

ORDINANCE NO. 2016-02-005

AN ORDINANCE AMENDING MULTIPLE SECTIONS OF THE CITY'S CRITICAL AREAS ORDINANCE (BMC 16.55) IN ORDER TO INCORPORATE STATE REQUIRED UPDATES, IMPROVE PROTECTION OF CERTAIN WETLANDS AND IMPROVE CLARITY AND THE EFFICIENCY OF ADMINISTERING THE REGULATORY PROVISIONS AND AMENDING THE CITY'S ADMINISTRATION OF DEVELOPMENT REGULATIONS (BMC 21.10) IN ORDER TO EXTEND THE TIMELINES OF CERTAIN CRITICAL AREA PERMITS AND TO INCLUDE MINOR CRITICAL AREA PERMITS AND OTHER DIRECTOR DECISIONS ISSUED UNDER BMC 16.55 AS "TYPE I" LAND USE DECISIONS

WHEREAS, the Growth Management Act (RCW 36.70A.172) requires each city to adopt regulations to protect critical areas and periodically update those regulations to reflect best available science and to maintain consistency with its Comprehensive Plan; and

WHEREAS, this periodic update is based on best available science and special consideration for protection of anadromous fisheries as required by the Growth Management Act; and

WHEREAS, the Washington State Department of Ecology requires an update to the wetland rating system that will take effect on January 1, 2015; and

WHEREAS, state rules (WAC 173-22-035) adopted a revised federal manual and regional supplements for determining wetland boundaries and accordingly, the Critical Areas Ordinance (CAO) must incorporate these by reference; and

WHEREAS, the city is not proposing to decrease or minimize critical area protection nor revise the requirements for utilization of best available science; and

WHEREAS, city staff have identified revisions that can be made that will improve the predictability and flexibility of the CAO; and

WHEREAS, city staff have utilized stakeholders to identify regulatory provisions and procedural elements that can be improved; and

WHEREAS, the city will amend BMC 21.10.260 C to align Type I, II, and III critical area permits with the vesting timelines for short subdivisions, preliminary plats, binding site plans, and planned developments when these approvals exceed two years and to include minor critical area permits and other Director decisions issued under BMC 16.55 as a "Type I" land use decisions; and

WHEREAS, the city issued a non-project SEPA Determination of Non-Significance (DNS) for the proposed changes on December 29, 2014; and

WHEREAS, the city provided the Washington State Department of Commerce the proposed revisions pursuant to RCW 36.70A.106 on December 29, 2014; and

WHEREAS, the city held a public hearing on January 15, 2015 before the Planning and Development Commission and provided notice of said public hearing pursuant to the requirements in BMC 21.10.150.D and E on December 14, 2014; and

WHEREAS, the city held a work session on June 4, 2015 before the Planning and Development Commission pursuant to the timelines established for public meetings and provided notice of said work session on May 17, 2015; and

WHEREAS, the city issued a SEPA Addendum to the original DNS on August 10, 2015 to account for additional staff revisions made to BMC 16.55 as directed by the Planning Commission at the June 4, 2015 work session; and

WHEREAS, the city held a public hearing date on August 27, 2015 before the Planning and Development Commission and provided notice of said public hearing pursuant to the requirements in BMC 21.10.150.D and E on July 22, 2015; and

WHEREAS, The Planning Commission conducted the public hearing on August 27, 2015 and adopted Findings of Fact, Conclusions and a Recommendation for approval of the proposed amendments to BMC 16.55 and BMC 21.10.

WHEREAS, on November 9, 2015 the Bellingham City Council held its first public hearing on the proposed update to the CAO where staff presented the proposed amendments and public written comment and oral testimony was given; and

WHEREAS, at the conclusion of the public hearing the City Council closed the public hearing, kept the written comment period open and referred the CAO update to a work session before the Planning Committee on December 7, 2015; and

WHEREAS, on December 7, 2015, after discussion with staff and further consideration the Planning Committee directed staff to prepare an adopting ordinance for the proposed update to the CAO and the proposed amendments to Title 21; and

WHEREAS, on January 25, 2016 the City Council voted to approve this adopting ordinance for the proposed amendments to BMC 16.55, Critical Areas and Title 21.10, Administration.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. The Planning Commission's Findings of Fact, Conclusions and Recommendation attached as Exhibit A are adopted by the City Council.

Section 2. Bellingham Municipal Code Chapter 16.55.040 shall be amended as follows:

16.55.040 Enforcement and penalties.

A-D: [No change]

E. Critical area and Buffer Restoration.

1. In the event of a violation of this chapter, the director's ~~designee~~ shall have the authority to order critical area or buffer restoration and ~~creation~~ measures for the damaged or destroyed area by the person and/or property owner responsible for the violation. The party responsible for the violation shall restore, or otherwise mitigate for, the damaged area by obtaining a critical area permit conditioned such to meet the provisions of this chapter. The critical area permit application shall include all the critical area report requirements, including compensatory mitigation, for the specific critical area. If the responsible ~~person-party~~ does not comply, ~~complete~~ such measures ~~within a reasonable time following the order, the city may either issue a civil infraction or restore the affected critical area and/or buffer to its prior condition, and create or restore other critical areas and buffers for the purpose of offsetting losses sustained as a result of the violation.~~

2. ~~This restoration requirement is not a penalty, but rather it is a method of undoing the harm done.~~

3. ~~The person responsible for the violation shall be liable to the city for all costs incurred by the city under this section.~~

F: [No change]

Section 3. Bellingham Municipal Code Chapter 16.55.050 shall be amended as follows:

16.55.050 Relationship to other regulations.

A: [No change]

B. Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, generally that which provides more protection to the critical areas shall apply, except that the shoreline master program (SMP) shall establish all permitted uses adjacent to and critical area buffer setbacks from the ordinary high water mark of marine waters and from the ordinary high water mark of Lake Whatcom and Lake Padden

Shorelines of the State and shorelands as defined in the Shoreline Master Program, BMC 22, and other critical areas occurring within the jurisdiction of Shorelines of the State and shorelands shall be regulated by BMC Title 22, Shorelines.

C: [No change]

D. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, shoreline substantial development permits, Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 or 401 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

Section 4. Bellingham Municipal Code Section 16.55.070 shall be amended as follows:

16.55.070 Determination of requirement for Critical Area pPermit.

A. Any proposal to alter any critical area and/or required buffer including, but not limited to, clearing, grading, draining, removal of vegetation, construction of buildings, facilities, utilities and related infrastructure shall require a critical area permit unless it qualifies as a minor activity expressly exempted as provided under BMC 16.55.080, or is an exception, as provided in BMC 16.55.085.

B. [No change]

Section 5. Bellingham Municipal Code Section 16.55.080 shall be amended as follows:

16.55.080 Minor Critical Area Permits. Exemptions

A. Minor critical area permits are for minor activities that occur in critical areas and/or their buffers and have little or no impact. Minor activities are described in subsection (C). The applicant shall provide a critical area evaluation, per 16.55.205, for the activity. The director may issue, deny, or condition a minor critical area permit for the activity or activities.

~~Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the director that describes the activity and states the exemption listed in this section that applies. The director shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter. The director may add conditions for exemption to ensure the level of activity remains consistent with the provisions of this chapter.~~

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B. All minor activities described in subsection (C) shall be conducted using best management practices to protect critical area functions and values. Mitigation shall be provided if functions and values are affected by the activity. Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas and their buffers. ~~To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense within a reasonable time and in an appropriate manner.~~

C. Required Use of Best Management Practices. All exempted activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense within a reasonable time and in a reasonable manner.

DC. Minor Exempt Activities. The following activities, developments and associated uses shall be construed as minor exempt from the provisions of this chapter provided, that they are consistent with the intent and purpose of this chapter and are otherwise consistent with the provisions of other local, state, and federal laws and requirements.

1. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to public or private property and that require remedial or preventative action in a time frame too short to allow for obtaining approval before the emergency action, ~~compliance with the requirements of this chapter.~~ Emergency actions shall minimize any potential impact to a critical area or its buffer, that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. ~~The person or agency entity~~ undertaking such action shall notify the city within one week following commencement of the emergency activity. Within 30 days of the notification, the director shall determine if the activity action taken was within the scope of the emergency actions allowed in this subsection.

If the activity is determined to be an emergency by the director, then within 30 days of said determination the entity who performed the emergency work shall apply for a minor critical area permit and submit all the necessary application materials, including a mitigation plan if there were impacts to the critical area. Mitigation activities shall commence within one year of the emergency and in the appropriate season.

If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions shall apply.

Within 30 days of permit issuance for ~~After the emergency,~~ the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.

2. Normal Operation, Maintenance, Demolition and Deconstruction or Repair. Normal maintenance, or repair of lawfully established existing buildings, demolition and deconstruction, improvements, utilities, public or private roads, dikes, levees, and drainage systems and landscaping that do not require construction permits, provided the activity does not increase the

impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed activity except as specified in subsection ~~(D)~~(C)(2)(a) of this section. Normal maintenance includes activities performed in accordance with best management practices that are part of normal ongoing maintenance and do not expand further into the critical area and do not directly impact an endangered or threatened species.

a. For instances where any of the activities specified above results in an expansion to an existing structure and said activity is located partly or wholly within the regulated buffer of a geologically hazardous area, as defined, but not within the critical area itself, said activity may be exempt, provided:

- i. The subject activity is attached to a legally established structure; or
- ii. If the proposed structure is self-supporting (not attached) and requires a building permit, it may not be a new primary or accessory use building; and
- iii. A qualified professional, as defined, demonstrates that there will be no impact to the critical area and that there is no increased risk to health, safety and welfare of the subject property and adjacent properties based upon submittal of the required information in BMC ~~16.55.210 and 16.55.430~~ 16.55.205 or as required by the director.

~~3. Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching, are permitted.~~

4.3. Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure. Said modification shall not further alter or increase any code nonconformity or impact to the critical area or buffer except as specified in subsection (C)(2)(a) of this section and in subsection 16.55.130 C. and there is no increased risk to life or property as a result of the proposed modification or replacement. ~~except as specified in subsection (D)(2)(a) of this section~~ Restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.

5.4. Activities within the Improved Portion Right-of-Way. Replacement, modification, installation, or construction of sidewalks, trails, minor road-related projects, utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:

~~a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and~~

~~ba. Retention and/or replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance, as determined by the director.~~

6.5. Minor Utility Projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:

- a. There is no practical alternative to the proposed activity with less impact on critical areas;
- b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and

c. The activity involves disturbance of an area less than 5400 square feet.

7.6. Select Vegetation Removal Activities. The following vegetation removal activities are allowed; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the director:

a. Removal of noxious weeds using non-motorized equipment or light equipment if approved by the director. If herbicides are used to control these weeds, a Washington State Dept. of Agriculture-licensed applicator is required, unless otherwise authorized by the director. For sites near water bodies, including wetlands, only products that are approved for use near and/or in water shall be used. All work shall comply with stormwater regulations, BMC 15.42. Replanting with native vegetation shall occur as determined by the director. Bare areas remaining after weed removal shall be revegetated with native plant material and covered with at least three inches of mulch as soon as practicable.

b. Removal and pruning of hazard trees; provided, that an ISA (International Society of Arboriculture)-certified arborist documents the hazard and provides a report including a risk assessment, a site plan showing the location of the trees, and a replacement plan to the director for review and approval. The applicant-landowner shall replace any cut tree with three native replacement trees (3:1 replacement ratio), unless determined otherwise by the director, within six months of cutting, in accordance with an approved replacement plan. The applicant shall provide documentation to the city demonstrating that the replacement plantings were installed within six months of the tree removal. Replacement trees shall be native species indigenous to the vicinity and approved by the director. Size of trees shall be approved by the director. The landowner shall ensure 100 percent survival of replacement trees. Cut trees and other vegetation may be left within the critical area or buffer where it does not pose a public threat or nuisance or damage significantly the surrounding vegetation.

c. Cut vegetation (other than noxious weeds) shall be left within the critical area or buffer where practicable unless removal is warranted due to the presence of an established disease infestation or other hazard, or because of access or maintenance needs if the area is a utility or access right-of-way.

d. c. Root systems and bases of cut trees shall be left intact and undisturbed. When possible the cut tree shall be left as a snag and be as tall as safely possible. The snag shall be retained as a habitat feature.

e. Prior to removal of hazard trees on temperature-impaired water bodies, as determined by Washington State Department of Ecology's 303(d) listing, planning staff shall consult with public works staff to weigh the negative impacts of removing or pruning the tree(s) on the water body.

f. d. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the director; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter.

7. Fences. The construction of fences within geologically hazardous areas and all other critical area buffers provided the location does not result in restricting wildlife movement, the location is the least impactful to the critical area as possible, and there is no alternative to fencing to achieve the purpose of the fence.

8. Chemical Applications. The application of herbicides, pesticides, ~~organic or mineral-derived~~ fertilizers, as deemed necessary, ~~and approved by the city;~~ provided, that their use shall be ~~restricted~~ in accordance with State Department of Fish and Wildlife Management

Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency.

~~9. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored. Septic excavation pits are prohibited in wetlands or areas suspected of being wetlands.~~

~~40 9. Fish, Wildlife and Wetland Restoration Activities. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the Washington State Department of Fish and Wildlife, Washington State Department of Ecology, Army Corps of Engineers, or other appropriate local, state, federal, or tribal jurisdiction.~~

~~11. Construction of Essential Public Facilities.~~

~~a. Essential Public Facilities Qualifying for Exemption. Only those essential public facilities listed below may apply for an exemption under this section:~~

~~i. Streets.~~

- ~~(A) James Street multi-modal improvements.~~
- ~~(B) San Juan Boulevard.~~
- ~~(C) Birchwood Avenue — James Street connector.~~
- ~~(D) Horton Road (between Northwest Avenue and Cordata Parkway).~~

~~ii. Water.~~

- ~~(A) Water treatment plant expansion.~~
- ~~(B) Upper Yew reservoir, pump station, access road and mains.~~

~~iii. Sewer.~~

- ~~(A) Waste water treatment plant expansion.~~
- ~~(B) Meridian Street capacity improvements near Bakerview Road.~~

~~iv. Stormwater.~~

- ~~(A) Padden Creek daylighting.~~

~~v. Trails.~~

- ~~(A) Bay to Baker Trail from Roeder Avenue to city limits.~~
- ~~(B) Interurban Trail improvements through Arroyo Park and proposed connections to Woodstock Farm.~~
- ~~(C) West Bakerview Trails (between Eliza and Northwest).~~
- ~~(D) Aldrich/Horton Trails (in newly annexed area).~~
- ~~(E) Padden Creek Trail.~~
- ~~(F) Samish Crest Trail.~~
- ~~(G) Northridge Park Neighborhood Trail connectors.~~
- ~~(H) Cordata Park Neighborhood Trail connectors.~~

~~vi. Parks.~~

- ~~(A) Northridge Park.~~
- ~~(B) Cordata Park.~~
- ~~(C) Sunset Pond Park.~~

~~b. Requirements.~~

~~i. The proponent of the proposed essential public facility must comply with subsections (A) through (C) of this section; and~~

ii. The proponent has the burden of showing that:

~~(A) There is no practical alternative to the proposed development with less impact on the city's critical areas;~~

~~(B) Any proposed alteration of a critical area to construct the essential public facility is the minimum necessary to accommodate the essential public facility;~~

~~(C) The construction of the essential public facility minimizes the adverse impacts on the critical area; and~~

~~(D) The construction of the essential public facility utilizes best available science and results in no net loss of function to the type of critical area being impacted.~~

~~c. Decision. The director's decision on the exemption is a Type II decision and shall comply with the provisions of BMC 21.40.110~~

Section 6. Bellingham Municipal Code Section 16.55.081 shall be added as follows:

16.55.081 Essential Public Facilities.

A. Only those essential public facilities listed below are subject to provisions in this section.

1. Streets.

a. San Juan Boulevard.

b. Horton Road (between Northwest Avenue and Cordata Parkway).

2. Water.

a. Water treatment plant expansion.

b. Upper Yew reservoir, pump station, access road and mains.

3. Trails.

a. Bay to Baker Trail from Roeder Avenue to city limits.

b. Interurban Trail improvements through Arroyo Park and proposed connections to Woodstock Farm.

c. West Bakerview Trails (between Eliza and Northwest).

d. Aldrich/Horton Trails.

e. Padden Creek Trail.

f. Samish Crest Trail.

g. Northridge Park nNeighborhood tTrail connectors.

h. Cordata Park nNeighborhood tTrail connectors (west of Cordata Parkway).

4. Parks.

a. Northridge Park.

b. Cordata Park (west of Cordata Parkway).

B. Requirements. A critical area permit is not required for the essential public facilities listed above in subsection A. However, the applicant for the proposed essential public facility has the burden of showing proof that:

1A. There is no practical alternative to the proposed development with less impact on the city's critical areas;

2B. Any proposed alteration of a critical area to construct the essential public facility is the minimum necessary to accommodate the essential public facility;

3C. The construction of the essential public facility minimizes the adverse impacts on the critical area; and

4D. The construction of the essential public facility utilizes best available science and results in no net loss of function to the type of critical area being impacted.

C. Decision. The applicant shall submit a critical area report and mitigation plan, if impacts occur, for each critical area type involved. The director's decision on an essential public facility listed above in subsection 1 is a Type II decision and shall comply with the provisions of BMC 21.10.110.

Section 7. Bellingham Municipal Code Section 16.55.085 shall be added as follows:

16.55.085 Exemptions.

A. Exemption Request and Responsibilities. Activities listed below in subsections B and C are exempt from obtaining a critical area permit or a minor critical area permit. The proponent of the activity shall submit a written request for an exemption to the director that describes the activity and shows the activity on a site plan. The director shall review the request to verify that it complies with this chapter and approve, condition, or deny the request. The proponent shall not begin the activity until director approval has been obtained. To be exempt from this chapter does not give permission to degrade a critical area or ignore risks from natural hazards. Any incidental damage to or alteration of a critical area that results from an exempt activity shall be restored or replaced at the expense of the responsible party with a period not to exceed one year.

B. The following activities are allowed within critical area buffers without any critical area permit: as determined by the director:

1. Installation of diminutive, non-habitable residential features that do not require a building permit or maintenance (excluding removal) of existing landscaping. Removal of hazard trees or noxious weeds shall be done in accordance with 16.55.080 C 6.

C. The following activities are allowed within a critical area and/or critical area buffer without any critical area permit as determined by the director:

1. Minor Site Investigative Work. Minimal site work expressly for the need to gather site information such as surveys, soil logs and borings, percolation tests, scientific research and other related activities necessary to provide documentation of critical areas and/or their buffers, where such activities do not require construction of new roads and only minimal amounts of excavation. Soil test pits for wetland determinations shall follow the methodology in 16.55.290 A. In every case, disturbance to the critical area shall be minimized through best management practices and the use of low-impact equipment. Septic excavation pits are prohibited in wetlands or areas suspected of being wetlands.

Section 8. Bellingham Municipal Code Section 16.55.120 shall be amended as follows:

16.55.120 Variances.

A. [No Change]

B. [No Change]

1-5. [No Change]

6. The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous-fish habitat; and

7. [No Change]

Adopting Ordinance for BMC 16.55 (9)

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Section 9. Bellingham Municipal Code Section 16.55.130 shall be amended as follows:

16.55.130 Nonconformity and redevelopment.

A. All land uses, buildings, structures, parking, driveways, utilities, stormwater facilities, trails, landscaping and supporting facilities that were lawfully established prior to the adoption of this chapter, but otherwise would be determined to be located within a critical area or minimum standard buffer for a critical area, shall be deemed as nonconforming as to this chapter but not in violation of this ordinance. All of the facilities above such uses, structures may be continued, maintained and replaced in kind as necessary if damaged by fire, accident or natural disaster on a like-for-like or very similar basis, provided there is no further encroachment into a critical area or buffer, except as provided in subsections (B) and (C), (C), below, of this section. If damaged, the replacement/reconstruction process shall commence within 12 months of the date of such damage.

B. ~~Any land use and/or building occupancy located upon any lot, parcel or land area described in subsection (A) of this section that ceases and remains unused and/or unoccupied for a period of one or more years shall be deemed as nonconforming with regard to the provisions of this chapter. All future uses and structural modifications to buildings, facilities and any other redevelopment, regardless of total affected land area, other than normal maintenance and operation, shall conform to the provisions of this chapter. Should this provision be contested, the burden of proof shall be upon the land owner to demonstrate to the city that continued land use and building occupancy has not lapsed into nonconformity.~~ B. Expansion, reconfiguration and/or intensification of any of the developed elements in subsection (A), above, may be approved pursuant to the thresholds specified in subsection (D) below if it can be demonstrated that such activity will not result in impacts to the critical area and/or critical area buffer. Impacts may include but are not limited to clearing of native vegetation, additional impervious surfaces, generation of surface water runoff, discharge or risk of discharge of pollutants, increased noise, light or glare.

C. ~~Any proposal to expand or change any existing use for land, buildings and facilities described in subsection (A) of this section that involves structural redevelopment of a total of 5,000 square feet or more of any lot, parcel or land area shall be required to comply with all provisions of this chapter, except as provided in subsection (D) of this section.~~

~~Minor revisions in uses, buildings and site plans described in subsection (A) of this section affecting an area of less than 5,000 square feet of land area shall be permitted, provided there is no further encroachment into a critical area or critical area buffer, except as specified in BMC 16.55.080(D)(2)(a) for development within a buffer of a geologically hazardous area. Subsequent revisions may occur until a sum total of 5,000 square feet of land area change is reached.~~

C. Expansion, reconfiguration and/or intensification of any of the developed elements in subsection (A), above, as specified in subsection (C) for the following general use categories shall not exceed the following thresholds:

1. 500 square feet for residential single and multi-family;
2. 1,000 square feet for commercial; and
3. 2,000 square feet for industrial and institutional

~~D. The 5,000 square foot redevelopment threshold shall not apply to internal tenant improvements within existing building shells and footprints.~~

D. Expansion, reconfiguration and/or intensification of any of the developed elements in subsection (A), above, that are consistent with the thresholds specified above, may be approved through a minor critical area permit as specified in 16.55.080 (A).

~~E. Proposals involving structural redevelopment of 5,000 square feet of land area or more shall only be required to provide the minimum standard wetland, riparian habitat or geological hazard buffer described in this chapter.~~

E. Activities under this subsection that exceed the square footages in subsection (D), above may be approved through review and approval of a critical area permit.

F. Interior tenant improvements do not require critical area review unless such improvements result in impacts as determined by the director.

Section 10. Bellingham Municipal Code Section 16.55.190 shall be amended as follows:

16.55.190 Protection of critical areas.

Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with mitigation sequencing (BMC 16.55.250) to avoid, minimize, and restore all adverse impacts.

Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.

Protection of critical areas that are part of an approved mitigation plan shall be achieved through a conservation easement recorded at the Whatcom County Auditor's Office, or similar means of protection in perpetuity.

Section 11. Bellingham Municipal Code Section 16.55.200 shall be amended as follows:

16.55.200 Review criteria.

A. [No Change]

1-3. [No Change]

4. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements in BMC 16.55.240 and 16.55.260 ~~plan requirements (BMC 16.55.260)~~ and additional requirements as outlined in specific critical area sections;

5-6. [No Change]

B. [No Change]

C. [No Change]

Section 12. Bellingham Municipal Code Section 16.55.205 shall be added as follows:

16.55.205: Evaluation of Critical Areas and/or Associated Buffers.

A. An evaluation of critical areas and/or critical area buffers shall be prepared by a qualified professional as defined in BMC 16.55.510.

B. An evaluation of critical areas and/or critical area buffers shall include the following information:

1. Address of site or parcel number and date(s) evaluation occurred;

2. Purpose of the evaluation;

3. Scaled site plan of the site, the project area, a description of the proposed activity and the extent of the activity and/or disturbance area;

4. Confirmation, location and description of existing function of all critical areas and/or critical area buffers in relation to the proposed activity;

5. Determination and/or conclusion of the project's impact on the functional performance of the subject critical area and/or its buffer and, where applicable, on the protection of abutting properties; and

6. Recommendations for mitigation or best management practices where appropriate.

Section 13. Bellingham Municipal Code Section 16.55.210 shall be amended as follows:

16.55.210 Critical area report - Requirements.

A. Prepared by a Qualified Professional. The applicant shall submit a critical area report prepared by a qualified professional as defined in BMC 16.55.510, unless determined to be a minor or exempt activity. ~~otherwise exempt.~~

B. [No Change]

C. [No Change]

1-3. [No Change]

4. Identification and characterization of all critical areas including their buffers, adjacent to the subject site and characterization of the ecological relationship of the critical area and buffers with any adjacent non critical areas such as upland forest patches; ~~wetlands, water bodies, and buffers adjacent to the proposed project area;~~

5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;

6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

7. The following are required only if there will be an impact to a critical area and/or its buffer, resulting in the requirement for mitigation:

7. a. An analysis of site development alternatives derived from mitigation sequencing; including a no development alternative;

b. 8--A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing (BMC 16.55.250) to avoid, minimize, and mitigate impacts to critical areas;

c. 9--Plans for adequate mitigation, as needed, to offset any impacts, in accordance with mitigation plan requirements and additional requirements specified for each critical area (BMC 16.55.260), including, but not limited to:

a.i. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

b.ii. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

iii. ~~14.~~ A discussion of the performance standards applicable to the critical area and proposed activity;

iv. ~~12.~~ A detailed, line-item estimate of the total costs to complete the proposed mitigation in accordance with mitigation requirements. ~~Financial guarantees to ensure compliance; and~~ ~~12.~~ Any additional information required for the critical area as specified in the corresponding chapter.

D. [No Change]

E. The director may require the report by the qualified professional and other documents to be reviewed by other agencies with jurisdiction. The director may also require peer review of any reports or documents at the expense of the applicant for the director's assurance that the materials are accurate and consistent with federal, state, and local regulations and guidelines.

Section 14. Bellingham Municipal Code Section 16.55.230 shall be amended as follows:

16.55.230 Signs and Fencing.

A. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the director may require the applicant to install permanent signs along the boundary of a critical area.

Permanent signs shall be made of a durable material and vandal-resistant, and shall be attached to a metal post, or other material of equal durability. Signs must be posted at an interval of 100 feet, or as closer if the director deems necessary, and must be maintained and replaced by the property owner if the sign language is no longer visible. Any modification of the location or materials required for permanent signs shall be approved by the director. The sign shall be worded as follows, or as approved by the director:

"Protected Critical Area"

Do Not Disturb

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B. Fencing.

1. The director may require the installation of A ~~a~~ temporary construction fence shall be placed along the construction limits adjacent to the critical area to prevent encroachment into the critical area during construction. The fencing shall be designed and installed to effectively prevent construction and related impacts. The fencing shall be installed and inspected prior to commencement of construction activities.

2. The director may condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the critical area when fencing will prevent future impacts to these features. Fencing shall be designed to not interfere with the migration of wildlife species and to keep out domestic grazing animals. Fencing materials shall not be made or treated with toxic materials.

3. ~~The applicant shall be required to install a permanent fence around the critical area when domestic grazing animals are present or may be introduced on site.~~

4. Permanent fencing intended to be in place beyond the duration of a temporary construction fence shall be placed at the edge of a critical area buffer. Fencing installed within a critical area, unless otherwise allowed in this chapter, requires a critical area permit. [Ord. 2010-08-050; Ord. 2005-11-092].

Section 15. Bellingham Municipal Code Section 16.55.240 shall be amended as follows:

16.55.240 Mitigation requirements.

A. The applicant shall avoid all impacts that increase risk to the general public and/or degrade the functions and values of a critical area or areas and their buffers. Unless otherwise provided in this chapter, and after mitigation sequencing in section 16.55.250 has been applied, if alteration to the critical area is unavoidable, all adverse impacts to ~~or from~~ critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

B. [No Change]

~~C.~~ [No Change]

D. The applicant shall be required to submit a financial guarantee ("surety" or "assignment of funds") for 150 percent of the total costs of mitigation to ensure the mitigation requirements are met and the mitigation plan is fully implemented, including, but not limited to, the required monitoring and maintenance periods.

Section 16. Bellingham Municipal Code Section 16.55.250 shall be amended as follows:

16.55.250 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas and buffers. When an alteration to a critical area is proposed, applicants shall follow the mitigation sequential order of preference below:

A-G. [No Change]

Section 17. Bellingham Municipal Code Section 16.55.260 shall be amended as follows:

16.55.260 Mitigation plan requirements.

A. [No Change]

B. Report Requirements.

1. Detailed summary of the project, including the impacts to the critical area, and the proposed mitigation to compensate for lost functions and values, ~~to appear in the beginning of the report.~~

2-3. [No Change]

4. Goals, objectives, performance standards and dates of commencement and completion of the mitigation proposal.

5. Report and maps of the critical area to be impacted. (If it is a wetland, the report must include a functional assessment – see BMC 16.55.280.)

6. Monitoring, Maintenance, and Contingency Plan and As-Built Report. The mitigation plan shall include the monitoring schedule (dates, frequencies, and protocols, and submittal deadlines) ~~must be included and for a the monitoring, maintenance, contingency and as-built report requirements. the monitoring reports submitted accordingly.~~ Monitoring and maintenance shall be required for at least five consecutive years unless otherwise stipulated by another government agency or the director.

7. Map of development, with scale, shown in relation to critical area.

8. A detailed, line-item estimate of the total cost to complete the approved mitigation plan, including a minimum of five years of maintenance and monitoring, shall be submitted for approval for the required financial surety for the project. The total estimate shall be multiplied by 150 percent.

Financial guarantees ("surety") for 150 percent of the total costs to ensure the mitigation plan is fully implemented, including, but not limited to, the required monitoring and maintenance periods.

Section 18. Bellingham Municipal Code Section 16.55.270 shall be amended as follows:

16.55.270 Wetlands - Applicability.

A. [No Change]

B. ~~This chapter shall not apply to~~ The following wetlands are exempt from the buffer provisions contained in this chapter and from mitigation sequencing as specified in BMC 16.55.250. They may be filled if impacts are fully mitigated based on provisions in BMC 16.55.350. In order to verify that the wetland meets this exemption, a critical area report for wetlands meeting the requirements in BMC 16.55.290 shall be submitted.

1. ~~Wetlands less than 1,000 square feet that meet all of the following criteria: All isolated Category III and IV wetlands less than 1,000 square feet that:~~

a. ~~Wetland is not hydrologically connected to a Type 1 through Type 5 stream; and Are not associated with riparian areas or buffers;~~

b. ~~Wetland d~~Does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife or provide suitable habitat for breeding amphibian populations. Suitable breeding habitat may be indicated by adequate stable and seasonal inundation that is persistent from February to at least through April and presence of thin-stemmed emergent vegetation and/or clean water; and

c. ~~Wetland is~~ Are not part of a mosaic of wetlands.

2. ~~Category III and IV wetland between 1,000 square feet and 4,000 square feet may be exempt if they meet all of the following criteria:~~

a. ~~Wetland is not hydrologically connected to a Type I through Type 5 stream; and~~

b. ~~Wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife and~~

c. ~~Wetland is not part of a mosaic of wetlands; and~~

d. ~~Wetland does not score 520 points or more for habitat or 824 points or more for water quality in the wetland rate per this section.~~

23. Wetlands and drainage structures, which were both artificially and intentionally created from nonwetland sites and were not required to be constructed as previous development wetland impact mitigation. These may include, but are not limited to: detention facilities, reservoirs, stormwater or wastewater treatment ponds, farm ponds, irrigation and drainage ditches, grass-lined swales, canals and landscape amenities.

Section 19. Bellingham Municipal Code Section 16.55.280 shall be amended as follows:

16.55.280 Wetland ratings

Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington--2014 Update* (Ecology Publication #14-06-029, October 2014), ~~revised April 2004 (Ecology Publication No. 04-06-025), and as revised in the future.~~ The wetland categories determined by the rating are as follows:

A. Category I. Category I wetlands are:

1. Relatively undisturbed eEstuarine wetlands larger than one acre;
2. Wetlands that are, or may be in the future, identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources as high-quality-wetlands of high conservation value;
3. ~~Bogs larger than one-quarter acre~~;
4. Mature forested wetlands larger than one acre; ~~larger than one-tenth (4,356 square foot) acre~~;
5. [No Change]
6. Wetlands that perform many functions well and score 23.70 points or more in the wetland rating. These wetlands are those that represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, or are relatively undisturbed and contain ecological attributes that are impossible to replace within one human lifetime.

B. Category II. Category II wetlands are:

1. [No Change]
2. Wetlands with a moderately high level of functions and score 2054 to 2269 points in the wetland rating.
3. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre.

C. Category III. Category III wetlands are:

1. [No Change]
2. Wetlands with a moderate level of functions and score between 1630 to 1950 points in the wetland rating.

D. Category IV. Category IV wetlands are:

1. Wetlands with a low level of functions, scoring less than 1630 points in the wetland rating.

E. Date of Wetland Rating. The wetland rating categories in this section shall be applied to wetland studies including but not limited to delineations, on or after the date of adoption of the ordinance codified in this chapter. The wetland rating shall be valid for five years unless the state rating system

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~~changes or the wetland and/or the wetland buffer have been altered since the rating. ,for as long as the wetland characteristics remain the same, whichever is less.~~

Section 20. Bellingham Municipal Code Section 16.55.290 shall be amended as follows:

16.55.290 Critical area report - Additional requirements for wetlands and wetland buffers.

~~Wetlands are those areas, designated in accordance with the Washington State Wetlands Identification and Delineation Manual, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.~~

A. Wetland Determination and Mapping. Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the federal wetland delineation manual and applicable regional supplements (as updated), as required by RCW 36.70A.175. All areas meeting the wetland designation criteria in that procedure are hereby designated as wetlands and are subject to provisions of this Chapter. ~~The exact location of all wetland boundaries shall be determined through the performance of a field investigation by a qualified wetland professional applying the Washington State Wetlands Identification and Delineation Manual as required by RCW 36.70A.175 (Ecology Publication No. 96-94). The wetland boundary shall be marked in the field and surveyed by a licensed surveyor. The surveyed wetlands areas shall be sized and mapped on a scaled site plan showing location and size of all wetlands. The director may require the wetland delineation to be verified in the field by the Army Corps of Engineers or the Washington State Department of Ecology when there is uncertainty in the wetland boundary or there was unauthorized wetland disturbance.~~

The requirement for a licensed surveyor to survey the wetland boundaries a high degree of accuracy is necessary to determine applicable regulations and requirements may be waived in limited circumstances, such as when there is no access to the wetland property or there is no proposed impact to the wetland and wetland buffer, with authorization from the director.

B. Wetland Delineation Requirements. The following are required components of a wetland delineation report.

1. [No Change]

2. Maps. The wetland delineation report shall include the following maps:

a. [No Change]

b. Parcel map, with scale, showing all wetlands on the site and within 150 feet of the parcel boundaries unless access is denied ~~in writing~~ by the adjacent property owner. Parcel map shall include all streams and drainages (Type 1, 2, 3, 4, or 5 streams), shorelines, floodplains, flood prone areas and critical habitat for threatened and endangered species on the parcel and within 150 feet of the parcel boundaries.

c-d. [No Change]

3. Wetland Analysis. A wetland delineation report shall provide an analysis of all wetlands and buffers on site and within 150 feet of the lot or parcel boundaries including, at a minimum, the following information:

a. [No Change]

b. The wetland boundaries shall be flagged using bright-colored flagging tape or pin flags and surveyed by a licensed surveyor or using an equivalent method with an accuracy of plus or

minus one foot of a survey, unless surveying is specifically waived by the director for a different method of mapping the wetland boundary.

c-j. [No Change]

~~C. Additional Information. Additional information may be required by the director, as necessary, to adequately determine the wetland regulatory requirements. The director may also require the wetland delineation report to be reviewed by other agencies with jurisdiction, including the Washington State Departments of Ecology, Fish and Wildlife, Natural Resources or the Army Corps of Engineers to determine whether these agencies shall require any permit or approval for the proposed project.~~

~~CD. Valid for Five Years. Wetland delineation reports conducted by a qualified wetland professional shall be valid for five years from the date of the delineation report if the wetland rating or the boundary has not measurably changed.~~

Section 21. Bellingham Municipal Code section 16.55.300 shall be amended as follows:

16.55.300 Wetland permit requirements.

A. Permit Requirements - Compliance. No regulated activity may be conducted within a regulated wetland or wetland buffer without a permit from the director, unless specifically listed as an allowed activity in BMC 16.55.320.

B. [No Change]

Section 22. Bellingham Municipal Code Section 16.55.310 shall be amended as follows:

16.55.310 Regulated activities.

The following activities are regulated if they occur in a regulated wetland, or its ~~their~~ respective buffer:

A-F. [No Change]

G. The destruction or alteration of vegetation through clearing, harvesting, shading, intentional burning, concentrated recreational or educational use, or planting of vegetation that would alter the character of a regulated wetland, or respective buffer; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or

H. [No Change]

Section 23. Bellingham Municipal Code Section 16.55.320 shall be amended as follows:

16.55.320 Regulated Allowed activities in wetland buffers.

Regulated activities, such as trail construction and utility installation, are not outright prohibited in wetland buffers with the exception of stormwater facilities, as described in BMC 16.55.330. The activities listed below are allowed in wetland buffers unless the activity results in a loss of the buffer functions that protect wetlands. A plan describing the activity shall be submitted to the director to determine if plan review and approval is adequate or a wetland buffer permit is needed. Approval of the activity shall be obtained in the appropriate critical area permit, minor critical area permit, or exception, depending on the activity. Mitigation shall be provided in accordance with the provisions in this chapter.

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

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~~B. Passive Recreation. Passive recreation facilities designed to be consistent with protecting the functions of the wetland, including:~~

~~1. Wildlife viewing structures and fishing access areas; provided, that these facilities and their access trails are the minimal necessary to provide access and only if they are consistent with protecting the functions and values of the wetland.~~

Section 24. Bellingham Municipal Code Section 16.55.330 shall be amended as follows:

16.55.330 Stormwater management implications to wetlands and wetland buffers.

A. Stormwater management facilities shall not be located within ~~are not allowed in~~ wetland buffers, with the following exceptions:

1. Conveyance systems may be located in wetland buffers on a case-by-case basis if deemed necessary and approved by the Ppublic Wworks and Pplanning and Community Development Ddepartments.
2. Full dispersion of flow, as defined in Chapter 15.42 ~~BMC~~, ~~may may~~ be allowed in a wetland buffer if approved by the Ppublic Wworks and Pplanning and Community Development Ddepartments.
3. [No Change]

B. Stormwater management design and facilities shall be consistent with Chapter 15.42, as amended, to protect wetland hydrology and wetland functions. Native vegetation enhancement in wetland buffers may be approved for both buffer enhancement and as part of a best management practice to meet Low Impact Development stormwater standards required by the Washington State Department of Ecology. Any stormwater management facility or method associated with wetlands shall meet the state requirements adopted in BMC Chapter 15.42, as amended. Wetland hydrology shall not be adversely affected by stormwater management. Post-development wetland hydrology shall match predevelopment wetland hydrology to the maximum extent feasible. An annual evaluation of hydrologic conditions, conducted by a qualified wetland professional or hydrologist, may be required to document hydrologic conditions.

Section 25. Bellingham Municipal Code Section 16.55.340 shall be amended as follows:

16.55.340 Wetland Buffers.

Wetland buffers shall be established to protect the integrity, functions and values of the wetland.

A. [No Change]

B. Buffer Standards. The buffer standards required by this chapter presume the existence of a dense vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the director may increase the standard buffer, require ing ~~require ing~~ buffer planting or other enhancements, and/or deny a proposal for buffer reduction or buffer averaging. Buffers may not include areas that are functionally and effectively disconnected from the wetland ~~or buffer areas by an existing public or private roadway~~, as determined by the director. Functionally and effectively disconnected means that the road blocks the protective measures provided by a buffer or it disrupts the life cycle of wildlife documented to be using the area.

The standard buffer shall be based on the wetland category, the adjacent land use, and the functions provided by the wetland. There are three sets of buffer standards, based on these parameters:

1. For wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of 8 or 9 ~~29~~ points or more on the wetland rating form, the buffers shall be as follows:

Table 16.55.340(A). [No Change]

2. For wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of 5 to 7 ~~20 to 28~~ points on the wetland rating form, the buffer shall be as follows:

Table 16.55.340 (B). [No Change]

3. For wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of less than 3 to 4 ~~20~~ points on the wetland rating form, the buffers shall be as follows:

Table 16.55.340(C). [No Change]

C. Modifications to Buffer Widths. Any modifications to the buffer width are to be based on the specific wetland functions, site and/or watershed characteristics, location of the wetland within the watershed or sub-basin, and the proposed land use.

1. Increasing Buffer Widths. The director shall have the authority to increase the standard buffer width on a case-by-case basis when a larger buffer is required by an approved habitat assessment~~management plan~~ as outlined in BMC 16.55.480(C~~D~~); or such increase is necessary to:

a-b. [No Change]

c. Maintain viable populations of species such as herons and other priority ~~fish and wildlife species~~; or

d. [No Change]

2. [No Change]

a-c. [No Change]

d. The buffer of a Category IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater, provided the buffer reduction does not result in reducing the functions and values of the wetland; and

e. The applicant implements all reasonable measures to reduce the adverse effects of adjacent land uses and ensure no new loss of buffer functions and values. The specific measures that shall be implemented include, but are not limited to, the following:

i-ii. [No Change]

~~iii. Establish covenants limiting use of pesticides and fertilizers within 150 feet of the wetland;~~

~~iii~~ iv. Implement integrated pest management programs;

iv. Infiltrate or treat, detain and disperse runoff into buffer;

~~v. vi.~~ Construct a wildlife permeable fence around buffer and post signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the city;

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~~vi. vii.~~ Plant buffer with "impenetrable" native vegetation appropriate for the location;

~~vii. viii.~~ Use low impact development techniques to the greatest extent possible;

~~viii ix.~~ Establish and record a permanent conservation easement to protect the wetland and the associated buffer and restrict the use of pesticides and herbicides in the easement.

3. [No Change]

a-f. [No Change]

D. [No Change]

E. Wetland Buffer Impacts. When buffer impacts occur, compensatory mitigation shall be provided at a square footage ratio of 1:1. The mitigation shall occur on the same site when feasible or within the same wetland system preferably. The mitigation shall ensure that the wetland functions and values are not diminished due to the buffer impacts. Buffer Impacts. Where impacts to buffers cannot be avoided and where buffer reduction and averaging are not sufficient or appropriate to offset buffer impacts, compensatory mitigation shall be provided. Compensatory mitigation for buffer impacts shall follow the requirements of BMC 16.55.250 and 16.55.340.

F. Buffers on Mitigated Sites. Buffer widths shall be applied to mitigation sites. All mitigation sites shall have buffers consistent with the wetland ratings and buffer requirements of this chapter for subsequent development and proposals and based on expected category of the wetland once the mitigation actions are taken.

G. Building Setbacks from Buffers. Buildings, structures, paving, and other hard surfacing shall be set back a distance of 15 feet from the edge of the wetland buffer, or edge of the wetland if no buffer is required, unless otherwise determined by the director to be a shorter distance. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required, to- The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer, the extent that the critical root zone of trees in the buffer are not disturbed. The following may be allowed in the building setback area if they do not disturb or cause damage to the existing critical root zone of trees growing in the adjacent critical area buffer:

1. [No Change]

2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;

~~3. Roof eaves and overhangs;~~

~~4. Pervious unroofed stairways and steps;~~

~~35.~~ Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided, that it is engineered as a pervious system as defined in BMC 16.80.050. Such improvements may be subject to the requirements in Chapter 15.42 BMC, Stormwater Management;

~~46.~~ Above and below ground water conservation cisterns and associated infrastructure, used for residential rainwater catchment but not to exceed 300 square feet total; provided, that if above ground, the necessary foundation is engineered as a pervious system.

Section 26. Bellingham Municipal Code Section 16.55.350 shall be amended as follows:

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16.55.350 Mitigation requirements specific to wetlands (see BMC 16.55.240, 16.55.250, and 16.55.260 for other mitigation requirements).

Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater wetland functions. Mitigation plans shall be consistent with *Wetland Mitigation in Washington State--Part 2: Developing Mitigation Plans Version* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)*, (Ecology Publication #09-06-32, Olympia, WA, December 2009).

A. Preference of Mitigation Actions. Mitigation actions shall occur in the following order of preference after mitigation sequencing (BMC 16.55.250) has been applied (see BMC 16.55.510 for full definitions of creation, enhancement, preservation, rehabilitation, reestablishment, and restoration):

1. Restoration (re-establishment and rehabilitation) of wetlands. Re-establishing wetlands is returning natural or historic functions to a former wetland. Rehabilitation of wetlands is repairing natural or historic functions of a degraded wetland on upland sites that were formally wetlands.
2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area to meet appropriate ratio requirements.
4. Preservation of high quality, at-risk wetlands when done in combination with restoration, creation, or enhancement.

B. [No Change]

For the purposes of this chapter, the mitigation categories are:

1. Restoration. This includes reestablishment or rehabilitation.
2. Creation (establishment). Wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being created.
3. [No Change]
4. [No Change]
 - a. [No Change]
 - b. The area proposed for preservation is of high quality (scores between 20 and 27 ~~51 and 100~~ points in the wetland rating system), is located in the same watershed, and is critical to the health of the watershed or sub-basin. Some of the other high quality features include:
 - i-iii. [No Change]
 - c-h. [No Change]

C. Location of Compensatory Mitigation. Site selection for compensatory mitigation shall be based on a location that will provide the greatest ecological benefit and have the greatest likelihood of success.

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Where feasible, mitigation shall occur in the same sub-basin as the permitted wetland alteration. However, if it can be demonstrated that a mitigation site in an alternative sub-basin or watershed would provide a greater ecological benefit and offer a more successful replacement of wetland functions and values, compensatory mitigation ~~may~~ can take place in an alternative sub-basin or watershed. If a mitigation bank or in-lieu fee program is proposed for the required mitigation, documentation shall be provided that demonstrates there is an ecological benefit. The documentation shall also include how locating the mitigation out of the sub-basin or watershed will not impact other nearby critical areas.

D. Mitigation Banking. Mitigation banking is ~~allowed~~ encouraged for compensatory mitigation when all of the following are met: ~~if it provides a greater ecological benefit and provides a more successful replacement of wetland functions and values. This chapter does not expressly regulate mitigation banking; state guidelines for mitigation banking should be adhered to.~~

1. The bank is certified under state rules;
2. The proposal to use the mitigation bank meets the certified banking instrument criteria;
3. Documentation is provided with the proposal that an alternatives analysis pursuant to BMC 16.55.210 C 7 has been completed;
4. Documentation that mitigation sequencing pursuant to BMC 16.55.250 has been adhered to;
5. Documentation is provided that the bank is ecologically preferable and will provide a more successful replacement of wetland functions and values; and
6. The director determines that the wetland bank provides appropriate compensation for impacts.

E. In-Lieu Fee Mitigation. Development or use of an in-lieu fee program is ~~allowed~~ if the program is established consistent with federal and state regulations and policies. Using credits from an approved in-lieu-fee program shall be consistent with mitigation sequencing pursuant to BMC 16.55.250 and with state criteria.

FE. Mitigation Ratios. The following ratios ~~appearing~~ in Table 16.55.350 and consideration of factors described in this section, shall be used to determine the relative amount of created, reestablished, restored, or enhanced wetlands that will be required to replace impacted wetlands. The first number refers to the amount of wetland area providing mitigation and the second refers to the amount of wetland area impacted or altered. If a mitigation bank or in-lieu program is used for mitigation requirements, wetland replacement ratios are not applied. The mitigation bank credit system, or in-lieu fee program credit system, whichever applies, is used to determine the number and cost of the credits to be purchased to fulfill mitigation requirements.

Table 16.55.350 – Wetland Replacement Ratios

	Creation or Reestablishment	Restoration (Rehabilitation)	Enhancement	Preservation
Category I BMC 16.55.280(A)(4). Mature forested wetland or BMC 16.55.380(A)(6) scores 70 points or	6:1	8:1 <u>12:1</u>	24:1	N/A

	Creation or Reestablishment	Restoration (Rehabilitation)	Enhancement	Preservation
more in wetland rating				
Category I BMC 16.55.280 (A)(6) scores 23 points or more in wetland rating	4:1	8:1	16:1	N/A
Category I BMC 16.55.280(A), all others	Case-by-case basis; may not be possible	Case-by-case basis; may not be possible	Case-by-case basis; may not be possible	N/A
Category II	3:1	4:4 6:1	8:4 12:1	16:1
Category III	2:1	3:4 4:1	6:4 8:1	10:1 Case-by-case basis
Category IV	1.5:1	4:5:4 3:1	3:46:1	5:1 to 10:1 Case-by-case basis

1. [No Change]

a-b. [No Change]

2. Credit / Debit Method. As an alternative to using mitigation ratios for calculating mitigation requirements, the director may allow mitigation based on the "credit/debit" method as described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised).

GF. Mitigation Report Requirements.

1. [No Change]

2. [No Change]

a-d. [No Change]

e. A mitigation implementation schedule that includes the sequence and timelines of tasks to fully implement the mitigation plan;

e. f. Monitoring and maintenance for a minimum of five consecutive years, and a contingency plan;

f. g. Function assessment of wetland to be impacted;

g. h. Delineation report, with maps, of site to be impacted;

h. i. Map of development, with scale, overlaid on wetland delineation map; and

i. j. An detailed, line-item estimate of the total costs to complete the approved mitigation plan including, but not limited to, a minimum of five years of monitoring and maintenance, shall be submitted for approval for the required, for surety for the entire project, including the

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~~required number of years of maintenance.~~ financial surety for the project. The total estimate shall be multiplied by 150 percent.

Section 27. Bellingham Municipal Code Section 16.55.370 shall be amended as follows:

16.55.370 Critical Area Report - Additional requirements for frequently flooded areas.

A. [No Change]

B. [No Change]

1. [No Change]

2. Areas Identified by the Public Works ~~d~~Director. Those areas of special flood hazard identified by the public works director based on review of base flood elevation, floodway data, historical data, high water marks, photographs of past flooding, or similar information available from federal, state, county, city or other valid sources when base flood elevation data from FEMA has not been provided or is not accurate;

3. [No Change]

Section 28. Bellingham Municipal Code Section 16.55.420 shall be amended as follows:

16.55.420 Designation of specific hazard areas.

A. Erosion Hazard Areas. Erosion hazard areas are prone to soil erosion. Specifically these areas include any area where the soil type is predominantly (greater than 50 percent) comprised of sand, clay, silt, and/or organic matter and slope is greater than 30 percent.

~~1. Areas identified in soil unit maps and Table 11 — Building Site Development of the U.S. Department of Agriculture Soil Conservation Service Soil Survey of Whatcom County Area. They are rated as "severe" due to "slope, wetness, ponding, flooding, cutbanks cave" or any combination thereof.~~

~~2. Erosion hazard areas also include those uplands immediately adjacent to Lake Whatcom, Lake Padden, Bellingham and Chuckanut Bays, ponds under 20 acres in size and all streams.~~

~~3. Erosion hazard areas may also include any area where the soil type is predominantly (greater than 50 percent) comprised of sand, clay, silt, and/or organic matter and slope is greater than 30 percent.~~

B. Landslide Hazard Areas. Landslide hazard areas may be prone to landslides and/or subsidence that could include slow to rapid movement of soil, fill materials, rock and other geologic strata resulting in risk of injury or damage to the public and environment. Landslides could result from any combination of soil, slope, topography, underlying geologic structure, hydrology, freeze-thaw, earthquake and other geologic influences. Specific landslide hazard areas include slopes with an incline that is equal to or greater than 40 percent grade (22 degrees) with a vertical elevation change of at least 10 feet. Slope shall be calculated by identifying slopes that have at least 10 feet of vertical elevation change within a horizontal distance of 25 feet or less.

Slope shall not include those lands that have 10 feet of vertical change by virtue of a legally established retaining wall(s), foundation wall, stairways or similar vertical structure or those land areas where public infrastructure and its supporting elements have been developed.

1. Those areas identified in soil unit maps and Table 11 — Building Site Development of the U.S. Department of Agriculture Soil Conservation Service Soil Survey of Whatcom County Area. They are rated "severe" due to "slope" and/or "subsides."

2. Slopes with an incline that is equal to or greater than 40 percent grade (22 degrees) within a vertical elevation change of at least 10 feet. Slope shall be calculated by identifying slopes that have at least 10 feet of vertical elevation change within a horizontal distance of 25 feet or less.

Slope shall not include those lands that have 10 feet of vertical change by virtue of a legally established retaining wall(s), foundation wall, stairways or similar vertical structure or those land areas where public infrastructure and its supporting elements have been developed.

3. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

4. Current and historic marine bluffs along present and historical shorelines including Bellingham and Chuckanut bays.

5. Areas depicted as having high landslide potential within the landslide hazard areas section of the Geologic Hazard Areas Map Folio, Bellingham, Washington, 1991.

C. Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. Specific areas of very high response to seismic shaking include Areas depicted as "Fill" and "Alluvial Deposits" within Whatcom County's Map Folio of Geologic Hazards, 1995. :

1. All landfills placed waterward of the historic 1850 natural coastline of Bellingham and Chuckanut bays.

2. All alluvial deposits near the mouth (delta) of Chuckanut Creek, Padden Creek, Whatcom Creek, Squalicum Creek and Little Squalicum Creek.

3. All marine and stream course bluffs greater than 10 feet in vertical relief and steeper than 100 percent (45 degrees).

4. All rock outcrops greater than 10 feet in vertical relief and lands lying adjacent, or in close proximity, and within the fall line of potential falling, rolling or sliding rock and debris flows.

D. [No Change]

Section 29. Bellingham Municipal Code Section 16.55.440 shall be amended as follows:

16.55.440 Critical area report - Additional technical information requirements for specific hazards.

A. [No Change]

1. [No Change]

2. [No Change]

a-g. [No Change]

h. Recommendations for building siting limitations; and

i. [No Change]

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j. All rock outcrops greater than 10 feet in vertical relief and lands lying adjacent, or in close proximity, and within the fall-line of potential falling, rolling or sliding rock and debris flows; and

k. Slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

3-7. [No Change]

B-D. [No Change]

Section 30. Bellingham Municipal Code Section 16.55.460 shall be amended as follows:

16.55.460 Performance standards - Specific hazards.

A. Erosion and Landslide Hazard Areas. Activities on sites containing erosion or landslide hazards shall meet the standards of Performance standards – General requirements (BMC 16.55.490450) and the specific following requirements:

1-6. [No Change]

7. d-If appropriate, as determined by a qualified professional, an erosion and sediment control plan may include a recommended monitoring and reporting schedule for specified phases of the development or activity.

7.8. Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:

a. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.

b. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the city determines that no other feasible alternative exists.

8-9. Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

B. Seismic Hazard Areas. Activities proposed to be located in seismic hazard areas shall meet the standards of Performance standards – General requirements (BMC 16.55.490450).

C. Mine Hazard Areas. Activities proposed to be located in mine hazard areas shall meet the standards of Performance standards – General requirements (BMC 16.55.490450) and the specific following requirements

1-3. [No Change]

Section 31. Bellingham Municipal Code Section 16.55.470 shall be amended as follows:

16.55.470 Designation of fish and wildlife habitat conservation areas.

A. [No Change]

1. [No Change]

a-b. [No Change]

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c. State priority habitats and areas associated with state priority species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species (PHS) are identified and listed by the State Department of Fish and Wildlife.

~~2. Kelp and eelgrass beds and herring, smelt and sand lance spawning areas.~~

~~3. 2. Commercial and recreational shellfish areas.~~

~~4. 3. Naturally Occurring Ponds Under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from upland dry areas for mitigation purposes, in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as detention facilities, wastewater treatment facilities, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation. To distinguish between ponds and wetlands, refer to current state or federal definitions and guidance.~~

~~5. All marine influenced pocket estuaries including: the north end of Chuckanut Bay, Bayside Road/Fieldstone Road Lagoon, Edgemoor Lagoon, Post Point Lagoon, Padden Creek Mouth, Whatcom Creek Mouth and Squalicum Creek Mouth.~~

~~6. 4. Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses, including wetlands, within the jurisdiction of the state of Washington, as classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used).~~

~~7. Lakes, ponds, streams, and rivers planted with game fish by a governmental entity.~~

~~8. 5. State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.~~

~~9. 6. Areas of Rare Plant Species and High Quality Ecosystems. Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.~~

~~10. 7. Land useful or essential for preserving connections between habitat blocks and open spaces.~~

B. [No Change]

C. The approximate location and extent of habitat conservation areas are shown on the following critical area maps adopted by the city, as revised: most recently updated. The following critical area maps are hereby adopted:

1. [No Change]

2. Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;

3-6. [No Change]

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7. Anadromous and resident fish salmonid-distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission and others;

8. [No Change]

9. City official habitat maps such as the Bellingham Habitat Restoration Technical Assessment maps.

These maps are to be used as a guide for the city, project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

Section 32. Bellingham Municipal Code Section 16.55.490 shall be amended as follows:

16.55.490 Performance standards - General requirements.

A-B. [No Change]

C. Approval of Activities. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or and its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

1-6. [No Change]

D. Mitigation and Equivalent or Greater Biological Functions. Mitigation of for alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

E-F. [No Change]

Section 33. Bellingham Municipal Code Section 16.55.500 shall be amended as follows:

16.55.500 Performance standards - Specific Habitats

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by unless a management plan established by the Washington Department of Fish and Wildlife or consistent with applicable state or federal agency regulations or guidance is provided. Appropriate management measures shall be included in a critical areas report prepared by a qualified professional for review by the city. The city may require a consultation with the respective agency prior to approval.

~~2. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.~~

~~32. Nesting bald eagles and B~~bald eagle habitat shall be protected pursuant consistent with to the U.S. Fish and Wildlife Service Bald Eagle Management Guidelines, or the state or federal regulations in place at the time of application. Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a bald eagle habitat management plan shall be developed by a qualified professional. Activities are adjacent to managed bald eagle sites when they are within 660-800 feet of a nest or within one-half mile (2,640 feet) of a and in a shoreline foraging area. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to consultation with the state or federal agency with authority on bald eagle pairs and their nest. ~~approval of the habitat management plan by the Washington Department of Fish and Wildlife.~~

B. Anadromous and Resident Fish.

1. [No Change]

a-e. [No Change]

2. Structures that prevent the migration of fish salmonids shall not be allowed in the portion of water bodies currently ~~or historically~~, or ~~potentially have a high potential to be~~ used by ~~anadromous~~ fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

3. Fills, when authorized by the shoreline master program, shall not adversely impact ~~anadromous~~ fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

C. [No Change]

D. Stream Buffers (Riparian Habitat Areas). ~~(Buffers).~~ Unless otherwise allowed in this chapter, all clearing, grading, structures, storage of materials and activities shall be located outside of the stream buffer/riparian habitat area.

Buffer Standards. The buffer standards required by this chapter presume the existence of a dense vegetation community in the buffer adequate to protect the stream functions and values. When a buffer lacks adequate vegetation, the director may increase the standard buffer, requiring buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging. Buffers may not include areas that are functionally and effectively disconnected from the stream or buffer areas by a public or private road.

~~1. Establishment of Riparian Habitat Areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to streams.~~

~~21. Stream Buffers Widths (Riparian Habitat Area Widths). Stream buffer (Riparian habitat) area widths are shown in Table 16.55.500(A). A stream buffer riparian habitat area shall have the minimum width recommended, unless a greater width is required pursuant to subsection (D)(3)(2) of this section, or a lesser width is allowed pursuant to subsection (D)(4)(3) of this section, or averaging is proposed, pursuant to subsection (D)(4). Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.~~

Table 16.55.500(A)

Riparian Habitat Areas Widths (Buffers)

Stream Type 1 and 2 (Type "S")

Creek	Segment	Minimum	Maximum
Chuckanut	Mouth to Chuckanut Drive	100 feet	250 feet
Chuckanut	Chuckanut Drive to City Limits	100 feet	250 feet
Whatcom	Mouth to Woburn Street	100 feet	200 feet
Whatcom	Woburn Street to Derby Dam	100 feet	250 feet
Whatcom	Derby Dam to Lake Whatcom	100 feet	200 feet
Squalicum	Reeder Bridge to I-5	100 feet	200 feet
Squalicum	I-5 to Hannegan Road	150 feet	250 feet
Squalicum	Hannegan Road to SMP Boundary	100 feet	200 feet

Table 16.55.500(BA)

Stream Buffer Widths by Stream Type 3 (Type "F")

Creek	Segment	Minimum	Maximum
Padden	Harris Street McKenzie to Donovan Avenue--Type F	75 feet	150 feet
Padden	Donovan Avenue to Old Fairhaven Parkway--Type F	100 feet	150 feet
Padden	Old Fairhaven Parkway to I-5--Type F	100 feet	150 feet
Padden	I-5 to Lake Padden--Type F	150 feet	200 feet
Connelly	Mouth to Detention Dam--Type F	75 feet	150 feet
Squalicum	SMP boundary to City Limits	100 feet	150 feet
Baker	Mouth to I-5--Type F	100 feet	150 feet
All Other Type 3F Streams	Type "F" All	75 feet	150 feet
Type Np4 Streams	Type "Np" All	50 feet	150 feet

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Creek	Segment	Minimum	Maximum
Type Ns 5 Streams	Type " Ns " <u>All</u>	50 feet	100 feet
Type Np 4 and Ns 5 Streams with high mass wasting risk		200 feet	225 feet

~~** Please Nnote~~ that water and stream types are defined in BMC 16.55.510.

~~Table 16.55.500(C)~~ (for reference only)

Recommended Riparian Habitat Areas (Buffers) Stream Type	WDFW Recommended RHA Widths
Type 1 and 2; or shorelines of the state, or shorelines of statewide significance	250 feet
Type 3; or other perennial or fish-bearing streams, five to 20 feet wide	200 feet
Type 3; or other perennial or fish bearing streams, < five feet wide	150 feet
Type 4 and 5; or intermittent streams and washes with low mass wasting potential	150 feet
Type 4 and 5; or intermittent streams and washes with high mass wasting potential	225 feet

~~** Please note~~ that water and stream types are defined in BMC 16.55.510.

2. Increasing Buffer Widths. The director shall have the authority to increase the minimum buffer width up to the maximum width as follows:

a. When the director determines that the minimum width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area as a result of a habitat assessment pursuant to 16.55.480 C;

b. When the frequently flooded area exceeds the minimum stream buffer width, the stream buffer shall extend to the outer edge of the frequently flooded area;

c. When a channel migration zone is present, the stream buffer shall extend to the outer edge of the channel migration zone; or

d. When the stream buffer is within a landslide hazard area, or its buffer, the stream buffer width shall be determined by the director based on a recommendation from qualified professionals in the field of geology and stream ecology/wildlife;

3. Increased Riparian Habitat Area Widths. Riparian habitat area widths shall be increased beyond the minimum up to the maximum, as follows:

a. When the director determines that the minimum width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;

- b. When the frequently flooded area exceeds the minimum riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
- c. When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
- d. When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional 50 feet on the at-risk side; or
- e. When the habitat area is within a landslide hazard area, or buffer, the riparian habitat area width shall be the maximum distance, or the erosion or landslide hazard area buffer, whichever is greater.

3. Reducing Buffer Widths. The director shall have the authority to reduce the minimum buffer widths when all the following criteria are met:

- a. The buffer reduction shall not adversely affect the functions and values of the stream and habitat;
- b. The buffer of a Type F or Np stream shall not be reduced to less than 75 percent of the minimum buffer;
- c. The buffer of Type Ns stream shall not be reduced to less than 50 percent of the minimum buffer; and
- d. The applicant implements all reasonable measures to reduce the adverse effects of adjacent land uses and ensure no new loss of buffer functions and values. The specific measures below shall be implemented to the greatest extent possible include, but are not limited to, the following:
 - i. Direct lights away from the stream and stream buffer;
 - ii. Locate facilities that generate substantial noise away from the stream and stream buffer;
 - iii. Construct a wildlife permeable fence around the buffer and post signs at the buffer to clearly indicate the location of the stream buffer area pursuant to 16.55.230;
 - iv. Plant buffer with "impenetrable" native vegetation appropriate for the location;
 - v. Use low impact development techniques to the greatest extent possible; and
 - vi. Establish and record a permanent conservation easement to protect the stream and stream buffer and restrict the use of pesticides and herbicides in the easement.

4. Riparian Habitat Area Width Averaging. The director may allow the riparian habitat area width to be averaged in accordance with a critical area report only if:

- a. The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;
- b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
- c. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
- d. The recommended riparian habitat area width is not reduced by more than 25 percent in any one location; and

e. The width reduction will not be located within another critical area or associated buffer.

4. Averaging Buffer Widths. The director has the authority to average stream buffer widths on a case-by-case basis when all the following criteria are met:

a. The buffer averaging does not reduce the functions or values of the stream or stream buffer; and

b. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be parallel to the stream; and

c. The stream or stream buffer contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and

d. The buffer width is not reduced in any location to less than 50 percent of the standard width or 35 feet, whichever is greater, on a case-by-case basis as a result of a habitat assessment pursuant to 16.55.480 C; and

e. The buffer has not been reduced in accordance with this section. Buffer averaging is not allowed if the buffer has been reduced; and

f. There were no feasible alternatives to the site design without buffer averaging.

5. Riparian Habitat Mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same subdrainage basin as the habitat impacted.

5. Stream Buffer Impacts. When buffer width adjustments through buffer averaging or reduction do not remove the proposed activity from the buffer, then the activity is considered a buffer impact. When unavoidable buffer impacts occur, compensatory mitigation shall be provided at a ratio of 1:1. The mitigation shall occur on the same site when feasible or within the same stream system preferably. The mitigation shall ensure that the stream and stream buffer functions and values are not diminished due to the impacts.

6. Alternative Mitigation for Riparian Habitat Areas. The performance standards set forth in this subsection may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.

6. Stream Buffers on Mitigation Sites. Stream buffer widths at mitigation sites shall comply with the buffer requirements of this chapter.

7. Building Setbacks from Stream Buffers. Buildings, structures, paving, and other hard surfacing shall be set back a distance of 15 feet from the edge of the stream buffer unless a smaller setback is approved by the director. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer.

a. Landscaping;

b. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;

c. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided, that they are engineered as a pervious system as defined in BMC 16.80.050.

Such improvements may be subject to the requirements in Chapter 15.42 BMC, Stormwater Management;

- d. Above and below ground water conservation cisterns and associated infrastructure, used for residential rainwater catchment but not to exceed 300 square feet total; provided, that if above ground, the necessary foundation is engineered as a pervious system.

E. Aquatic Habitat. The following specific activities listed below are allowed in may be permitted within a riparian habitat area stream buffers, pond, lake and, waters of the state with the exception of wetlands, and marine habitat or associated buffer when the activity complies with the provisions set forth in the SMP and subject to the standards of this subsection. The standards that provide the most protection to protected habitat and species shall apply. Approval of the activity shall be obtained in the appropriate critical area permit, minor critical area permit, or exception, depending on the activity. Mitigation shall be provided in accordance with the provisions of this chapter.

1. Clearing and Grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.

~~b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.~~

eb. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.

ec. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

ed. Erosion and sediment control that meets or exceeds the standards set forth in Chapter 15.42 BMC shall be provided.

2. Shoreline Erosion Control Measures. New, replacement, or substantially improved shoreline erosion control measures may be permitted in accordance with an approved critical area report that demonstrates the following:

a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.

b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.

c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the proposed shoreline erosion control measures.

d. The proposed shoreline erosion control measures do not result in alteration of intertidal migration corridors.

3. Stream Bank Stabilization. Stream bank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.

4. Roads, Trails, Bridges, and Rights-of-Way. Construction of trails, roadways, ~~and minor road bridging, less than or equal to 30 feet wide and bridges,~~ may be permitted in accordance with an approved critical area report subject to the following standards:

a. There is no other feasible alternative route with less impact on the fish populations, stream, or stream buffer, and mitigation sequencing has been applied;~~environment;~~

b-c. [No Change]

d. Trails shall be located on the outer edge of the riparian area or buffer except for limited viewing platforms and crossings unless there is a location that has a lesser impact on the water body. Trails shall not be located in the channel migration zone and shall be the minimum width necessary for safe travel;

e-f. [No Change]

g. Road bridges are designed to be consistent with according to the Washington State's Department of Fish and Wildlife "Water Crossing Design Guidelines" (2013) Fish Passage Design at Road Culverts, 1999, and the National Marine Fisheries Service "Anadromous Salmonid Passage Facility Design" (2011). Guidelines for Salmonid Passage at Stream Crossings, 2000.

5. Utility Facilities. New utility lines and facilities may be permitted ~~to cross watercourses~~ in accordance with an approved critical area report, if they comply with the following ~~criteria; standards:~~

a. There is no alternative location;

a b. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;

b c. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;

ed. If a utility is proposed to cross or span a stream, ~~t~~The utility~~ies~~ shall cross at an angle greater than 60 degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;

d e. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;

e f. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and

f g. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.

6. Public Flood Protection Measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report and the approval of a federal biological assessment by the federal agency responsible for reviewing actions related to a federally listed species.

7. Instream Structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.

~~8. Stormwater Conveyance Facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:~~

- ~~a. No other feasible alternatives with less impact exist;~~
- ~~b. Mitigation for impacts is provided;~~
- ~~c. Stormwater conveyance facilities shall incorporate fish habitat features; and~~
- ~~d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water. [Ord. 2005-11-092].~~

8. Stormwater management in stream buffers.

a. Stormwater management facilities shall not be located within stream buffers, with the following exceptions:

- i. Conveyance systems may be located in stream buffers on a case-by-case basis if deemed necessary and approved by the Public Works and Planning and Community Development Departments.
- ii. Full dispersion of flow, as defined in Chapter 15.42 BMC may be allowed in a stream buffer if approved by the Public Works and Planning and Community Development Departments.

b.iii. The facilities specified above in (a)(i) and (a)(ii) are allowed only if impacts to the buffer, resulting from their installation, are avoided or mitigated.

cb. Stormwater management design and facilities shall be consistent with Chapter 15.42, as amended, to protect stream conditions and functions.

9. Restoration. Restoration, relocation, alteration and/or realignment of a stream channel to improve ecological functions provided such action is concurrently reviewed and approved by the Washington State Department of Fish and Wildlife, the United States Army Corps of Engineers and if required, the Department of Ecology.

Section 34. The following definitions are amended or added to Bellingham Municipal Code Section 16.55.510. All other definitions in the section remain unchanged.

16.55.510 Definitions

~~"Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas published by the Washington State Department of Commerce.~~

~~"Emergencies" means those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to public or private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within 30 days, the director shall determine if the action taken was within the scope of the emergency actions~~

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allowed in this definition. If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then provisions of BMC 16.55.040 (Enforcement and penalties) shall apply.

"Hazard tree" means any tree determined by an International Society of Arboriculture (ISA)-certified arborist to be a hazard to people or property as a result of a risk assessment conducted according to ISA guiding principles or tree part which poses a high risk of damage to persons or property.

"Mature forested wetland" means a wetland where at least one acre of the wetland surface is covered by woody vegetation greater than 20 feet in height with a crown cover of at least 30 percent and where at least 8 trees/acre are 80 to 200 years old or have average diameters at breast height (dbh) exceeding 21 inches (53 centimeters) measured from the uphill side of the tree trunk at 4.5 feet up from the ground, comprised of coniferous trees of at least 50 years in age and/or deciduous trees 30 years in age or a combination of trees representing a distinct layered canopy complex of immature woody vegetation less than 20 feet in height, trees of medium heights, typically 20 feet to 60 feet, and taller trees ranging from 60 feet to 90 feet or more in height inclusive of a diverse understory.

"Moderate intensity land use" means land use that includes the following uses or activities: residential (one unit/acre or less), moderate-intensity open space (parks), moderate-intensity new agriculture (orchards and hay fields), paved trails, and building of logging roads.

"Preservation (protection/maintenance)" means removing the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres but may result in a gain in functions and will be used only in exceptional circumstances over the long term.

"Restoration" means measures taken to restore an altered or damaged natural feature, including: active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities or catastrophic events, the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Includes "reestablishment" and "rehabilitation."

"Stream Type-4 S" means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, but not including those waters' associated wetlands as defined in Chapter 90.58 RCW.

"Stream Type-2 F" means waters generally classified according to WAC 222-16-031 and specifically as follows:

Segments of natural waters that are not classified as Type 4 S water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

A. Are diverted for use by fish hatcheries. Such waters shall be considered Type 2 F water upstream from the point of diversion for 1,500 feet, including tributaries, if highly significant for protection of downstream water quality;

B-C. [No Change]

"Stream Type F3" also means waters generally classified according to WAC 222-16-031 and specifically as follows:

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Segments of natural waters that are not classified as Type 4 ~~S~~ or 2-waters and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

A-C. [No Change]

"Stream Type 4 ~~Np~~" means waters classified according to WAC 222-16-031 ~~with excerpts~~ as follows:

All segments of natural waters within the bankfull width of defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 ~~Np~~ waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 23), then Type 4 ~~Np~~ waters begin at a point along the channel where the contributing basin area is at least 52 acres in Western Washington.

"Stream Type 5 ~~Ns~~" means waters classified according to WAC 222-16-031 ~~with excerpts~~ as follows:

All segments of natural waters within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 ~~S, F or Np~~ waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 water. Type 5 ~~Ns~~ waters must be physically connected by an above-ground channel system to Type ~~S~~1, ~~F~~2, 3, or ~~Np~~4 waters.

~~"Stream Type F" means fish-bearing waters.~~

~~"Stream Type NP" means non-fish-bearing, perennial.~~

~~"Stream Type NS" means non-fish-bearing, seasonal.~~

~~"Stream Type S" means waters subject to the shoreline master program.~~

"Sub-basin" or "sub-drainage basin" means the drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.

Section 35. Bellingham Municipal Code Section 21.10.040 shall be amended as follows:

A. [No Change]

B. [No Change]

1-19. [No Change]

20. Critical area and minor critical area permits and other Director decisions issued under BMC 16.55 that do not require approvals without a variance and that are not a Type II process;

21-23. [No Change]

Section 36. Bellingham Municipal Code Section 21.10.260 shall be amended as follows:

A-B. [No Change]

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C. [No Change]

1. Except for lot line adjustments, short subdivisions, preliminary plats, general binding site plans, planned developments and critical area permits or where a different duration of approval is established by city ordinance, executed development agreement or state or federal law, the vested status of an approved land use permit under Process Type I, II, III or VII shall expire two years from the date of the city's final decision, unless a complete building permit application is filed before the end of the two-year term.

2. Planned development approvals and critical area permits shall expire five years from the date of the city's final decision unless a complete building permit application is filed before the end of the five-year term or the applicant has obtained an extension from the planning director. The director may grant one extension of up to two years.

3. [No Change]

D. [No Change]

PASSED by the Council this 8th day of February, 2016.

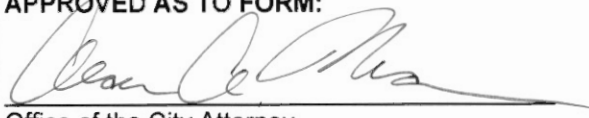

Council President

APPROVED by me this 16th day of February, 2016.


Mayor

ATTEST: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:

February 12, 2016

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CRITICAL AREAS ORDINANCE AMENDMENTS
FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS
BELLINGHAM PLANNING COMMISSION
AUGUST 27, 2015

SUMMARY: Periodic update to the City's Critical Areas Ordinance (CAO), Bellingham Municipal Code 16.55.

The purpose of this periodic update is to ensure that the CAO meets Growth Management Act (GMA) requirements including consistency with the Department of Ecology's (DOE) updates, best available science (BAS) and the Bellingham Comprehensive Plan. The proposed changes to the CAO are also meant to improve overall administration by staff and predictability for the general public by clarifying language and streamlining project review while maintaining protection of the city's critical areas. Please see the staff report that explains the proposed amendments.

I. Findings of Fact

1. Project Summary

On August 27, 2015 the Bellingham Planning Commission approved Findings of Fact, Conclusions of Law and a Recommendation of approval of the proposed amendments to the Critical Areas Ordinance (BMC 16.55).

The GMA, RCW 36.70A, defines critical areas as: wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (includes streams), geologically hazardous areas, and aquifer recharge areas. The city regulates all of these through the BMC 16.55 except aquifer recharge areas because there are none within city limits.

The proposed amendments to BMC 16.55 intend to achieve one or more of the following objectives:

- ✓ Incorporate state required updates and guidelines;
- ✓ Improve predictability and consistency by clarifying language; and
- ✓ Improve customer service by clarifying requirements and streamlining project review

The proposed amendments do not include;

- ✓ Decreasing protection of critical areas; and
- ✓ Increasing or decreasing buffer widths

Two minor amendments to BMC Title 21.10 are proposed. One is to extend certain critical area permits beyond their two year life when they are associated with plats, binding site plans and planned developments (5-years) and the other is to include "minor critical area permits" and "exemptions" as Type I land use decisions.

Background Information

The Wetland/Stream Ordinance (BMC 16.50) adopted in 1991 was the city's first code that provided regulatory protection of wetlands and streams. In 2005, the city's first CAO (BMC 16.55) was approved. The CAO regulates not only wetlands and streams but the other critical areas as described above. It was based largely on the DOE model ordinance that had been

1 drafted for cities and counties planning under GMA. Over the next few years of implementation
2 minor errors and confusing language were identified for improvement.

3
4 In 2010, the City amended BMC 16.55 in order to address a number of minor issues (Ordinance
5 #2010-08-050). Those amendments included such topics as nonconformity, repair and
6 maintenance activities in geologically hazardous area buffers, and roadways that bisect buffers,
7 among other minor changes and corrections.

8
9 The amendments proposed here are part of the GMA periodic update, a process that ensures
10 the city's development regulations are in compliance with GMA requirements such as BAS and
11 are consistent with the Comprehensive Plan. While the original CAO was based on BAS, new
12 guidance has been published by DOE that must be incorporated into BMC 16.55 to reflect it.

13
14 DOE has published a new wetland rating system that is based on the most recent science. As
15 of January 1, 2015, DOE requires that all wetland ratings be done using the "2014" wetland
16 rating system. The new system uses a revised scoring scheme which more accurately
17 assesses wetland functions. The new system does not change buffer widths.

18
19 Another change required in the CAO is the reference to the wetland delineation manual. In
20 2011 state rules changed requiring the identification of wetlands to be done in accordance with
21 the approved federal manual and regional supplements (WAC 173-22-035 (2011)).

22
23 In order to identify and revise other code sections not mandated by the state, staff formed two
24 technical advisory groups in 2014 that were instrumental in reviewing and making
25 recommendations regarding the proposed amendments. One technical group was formed for
26 wetlands and one for geologically hazardous areas. A stakeholder group was also convened
27 that included representatives from the development community as well as city staff who manage
28 capital projects requiring critical area review.

29
30 In addition to the local experts and the stakeholders, comments from others were solicited. The
31 wetland section of DOE's Northwest Regional Office reviewed the proposed amendments and
32 provided comments. City departments that implement capital projects within critical areas such
33 as the Parks and Recreation, Public Works and Environmental Resources Departments have
34 provided comments on the proposed amendments. Finally, the Legal Department has reviewed
35 the proposed amendments and provided comments. These comments have been appropriately
36 considered and are reflected in these proposed amendments.

37
38 The scope of the amendments changed after receiving comments on the draft CAO from DOE
39 and from the public, including Futurewise, following the January public hearing. Initially, the
40 scope was aimed at updating references and clarifying the CAO. However, DOE identified code
41 language not consistent with BAS and referred staff to their "Wetlands and CAO Updates:
42 Guidance for Small Cities" (DOE, Publication No.10-06-002). As a result, the CAO will now
43 regulate all wetlands regardless of size. In addition, mitigation ratios now align with DOE
44 guidelines after increasing ratios that were lower than the guidelines.

45
46 Finally, critical area permits are valid for two years and are processed concurrently with other
47 land use permits when they require simultaneous approval. The new language proposes to
48 synchronize the vesting of critical area permits to specific land use approvals (plats, binding site
49 plans, planned permits) when they exceed two years. Critical area permits associated with all
50 other land use approvals including building permits would retain the two year vesting language.

2. Procedural History

The procedures specified in BMC 21.10.150 for this TYPE VI legislative process have been followed.

The Planning and Community Development Department (PCDD) published the required 30-day legal notice for a public hearing on the proposed amendments on December 14, 2014 in the Bellingham Herald. Legal notice was also posted on the City's "Notices" page and was posted in the lobby of City Hall. The public hearing was held before the Planning Commission on January 15, 2015 at 7:00 P.M. in the City Council Chambers at City Hall, 210 Lottie Street, Bellingham, WA 98225.

Mailed notice of the public hearing was provided to members of the Mayor's Neighborhood Advisory Committee and Neighborhood Associations on December 12, 2014.

The PCDD provided the proposed amendments to the Washington State Department of Commerce as required by RCW 36.70A.106 on December 29, 2014.

The Planning Commission conducted their review at the January 15, 2015 public hearing. At the conclusion of the public hearing the Planning Commission directed staff to prepare additional materials that responded to the public testimony and the Commission's own questions. It was recommended that these materials be brought back to the Commission at a work session.

On May 17, 2015 the PCDD published notice in the Bellingham Herald and posted legal notice on the City's "Notices" page for a work session on the proposed amendments to the CAO. The work session was held for June 4, 2015 at 7:00 P.M. in the City Council Chambers at City Hall, 210 Lottie Street, Bellingham, WA 98225.

The Planning Commission considered the materials that were prepared by PCDD staff for the work session. These materials included:

- ✓ Staff report;
- ✓ Staff responses to the Commissioner's questions from January 15, 2015 public hearing;
- ✓ Memorandum from Rick Sepler, Director on Best Available Science;
- ✓ Public comment tracker;
- ✓ Detailed responses to DOE, Futurewise and G. Middaugh;
- ✓ Staff recommended language for new changes to the CAO based on comments received; and
- ✓ Comments from Futurewise, DOE, and G. Middaugh

Public comment was also taken. At the conclusion of the work session the Planning Commission directed staff to incorporate the proposed revisions into the CAO and bring them back in a public hearing.

The PCDD published the required 30-day legal notice for a public hearing on the proposed amendments on July 26, 2015 in the Bellingham Herald. Legal notice was also posted on the City's "Notices" page and was posted in the lobby of City Hall. The public hearing was scheduled before the Planning Commission on August 27, 2015 at 7:00 P.M. in the City Council Chambers at City Hall, 210 Lottie Street, Bellingham, WA 98225.

1 Mailed notice of the public hearing was provided to members of the Mayor's Neighborhood
2 Advisory Committee and Neighborhood Associations on July 22, 2015.

3
4 Materials were made available to the general public and to the Planning Commissioners on
5 August 10, 2015. These materials included:

- 6
- 7 ✓ Staff Report;
- 8 ✓ SEPA Addendum issued August 10, 2015;
- 9 ✓ Draft Findings of Fact, Conclusions and Recommendations;
- 10 ✓ Draft Ordinance for amendments to BMC 16.55;
- 11 ✓ Draft Ordinance for amendments to BMC 21.10;
- 12 ✓ BMC 16.55 in track change format showing the original amendments and the
- 13 amendments resulting from the June 4, 2015 work session
- 14

15 The Planning Commission conducted their review process at the August 27, 2015 public
16 hearing. Public testimony was provided.

17
18 The Commission subsequently reviewed and considered the proposal to develop these findings,
19 conclusions and recommendations.

20 21 **3. Public Comment**

22
23 The Commission held two public hearings; one on January 15, 2015 and one on August 27,
24 2015. Public testimony was provided at each public hearing. Public comment was taken at the
25 work session on June 4, 2015. All written comments were provided to the Commissioners and
26 posted on the project web site. Public comment was tracked throughout the Commission's
27 review process, and staff provided responses to the comments where appropriate.

28 29 **4. Environmental Review**

30
31 The City's SEPA Official issued a non-project SEPA Determination of Non-Significance (DNS)
32 on December 29, 2014 on the subject amendments. The required 14-day comment period was
33 extended to 21 days to account for December holidays. The comment period expired on
34 January 15, 2015.

35
36 The City's SEPA Official issued an Addendum to the DNS (SEP2015-00028) on August 6, 2015.
37 This Addendum was issued because of the most recent revision to the CAO proposed by PCDD
38 staff since the issuance of the December 29, 2014 DNS (SEP2014-00042). These new revisions
39 intend to implement best available science and protection of critical areas. The Addendum was
40 circulated to agencies and posted on the City's "Notices" webpage. However, no additional
41 comment period was provided.

42
43 The CAO approved on December 5, 2005 was based on BAS and on special consideration for
44 protection measures to preserve anadromous fisheries, as required by the GMA (RCW
45 36.70A.172(1)). During development of the CAO, the Dept. of Ecology had published two
46 important documents for cities and counties that were drafting their CAO's.

47
48 The first document, referred to as "Volume I", was a synthesis of the science pertaining to
49 wetlands while the second one, "Volume II", was the guidance for protecting wetlands derived
50 from Volume I. The record for Ordinance No. 2005-11-092, the CAO, includes a list of

publications used as the BAS for the original CAO. These are provided in the Attachment 1 of the staff report.

This periodic update of the CAO is building on the foundation of those BAS publications through the incorporation of several newer publications listed below:

- ✓ Draft Bellingham Habitat Restoration Technical Assessment Report (City of Bellingham, May 2014)
- ✓ Urban Streams Monitoring Report 2013 (Bellingham Public Works Laboratory, 2013)
- ✓ Update on Wetland Buffers: The State of the Science (Ecology Publication #12-06-011, October 2013)
- ✓ Wetlands and CAO Updates: Guidance for Small Cities (Ecology Publication #10-06-002 (2nd Revision October 2012)
- ✓ Priority Habitats and Species List (Dept. of Fish and Wildlife, August 2008)
- ✓ Wetland Mitigation in Washington State--Part 1: Agency Policies and Guidance (Version 1, March 2006, Ecology Publication 306-06-011a)
- ✓ Bellingham Comprehensive Plan - Chapter 9 - Environment Element
- ✓ Washington State Wetland Rating System for Western Washington--2014 Update (Ecology Publication #14-06-029)
- ✓ Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised)
- ✓ Corps of Engineers Wetlands Delineation and Regional Supplements (adopted in March 2011 through WAC 172-22-035)
- ✓ Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington), (Ecology Publication #09-06-32, Olympia, WA, December 2009)
- ✓ Wetland Mitigation in Washington State--Part 2: Developing Mitigation Plans (Version 2, March 2006, Ecology Publication 306-06-011b)

The city believes that the CAO update is consistent with BAS and that the update will continue to protect the functions and values of critical areas in Bellingham.

5. Goals and policies from the "Environment" and "Economic Development" Chapters of the city's Comprehensive Plan and City Legacies and Strategic Commitments.

The Environment and Economic Development chapters of the city's Comprehensive Plan have guided this periodic update. The following are the key goals and policies supporting the proposed amendments:

Environment - Chapter 9:

EVG-3: Continue to implement GMA and Comprehensive Plan goals aimed at environmental protection and maintaining quality of life through the implementation of the Critical Areas Ordinance.

LU-14: Bellingham recognizes the requirement for, and substantial benefit of, incorporating the use of "best available science" in the overall management of critical area and natural resource protection.

1 LU-146: Our community acknowledges the tremendous ecological value of anadromous fish,
2 given their potentially broad geographic range, and the responsibility that comes with providing
3 for their enduring lifecycle and habitat needs. We have a long-term commitment to enhance this
4 resource.

5
6 EVP-21: A Preserve and protect significant environmental features including unique wetlands,
7 woodlands, prairies, meadows, shorelines, waterfronts, wooded hillsides, and other
8 characteristics that support wildlife and reflect Bellingham's resources.

9
10 Economic Development - Chapter 10:

11 ED-3: Recognize and consider the potential economic impacts of proposed legislative actions
12 prior to adoption.

13
14 ED-4: Continually review and evaluate the city's permit processes in order to provide timely,
15 cost effective services and predictable outcomes.

16
17 ED-44: Continue to provide a healthy community that includes clean air and water, public open
18 spaces, natural and recreational areas, and "green infrastructure" such as street trees and
19 native vegetation in urban centers and residential areas.

20
21 Furthermore, this update, comprised of multiple proposed amendments is consistent with these
22 City Legacies and Strategic Commitments:

- 23
24 ✓ Healthy Environment: Protect and restore ecological functions and habitat;
25 ✓ Vibrant and Sustainable Economy: Support thriving local economy across all sectors;
26 and
27 ✓ Quality Responsive City Services: Deliver efficient, effective and accountable municipal
28 services and use transparent processes and involve stakeholders in decisions.

29
30 **II. Conclusions**

31
32 Based upon public testimony at the public hearings, consideration of PCDD staff responses
33 provided at the work session and review and consideration of the information provided in the
34 staff reports, all attachments including these Findings the Planning Commission concludes that:

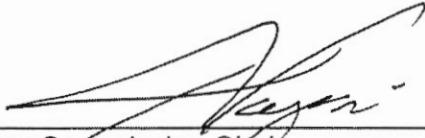
- 35
36 1. The City has followed the procedures regarding a TYPE VI legislative process as
37 specified in BMC 21.10.150;
38 2. The proposed amendments have been shown to be consistent with the City's
39 Comprehensive Plan;
40 3. The proposed amendments meet GMA requirements and incorporate best available
41 science;
42 4. The proposed amendments will not result in a net loss of existing critical area functions;
43 and
44 5. The proposed amendments should be approved.

45
46 **III. Recommendation**

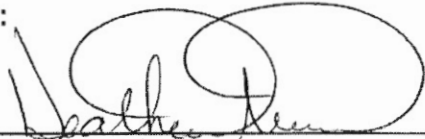
47
48 Approve the proposed amendments to the City's Critical Areas Ordinance.
49

1 By a vote of 4-0 on August 27, 2015, the Planning Commission made a motion recommending
2 approval of the amendments to the Critical Areas Ordinance as shown in the Draft Ordinance
3 provided in Attachment 1.

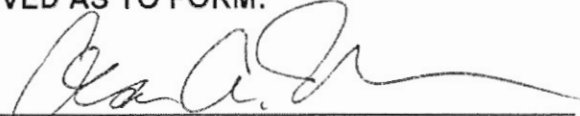
4
5 ADOPTED this 15TH day of OCTOBER, 2015.

6
7
8
9
10 
11 _____
12 Planning Commission Chair

13 ATTEST:

14
15 
16 _____
17 Recording Secretary

18 APPROVED AS TO FORM:

19
20
21 
22 _____
City Attorney