing certificate, consistent with the requirements of this chapter, shall be submitted;

2. For projects subject to floodplain habitat mitigation plan requirements, all of the required mitigation activities and work identified in the mitigation plan shall be completed and inspected;

3. Copies of all other required federal, state, and local permits shall be submitted;

4. The project fully complies with the requirements of this chapter. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.431 Habitat impacts and mitigation.

A. Applicability. A habitat assessment, and if necessary a mitigation plan, shall be provided with all applications for a flood development permit unless the development activity is explicitly identified as being exempt below.

B. Exempt Development. The following development activities shall be exempt from the habitat assessment and mitigation requirements of this section:

1. Repairing or remodeling an existing structure provided the work does not constitute a substantial improvement or a repair to substantial damage.
2. Additions to existing structures provided the addition or expansion does not increase the footprint of the structure by more than 10 percent, or constitute a substantial improvement. For purposes of determining compliance with this requirement, measurements shall be counted cumulatively from the effective date of the ordinance codified in this chapter or September 22, 2011, whichever is earlier. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow.
3. Development undertaken for the sole purpose of creating, restoring or enhancing the natural functions of floodplains, streams, watercourses, fish and wildlife habitat, and riparian areas; provided, that:
 - a. The project complies with all other applicable federal, state, and local permit requirements and regulations;
 - b. The development activities do not include the placement of fill or the creation of additional impervious surface areas.
4. Development of open space and recreational facilities, such as parks, trails, and play fields, that do not include structures, fill, impervious surfaces or the removal of more than five percent of the native vegetation within the floodplain management area.
5. Other development activities consistent with all of the following:
 - a. Native vegetation within the riparian habitat zone shall not be removed; and
 - b. Native vegetation removal outside of the riparian habitat zone does not exceed 35 percent of the surface area of the portion of the site within the floodplain management area. If the site contains a riparian habitat zone, the vegetation within the riparian habitat zone may be counted towards this requirement; and
 - c. The development does not involve the storage, handling, processing, disposal, transport, or production of significant quantities of chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, or other materials that are hazardous, toxic, or a threat to water quality; and
 - d. The development is not riverward of a dike or levee; and
 - e. The development does not reduce the effective flood storage volume of the floodplain management area, or the development provides compensatory storage consistent with all of the following:
 - i. The compensatory storage is provided at an equivalent volume and at equivalent elevations to the flood storage capacity being displaced. For purposes of interpreting this requirement “equivalent elevation” shall mean an elevation with a similar relationship to the ordinary high water and the best available 15-, 50-, and 100-year flood surface water profiles; and
 - ii. The compensatory storage is hydraulically connected to the source of flooding; and
 - iii. Flood development permit applications for projects involving compensatory mitigation shall include grading plans and calculations prepared by a licensed engineer demonstrating compliance with the compensatory mitigation requirements.

C. Habitat Impact Assessment. Unless the proposal involves development activities explicitly identified above as exempt, all flood development permit applications shall include a habitat assessment prepared consistent with the requirements of this section.

1. Requirements. All habitat assessments shall include the following information, analysis, and materials:

- a. A biological evaluation or biological assessment developed per 50 CFR 402.12 to initiate federal interagency consultation under Endangered Species Act Section 7(a)(2); or
- b. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or
- c. Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or
- d. An assessment prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region 10, 2010. The assessment shall determine if the project would adversely affect:
 - i. Species that are federal, state or local listed as threatened or endangered;
 - ii. The primary constituent elements for critical habitat, when designated;
 - iii. Essential fish habitat designated by the National Marine Fisheries Service;
 - iv. Fish and wildlife habitat conservation areas;
 - v. Other protected areas and elements necessary for species conservation.

D. Habitat Mitigation Plan. If the habitat assessment provided with the flood development permit application concludes the development is expected to have an adverse effect on water quality, aquatic or riparian habitat, or habitat functions, the applicant shall provide a habitat mitigation plan. The following requirements shall apply to habitat mitigation plans and to all developments requiring a habitat mitigation plan:

1. Habitat mitigation plans shall be prepared in accordance with standards and procedures identified in the "Regional Guidance for Floodplain Habitat Assessment and Mitigation" published by FEMA Region 10.
2. If the project is located outside the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures so that indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, large woody debris, etc.) are mitigated such that equivalent or better habitat protection is provided.
3. New stream crossings are not allowed outside the protected area unless the crossing has been explicitly approved consistent with the requirements of this chapter.
4. For development within the protected area, the mitigation plan shall stipulate avoidance measures as are needed to ensure that there is no adverse effect during any phase of the project.
5. The plan's habitat mitigation activities shall be incorporated into the design of development. The floodplain development permit shall be based on the redesigned project and its mitigation components.
6. If the NMFS or USFWS issues an incidental take permit under Section 10 ESA, Biological Opinion under Section 7, ESA; it can be then it can be used as a mitigation plan to meet the requirements of this section. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.432 Records and documentation.

Certificates, forms, studies, and other documents required by this chapter shall be consistent with the following requirements and shall be maintained by the city and made available for public review:

- A. The finished construction elevations required by this chapter shall be recorded on a current FEMA elevation certificate. All elevation certificates shall be prepared, stamped, and signed by a professional land surveyor licensed in the state of Washington.

B. Base flood elevation data, in relationship to the datum of the effective FIRM, shall be recorded on a current FEMA floodproofing certificate. All floodproofing certificates shall be prepared, stamped, and signed by a professional engineer licensed in the state of Washington.

C. Flood development permits, documents included with flood development permit applications, elevation certificates, floodproofing certificates, and certificates of occupancy shall be maintained by the city and shall be available for public review.

D. Maps, studies, reports and other sources of information used in the administration of this section shall be maintained by the director and shall be available for public review.

E. The city shall maintain, and make available for public review, any other documents or studies required by this chapter including, but not limited to, floodplain habitat assessments, improvement and damage calculations, inspection records, approved permits, and completed application forms. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.433 Penalties and enforcement.

Failure to obtain a flood development permit or any other violation of any of the regulations identified in this section shall be subject to the penalty and enforcement provisions identified in chapter 1.34 BMC and any other applicable enforcement provisions authorized by Burlington Municipal Code. (Ord. 1903 § 2 (Exh. A), 2021).

COMPLIANCE

14.15.440 Compliance with critical area regulations.

No permit for a development proposal shall be issued unless it also complies with the regulations of this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.450 Construction.

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning, the provisions of this chapter shall apply. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.460 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person, owner, or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons, owners or circumstances. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.470 State Environmental Policy Act.

This chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of critical areas in the city, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.480 Liability disclaimer.

Since floods more severe than the 100-year flood occur on rare occasions, reliance on this chapter will not altogether guarantee freedom from flood damage, nor shall this chapter create liability on the part of the city for such damage. It is further noted that other data regarding 100-year floodplain elevations may exist which indicate a more severe threat than the data established by FEMA. Information on these other data sources shall be kept and made available at Burlington City Hall. (Ord. 1853 § 2 (Exh. B), 2018).

¹ Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or reestablishment. See Table 1a, Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance – Version 1 (Ecology Publication No. 06-06-011a, Olympia, WA, March 2006 or as revised). See also subsection (D)(4) of this section for more information on using preservation as compensation.