



PLANNING COMMISSION AGENDA

Regular Meeting Date: 11-7-2018

Planning Commission
Meeting:

First Wednesday of every
Month @ 7:00pm

Planning & Community
Development Department

1812 Main Street
Lake Stevens, WA 98258
(425) 377-3235

www.lakestevenswa.gov

Municipal Code

Available online:

www.codepublishing.com/WA/LakeStevens/

*Items attached

**Items previously
distributed

Items to be
distributed

A. **CALL TO ORDER: 7:00pm**
Pledge of Allegiance

B. **ROLL CALL**

C. **GUEST BUSINESS**

D. **ACTION ITEMS**
1. Approve minutes for October 17, 2018 meeting

E. **PUBLIC HEARING**
1. Critical Areas **Community Development Director Wright**

Public hearing presentation will follow the public hearing format listed below:

PUBLIC HEARING FORMAT

2. PC Chair Opens Public Hearing
3. Staff Presentation
4. Commission's questions for staff
5. Proponent's comments
6. Comments from the audience
7. Proponent rebuttal comments
8. Close public comments portion of hearing by motion
9. Re-open public comment portion of hearing for additional comments (optional)
10. Close Hearing by motion
11. **COMMISSION ACTION BY MOTION—Recommendation to Council**
 - A. Approve
 - B. Deny
 - C. Continue

F. **DISCUSSION ITEMS**
1. Fences, Hedges and Walls Code Amendment Senior Planner Place

G. **COMMISSIONER REPORTS-**
H. **PLANNING DIRECTOR'S REPORT-**

I. **ADJOURN**

SPECIAL NEEDS

The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact Human Resources, City of Lake Stevens ADA Coordinator, at (425) 377-3227 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.

PLANNING COMMISSION REGULAR MEETING MINUTES

Community Center
1808 Main Street, Lake Stevens
Wednesday October 17, 2018

CALL TO ORDER: 7:00 pm by Chair Janice Huxford

MEMBERS PRESENT: Chair Janice Huxford, Tracey Trout, Linda Hoult, Steve Ewing, John Cronin, Jennifer Davis and Vicki Oslund

MEMBERS ABSENT: None

STAFF PRESENT: Community Development Director Wright, Planning Manager Machen and Clerk Teresa Meyers

OTHERS PRESENT:

Guest business: None

Action Items: 1. Motion made by Commissioner Hoult and seconded by Commissioner Ewing to approve the October 3, 2018 minutes as corrected. Motion passed 7-0-0-0.

Discussion Items: Community Development Director Wright provided background details for the proposed Critical Area Regulation amendments to the Lake Stevens Municipal Code as mandated and outlined by RCW 36.70A.130 as part of the Comprehensive Plan update process. The Commission previously reviewed the amendments including changes to the rating system in 2016. The Department of Ecology (DOE) has refined its model and developed updated guidance in its July 2018 supplemental report. Director Wright reviewed the July 2018 updates with the Commission seeking Planning Commission approval to recommend the updates to Council for adoption. The process will entail ensuring the language is updated in the tables; forwarded to DOE for final review; sent to commerce for final review and reviewed at a public hearing.

Commissioner Huxford and Commissioner Cronin went on record to declare personal interest in areas potentially affected by the updates. Commissioner Trout asked for clarification on tree mitigation language with a concern for loss of habitat trees. Director Wright defined the current tree mitigation of 3-1 as approved by council. Further discussion took place regarding innovative design; replacing habitat areas with creative functions; building versus land development; lot size concerns and the timeline between previous Planning Commission critical area review and current recommendations. Director Wright outlined the process for the Planning Commission to either accept staff recommendations as presented or hold a public hearing before forwarding a recommendation to City Council. Commissioner Hoult moved to add the public hearing to the November 7, 2018 regular meeting. Commissioner Trout seconded the motion. Motion passed 4-2-1-0

Planning Manager Machen gave a briefing on Wireless Communication Facilities including the recent FCC rules issued on October 15, 2018. Recent requirements allow the jurisdiction to regulate the number of small cell equipment on poles and residential roof top deployment. Planning Manager Machen will research shoreline jurisdiction allowance for attaching cell equipment to poles in an effort to avoid obstructing views. The FCC requirements go into effect January 2019, so staff and the Commission have time to develop standards such as undergrounding or cabinet concealment prior to deployment. The City may determine design guidelines for concealment within the sub-areas.

Questions for Planning Commission direction:

- What are concealment preferences within Design Districts?
- Where to require undergrounding? (Note: FCC does not allow City to regulate undergrounding in all areas.)
- Should City allow in-line facilities?
- Should existing utility poles be replaced or enlarged?
- Should attached equipment cabinets be allowed?
- Which areas within the City should require equipment concealment such as faux rocks or just paint and landscape fencing?

Commissioner Huxford suggested sharing the downtown plan with companies in advance to provide ample time to meet design guidelines prior to deployment.

Planning Manager Machen described the timeline needed to prepare a draft code for the Commission and a public hearing presentation. Director Wright indicated the priority would be to get a franchise agreement adopted first; however, staff should have draft code to the commission January or February of 2019.

Commissioner Ewing asked if staff could provide estimates of proposed small cell locations predicted? Director Wright and Senior Planner Machen will look at surrounding jurisdictions for data.

Commissioner Reports: Chair Huxford shared an invitation to the Aquafest Board meeting on October 30, 2018 at 5:30 pm. Commissioner Trout invited everyone to attend the LSHS Homecoming game, Friday, October 19th.

Director Report: Community Development Director Wright invited the Commissioners to attend the Open House for the New Police Department building. The event is scheduled to be held October 24th at 5:30 p.m. at Fire Station 82.

Adjourn: Motion by Commissioner Hoult to adjourn. Commissioner Ewing seconded. Motion carried 7-0-0-0. Meeting adjourned at 8:24 p.m.

Janice Huxford, Chair

Jennie Fenrich, Clerk, Planning & Community Development



Staff Report City of Lake Stevens Planning Commission

Public Hearing
Date: **November 7, 2018**

Subject: **LUA2016-0024**: Amendments to the City of Lake Stevens Municipal Code Critical Areas Regulations

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

SUMMARY: Proposed amendments to the city of Lake Stevens Critical Areas Regulations as mandated and outlined by RCW 36.70A.130 as part of the Comprehensive Plan update process.

ACTION REQUESTED OF PLANNING COMMISSION

Forward a recommendation to the City Council.

BACKGROUND/HISTORY:

The Growth Management Act of Washington requires cities and counties review their critical area ordinances as part of their mandatory Comprehensive Plan update under RCW 36.70A.130. Planning and Community Development started a review of the entire Critical Areas regulations in Chapter 14.88 LSMC (**Exhibit 1**) in 2016. As reviewed with the Planning Commission, staff has proposed minor updates to the full chapter in addition to significant changes to the wetlands section based on adoption of the 2014 Wetland Rating System for Western Washington and integration of model code elements published in Wetland Guidance for CAO Updates (Publication No. 16-06-001), dated June 2016. All changes are shown in edit mode.

The Washington State Department of Ecology (DOE) made significant changes to the Wetland Rating System for Western Washington manual, which became effective January 1, 2015. The changes to the rating system were designed to provide a more accurate characterization of wetland functions. After reviewing the model, DOE has refined its model and developed updated guidance in its July 2018 supplemental report, Modifications for Habit Scores.

The following is a list of major changes:

1. Updated definitions added in Chapter 14.08 LSMC;
2. Section 14.88.120 Regulated Activities updated for compliance with the model ordinance, including references to assumption of Class IV permits and limitations on subdivisions;
3. Section 14.88.220 Allowed Activities updated for compliance with the model ordinance, adding new sections (a) through (d) – section describes when stormwater facilities may be allowed in critical area buffers;
4. Section 14.88.275 Mitigation/Enhancement Plan Requirements updated to include criteria for data collection;
5. Section 14.88.276 Alternative Mitigation added that would allow purchase of credits or payment of in-lieu fees for impacts to streams, wetlands and associated buffers;

6. Section 14.88.285(d) defines when fences and walls will be allowed in critical areas and buffers and materials;
7. Section 14.88.287 Fencing and Signage updated for compliance with the model ordinance;
8. Section 14.88.290 Critical Areas Tracts and Easements added to clarify when the city will require the dedication of a tract or easement to establish a Native Growth Protection Area;
9. Section 14.88.297 On-site Density Transfer for Critical Areas updated to clarify the extent and allowed modifications for on-site density transfers; and
10. Section 14.88.440 Mitigation updated to include specific requirements for innovative design;
11. Part VIII Wetlands – most of this section was updated for compliance with the model ordinance.
 - New purpose statement – Section 14.88.800
 - Wetland rating manual reference and the description of wetland types updated - Section 14.88.805
 - Allowed activities updated – Section 14.88.820
 - A new Exemptions section added – Section 14.88.825
 - Requirements updated – Section 14.88.830
 - Section on Buffers updated including Table 14.88-II Wetland Buffers – all buffers would increase – Table 14.88-III Required Measures, buffer averaging, and buffer conditions
 - Section 14.88.840 adds/modifies subsections related to buffer mitigation ratios, innovative design and credit/debit methodology.

Based on the July 2018 Modifications, staff has updated Table 14.88 II – specifically the habit score columns were condensed from four to three, with habitat scores ranges and revised buffers were revised concurrently. The mid-range buffers were reduced for both mitigated (165-feet to 110-feet) and non-mitigated sites (220-feet to 150-feet).

Additionally, staff has added clarification for tree mitigation measures in LSMC 14.88.295 and jurisdictional approvals for allowed wetland modifications in LSMC 14.88.820 along with a few minor non-substantive clerical changes have also been made. Based on Planning Commission discussion, alternative language for Section 14.88.295(b) is proposed for tree mitigation as follows (new section is highlighted),

- (b) Removal of hazardous trees by the property owner, when based on a recommendation by a qualified arborist and an assessment of hazardous tree risk study and when approved by the City.
 - (1) Any trees removed in an NGPA shall be replaced per LSMC 14.76.120 at a 3:1 ratio or at a 1.5:1 ratio when 4-6-foot-tall trees are planted with the total count being rounded up to the next whole number.
 - (2) Any tree removed should only be cut to a point that it does not present a danger to adjacent properties or structures but can provide wildlife habitat.

The Planning Commission previously held a public hearing on January 4, 2017 and recommended approval to the City Council (**Exhibit 2**). The City Council tabled the review at the time because of its concerns over impacts to the city's buildable lands inventory when the model was untested. Staff is

looking for direction from the Planning Commission if it would like to hold an additional public hearing or forward the revised amendments to City Council for its review and action with a new recommendation incorporating the identified changes

FINDINGS AND CONCLUSIONS:

1. Compliance with selected Land Use Goals of the Comprehensive Plan

- Land Use Goal 2.10 - Ensure that land uses optimize economic benefit and the enjoyment and protection of natural resources while minimizing the threat to health, safety and welfare.
- Land Use Goal 2.11 - Where possible, use elements of the natural drainage system to minimize storm water runoff impacts.
- Environmental and Natural Resources Goal 4.1 - Sustain environmental quality through the preservation and conservation of the natural environment and resources and require development to be sensitive to site characteristics and protect natural and cultural resources.
- Environmental and Natural Resources Goal 4.3 - Protect the natural environment, surface water and ground water and aquifer recharge areas, conserve all critical areas including wetlands, shorelines, creeks/streams, geological hazard areas and wildlife habitats by locating development within geographically suitable and geologically stable areas, and coordinate local development regulations with state and federal policies.

Conclusions – The proposed code amendments are consistent with several Land Use and Environment and Natural Resource goals.

2. Compliance with the State Environmental Policy Act (SEPA)(Chapter 97-11 WAC and Title 16 LSMC)

- Staff prepared an environmental checklist for the proposed code revisions, February 5, 2016 (**Exhibit 3a**).
- The SEPA official issued a threshold Determination of Non-Significance on February 5, 2016 (**Exhibit 3b**).
- The city received comments from the DOE. Staff has integrated or responded to all DOE comments.

Conclusions – The proposed code amendments have met local and state SEPA requirements.

3. Compliance with the Growth Management Act (RCW 36.70A.106)

- The city requested review from the Department of Commerce on January 28, 2016 (**Exhibit 4a**).
- The Department of Commerce sent a letter of acknowledgment on February 1, 2016 (**Exhibit 4b**).
- The proposed update will implement the city's updated comprehensive plan.
- Staff will file the final ordinance with the Department of Commerce within 10 days of City Council action.

Conclusions – The proposed code amendments have met Growth Management Act requirements.

4. Public Notice and Comments

- The city published a notice of SEPA determination in the Everett Herald on February 5, 2016.

- The city published a notice of Public Hearing in the Everett Herald on December 13, 2016.
- The city received a letter from the public concerning the proposed code amendments on May 31, 2016 (**Exhibit 5**).
- The city advertised the additional public hearing with the Planning Commission on October 24 and October 31 in the Everett Herald.

Conclusions – The City has met public noticing requirements per Chapter 14.16B LSMC.

RECOMMENDATION: Forward a recommendation to the City Council to APPROVE the proposed amendments to the critical areas regulations.

ATTACHMENTS:

- 1 Draft Code Amendments
- 2 Planning Commission Approval
- 3a Environmental Checklist
- 3b SEPA Determination
- 4a Notification of Amendment to Department of
- 4b Commerce Commerce Acknowledgement
- 5 Public Comment
- 6 DOE Summary

Attachment 1

Definitions Chapter 14.08

Qualified Professional. A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, archaeology, cultural resources or related field, and two years of related work experience.

- A. A qualified professional for streams, wetlands or other natural habitats must have a degree in biology and professional experience related to the subject critical area.
- B. A qualified professional for geologically hazardous areas must be a professional geotechnical engineer or geologist, licensed by the state of Washington.
- C. A qualified professional for cultural resources must have a degree in archaeology or cultural resources and professional experience related to their discipline of expertise.

Part I. Purpose and Intent

14.88.010 Purpose and Intent.

The purpose of this chapter is to designate, classify, and protect the critical areas of the Lake Stevens community by establishing regulations and standards for development and use of properties which contain or adjoin critical areas for protection of the public health, safety, and welfare. The purpose and intent of this chapter is also to ensure that there is no net loss of the acreage or functions and values of critical areas regulated by this chapter.

- (a) A project proponent shall make all reasonable efforts to avoid and minimize impacts to critical areas and buffers in the following sequential order of preference:
 - (1) Avoiding impacts altogether by not taking a certain action or parts of an action; or
 - (2) When avoidance is not possible, minimizing impacts by limiting the degree or magnitude of the action and its implementation, using appropriate technology, or by taking affirmative steps, such as project redesign, relocations, or timing, to avoid or reduce impacts and mitigating for the affected functions and values of the critical area; and
 - (3) Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the action.
 - (4) Compensating for unavoidable impacts by replacing, enhancing or providing substitute resources or environments.
- (b) Protect the public from personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence.
- (c) Protect against publicly financed expenditures due to the misuse of critical areas which cause:
 - (1) Unnecessary maintenance and replacement of public facilities;
 - (2) Publicly funded mitigation of avoidable impacts;
 - (3) Cost for public emergency rescue and relief operations where the causes are avoidable;
 - (4) Degradation of the natural environment.

- (d) Protect aquatic resources.
- (e) Protect unique, fragile, and valuable elements of the environment, including wildlife and its habitat.
- (f) Alert appraisers, assessors, owners, potential buyers, or lessees to the development limitations of critical areas.
- (g) Provide City officials with sufficient information to adequately protect critical areas when approving, conditioning, or denying public or private development proposals.
- (h) Give guidance to the development of Comprehensive Plan policies in regard to the natural systems and environment of the Lake Stevens Watershed.
- (i) Provide property owners and developers with succinct information regarding the City's requirements for property development. (Ord. 903, Sec. 51, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

Part II. Definitions

14.88.100 Definitions.

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

Part III. General Provisions

14.88.200 Applicability.

The provisions of this chapter apply to all lands, land uses and development activity within the City. No action shall be taken by any person, which results in any alteration of any critical areas except as consistent with the purposes, objectives, and goals of this chapter. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.210 Regulated Activities.

- (a) For any regulated activity, a critical areas report is required to support the requested activity. All land use and/or development activities on lands containing critical areas are subject to this chapter and are prohibited unless:
 - (1) The use or activity is found to be exempt by the Planning and Community Development Director or designee per the "allowed activities" sections of this chapter; or
 - (2) The use or activity meets the performance standards found in the "requirements" sections of this chapter; or
 - (3) It can be demonstrated that the denial of authorization of such an activity would deny all reasonable economic uses, as demonstrated per Section [14.88.310](#). In such a case, approval in writing shall be issued by the Planning and Community Development Director or designee. Approval of a reasonable economic use must be attached to another type of development permit obtained from the City of Lake Stevens prior to undertaking the regulated activity in the critical area or its buffer.
- (b) Land use and development activities include, but are not limited to, the following activities:
 - (1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

- (2) The dumping, discharging, or filling with any material.
- (3) The draining, flooding, or disturbing of the water level or water table.
- (4) The driving of pilings.
- (5) The placing of obstructions.
- (6) The construction, reconstruction, demolition, or expansion of any structure.
- (7) The destruction or alteration of vegetation in a critical area through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a critical area.
- (8) Class IV – General Forest Practices under the authority of the 1992 Washington State Forest Practices Act Rules and Regulations per WAC 222-12-030, or as thereafter amended, provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules
- (9) Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of water sources, including quantity, or the introduction of pollutants.
- (10) Land that is located wholly within a critical area or its buffer may not be subdivided, unless specifically allowed elsewhere in this chapter.

(Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.220 Allowed Activities.

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

- (a) Existing and ongoing agricultural activities, provided that they implement applicable Best Management Practices (BMPs) contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or develop a farm conservation plan in coordination with the local conservation district. BMPs and/or farm plans should address potential impacts from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. BMPs and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations and wildlife habitat.
- (b) Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class IV – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
- (c) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of existing topography, water conditions, or water sources.
- (d) Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate

regulatory agencies have been obtained for approved mechanical, biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

- (e) Educational and, scientific research activities.
- (f) ~~, and~~ Walkways and trails may be constructed and use of nature trails; provided, that they are proposed only within the outer 25 percent of the wetland critical area buffers, except that trails may be located within the remainder of the critical area buffer when it is demonstrated through the site/resource-specific report that:
 - (1) No other alternative for the trail location exists which would provide the same educational and/or scientific research opportunities; and
 - (2) The critical area functions and values will not be diminished as a result of the trail; and
 - (3) The materials used to construct the trail are pervious and will not harm the critical area; and
 - (4) Raised boardwalks using non-treated pilings may be acceptable.
 - ~~(45)~~ Land disturbance is minimized to the greatest extent possible including removal of significant trees; and
 - ~~(56)~~ Where possible, the number of trails allowed in critical area buffers shall be limited.
- ~~(b)~~g) Navigation aids and boundary markers.
- ~~(e)~~h) Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored.
- ~~(d)~~i) Normal maintenance, repair, or operation of existing structures, facilities, or improved areas.
- ~~(e)~~j) Installation or construction of City road right-of-way; or installation, replacement, operation, repair, alteration, or relocation of all water, natural gas, cable communication, telephone, or other utility lines, pipes, mains, equipment or appurtenances, not including substations or other buildings, only when required by the City and approved by the Planning and Community Development Director or designee and when avoidance of critical areas and impact minimization has been addressed during the siting of roads and other utilities and a detailed report/mitigation plan is submitted, reviewed, and approved by the City prior to permit issuance or land use approval.
- ~~f~~k) Minor expansion of uses or structures existing at the time of adoption of this code, and which are in compliance with all other chapters of this title; provided, that the applicant obtains all required local, State, and Federal permits, including but not limited to a Department of Fish and Wildlife Hydraulic Permit and a Clean Water Act 404 Permit and the expansion does not create a loss of wetland critical area and functions nor pose a significant threat to water quality. A site/resource-specific report and mitigation plan shall be prepared to describe the wetland critical area, function, and water quality and submitted to the City for review and approval prior to permit issuance. For the purposes of this subsection, "minor expansion" refers to an addition to or alteration of a use or structure and shall be limited to a maximum of 1,000 square feet of impervious area.

(g) Stormwater Management Facilities. ~~Where buffers and setbacks are larger than 50 feet and slopes are less than 15 percent, stormwater management facilities, limited to stormwater~~ Dispersion outfalls and bioswales, may be allowed within the outer 25 percent of the buffer, when the location of such facilities will not degrade the function or values of the wetland critical area based on the recommendation of a qualified professional for the specific critical area type.

(h) Emergency Activities. Those activities that are necessary to prevent an immediate threat to public health, safety, or welfare or pose an immediate risk of damage to private property, and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.230 Compliance.

All land uses or development applications shall be reviewed to determine whether or not a critical area exists on the property for which the application is filed, what the action's impacts to any existing critical area would be, and what actions are required for compliance with this chapter. No construction activity, including land clearing or grading, shall be permitted until the information required by this section is reviewed and a plan is approved by the City. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.235 Best Available Science.

- (a) Criteria for Best Available Science. The best available science is that scientific information applicable to the critical area prepared by local, State or Federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals, that is consistent with criteria established in WAC [365-195-900](#) through [365-195-925](#).
- (b) Protection of Functions and Values and Fish Usage. Critical area studies and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout.
- (c) Lack of Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function or permitting an alteration of or impact to the critical area, the City shall:
 - (1) Take a precautionary or no-risk approach that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and
 - (2) Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberative scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, the City hereby commits to:
 - (i) Address funding for the research component of the adaptive management program;
 - (ii) Change course based on the results and interpretation of new information that resolves uncertainties; and
 - (iii) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and non-regulatory actions affecting protection of critical areas and anadromous fisheries. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.240 Classification as a Critical Area.

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

14.88.250 Procedures.

Prior to fulfilling the requirements of this chapter, the City of Lake Stevens shall not grant any approval or permission to conduct development or use in a critical area. The Planning and Community Development Director or designee is authorized to adopt administrative procedures for the purpose of carrying out the provisions of this chapter. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.260 Submittal Requirements.

To enable the City to determine compliance with this chapter, at the time of application submittal, the applicant shall file a SEPA Environmental Checklist (if use is subject to SEPA), ~~a critical area checklist,~~ site/resource-specific reports as specified in Section [14.88.270](#), and any other pertinent information requested by the Department of Planning and Community Development. ~~Any of these submittal requirements may be waived by the Planning and Community Development Director.~~ The Planning and Community Development Director or designee may waive any of these submittal requirements if it is deemed unnecessary to make a compliance determination. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.270 Site/Resource-Specific Reports.

Unless waived per Section [14.88.260](#), all applications for land use or development permits proposed on properties containing or adjacent to critical areas or their defined setbacks or buffers shall include site/resource-specific reports prepared to describe the environmental limitations of the site. These reports shall conform in format and content to guidelines prepared by the Department of Planning and Community Development, which is hereby authorized to do so. The report shall be prepared by a qualified professional who is a biologist or a geotechnical engineer as applicable with experience preparing reports for the relevant type of critical area. The report and conclusions present in the critical area report shall be based on best available science. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.275 Mitigation/Enhancement Plan Requirements.

In the event that mitigation and/or enhancement is required, the Department of Planning and Community Development shall require the applicant to provide a mitigation plan for approval and a performance and maintenance bond in a form and amount acceptable to the City in accordance with Section [14.88.278](#). The plan shall provide information on land acquisition, construction, maintenance and monitoring of the replaced critical area that creates a no-net-loss area in function of the original area in terms of acreage, function, habitat, geographic location and setting. ~~The plan shall also include critical areas and buffer impacts and critical areas and proposed buffer areas.~~ All mitigation plans shall include the following items, which shall be submitted by the applicant or a qualified biologist, civil or geotechnical engineer:

(a) Data collected and synthesized for the critical area and/or the newly restored site:

- (1) Description of existing site conditions, critical areas and proposed buffers;
- (2) Description of proposed impacts to critical areas and buffers and proposed plans to mitigate those impacts; and
- (3) Documentation of best available science or site criteria supporting the proposed mitigation plan.

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

- (i) The plan must also provide information on the natural suitability of the proposed site for establishing the replaced critical area, including water source and drainage patterns, topographic position, wildlife habitat opportunities, and value of existing area to be converted. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.276 Alternative Mitigation

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

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

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

- (b) In-lieu fee mitigation shall be established in accordance with the guidance contained in "Guidance on In-lieu Fee Mitigation" (Washington State Department of Ecology, December 2012, or latest edition, Publication #12-06-012) based upon the following order of preference:

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

14.88.277 Mitigation Monitoring.

- (a) All compensatory mitigation projects shall be monitored for the period necessary to establish that performance standards have been met, but in no event for ~~a period~~ less than five years following the

acceptance of the installation/construction by the Planning and Community Development Director or designee.

- (b) Monitoring reports on the ~~current~~ status of the mitigation project shall be submitted to the Planning and Community Development Department. The reports shall be prepared by a qualified consultant and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation. Reports shall be submitted in accordance with the following schedule:
- (1) At the time of construction;
 - (2) Thirty days after planting;
 - (3) Early in the growing season of the first year;
 - (4) End of the growing season of the first year;
 - (5) Twice the second year (at the beginning and end of the growing season); and
 - (6) Annually thereafter, to cover a total monitoring period of at least five growing seasons.
- (c) The Planning and Community Development Director or designee shall have the authority to extend the monitoring and surety period and require additional monitoring reports and maintenance activities beyond the initial five-year monitoring period for any project that involves one or a combination of the following factors:
- (1) Creation or restoration of forested wetland or buffer communities;
 - (2) ~~does not~~ Failure to meet the performance standards identified in the mitigation plan;
 - (3) ~~does not~~ Failure to provide adequate replacement for the functions and values of the impacted critical area; or if
 - (4) ~~otherwise warrants additional monitoring~~ Additional monitoring is warranted.

-(Ord. 773, Sec. 2, 2008)

14.88.278 Bonding (Security Mechanism).

- (a) If the development proposal is subject to compensatory mitigation, the applicant shall enter into an agreement with the City to complete the mitigation plan approved by the City and shall post a mitigation performance surety to ensure mitigation is fully functional.
- (b) The surety shall be in the amount of 150 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on a detailed, itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring and all other costs.
- (c) The surety shall be in the form of an assignment of funds, bond, security device, or other means acceptable to the City Finance Director in consultation with the City Attorney.
- (d) The performance surety authorized by this section shall remain in effect until the City determines, in writing, that the permit conditions, code requirements and/or standards bonded for have been met. Once the mitigation installation has been accepted by the Planning Director or designee ~~or Public~~

~~Works Director~~, the bond may be reduced to 20 percent of the original mitigation cost estimate and shall become a maintenance surety. Said maintenance surety shall generally be held by the City for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods under Section [14.88.277](#)(c).

- (e) Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant to complete required mitigation, maintenance, monitoring, or restoration.
- (f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- (g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default. Upon notice of any default, the City may demand immediate payment of any financial guarantees or require other action authorized by the City code or any other law.
- (h) Any funds paid or recovered pursuant to this section shall be used to complete the required mitigation or other authorized action.
- (i) The Director or designee may authorize a one-time temporary delay, up to ~~120~~ 180 days, in completing mitigation activities when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation. The request for the temporary delay shall include a written justification documenting the environmental constraints that preclude implementation of the mitigation plan and shall include a financial guarantee. The justification shall be verified by the City before approval of any delay.
- (j) The provisions of Section [14.16A.180](#) (Security Mechanisms) shall also apply if necessary to ensure adequate protection of the public interest. (Ord. 811, Sec. 73, 2010; Ord. 773, Sec. 2, 2008)

14.88.280 Maps and Inventory.

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

- (a) Washington Department of Fish and Wildlife Priority Habitat and Species maps.
- (b) Washington State Department of Natural Resources official water type reference maps, as amended.
- (c) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission.
- (d) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.
- (e) Washington State Department of Natural Resources Natural Heritage Program mapping data.

- (f) Lake Stevens and/or Snohomish County maps. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.283 Pesticide Management.

Pesticide use is not allowed in critical areas, including critical area buffers, unless it is determined by the Planning and Community Development Director or designee that there is no alternative to controlling invasive species. If pest control is being proposed as mitigation measures to control invasive species, a pesticide management plan must be submitted to the Planning and Community Development Department. The pesticide management plan must be part of the critical areas report required in Section [14.88.270](#) for any development proposal, and shall include why there is no other alternative to pesticide use, mitigation of pesticide use, planned application schedules, types of pesticides proposed for use, and a means to prevent or reduce pesticide movement to groundwater and surface water. The report shall be prepared by a qualified specialist. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.285 Building Setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- (a) Uncovered decks;
- (b) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; ~~and~~
- (c) Impervious ground surfaces, such as driveways and patios; provided, ~~that~~ such improvements may be subject to water quality regulations as adopted; and
- (d) Fences and walls when the fence or wall further separate incompatible uses outside of the critical area and its associated buffer and when any temporary or permanent impacts are mitigated according to this chapter and in compliance with other provisions of Title 14 LSMC, based on the recommendation of a qualified professional for the specific critical area type.

14.88.287 Fencing and Signage.

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

- (a) ~~Fencing shall be smooth wire or an alternative approved by the Planning and Community Development Director.~~
 - (1) The applicant shall install permanent fencing so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the critical areas and associated buffer. ~~must be a permanent structure installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas with a minimum gap of one and one-half feet at the bottom of the fence, and maximum height of three and one-half feet at the top;~~
 - (2) The fence shall be designed and constructed to clearly demarcate the buffer from the developed portion of the site and to limit access of landscaping equipment, vehicles, or other human disturbances; and
 - (3) No pressure treated posts and rails will be used for signage or fencing, unless shown to be inert.

- (b) Signs designating the presence of a critical area shall be posted along the buffer boundary. The signs shall be posted at a minimum rate of one every 100 lineal feet, or one per lot, whichever provides more coverage. Standard details for signage shall be kept on file at the Planning and Community Development Department. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.290 Critical Areas Tracts and Easements.

- (a) Unless otherwise required in this chapter, native growth protection areas shall be used in all development proposals to delineate and protect the following critical areas and buffers:
- (1) All geologically hazardous areas not approved for alteration and associated setback buffers;
 - (2) All wetlands and buffers; and
 - (3) All fish and wildlife habitat conservation areas and buffers.
- (b) Native growth protection areas created pursuant to this Chapter shall be designated on the face of the plat, short plat or other recorded drawing pursuant to Sections 14.16C.105 and 14.18.040 LSCM and shall be protected by one of the following methods:
- (1) Development proposals for subdivisions, short subdivisions, binding site plans and planned residential developments and similar land use actions that segregate property shall use separate critical area tracts to delineate and protect native growth protection areas. The critical area tract shall be held by each lot owner in the development in an undivided interest or held by a Homeowner's Association or other legal entity, which assures the ownership, maintenance, and protection of the tract; or
 - (2) For development proposals that do not segregate lots, the permit holder shall establish and record a native growth protection area easement with the Snohomish County Auditor stating the location of and the limitations associated with all of the critical areas and associated buffers or mitigation sites on the property. Restrictions and limitations shall be stated on the face of the deed applicable to the property and recorded with the Snohomish County auditor.
- (c) Such easements or tracts shall cover the critical area as delineated by its defined boundaries and buffers.

14.88.290 Dedication of Open Space/Native Growth Protection Area.

- ~~(a) In order to protect critical areas, open space easements or tracts, referred to as a native growth protection area, where proposed as mitigation, shall be dedicated to the City.~~
- ~~(b) Anyone may offer to dedicate a critical area easement or tract and its buffer to the City even if not proposed as mitigation. The Planning and Community Development Director shall make a determination regarding the City's acceptance of such a dedication, based on consistency with the goals and policies of the adopted Comprehensive Plan.~~
- ~~(c) Such easements or tracts shall cover the critical area as delineated by its defined boundaries and buffers. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~

14.88.295 Permanent Protection for Streams, Wetlands and Buffers.

All streams and wetlands under this chapter and their required buffers shall be permanently protected by designating them as native growth protection areas (NGPAs) in accordance with Section [14.88.290](#). NGPAs are to be left permanently undisturbed in a substantially or environmentally enhanced natural state. No

clearing, grading, filling, building construction or placement, or road construction is allowed except the following:

- (a) On a case by case basis when supported by a critical areas assessment study, crossings for underground utility lines which utilize the shortest alignment possible and for which no alignment that would avoid such a crossing is feasible;
- (b) Removal of hazardous trees by the property owner, when based on a recommendation by a qualified arborist and an assessment of hazardous tree risk study and when approved by the City.
 - (1) Any trees removed in an NGPA shall be replaced per LSMC 14.76.120.
 - (2) Any tree removed should only be cut to a point that it does not present a danger to adjacent properties or structures but can provide wildlife habitat.
- (c) Existing legally (on-going) established structures, and non-native or ornamental landscaping, including, but not necessarily limited to, gardens, yards, pastures, and orchards, are not required to be designated as NGPAs. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.297 Density Transfers on Sites Less than Five Acres On-site Density Transfer for Critical Areas.

On-site density transfers ~~on sites less than five acres~~ may be permitted when critical areas are located on the property subject to the following provisions:

- (a) Only the area contained in the following critical area areas and their associated buffers of the following wetlands is are eligible to be used in the density transfer calculation:
 - (1) ~~Category II, and III, and IV wetlands with a habitat score of less than 20; and~~
 - (2) ~~Category IV wetlands.~~ Fish and Wildlife Conservation areas; and
 - (3) Geologically hazardous areas, not approved for alteration.
- (b) The development must be proposed to connect to sewer service and sewer service must be available.
- (c) The base density shall be consistent with the densities set forth in Chapter [14.36](#) for the zoning districts. The site density shall be calculated using the area of the subject property divided by the minimum lot size of the applicable zone.
- (d) The overall density of the proposed site may be transferred from the undevelopable portion to the developable part of the site.
- (e) The development shall meet applicable policies, setbacks and other standards of the City except:
 - (1) Lot sizes may be modified to not less than 6,000 square feet in the WR and SR zones, not less than 4,500 square feet in the UR zone and not less than 3,000 square feet in the HUR zone; Lot widths of Chapter [14.48](#) Table V may be modified to not less than 40 feet in the SR and UR zones and not less than 30 feet in the HUR zone;
 - (2) Lot widths of Chapter [14.48](#) Table I may be modified to not less than 50 feet in the WR and SR zones, and not less than 40 feet in the UR and HUR zones; Lot sizes may be modified to not less than 4,000 square feet in the SR and UR zones and not less than 3,000 square feet in the HUR zone

- (3) The front setbacks specified in Chapter 14.48 LSMC Table I may be reduced by five (5) feet, but in no instance may the garage setback be less than 19 feet ~~Setbacks of the zone as specified in Chapter 14.48 Table V may not be modified when using the density transfer provision.~~
- (4) The proposed development must be compatible with the character of the area and adjacent uses; and
- (5) The area to which density is transferred must not be constrained by other critical areas. (Ord. 773, Sec. 2, 2008)

14.88.298 Innovative Development Design.

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

- (a) An innovative development design will be considered in conjunction with the primary land use project approval or building permit approval, when the project. ~~The Planning and Community Development Director shall develop and adopt administrative procedures as authorized in Section [14.88.250](#) for review and approval of innovative development design that are~~ is consistent with subsection (b) of this section. An applicant may include the innovative development design proposal in the project pre-application review packet for review. ~~The Planning and Community Development Director shall give preliminary findings on the pre-application and shall only issue a final decision for the design with the project or building permit approval, whichever occurs first.~~
- (b) The applicant shall demonstrate in a site/resource-specific report required pursuant to Section [14.88.270](#) how the innovative development design complies with the following requirements:
 - (1) The innovative development design will achieve protection equivalent to or better than the treatment of the functions and values of the critical areas that would be obtained by applying the standard prescriptive measures contained in this chapter;
 - (2) Applicants for innovative development design ~~are encouraged to~~ must consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies which address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this chapter;
 - (3) The innovative development design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property; and
 - (4) Applicants for innovative development design are encouraged to consider measures prescribed in the Puget Sound Action Team ~~2005~~[2012](#) Technical Guidance Manual for Low Impact Development or as amended. (Ord. 773, Sec. 2, 2008)

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

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

14.88.310 Demonstration of Denial of All Reasonable Economic Uses.

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

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

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

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

- (a) If proposed in a wetland, stream, creek, river, lake or other surface water, that the proposed project is water-dependent or requires access to the wetland as a central element of its basic function; or
- (b) If proposed in a critical area not listed in subsection (a) of this section, that it is not water-dependent but has no practicable alternative; and
- (c) That no reasonable use with less impact on the critical area and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);
- (d) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the critical area and its buffer;
- (e) That the proposed activities will result in minimum feasible alteration or impairment to the functional characteristics of the critical area and its existing contours, vegetation, fish and wildlife resources, hydrological, and geologic conditions;
- (f) That disturbance of the critical area has been minimized by locating any necessary alteration in buffers to the extent possible;
- (g) That the proposed activities will not jeopardize the continued existence of endangered, threatened, or sensitive species as listed by the Federal Government or the State of Washington. An applicant is required to confirm with the State of Washington that special conditions or recommendations are not required for candidate or monitor species;
- (h) That the proposed activities will not cause significant degradation of groundwater or surface water quality;
- (i) That the proposed activities comply with all State, local and Federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
- (j) That any and all alterations to critical areas and their buffers will be adequately mitigated;
- (k) That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property;
- (l) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter; and
- (m) That deliberate measures have been taken to minimize the impacts. Minimizing impacts shall include but not be limited to:
 - (1) Limiting the degree or magnitude of the prohibited activity;
 - (2) Limiting the implementation of the prohibited activity;
 - (3) Using appropriate and best available technology;
 - (4) Taking affirmative steps to avoid or reduce impacts;
 - (5) Sensitive site design and siting of facilities and construction staging areas away from critical areas and their buffers;

- (6) Involving resource agencies early in site planning;
- (7) Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures; and
- (8) Scheduling the prohibited activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities. (Ord. 903, Sec. 53, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.330 Nonconforming Activities.

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

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

14.88.340 Assessment Relief.

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

Part IV. Fish and Wildlife Conservation Areas

14.88.400 Classification.

Fish and wildlife conservation areas include:

- (a) Lands containing priority habitats and species, including plant and/or animal species listed on Federal or State threatened or endangered species lists.
- (b) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals, detention facilities, waste-water treatment facilities, farm ponds, temporary construction ponds (of less than three years' duration), and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

- (c) Waters of the State, as defined in WAC Title [222](#), Forest Practices Rules and Regulations. Waters of the State shall be classified using the system in WAC [222-16-030](#). In classifying waters of the State as fish and wildlife habitats the following shall be used:
- (1) Species are present which are endangered, threatened or sensitive;
 - (2) Existing surrounding land uses are incompatible with salmonid and other game fish habitat;
 - (3) Presence and size of riparian ecosystem;
 - (4) Existing water rights.
- (d) Lakes, ponds, and streams planted with game fish (defined at RCW [77.08.020](#)), including those planted under the auspices of Federal, State, local, or tribal programs, or which support priority fish species as identified by the Department of Fish and Wildlife.
- (e) State natural area preserves and natural resource conservation areas.
- (f) Habitats or species of local importance. Such habitats or species may be locally listed per the process elucidated in Section [14.88.415](#).
- (g) Streams shall be classified according to the stream type system as provided in WAC [222-16-030](#), Stream Classification System, as amended.
- (1) Type S Stream. Those streams, within their ordinary high water mark, as inventoried as shorelines of the State under Chapter [90.58](#) RCW and the rules promulgated pursuant thereto.
 - (2) Type F Stream. Those stream segments within the ordinary high water mark that are not Type S streams, and which are demonstrated or provisionally presumed to be used by fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and have a gradient of 16 percent or less for basins less than or equal to 50 acres in size, or have a gradient of 20 percent or less for basins greater than 50 acres in size, are provisionally presumed to be used by fish. A provisional presumption of fish use may be refuted at the discretion of the Planning and Community Development Director where any of the following conditions are met:
 - (i) It is demonstrated to the satisfaction of the City that the stream segment in question is upstream of a complete, permanent, natural fish passage barrier, above which no stream section exhibits perennial flow;
 - (ii) It is demonstrated to the satisfaction of the City that the stream segment in question has confirmed, long-term, naturally occurring water quality parameters incapable of supporting fish;
 - (iii) Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of fish use, as determined in consultation with the Washington Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;
 - (iv) The Washington Department of Fish and Wildlife has issued a hydraulic project approval, pursuant to RCW [77.55.100](#), which includes a determination that the stream segment in question is not used by fish; and
 - (v) No fish are discovered in the stream segment in question during a stream survey conducted according to the protocol provided in the Washington Forest Practices Board Manual, Section

13, Guidelines for Determining Fish Use for the Purpose of Typing waters under WAC [222-16-031](#); provided, that no unnatural fish passage barriers have been present downstream of said stream segment over a period of at least two years.

- (3) Type Np Stream. Those stream segments within the ordinary high water mark that are perennial and are not Type S or Type F streams. However, for the purpose of classification, Type Np streams include intermittent dry portions of the channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the City.
- (4) Type Ns Stream. Those stream segments within the ordinary high water mark that are not Type S, Type F, or Type Np streams. These include seasonal streams in which surface flow is not present for at least some portion of a year of normal rainfall that are not located downstream from any Type Np stream segment. (Ord. 903, Sec. 54, 2013; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.410 Determination of Boundary.

- (a) The boundaries of fish and wildlife conservation areas shall be determined by the Planning and Community Development Director or designee, who may rely on a Departmental approved biological resources survey prepared by a qualified wildlife biologist per the Department's Biological Resources Survey Guidelines. Such a report would be supplied by the applicant of a permit.
- (b) The boundary of the creek, stream, river, lake, or other surface water shall be determined by the Planning and Community Development Director or designee, relying on a delineation by a licensed surveyor or other comparable expert. Such boundary shall be contiguous with the 100-year floodplain designations as adopted by the City, or where such a designation has not been adopted by the City, the 100-year floodplain designation of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program where it has been delineated (shown on Flood Insurance Rate Maps (FIRM)). Where this information does not exist, the boundary determination shall be made by a licensed surveyor and based upon the same criteria used by FEMA. This determination shall be confirmed by the City Engineer. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.415 Species/Habitats of Local Importance.

- (a) Species or habitats may be listed as a species or habitat of local importance by the City Council according to the following process:
 - (1) An individual or organization must:
 - (i) Demonstrate a need for special consideration based on:
 - a. Declining populations;
 - b. Sensitivity to habitat manipulation; or
 - c. Commercial or game value or other special value, such as public appeal.
 - (ii) Propose relevant management strategies considered effective and within the scope of this chapter.
 - (iii) Provide species or habitat location(s) on a map.

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

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

(b) Species or habitats of local importance include:

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

14.88.420 Allowed Activities.

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

(a) Those activities listed in Section [14.88.220](#).

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

(c) Bridges and other crossings over streams for public and private rights-of-way. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.430 Requirements.

(a) Except as provided in this subsection, a 50-foot buffer shall be required for all regulated activities adjacent to fish and wildlife conservation areas. All buffers shall be measured from the fish and wildlife conservation area boundary as surveyed in the field. The width of the buffer may be increased depending on the habitat value and the proposed land use.

(b) Buffer widths may be increased based on recommendations by the Department of Fish and Wildlife based on their Management Recommendations for Priority Habitats and Species.

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

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

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

Table 14.88-I: Stream Buffer Width

Stream Type	Buffer
S	150 feet
F	100 feet
Np	50 feet
Ns	50 feet

- (d) Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of the bank if the ordinary high water mark cannot be identified, or from the outer edge of the channel migration zone when present.
- (e) The Planning and Community Development Director may modify the buffer widths in the above table in accordance with the following:
- (1) Buffer widths may be increased as necessary to fully protect riparian functions. For example, the buffer may be extended to the outer edge of the floodplain or windward into an area of high tree blow-down potential as determined by an arborist.
 - (2) Buffer widths may be reduced in exchange for restoration and enhancement of degraded areas in accordance with an approved plan, or for buffer averaging in accordance with Section [14.88.275](#) and subsection (e)(4) of this section.
 - (3) If the stream enters an underground culvert or pipe, and is unlikely to ever be restored aboveground, the Planning and Community Development Director may waive the buffer along the undergrounded stream; provided, that where the stream enters and emerges from the pipe the opposite outer edges of the buffer shall be joined by a radius equal to the buffer width, with said radius projecting over the piped stream.
 - (4) Stream buffer widths may be modified by averaging. In no instance shall the buffer width be reduced by more than 25 percent of the standard buffer. Stream buffer width averaging shall only be allowed when the applicant demonstrates the following:
 - (i) A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science as described in Section [14.88.235](#); and
 - (ii) A buffer enhancement plan is proposed that would significantly improve the functions and values of the stream buffer(s); and
 - (iii) The averaging will not impair or reduce the habitat, water quality purification and enhancement, stormwater detention, groundwater recharge, shoreline protection and erosion and other functions and values of the stream and buffer.
 - (5) Buffer widths may be modified if the subject property is separated from the stream channel by pre-existing, intervening, and lawfully created structures, public roads, or other substantial pre-existing intervening improvements. The intervening structures, public roads, or other substantial

improvements must separate the subject upland property from the stream channel by height or width, preventing or impairing the delivery of buffer functions to the stream channel. In such cases, the reduced buffer width shall reflect the buffer functions that can be delivered to the stream channel.

- (f) Development in the shorelines of State-wide significance is regulated under Appendix B of the City's State-approved Shoreline Master Program (SMP).
- (g) To protect the natural functions and aesthetic qualities of a stream and stream buffer, a detailed temporary erosion control plan which identifies the specific mitigating measures to be implemented during construction to protect the water from erosion, siltation, landslides and hazardous construction materials shall be required. The City shall review the plan with the appropriate State, Federal and tribal agencies and any adjacent jurisdiction. (Ord. 898, Sec. 8, 2013; Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.440 Mitigation.

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

- (a) Dedicate an exclusive open space easement for the protection of wildlife and/or habitat, creeks, streams, rivers, lakes, or other surface water over the creeks, streams, rivers, lakes, or other surface water and a buffer consistent with the standards listed in Section [14.88.430](#). Where such mitigation leads to, or would in the opinion of the Planning and Community Development Director lead to a court finding of a taking, the below listed mitigation may be considered.
- (b) Where on-site protection is not possible, dedicate an exclusive easement for the protection of an equivalent (in type and value) waterway over the waterway and a 50-foot buffer on an off-site waterway at a 2:1 ratio. The location of any off-site waterway shall be located as near to the site as possible, in accordance with the following preferred order:
 - (1) Contiguous to the impacted waterway;
 - (2) Within the same drainage basin;
 - (3) Elsewhere within the City;
 - (4) Within the Lake Stevens UGA;
 - (5) Within the region.
- (c) The applicant may propose innovative site design based on the best available science and pursuant to Section 14.88.298 if the innovative development design will achieve protection equivalent to or better than the standard provisions of this chapter. Approval of the innovative site design will be considered in combination with criteria listed in Section 14.88.298 if the design achieves the following:
 - (1) The site design avoids all impacts to the critical area and minimizes buffer impacts; or
 - (2) The site design increases the functions and/or values of the stream channel and buffer with a combination of the following measures:

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

Part V. Frequently Flooded Areas

14.88.500 Classification.

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

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

14.88.510 Determination of Boundary.

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

14.88.520 Allowed Activities.

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

- (a) Those activities allowed per Section [14.88.220](#).

- (b) Those activities allowed per Section [14.64.025](#). (Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.530 Requirements.

All land uses and development proposals shall comply with the applicable provisions of the Lake Stevens Municipal Code for general and specific flood hazard protection (see Chapter [14.64](#), Special Flood Hazard Areas, Drainage, and Erosion).

- (a) Development shall not reduce the effective flood storage volume. Reduction of the floodwater storage capacity due to grading, construction, or other regulated activities shall provide compensatory storage per Section [14.64.055](#)(b).
- (b) The final recorded subdivision plat or site plan shall include a notice that the property contains land within the regulatory floodplain including special flood hazard areas and protected areas, as applicable. (Ord. 860, Sec. 5 (Exh. 3), 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.540 Mitigation.

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

Part VI. Geologically Hazardous Areas

14.88.600 Classification.

- (a) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquakes, liquefaction, or other geological events. Geologically hazardous areas shall be classified based upon the history or existence of landslides, unstable soils, steep slopes, high erosion potential or seismic hazards. In determining the significance of a geologically hazardous area the following criteria shall be used:
- (1) Potential economic, health, and safety impact related to construction in the area;
 - (2) Soil type, slope, vegetative cover, and climate of the area;
 - (3) Available documentation of history of soil movement, the presence of mass wastage, debris flow, rapid stream incision, stream bank erosion or undercutting by wave action, or the presence of an alluvial fan which may be subject to inundation, debris flows, or deposition of stream-transported sediments.
- (b) The different types of geologically hazardous areas are defined as follows:
- (1) Erosion hazard areas are as defined by the USDA Soil Conservation Service, United States Geologic Survey, or by the Department of Ecology Coastal Zone Atlas. The following classes are high erosion hazard areas.
 - (i) Class 3, class U (unstable) includes severe erosion hazards and rapid surface runoff areas;
 - (ii) Class 4, class UOS (unstable old slides) includes areas having severe limitations due to slope; and
 - (iii) Class 5, class URS (unstable recent slides).

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

14.88.610 Determination of Boundary.

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

14.88.620 Allowed Activities.

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

- (a) Those activities allowed per Section [14.88.220](#).

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

14.88.630 Geological Assessment Requirements.

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

- (a) The geological assessment shall be submitted with the minimum required content as set forth in subsection (d) of this section and in the format established by the Planning and Community Development Director, and shall be consistent with the following:
- (1) A geotechnical letter is required when the geologist or geotechnical engineer finds that no active geological hazard area exists on or within 200 feet of the site.
 - (2) A geotechnical report is required when the geologist or geotechnical engineer finds that an active geological hazard area exists on or within 200 feet of the proposed project area.
- (b) The Department shall review the geological assessment and either accept or reject the assessment and require revisions or additional information. When the geological assessment has been accepted, the Department shall issue a decision on the land use permit application.
- (c) A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during the five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.
- (d) A geological assessment shall include the following minimum information and analysis:
- (1) A field investigation that may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.
 - (2) An evaluation of any areas on the site or within 200 feet of the site that are geologically hazardous as set forth in Section [14.88.600](#).
 - (3) An analysis of the potential impacts of the proposed development activity on any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope whether the slope is part of the subject property or starts off site.
 - (4) Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long term basis. The mitigation plan shall include recommendations regarding any long term maintenance activities that may be required to mitigate potential hazards.

- (5) The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments, or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.
- (6) The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.
- (e) Geological assessments shall be prepared under the responsible charge of a geologist or geotechnical engineer, and shall be signed, sealed, and dated by the geologist or geotechnical engineer. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.640 Setback Buffer Requirements.

- (a) The setback buffer width shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 18 of the International Building Code (IBC), or as the IBC is updated and amended.
 - (1) If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.
 - (2) The City may require increased setback buffer widths under any of the following circumstances:
 - (i) The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.
 - (ii) The area has a severe risk of slope failure or downslope stormwater drainage impacts.
 - (iii) The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of geological assessment.
- (b) Unless otherwise permitted as part of an approved alteration, the setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation in conjunction with any proposed development activity.
- (c) The City may impose seasonal restrictions on clearing and grading within 200 feet of any geologically hazardous areas. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.650 Allowed Alterations.

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

- (a) The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;
- (b) The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

- (c) The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
- (d) The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;
- (e) The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;
- (f) The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;
- (g) All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and
- (h) The improvements are certified as safe as designed and under anticipated conditions by a geologist or geotechnical engineer. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.660 Prohibited Alterations.

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

- (a) Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alterations of the slopes are not permitted, except as allowed in Section [14.88.220](#). The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than 25 feet from the top of slopes of 25 percent and greater.
- (b) Any proposed alteration that would result in the creation of, or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on or off site shall be prohibited. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.670 Mitigation.

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

(iii) Long term maintenance of slopes and on-site drainage systems.

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

Part VII. Streams, Creeks, Rivers, Lakes and Other Surface Water

14.88.700 Classification.

Repealed by Ord. 741.

14.88.710 Allowed Activities.

Repealed by Ord. 741.

14.88.720 Requirements.

Repealed by Ord. 741.

14.88.730 Determination of Boundary.

Repealed by Ord. 741.

14.88.740 Mitigation.

Repealed by Ord. 741.

Part VIII. Wetlands

14.88.800 Purpose

The purposes of this Chapter are to:

- (a) Recognize and protect the beneficial functions performed by wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
- (b) Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout Lake Stevens.
- (c) Establish review procedures for development proposals in and adjacent to wetlands.
- (d) Compliance with the provisions of the Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

1.88.805 Classification Identification and Rating.

Wetlands shall be classified as Category I, II, III, or IV using the Washington State Department of Ecology's Wetland Rating System for Western Washington, Publication No. 04-06-025, or as amended hereafter. Wetland delineations shall be determined in accordance with WAC 173-22-035.

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

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

(b) Category I Criteria.

- (1) Wetlands that represent a unique or rare wetland type; or
- (2) Are more sensitive to disturbance than most wetlands; or
- (3) Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
- (4) Provide a high level of functions.
- (5) Category I wetlands include:
 - (i) Estuarine wetlands which are larger than one acre in size.
 - (ii) Natural heritage wetlands as identified by the Natural Heritage Program of the Washington Department of Natural Resources.
 - (iii) Bogs.
 - (iv) Mature and old growth forested wetlands over one acre in area.
- (v) Wetlands that score 70 or more 23 27 points out of 100 27 using the Western Washington Rating System.

(c) Category II Criteria.

- (1) Category II wetlands are difficult though not impossible to replace and provide high levels of some functions.
- (2) Category II wetlands include:

- ~~(i) Estuarine wetlands under one acre in area.~~
- ~~(ii) Wetlands that score between 51 and 69 points out of 100 on the Western Washington Rating System.~~
- ~~(d) Category III Criteria. Wetlands with a moderate level of functions and with rating system scores between 30 and 50 points out of 100.~~
- ~~(e) Category IV Criteria. Wetlands with a low level of functions and with rating system scores less than 30 points out of 100. (Ord. 855, Sec. 24, 2011; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~
- (b) Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology) and in accordance with WAC 173-22-035, which contains the definitions and methods for determining whether the criteria below are met.
 - (1) Category I. Category I wetlands represent unique or rare wetland types; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of functions. In Lake Stevens Category I wetlands may include:
 - i Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;
 - ii Bogs;
 - iii Mature and old-growth forested wetlands larger than 1 acre; and
 - iv Wetlands that perform many functions well (scoring 23 points or more).
 - (2) Category II. In Lake Stevens Category II wetlands may include wetlands with a moderately high level of functions (scoring between 20 and 22 points) that are difficult though not impossible to replace and provide high levels of some functions.
 - (3) Category III. In Lake Stevens Category III wetlands may include:
 - i Wetlands with a moderate level of functions (scoring between 16 and 19 points);
 - ii Can often be adequately replaced with a well-planned mitigation project; and
 - iii Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
 - (4) Category IV. In Lake Stevens Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. These wetlands may provide some important functions, and should be protected to some degree.
- (c) Illegal modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

14.88.810 Determination of Boundary.

- (a) The Planning and Community Development Director or designee, relying on a field investigation supplied by an applicant and applying the wetland definition provided in this chapter, shall determine the location of the wetland boundary. Qualified professional and technical scientists shall perform wetland delineations as part of a wetland identification report in accordance with WAC [173-22-035](#). Criteria to be included in a required wetland identification report may be found in Section [14.88.275](#), Mitigation/Enhancement Plan Requirements. The applicant is required to show the location of the wetland boundary on a scaled drawing as a part of the permit application.
- (b) When the applicant has provided a delineation of the wetland boundary, the Planning and Community Development Director or designee shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning and Community Development Director shall, at the applicant's expense, obtain expert services to render a final delineation.
- (c) The Planning and Community Development Director, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The Planning and Community Development Director or designee shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant will be charged for the costs incurred. Where the ~~Planning and Community Development Director~~ city performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination. (Ord. 855, Sec. 25, 2011; Ord. 797, Sec. 6, 2009; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.820 Allowed Activities.

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

- (a) Those uses listed in Section [14.88.220](#).
- ~~(b) In Category IV wetlands only, access to developable portions of legal lots where:~~
 - ~~(1) There is no other reasonable method of accessing the property;~~
 - ~~(2) Altering the terrain would not cause drainage impacts to neighboring properties; and~~
 - ~~(3) Not more than 2,500 square feet of wetland is impacted. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)~~
- (b) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
- (c) Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if the following criteria are met:
 - (1) The location of the stormwater management facility is restricted to the outer 25 percent of the buffer around the wetland;
 - (2) There will be "no net loss" of functions and values of the wetland;

- (3) The wetland does not contain a breeding population of any native amphibian species;
- (4) The hydrologic functions of the wetland can be improved;
- (5) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and
- (6) All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits;
- (7) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.
- (8) Stormwater LID BMPs required as part of New and Redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site.

14.88.825 Exemptions

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

- (a) All isolated Category IV wetlands less than 4,000 square feet:
 - (1) Not associated with riparian areas or their buffers;
 - (2) Not associated with shorelines of the state or their associated buffers;
 - (3) Not part of a wetland mosaic;
 - (4) Do not score 5 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology); and
 - (5) Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance.
- (b) Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

14.88.830 Requirements.

- (a) Buffers. Wetland buffers shall be required for all regulated activities adjacent to regulated wetlands as provided in Table 14.88-II, unless modified ~~per subsection (b) or (c) of this section elsewhere in this chapter.~~
 - (1) Any wetland created, restored, or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer zone shall be determined according to wetland category

and the proposed land use. ~~These buffers have been established to reflect the impact of low and high intensity uses on wetland functions and values.~~

- (2) To facilitate long-range planning using a landscape approach, the Planning and Community Development Director or designee may pre-assess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The Administrator will prepare maps of wetlands that have been pre-assessed in this manner.
- (3) All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

Table 14.88-II

Category	Land Use	HS 29-36	HS 20-28	HS <20
I	High	190	95	65
	Low	125	65	45
II	High	190	95	65
	Low	125	65	45
III	High	N/A	95	50
	Low		65	35
IV	High	N/A	N/A	35
	Low			20

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

Table 14.88-II Wetland Buffer Requirements

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

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

Table 14.88-III Required Measures to minimize impacts to wetlands (measures are required if applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u>
Noise	<ul style="list-style-type: none"> • <u>Locate activity that generates noise away from wetland</u> • <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> • <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
Toxic runoff	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150-feet of wetland</u> • <u>Apply integrated pest management</u>
Stormwater runoff	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized flow from lawns that directly enters the buffer</u> • <u>Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)</u>

<u>Change in water regime</u>	<ul style="list-style-type: none"> • <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> • <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>

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

(1) ~~A larger buffer is necessary to maintain viable populations of existing species; or~~

(2) ~~The wetland is used by species proposed or listed by the Federal Government or the State as endangered, threatened, sensitive, critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees. An applicant must consult with the State Department of Fish and Wildlife to confirm any special recommendations for candidate or monitor species as listed for approval by the Planning and Community Development Director; or~~

(3) ~~The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts, or the adjacent land has minimal vegetative cover or slopes greater than 15-30 percent.~~

(1) The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

(2) The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

(3) The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

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

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

(2) The buffer is increased adjacent to the higher functioning area and decreased adjacent to lower-functioning area; and

- (23) The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging.
- (d) (e) Buffer Conditions. Except as otherwise specified, wetland buffers shall be retained in their natural condition.
- (1) Where buffer disturbance may or has occurred during construction, revegetation with native wetland vegetation may be required appropriate for the ecoregion or with vegetation performing similar functions.
 - (2) If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.
- ~~(e) Permitted Uses in a Wetland Buffer. Regulated activities shall not be allowed in a buffer zone except for the following:~~
- ~~(1) Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;~~
 - ~~(2) For Category III and IV wetlands, stormwater management facilities restricted to the outer 25 percent of the buffer around the wetland; or~~
 - ~~(3) For Category III and IV wetlands, development having no feasible alternative location, pursuant to sequencing and subject to the mitigation requirements of LSMC 14.88.840.~~
- (f) Buffer Reductions. Buffer reductions may be allowed for Category III or IV wetlands, provided the applicant demonstrates the proposal meets the criteria in subsections (f)(1) through (4) of this section and either subsection (f)(5) or (6) of this section. Buffer width reduction proposals that meet the criteria as determined by the Planning and Community Development Director or designee shall be reduced by no more than 25 percent of the required buffer ~~and shall not be less than 25 feet in width.~~
- (1) The buffer area meets buffer area planting in Section [14.88.275](#) and has less than 15 percent slopes; and
 - (2) A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science as described in Section [14.88.235](#); and
 - (3) Buffer width averaging as outlined in subsection (c) of this section is not being used; and
 - (4) A buffer enhancement plan is proposed that would significantly improve the function and value of ~~the a degraded~~ wetland and buffer subject to mitigation requirements of LSMC 14.88.840; and either
 - (5) The subject property is separated from the wetland by pre-existing, intervening, and lawfully created structures, public roads, or other substantial improvements. The pre-existing improvements must be found to separate the subject upland property from the wetland by height or width that prevents or impairs the delivery of buffer functions to the wetland. In

such cases, the reduced buffer width shall reflect the buffer functions that can be delivered to the wetland; or

- (6) The wetland scores ~~less than 20~~ 5 or less points for wildlife habitat in accordance with the rating system applied in Section [14.88.800](#), and mitigation is provided based on Section [14.88.840](#)(b) and Table 14.88-III, when determined appropriate based on the evaluation criteria in Section [14.88.840](#)(f).

Table 14.88-III: Disturbance Mitigation

Examples of Disturbance	Activities that May Cause Disturbance	Example Measures to Minimize Impacts
Lights	Parking lots, warehouses, manufacturing, high density residential	Direct lights away from wetland
Noise	Manufacturing, high density residential	Place activity away from wetland
Pets and humans	Residential areas	Landscaping to delineate buffer edge and to discourage disturbance of wildlife by humans and pets
Dust	Tilled fields	Best management practices for dust control
Toxic runoff*	Parking lots, roads, manufacturing, residential areas, landscaping	Route all new untreated runoff away from wetland while ensuring that wetland is not dewatered

		<div><div><div>-Establish covenants governing use of pesticides within 150 feet of wetland</div><div>-Apply integrated pest management</div></div></div>
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Changes in Water Regime	Residential, commercial and industrial development	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surface and lawns
Stormwater runoff	Parking lots, roads, manufacturing, residential areas, commercial areas, landscaping	Retrofit stormwater detention and treatment for roads and existing adjacent development Prevent channelized flow from lawns that directly enters buffer
*These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.		

(g) Buffers may be modified when approved for the purpose of implementing innovative development design in accordance with Section [14.88.298](#). (Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.840 Mitigation.

The mitigation sequence set forth in this section should be applied after impact avoidance and minimization measures have been taken.

(a) Location and Timing of Mitigation.

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

- (2) Whether occurring on site or off site, the mitigation project shall occur near an adequate water supply with a hydrologic connection to the wetland to ensure a successful wetlands development or restoration;
 - (3) Any approved proposal shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule has also been approved by the Planning and Community Development Department;
 - (4) Wetland acreage replacement ratios shall be as specified in Table 14.88-IV;
 - (5) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands.
 - (i) This provision may be used when:
 - a. The bank is certified under Chapter [173-700](#) WAC;
 - b. The Planning and Community Development Director or designee determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
 - (ii) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
 - (iii) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.
- (b) Mitigation Performance Standards.
- (1) All reasonable measures shall be taken to avoid and reduce impacts. When such avoidance and reduction is not reasonable, adverse impacts to wetland functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in Section [14.88.010](#)(a). Proposals which include less preferred or compensatory mitigation shall demonstrate that:
 - (i) All reasonable measures will be taken to reduce impacts and losses to the original wetland;
 - (ii) No overall net loss will occur in wetland functions, values and acreage; and
 - (iii) The restored, created or enhanced wetland will be as persistent and sustainable as the wetland it replaces.
- (c) Wetland Replacement Ratios.
- (1) Where wetland alterations are permitted by this chapter, the applicant shall restore or create equivalent areas of wetlands in order to compensate for wetland losses. Equivalent areas shall be determined according to size, function, category, location, timing factors, and projected success of restoration or creation.

- (2) Where wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.
- (3) The following acreage replacement ratios shall be used as targets. The Planning and Community Development Director may vary these standards if the applicant can demonstrate and the Planning and Community Development Director or designee agrees that the variation will provide adequate compensation for lost wetland area, functions and values, or if other circumstances as determined by the Planning and Community Development Department justify the variation.
- (4) The qualified scientific professional in the wetlands report may, where feasible, recommend that restored or created wetlands shall be a higher wetland category than the altered wetland.
- (d) The Planning and Community Development Director may increase the ratios under the following circumstances:
 - (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
 - (2) A significant period of time will elapse between impact and replication of wetland functions.
- (e) All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared in conformance to the requirements of Section [14.88.275](#), Mitigation/Enhancement Plan Requirements.
- (f) Mitigation ratios for the replacement of impacted wetlands shall be as listed in Table 14.88-IV. However, Table 14.88-IV shall not apply to bogs, because it is not possible to create or restore bogs due to their unique chemistry and hydrology. Therefore, impacts to bogs are considered to be a loss of functions and shall be avoided.

Table 14.88-IV: Wetland Mitigation Ratios

Affected Wetland	Mitigation Type and Ratio			
Category	Re-establishment or Wetland Creation	Rehabilitation	Re-establishment or Creation (R/C) and Enhancement (E)	Enhancement Only
Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1
Category III	2:1	4:1	1:1 R/C and 2:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 E	12:1
Category I – Forested	6:1	12:1	1:1 R/C and 10:1 E	24:1
Category I – Score Based	4:1	8:1	1:1 R/C and 10:1 E	16:1
Category I – Bog	Not possible	considered N/A	N/A	N/A

(Ord. 811, Sec. 92, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

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

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

(1) The site design avoids impacts to the critical area; or

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

(i) Improving water quality functions and values of the wetland and buffer by reducing fine sediment and pollutant input in the watershed by increasing hydrologic retention and filtration;

(ii) Improving the hydrologic functions and values of the wetland and buffer by providing increased flood control adjacent to a stream channel or by improving water storage ability in the wetland system to increase groundwater recharge potential; and

(iii) Increasing habitat for aquatic, amphibian and invertebrate species and associated wetland bird and mammal species.

(i) Credit/Debit Method. As an alternative to the mitigation ratios found in the joint guidance *Wetland Mitigation in Washington State Parts I and II* (Ecology Publication #06-06-011a-b, Olympia, WA, March 2006), the Director or Designee may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in *Calculating Credits and Debits for Compensatory Mitigation*

in Wetlands of Western Washington: Final Report, (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised).

Part IX. Transfer of Development Rights

14.88.900 Definitions.

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

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

- (a) The purpose in allowing the transfer of density is:
 - (1) To allow for the transfer of development rights out of critical areas into buildable areas; and
 - (2) To allow a property owner to recover a portion of the development value from property that may be used for a public purpose.
- (b) TDR is not a guarantee that full development value can be recovered from a parcel of land designated as a sending area. Certain market forces may limit demand for density transfers including limitations placed on critical area receiving district capacities; particularly where all such districts are built out. Value of development rights shall be determined by the market for said rights and shall in no way be the responsibility of the City of Lake Stevens.
- (c) All transfers must be consistent with the policies of the City's Comprehensive Plan and the provisions of this chapter. In particular, land developed within a critical area receiving district through the transfer of development rights shall comply with all use, dimensional, parking, screening, etc., requirements as set forth in this title.
- (d) Development rights may be transferred out of areas designated as critical area sending districts and only into areas designated as critical area receiving districts. They may be transferred within or across ownership boundaries.
- (e) When development rights are transferred off site, the property owners shall provide and enter into a contract with one another which, at a minimum, shall acknowledge their participation and acceptance. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

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

- (a) All areas classified as a critical area by this chapter shall be considered critical area sending districts. Additionally, land that does not qualify as a critical area but which has been determined by City Council to be land suitable for a public purpose may be designated as critical area sending districts by the Planning and Community Development Director with the concurrence of the majority ownership of the land.
- (b) Any parcel or portion of a parcel on which development can occur per this title may be designated as a critical area receiving district by the Planning and Community Development Director with the concurrence of the majority ownership of the land. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.930 Designation Process.

- (a) Critical area sending or receiving districts are considered overlay zones allowed per Section [14.88.920](#), Qualifications for Designation of Land as a Critical Area Sending or Receiving District. Designation as a critical area sending or receiving district is the equivalent of a rezone and shall be accomplished by the same process as specified in Section [14.16C.090](#).
- (b) Underlying land use and zoning designations may be changed by the legislative authority granted to the City through its normal Comprehensive Plan amendment or rezoning procedures. However, the land will retain the critical area sending district designation until that designation is specifically removed.
- (c) Land designated as a critical area sending or receiving district shall be shown as an overlay district on the Official Zoning Map. The map shall be modified upon each designation or revocation.
- (d) Designation or revocation as a critical area sending or receiving district shall be recorded with the Snohomish County recorder's office and shall run with the land. (Ord. 903, Sec. 55, 2013; Ord. 811, Sec. 74, 2010; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.940 Designation Revocation.

- (a) Land that has been designated as a critical area sending district shall retain its designation:
 - (1) Until all development rights calculated for that parcel have been transferred; or
 - (2) For a period of three years, whereby the designation may be reviewed for reconsideration. The designation may be continued upon all of the following findings being met:
 - (i) The property retains the same characteristics that qualified it as a critical area receiving district in the first place.
 - (ii) The owner(s) of the property desire a continuation of the designation.
 - (iii) It is still in the public interest to continue the designation.
- (b) Land that has been designated a critical area receiving district shall retain its designation until the property has yielded its development potential.
- (c) The Council may reconsider designation revocation of a noncritical area when it determines that the property is no longer suitable for public use.
- (d) Revocation of a critical area sending or receiving district designation shall not affect the underlying land use designation or zone. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

14.88.950 Calculating Transferable Development Rights.

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

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

Part X. Mitigation Plan Requirements

14.88.960 Criteria.

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

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Attachment 2

January 4, 2017

Lake Stevens City Council
1812 Main Street
Lake Stevens, WA 98258

Subject: Planning Commission Recommendation – Critical Areas Regulations (LUA2016-0024)

Dear Council Members:

The Lake Stevens Planning Commission held a public hearing on Wednesday, January 4, 2017 to consider amendments to the city's Critical Areas regulations in chapters 14.08 and 14.88 of the Lake Stevens Municipal Code.

Commissioners Present: Commissioner Davis, Commissioner Huxford, Commissioner Oslund, Commissioner Trout

Commissioners Absent: Commissioner Hoult

PLANNING COMMISSION PUBLIC HEARING January 4, 2017

Planning and Community Development staff presented the proposed code amendments, summarized findings and conclusions from the staff report, and answered the Commission's questions. Sally Jo Sebring inquired on how credit for wetland banking will be defined and used in the new code. Director Wright responded that the revised code provides additional clarity on the use of mitigation banking.

FINDINGS AND CONCLUSIONS

The Planning Commission hereby adopts staff's findings and conclusions, included below, and concludes that the proposed amendments.

1. Comply with selected Goals of the Comprehensive Plan

- Land Use Goal 2.10 - Ensure that land uses optimize economic benefit and the enjoyment and protection of natural resources while minimizing the threat to health, safety and welfare.
- Land Use Goal 2.11 - Where possible, use elements of the natural drainage system to minimize storm water runoff impacts.
- Environmental and Natural Resources Goal 4.1 - Sustain environmental quality through the preservation and conservation of the natural environment and resources, and require development to be sensitive to site characteristics and protect natural and cultural resources.
- Environmental and Natural Resources Goal 4.3 - Protect the natural environment, surface water and ground water and aquifer recharge areas, conserve all critical areas including wetlands, shorelines, creeks/streams, geological hazard areas and wildlife habitats by locating development within geographically suitable and geologically stable areas, and coordinate local development regulations with state and federal policies.

Conclusions – The proposed code amendments are consistent with Comprehensive Plan goals.

2. *Comply with the State Environmental Policy Act (SEPA)(Chapter 97-11 WAC and Title 16 LSMC)*

- The SEPA official issued a Determination of Non-significance on February 5, 2016.
- The city did not receive any appeals related to the SEPA determination.
- The city responded to comments from the Department of Ecology.

Conclusions – The proposed code amendments have met local and state SEPA requirements.

3. *Comply with the Growth Management Act (RCW 36.70A.106)*

- The city sent the amendments to the Department of Commerce on January 28, 2016 for the required 60-day review.
- The Department of Commerce sent a letter of acknowledgment on February 1, 2016
- Staff will file the final ordinance with the Department of Commerce within 10 days of final City Council action.

Conclusions – The proposed code amendments have met Growth Management Act requirements.

4. *Comply with Public Notice and Comment Requirements*

- The city published a notice of SEPA determination in the Everett Herald on February 5, 2016.
- The city published the required Public Hearing notices in the Everett Herald twice per LSMC 1416B LSMC.

Conclusions – The City has met public notice requirements per Chapter 14.16B LSMC.

PLANNING COMMISSION RECOMMENDATION

MOTION: Commissioner Huxford/Second Vicki Oslund forward a recommendation to the City Council to APPROVE the proposed amendment/Critical Areas regulations in chapters 14.08 and 14.88 of the Lake Stevens Municipal Code. Motion carried (4-0-0-1)

Respectfully submitted,

Lake Stevens Planning Commission

Signed original on file

Jennifer Davis, Vice Chairperson



CITY OF LAKE STEVENS
PLANNING AND COMMUNITY DEVELOPMENT
PO BOX 257, LAKE STEVENS, WA 98258
PHONE: (425) 377-3235 / FAX: (425) 212-3327

SEPA ENVIRONMENTAL CHECKLIST

UPDATED 2014

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements—that do not contribute meaningfully to the analysis of the proposal.

A. BACKGROUND

1. Name of proposed project, if applicable:

Amendments to the City of Lake Stevens Municipal Code Chapter 14.88 – Critical
Areas

2. Name of applicant:

City of Lake Stevens

3. Address and phone number of applicant and contact person:

Russ Wright, Planning and Community Development Director
City of Lake Stevens
1812 Main Street / PO Box 257
Lake Stevens, WA 98258

(425) 212 - 3315

4. Date checklist prepared:

January 29, 2016

5. Agency requesting checklist: **City of Lake Stevens**

6. Proposed timing or schedule (including phasing, if applicable):

SEPA Determination:	February 5, 2016
Planning Commission Public Hearing:	March 2, 2016
City Council Public Hearing (1 st Reading):	March 22, 2016
City Council Public Hearing (2 nd Reading) / Adoption:	April 26, 2016

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

Not applicable, this is a Non-project action

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

Best Available Science reviewed is available in project folder

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

Not applicable, this is a Non-project action

10. List any government approvals or permits that will be needed for your proposal, if known.

City Council approval and Department of Commerce review

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The City of Lake Stevens is proposing amendments to Chapter 14.88 of the Lake Stevens Municipal Code. The Growth Management Act of Washington requires cities and counties review their critical area ordinances as part of their mandatory Comprehensive Plan update under RCW 36.70A.130 (1) and (5). City of Lake Stevens Planning and Community Development staff have completed a review of the entire Critical Areas regulation Chapter 14.88 LSMC and are proposing some minor updates to the full chapter in addition to modest updates for permitting process clarification and inclusion of the 2014 changes to the Wetland Rating System for Western Washington manual.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The regulations apply to critical areas and buffers within the city boundaries of Lake Stevens, WA.

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other:

The City of Lake Stevens' topography includes steep slopes, ravines, hilly and some flat land areas.

- b. What is the steepest slope on the site (approximate percent slope)?

Moderate slopes between 15 and 40 percent, and some steep slopes over 40 percent exist within the city boundaries of Lake Stevens

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

The city contains the following soil series:

- Tokul gravelly loam
- Mukilteo Muck
- Everett gravelly sandy loam
- Norma loam
- Urban Land
- Disturbed/Fill
- Winston gravelly loam
- Bellingham silty clay loam
- McKenna gravelly silt loam
- Rober silt loam
- Pastik silt loam
- Terric Medisaprist

- d. Are there surface indications or history of unstable soils in the immediate vicinity?

☒ yes ☐ no

If so, describe.

The Land Capability Classification from the USDA Web Soil Survey shows soil types ranging from 2e to 7e. This index rates the suitability of soil for cultivation. This means some soil types in the city are potentially unstable depending on site conditions, such as soil depth, water content and may be susceptible to erosion without proper soil management. The Tokul, Winston, and Paskit series are most susceptible to erosion. The Bellingham, McKenna, and Pilchuck series may be unstable with excessive water.

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

Not applicable, this is a Non-project action

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

Not applicable, this is a Non-project action

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

Not applicable, this is a Non-project action

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Not applicable, this is a Non-project action

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

Not applicable, this is a Non-project action

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

Not applicable, this is a Non-project action

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

Not applicable, this is a Non-project action

3. Water

- a. Surface Water:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names.

☐ yes ☒ no

If appropriate, state what stream or river it flows into.

The city of Lake Stevens has several bodies of water including Lake Stevens, Catherine Creek, Stevens Creek, Lundeen Creek, Stitch Lake and associated wetland complexes. Catherine Creek flows into Little Pilchuck Creek.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

Not applicable, this is a Non-project action

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

Not applicable, this is a Non-project action

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

Not applicable, this is a Non-project action

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

☒ yes ☐ no

If so, note location on the site plan.

The city of Lake Stevens has lands with Special Flood Hazard Area Zone A, depicted on the FIRMs for Lake Stevens, WA.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

Not applicable, this is a Non-project action

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

Not applicable, this is a Non-project action

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

Not applicable, this is a Non-project action

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Not applicable, this is a Non-project action

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

Not applicable, this is a Non-project action

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

Not applicable, this is a Non-project action

- d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Not applicable, this is a Non-project action

4. Plants

- a. Check the types of vegetation found on the site:

The following vegetation types are found within the boundaries of the City of Lake Stevens:

- ☒ Deciduous tree: alder, maple, aspen, other
- ☒ Evergreen tree: fir, cedar, pine, other
- ☒ Shrubs
- ☒ Grass
- ☒ Pasture
- ☐ Crop or grain
- ☒ Wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- ☒ Water plants: water lily, eelgrass, milfoil, other
- ☒ Other types of vegetation

- b. What kind and amount of vegetation will be removed or altered?

Not applicable, this is a Non-project action

- c. List threatened and endangered species known to be on or near the site.

Not applicable, this is a Non-project action

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Not applicable, this is a Non-project action

- e. List all noxious weeds and invasive species known to be on or near the site.

Himalayan Blackberry, Holly and English Ivy are known to be present within the boundaries of the City of Lake Stevens. Other noxious weeds or invasive species may be present on a case-by-case basis. This is a Non-project action.

5. Animals

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: hawk, heron, eagle, songbirds, other: various picidae species, various corvidae species, various waterfowl species

Mammals: deer, bear, elk, beaver, other: raccoons, opossums, rodents

Fish: bass, salmon, trout, herring, shellfish, other: sculpin and stickleback

- b. List any threatened and endangered species known to be on or near the site.

- Lake Stevens - Puget Sound Coho salmon (*O. Kisutch*) – Federal Species of Concern, and State Priority Species
- Streams - Puget Sound Steelhead (*O. mykiss*) – Federal Threatened Species
- Streams - Bull Trout (*S. Confluentus*) – Federal Threatened Species

- c. Is the site part of a migration route? If so, explain.

☒ yes ☐ no

If so, explain.

The City of Lake Stevens is located within the Pacific flyway and salmonid migratory routes.

- d. Proposed measures to preserve or enhance wildlife, if any:

Not applicable, this is a Non-project action

- e. List any invasive animal species known to be on or near the site.

Grey squirrels are the only known invasive animal species within the boundaries of the City of Lake Stevens. This is a non-project action.

6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Not applicable, this is a Non-project action

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

Not applicable, this is a Non-project action

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

Not applicable, this is a Non-project action

7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

Not applicable, this is a Non-project action

- 1) Describe any known or possible contamination at the site from present or past uses.

Not applicable, this is a Non-project action

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

Not applicable, this is a Non-project action

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

Not applicable, this is a Non-project action

- 4) Describe special emergency services that might be required.

Not applicable, this is a Non-project action

- 5) Proposed measures to reduce or control environmental health hazards, if any:

Not applicable, this is a Non-project action

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Not applicable, this is a Non-project action

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Not applicable, this is a Non-project action

- 3) Proposed measures to reduce or control noise impacts, if any:

Not applicable, this is a Non-project action

8. Land and shoreline use

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

The city of Lake Stevens includes a variety of urban land uses including residential, commercial, office, industrial and public.

- b. Has the project site been used as working farmlands or working forest lands?

☒ yes ☐ no

If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

Some parcels within the city of Lake Stevens were likely used for agriculture in the past. Currently, some larger parcels include fruit trees and may still have farm animals. This is a non-project action and no farmland or forest land of long-term commercial significance exist within the city boundaries of Lake Stevens, therefore no tax status conversion is expected.

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

Not applicable, this is a Non-project action

c. Describe any structures on the site.

There are a mix of residential, public, and commercial buildings within the City of Lake Stevens.

d. Will any structures be demolished? If so, what?

Not applicable, this is a Non-project action

e. What is the current zoning classification of the site?

Critical Areas are located across multiple zones within the City of Lake Stevens. There are multiple densities of residential, commercial, industrial, mixed use and public zones throughout the City.

f. What is the current comprehensive plan designation of the site?

Critical Areas are located across multiple comprehensive plan designations within the City of Lake Stevens. There are multiple densities of residential, commercial, industrial, mixed use and public comprehensive plan designations throughout the City.

g. If applicable, what is the current shoreline master program designation of the site?

The city's Shoreline Master Program has the following Environment Designations: Aquatic, Natural, High Intensity, Urban Conservancy, and Shoreline Residential.

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

☒ yes ☐ no

The proposed regulations amend the current critical area regulations to better protect their habitats and functions. The city of Lake Stevens includes a variety of critical areas including streams, wetlands, fish and wildlife habitat conservation areas, flood hazard areas and geologically hazardous areas.

i. Approximately how many people would reside or work in the completed project?

Not applicable, this is a Non-project action

- j. Approximately how many people would the completed project displace?

Not applicable, this is a Non-project action

- k. Proposed measures to avoid or reduce displacement impacts, if any:

Not applicable, this is a Non-project action

- L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Not applicable, this is a Non-project action

- m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

There are no agricultural or forest lands of long-term commercial significance located within the city boundaries of Lake Stevens.

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

Not applicable, this is a Non-project action

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

Not applicable, this is a Non-project action

- c. Proposed measures to reduce or control housing impacts, if any:

Not applicable, this is a Non-project action

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

Not applicable, this is a Non-project action

- b. What views in the immediate vicinity would be altered or obstructed?

Not applicable, this is a Non-project action

- c. Proposed measures to reduce or control aesthetic impacts, if any:

Not applicable, this is a Non-project action

11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

Not applicable, this is a Non-project action

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

Not applicable, this is a Non-project action

- c. What existing off-site sources of light or glare may affect your proposal?

Not applicable, this is a Non-project action

- d. Proposed measures to reduce or control light and glare impacts, if any:

Not applicable, this is a Non-project action

12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

The city of Lake Stevens includes a variety of recreational facilities including the lake, city and county parks, schools, athletic fields, and the Centennial Trail.

- b. Would the proposed project displace any existing recreational uses? If so, describe.

Not applicable, this is a Non-project action

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

Not applicable, this is a Non-project action

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

Not applicable, this is a Non-project action

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

Not applicable, this is a Non-project action

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

Not applicable, this is a Non-project action

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

Not applicable, this is a Non-project action

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

The city of Lake Stevens includes several major roads including highways SR-9, SR-92, and SR-204. Major roads through the city include Vernon, Lundeen Parkways, 20th Street NE and 20th Street SE.

- b. Is the site or affected geographic area currently served by public transit?

☒ yes ☐ no

If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

Community Transit of Snohomish County provides transit service to select areas of Lake Stevens.

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

Not applicable, this is a Non-project action

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

Not applicable, this is a Non-project action

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Not applicable, this is a Non-project action

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

Not applicable, this is a Non-project action

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

Not applicable, this is a Non-project action

- h. Proposed measures to reduce or control transportation impacts, if any:

Not applicable, this is a Non-project action

15. Public services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

Not applicable, this is a Non-project action

- b. Proposed measures to reduce or control direct impacts on public services, if any.

Not applicable, this is a Non-project action

16. Utilities

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other:

☒ Electricity

☒ Telephone

☒ Natural gas

☒ Sanitary sewer

☒ Water

☒ Septic system

☒ Refuse service

☐ Other (list)

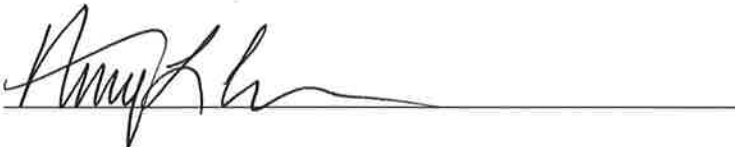
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Not applicable, this is a Non-project action

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____



Name of signee: _____

Amy L Lucas

Position and Agency/Organization: _____

Associate Planner / City of Lake Stevens

Date Submitted: _____

2/5/16

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposal is not likely to increase discharge to water; emissions to air; production, storage or release of toxic or hazardous substances, or production of noise.

Proposed measures to avoid or reduce such increases are:

The amendments are being proposed to update the Critical Areas regulations within Lake Stevens to better protect wetlands, fish and wildlife habitat areas, geohazardous areas and flood hazard areas. Avoiding and mitigating impacts to critical areas will likely prevent increased discharge of pollutants to water.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposal aims to better protect critical areas and is likely to have a positive effect on plants, animals and fish. No marine life is present in Lake Stevens.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

The proposed amendments include measures based on Best Available Science and Washington Department of Ecology's 2014 updates to the Wetland Scoring System which aim to better protect wetlands and associated fish, mammal and bird species. Other updates include adding critical area study requirements and mitigation plan requirements to better assess the existing conditions of the site and to assist staff with permitting decisions that affect critical areas. These amendments intend to better protect or conserve plants, animals and fish. Any future development proposals would be subject to applicable regulations related to plants, animals and fish.

3. How would the proposal be likely to deplete energy or natural resources?

The proposal is not likely to deplete energy or natural resources. The amendments regulate critical areas and buffers within Lake Stevens.

Proposed measures to protect or conserve energy and natural resources are:

Any proposed development will be required to comply with applicable regulations to protect or conserve energy and natural resources.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

The proposal aims to better protect critical areas and is likely to better protect environmentally sensitive areas or areas designated for governmental protection.

Proposed measures to protect such resources or to avoid or reduce impacts are:

The proposed amendments include measures based on Best Available Science and Washington Department of Ecology's 2014 updates to the Wetland Rating System which aim to better protect environmentally sensitive areas. Other updates include adding critical area study requirements and mitigation plan requirements to better assess the existing conditions of the site and to assist staff with permitting decisions that affect environmentally sensitive areas. Any proposed development will be required to comply with Chapter 14.88 – Critical Areas, and Title 16 – SEPA, of the Lake Stevens Municipal Code.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposal amends critical area regulations outside of the Shoreline jurisdiction and will not likely affect land and shoreline use or allow or encourage land or shoreline uses incompatible with existing plans.

Proposed measures to avoid or reduce shoreline and land use impacts are:

Any future development proposals within the Shoreline jurisdiction of Lake Stevens will be required to comply with the City of Lake Stevens Shoreline Master Program and regulations.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposal is not likely to increase demands on transportation or public services and utilities.

Proposed measures to reduce or respond to such demand(s) are:

Any future development proposals will be required to submit a traffic impact analysis report and comply with applicable transportation, public service and utility requirements.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposal does not create any known conflicts with local, state or federal laws or requirements. The proposals are consistent with the City of Lake Stevens Comprehensive Plan, the Department of Ecology Wetland

Attachment 3b



DETERMINATION OF NONSIGNIFICANCE

Issuance Date: February 5, 2016

Project Name (No.): City of Lake Stevens Critical Areas Regulations Update

Proponent: City of Lake Stevens

Applicant: City of Lake Stevens
1812 Main Street / P.O. Box 257
Lake Stevens, WA 98258

Description of Proposal: The City of Lake Stevens is proposing updates to Chapter 14.88 – Critical Areas, of the Lake Stevens Municipal Code. The Growth Management Act of Washington requires cities and counties review their critical area ordinances as part of their mandatory Comprehensive Plan update under RCW 36.70A.130 (1) and (5). City of Lake Stevens Planning and Community Development staff have completed a review of the entire Critical Areas regulation Chapter 14.88 LSMC and are proposing some minor updates to the full chapter in addition to modest updates for permitting process clarification and inclusion of the 2014 changes to the Wetland Rating System for Western Washington manual.

Project Location (including street address, if any): Within City Limits of Lake Stevens

Contact Person: Amy Lucas, Associate Planner **Phone:** (425) 377 - 3226

Threshold Determination: The City of Lake Stevens, acting as lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date of issuance.

SEPA Responsible Official:



Russ Wright, Planning Director, City of Lake Stevens

Comments on the Threshold Determination: If you would like to comment on this Threshold Determination, your written comments should be sent to the address below by February 19, 2016 (*14 days from issuance*). The Responsible Official may incorporate any substantial comments into the DNS. If the DNS is substantially modified, it will be reissued for further public review.

Appeals: You may appeal this determination of non-significance by submitting an appeal to the address below no later than 5:00 PM, February 19, 2016 (*14 days from issuance*). The appeal must be in written form, contain a concise statement of the matter being appealed and the basic rationale for the appeal. A fee is required per the City's Fee Resolution. Please note that failure to file a timely and complete appeal shall constitute a waiver of all rights to an administrative appeal under City code. All comments or appeals are to be directed to City Hall, P.O. Box 257, Lake Stevens WA, 98258.



Department of Commerce

Innovation is in our nature.

Notice of Intent to Adopt Amendment 60 Days Prior to Adoption

Indicate one (or both, if applicable):

- ☐ **Comprehensive Plan Amendment**
☒ **Development Regulation Amendment**

Pursuant to RCW 36.70A.106, the following jurisdiction provides notice of intent to adopt a proposed comprehensive plan amendment and/or development regulation amendment under the Growth Management Act.

(If needed, you may expand this form and the fields below, but please try to keep the entire form under two pages in length.)

Jurisdiction:	City of Lake Stevens
Mailing Address:	1812 Main Street Lake Stevens, WA 98258
Date:	01/28/2016

Contact Name:	Amy Lucas
Title/Position:	Associate Planner
Phone Number:	(425) 377 – 3226
E-mail Address:	alucas@lakestevenswa.gov

Brief Description of the Proposed/Draft Amendment: <i>(40 words or less)</i> <i>If this draft amendment is provided to supplement an existing 60-day notice already submitted, then please provide the date the original notice was submitted and the Commerce Material ID number (located in your Commerce acknowledgement letter.)</i>	<i>The City of Lake Stevens is proposing amendments to Chapter 14.88 LSMC – Critical Areas. The update includes changes to incorporate the Department of Ecology 2014 Update to the Wetland Rating System. Other updates to the code include clarifications and criteria additions to improve the permitting decision process and increase efficiency. Minor clerical changes are also proposed.</i>
Public Hearing Date:	Planning Board/Commission: March 2, 2016 Council/County Commission: April 26, 2016
Proposed Adoption Date:	April 26, 2016

REQUIRED: Attach or include a copy the proposed amendment text.

Attachment 4b



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

February 1, 2016

Amy Lucas
Associate Planner
City of Lake Stevens
1812 Main Street
Post Office 257
Lake Stevens, Washington 98258-0257

Dear Ms. Lucas:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

City of Lake Stevens - Proposed amendments to Chapter 14.88 LSMC - Critical Areas. The update includes changes to incorporate the Department of Ecology 2014 Update to the Wetland Rating System. Other updates to the code include clarifications and criteria additions to improve the permitting decision process and increase efficiency. Minor clerical changes are also proposed. These materials were received on January 29, 2016 and processed with the Material ID # 22050.

We have forwarded a copy of this notice to other state agencies.

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment, then final adoption may occur no earlier than March 29, 2016. Please remember to submit the final adopted amendment to Commerce within ten (10) days of adoption.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Dave Andersen (509) 434-4491.

Sincerely,

Review Team
Growth Management Services

Attachmnet 5

ATTACHMENT C

Letter for the Public Record

City of Lake Stevens Planning Commission June 1, 2016

Critical Areas Update

May 29, 2016

Fellow Commissioners:

The concept of sustainability is a tripod: A. economic development B. social equity/property rights/public process C. environmental protections. The top of the tripod is our quality of life. The devil is in the details, of course.

As we ponder the state recommended changes to Critical Areas: Wetlands, there are some hard and difficult questions about C. Environmental Protections:

- A. Lake Stevens is a highly stressed body of water:
 - 1. Lake levels: in the past two years we have had historic High Pool Levels
 - a. Submerged docks b. shoreline erosion c. fringe flooding D. citizen complaints
 - 2. Lake levels: in the past two years we have had historic Low Pool Levels
 - a. recreation impacts due to shoaling b. propeller damage c. higher water temp. d. lower dissolved O2 e. citizen complaints
 - 3. Water quality is a constant battle:
 - a. Alum treatments b. milfoil wars c. mats of algae in May! D. algae blooms in winter! E. phosphorous and nitrogen loading
 - 4. Cultural and natural Eutrophication: lakes age and fill in with sediment(natural), but human impacts can increase the rate of eutrophication and impacts: i.e. invasive species
 - 5. Inflow/outflow turnover rates are woefully minimal for such a large lake

Unfortunately, the state wetland update does little to address our specific problem. While reclassifying wetland categories and adjusting buffers mostly on Habitat Scores may behoove much of Western WA, it does not seem particularly appropriate in much of our highly developed Lake Basin drainages.

These two functions seem more relevant for our Lake and its health:

Wetland Function: WA Dept. of Ecology (A Landowners Guide to Wetlands)

Groundwater Recharge and Streamflow Maintenance (the sponge effect)

Aquifers and groundwater are "recharged," that is, replenished with water by precipitation that seeps into the ground and by surface waters. Those wetlands connected to groundwater systems or aquifers are important areas for groundwater exchange. They retain water and so provide time for infiltration to occur. Groundwater, in turn, provides water for drinking, irrigation, and maintenance of streamflow and lake and reservoir levels. During periods of low streamflow (or low lake water levels), the slow discharge of

groundwater often helps maintain minimum water levels. In addition, wetlands located along streams, lakes, and reservoirs may release stored water directly into these systems, thus also contributing to their maintenance. Wetlands' many intricate connections with groundwater, streamflow, and lake and reservoir water levels make them essential in the proper functioning of the hydrologic cycle. (my underline)

Flood Protection/Damaging High Lake Levels

Almost any wetland can provide some measure of flood protection by holding the excess runoff after a storm, and then releasing it slowly. The size, shape, location, and soil type of a wetland determine its capacity to reduce local and downstream flooding. While wetlands cannot prevent flooding, they do lower flood peaks by temporarily holding water and by slowing the water's velocity. Wetland soil acts as a sponge, holding much more water than other soil types. Even isolated wetlands can reduce local flooding -- if the wetlands were not there to hold stormwater runoff, backyards and basements might end up under water.

Recommendations:

1. Commission a review of relevant, timely Best Available Science on Hydrogeologic Functions of Wetlands and associated buffers, i.e.: groundwater recharge, flood protection, water quality, mitigating aquatic hypoxia. Habitat is nice, but we know red winged blackbirds like wetlands. We need data on groundwater release, storage, and quality.

Then, if needed:

2. Bring all Lake Basin Buffers for Class III and Class IV Category Wetlands, regardless of land use intensity and habitat score, into line with Snohomish County CAR update, State Ecology Recommendations, and City of Sammamish CAR Update(a comparable jurisdiction and often used in comparisons with City of Lake Stevens.) We are at least 5-??? feet more narrow than all of the above with no discernible citations of support using Best Available Science.

But in the long term:

3. Commission a standing committee of stakeholders, experts, and staff to study Eutrophication Effects, Human Impacts such as Phosphorous Loading, Climate Change, etc. Alum, milfoil, beach closures, shoreline erosion repairs are all stop-gap measures. It is time we get ahead of the curve.

Thanks,

Sorry I could not be at the meeting.

Tom Matlack

Attachment 6

Summary of DOE Comments from February 18, 2016

Part V Frequently Flooded Areas

Have you consulted with Dave Radabaugh at Ecology for this section?

Response – the city worked with FEMA on its updates to the city Flood Regulations.

Section 14.88.800 Classification

Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

Category II. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Response – definitions proposed are consistent with DOE Manual

Section 14.088.820 Allowed Activities

- we would recommend including additional criteria:
- o Are not associated with riparian areas or buffers
- o Are not part of a wetland mosaic
- o Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance identified in Chapter XX.XX.

Response – Sections 14.88.220, 14.88.820 ,14.88.830, 18.88.840 have been updated to meet DOE concerns

14.88.830 Requirements

Table 14.88-II

These buffer widths are not consistent with our guidance. We recommend adopting the latest Small Cities Guidance buffer table.

Subsections (d),(e), (f)

(d) Our recommended buffers assume that the buffer is vegetated with a native plant community appropriate for the ecoregion or with one that performs similar functions. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

(e) We are concerned this is not specific enough to protect wetlands.

(f) Because the current buffer widths are smaller than Ecology recommends, allowing a further reduction is a high risk approach.

Response – This section has been updated to ensure the buffer table complies with current ecology guidance and mitigation standards.



Staff Report City of Lake Stevens Planning Commission

Planning Commission Discussion
Date: **November 7, 2018**

SUBJECT: Code Amendment to Fences, Hedges and Walls (LUA2018-0109)

CONTACT PERSON/DEPARTMENT: Melissa Place, *Senior Planner*

SUMMARY: Code amendment to revise Chapters 14.08, 14.48.050, 14.44.420, 14.80, and 14.88.285 LSMC, revising regulations to fences, hedges, and walls city-wide.

ACTION REQUESTED OF PLANNING COMMISSION: Review and make recommendations on the proposed regulations.

Background on Proposed Code Amendment

On June 19, 2018, the city initiated a code amendment to update regulations governing fences, hedges, and walls within the city. The purpose of the amendment is to clarify and revise the height, setback requirements, allowable location, and definition of fences and retaining walls, as well as address safety concerns and aesthetics for such features.

On October 3, 2018 the Planning Commission was briefed on the code amendment. Staff presented the intent of the code update, identified areas in the existing code that present interpretation and enforcement challenges, and presented photos illustrating existing conditions and desirable conditions. The Planning Commission discussed the need for balance and flexibility in the regulations to address the different functions and purposes for fences and walls, agreed on the importance of safety, and specified the importance of obtaining public input on the proposed code changes.

Fence, Hedge, and Retaining Wall Data

Attached to this staff report is a table comparing other jurisdiction's fence, hedge and wall regulations to the existing and proposed regulations of Lake Stevens (*Attachment 1*). The proposed regulations are a first draft only and are intended to be discussed and edited as applicable. Adjacent communities to Lake Stevens and Municipal Research and Services Center (MRSC) jurisdictions were researched and compared. The proposed regulations were drafted in part based on other jurisdictions in our area.

Regulations on fences, hedges, and retaining walls are not generally located in one place in municipal and county codes. Thus, where N/A is listed in the matrix, either the specific information was not located by staff or the code was silent on the subject. As indicated by the matrix, most codes consider a retaining wall of four feet and above a structure, most require protective fencing (usually through the IBC), and all include sight triangle provisions for safety purposes. The regulations for the remaining categories vary regarding treatment of fencing/walls within front yards, whether they are subject to setbacks, whether fence/wall combinations are allowed and if so, to what extent, whether the fence/wall code has flexibility, and design treatment including the terracing of walls.

Draft Code Summary

The attached draft code (*Attachment 2*) is intended for review and comment by the Planning Commission. The draft code generally reflects the proposed regulations that were previously discussed on October 3, 2018.

To summarize, the draft code essentially replaces several existing code sections that addressed fence, hedge, and wall regulations into one consolidated chapter (14.52), adds definitions to 14.08, includes new regulations addressing the height and location of fences/walls more specifically, addresses through lots, requires terracing and landscaping of walls above six feet in height, allows fencing above the previous height limit if the fence/wall is at least 50% open, defines the sight triangle in the code, and provides for flexibility in the administration of the chapter.

Next steps

To continue the code amendment process, staff will begin the SEPA review process and the Department of Commerce review process. Staff plans to brief the City Council on the code amendment on November 13, 2018.

Staff anticipates bringing the code amendment before the Planning Commission at a public hearing on December 5, 2018 and a public hearing before the City Council in December or January of 2019.

ATTACHED:

- 1) Jurisdiction Comparison Matrix
- 2) Draft Code

Jurisdiction Comparison Matrix: Fence/Wall Requirements (N/A = Not Addressed)

Jurisdiction	Fence Max Front Yard Height	Through Lot Regulations	Require Protective Fencing	Are walls considered structures	Allow fence/wall combos? Max height	Fences/Walls subject to setbacks	Sight Triangle regulations	Flexibility in administration	Walls/fences allowed in building setback from critical area	Walls require terracing or other design treatment (outside of special districts)
Adjacent										
Lake Stevens <i>existing</i>	42"	No	Yes	Yes – 4'+	Yes – 42" within setback, 6' outside of setback	Yes	Yes, via EDDS	No	No	No
Lake Stevens <i>proposed</i>	48" unless w/in sight triangle then 42"	Yes	Yes	Yes – 4'+	Yes – 6'. Can exceed 6' if terraced with plantings	Yes	Yes	Yes	Yes	Yes
Arlington	48" or 6' if open (50% opacity above 4')	N/A	Yes	Yes - 3'+	Yes	Yes, if above 42" and adjacent to streets	Yes	No	N/A	Yes – design treatment
Everett	42" and be 30% transparent or 6' and 70% transparent and 10' from sidewalk	Yes – 10' landscape buffer	Yes	Yes – 4'+	Yes – 6' + 42" fence	Yes, but max height is that for the district	Yes	No	N/A	Yes – terracing with landscaping every 4' and terrace must be at least 2' wide. Also, if between 4'-6' and visible to public shall be constructed of certain materials to reduce mass of wall
Marysville	48" solid or 6' if open on access streets or 4' solid with top 2' open if arterial St.	N/A	Yes	Yes – 4'+	Yes – 6', any height above shall be open	Yes, in front setback – no setbacks in side and rear	Yes	Yes – fence variances via Director	N/A	Yes – terracing with landscaping every 4' and terrace must be at least 2' wide.
Snohomish	36" for a solid fence and 60" if open – for residential areas only – height max based on district areas	N/A	Yes, but not counted toward height	Yes – 4'+	Yes – 6' – require a retaining wall permit for 4'+	Yes, max height for retaining walls and rockeries in a setback is 6'	Yes	Yes – minor variance	N/A	Yes – design treatment per design guidelines Requires retention of natural slopes in geohazard areas rather than graded artificial slopes when possible.
Snohomish County	6' or less	N/A	N/A	Yes – 4'+	Yes	Yes if 6'+ or if a landscaped area is required	Yes	N/A	N/A	Design treatment on walls if longer than 20' in UC Zone. Terracing of 6 feet in width required on slopes at 30' high intervals. Requires retention of natural slopes in geohazard areas rather than graded artificial slopes when possible.
MRSC										
Edmonds	48" – can go higher if 50% open	N/A	N/A	Yes – 4'+	Yes – 4' fence above for safety only	N/A	Yes	Yes- variance	Fences yes – requires fence permit	GC Zone -Walls facing adjacent property or public ROW shall be a max of 7' and terraced. A min. of four feet of planted terrace is required between segments
Lynnwood	3' solid or 6' if open	N/A	N/A	N/A	N/A	N/A	Yes	Yes – variance, exceptions, and conditioning	N/A	Yes, landscaping adjacent to continuous fencing and design guidelines
Redmond	42" in certain zones	N/A	Yes	Yes – 4'+	Yes – 8' max unless excepted	N/A	Yes	Yes, via Administrator	N/A	Yes - terracing
Bothell	6' if no landscape buffer required	N/A	Yes	Yes - 4'+	N/A	Yes if 6'+	Yes	N/A	Allows fence at edge of wetland buffer	N/A
Mill Creek	42"	N/A	N/A	Yes – 3'+	6' max	Yes, over 42"	Yes	N/A	N/A	Yes – design review

Chapter 14.52

FENCES, HEDGES AND WALLS

Sections:

Part I. General Provisions

14.52.010	Purpose and Intent
14.52.020	Applicability
14.52.030	Safety
14.52.040	Flexibility
14.52.050	Exemptions

Part II. Fences and Hedges

14.52.060	Permits
14.52.070	Height/Setbacks
14.52.080	Design
14.52.090	Exceptions

Part III. Walls

14.52.100	Permits
14.52.110	Height
14.52.120	Setbacks
14.52.130	Critical Areas
14.52.140	Design

Part I. General Provisions

14.52.010 Purpose and Intent.

The purpose and intent of this section is to provide regulations for fences, hedges and walls and promote the positive benefits of each without endangering public or vehicle safety.

- (a) Fences, hedges and walls can create privacy, protect children and pets, provide separation from streets and enhance the appearance of properties by providing landscape elements.
- (b) Fences, hedges and walls can create the appearance of street walls that inhibit visibility for police and community security, decrease the sense of community, hinder the safe movement of pedestrians, emergency access and vehicles at street and driveway intersections and block sun, light and air to individual residences.
- (c) Fences, hedges and walls provide privacy and security, but long expanses are undesirable due to the visual monotony and restricted vistas that long expanses create.
- (d) Needs along streets differ between front yards, which are traditionally open and unobscured and contain vehicular access to streets and side and rear yards, where family activities more often take place and require more privacy.

- (e) Fences, hedges and walls may promote and enhance the city's neighborhoods as walkable places and reduce impacts on the pedestrian experience that may result from taller fencing.

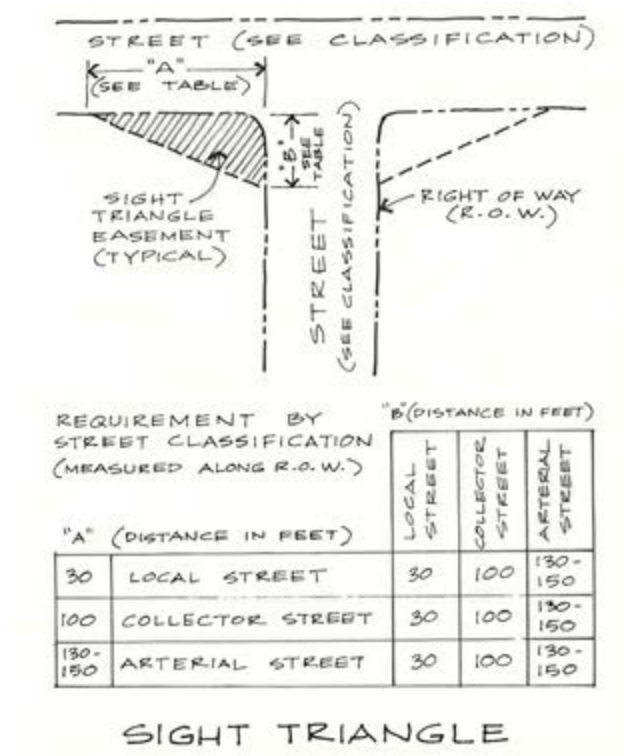
14.52.020 Applicability.

The provisions of this section apply to all fences, hedges and walls within the city constructed, modified or replaced after the effective date of the ordinance. As part of approving fences, hedges and walls under this section, the director of Planning and Community Development or designee may impose conditions or limitations on such allowed under this section to ensure that fences, hedges and walls conform with the purpose and intent of this chapter and this title.

14.52.030 Safety.

All fences, hedges and walls must ensure sightline visibility is maintained, reduce the potential for falls when residents install fences, walls or hedges for personal security or landscaping for properties. All fences, hedges and walls within city limits shall comply with the following:

- (a) All fences, hedges and walls shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property, subject to the International Property Maintenance Code.
- (b) Anything that is a fall hazard (as defined by the city's building code) and is greater than 30 inches in height is required to have a 42-inch guard rail. Guard rails must consist of vinyl-coated chain link or other rust-proof and long-lasting material(s) that are low maintenance or equivalent. Wood or other high maintenance fencing that deteriorates rapidly is not allowed as protective fencing.
- (c) No fence, hedge or wall shall create a safety hazard or sight obstruction.
- (d) All fences, hedges and walls must maintain a sight triangle at the intersection of the street and/or alley rights-of-way or other access configurations including access tracts and easements for the purpose of traffic safety. No building, structure, object or growth over 42 inches in height, measured from finished grade of the intersecting streets, shall be allowed within this triangle.
 - 1. If the public works director or designee finds that no hazard to users of the street or to nearby property will be created, the public works director or designee may approve a fence of up to six feet in height in this area on corner lots.
 - 2. The public works director or designee may require modification or removal of structures or landscaping, even those elements 42 inches or under, located in required street setbacks, if:
 - i. those elements prevent adequate sight distance to drivers entering or leaving a driveway; and
 - ii. The sight-triangle setback requirement may be waived or modified by the public works director or designee if a fence is designed and constructed so that it does not cause a public safety hazard by obstructing visibility of pedestrians or motorists using streets, driveways or sidewalks.



(e) No fences incorporating barbed wire, razor wire or electrical wire is permitted except in the following circumstances:

1. Security purposes surrounding commercial or industrial sites;
2. Agricultural uses including those necessary for control of permitted livestock (code citation), except when adjacent to a public walkway or sidewalk;
3. Razor wire fencing is prohibited; and
4. Electric fences are allowed for \controlling permitted livestock, except when adjacent to a public walkway or sidewalk.

14.52.040 Flexibility.

The Planning and Community Development Director or designee may approve alternative materials or a combination of materials for the fences, hedges and walls described below when such alternative materials or combinations are demonstrated to better meet the intent of this chapter. All requests for modifications from the requirements of this chapter shall be processed under the Administrative Authority code as provided for in LSMC 14.16C.120.

14.52.050 Exceptions and Exemptions.

- (a) Fences or hedges exempt from a permit, as described in this chapter, must still comply with the applicable restrictions and requirements contained in Sections 14.52 Part II and Part III.

- (b) If there is a conflict between this section and the EDDS, the provisions of this chapter shall control.
- (c) An open wire mesh or similar type fence may be erected more than the maximum heights permitted in this chapter on the periphery of playgrounds associated with private and public schools and parks, public facilities, industrial and commercial uses, transmitter and transformer sites and government installations, where security or public safety is required or where such fencing is required by state law. The type, size, location and height of fencing proposed above requires a building permit and will be reviewed and approved by the Planning and Community Development Department on a project-by-project basis.
- (d) Construction of walls to protect rights-of-way
- (e) Temporary construction fencing

Part II. Fences and Hedges

14.52.060 Permits.

- (a) Fences exceeding six feet in height require a building permit before being constructed, modified or replaced.
- (b) Fences of six feet in height or less are exempt from the requirement to obtain a building permit but are subject to the requirements of this chapter.

14.52.070 Height/Setbacks.

- (a) Fence height shall be measured as the vertical distance between the finished grade at the base of the fence and the top edge of the fence material.
- (b) Fences and hedges or any combination of retaining walls fences and hedges are allowed to be a maximum of 48 inches in height within required front yard setbacks, except when these elements create a sight triangle obstruction
- (c) Fences are allowed to a maximum height of six feet within required side or rear yards except on the street side of corner lots.
- (d) Fences and hedges located in a side yard setback on the street side of a lot shall be set back a minimum of five feet from the right-of-way and must meet the sight triangle as defined by the municipal code.
- (e) No person shall place fill upon which to build a fence unless the total height of the fill plus the fence does not exceed the maximum height allowable for the fence without the fill.

Table 14.52–I Fence and Hedge Height/Location Regulations¹

Lot Type	Allowed Height within Setback Location		
	Front Yard	Side Yard	Rear Yard
Standard Lot	4 feet	6 feet	6 feet
Corner Lot	4 feet ^{2, 3}	6 feet / 4 feet on street side	6 feet
Double-Fronting (Through) Lot	4 feet	6 feet	6 feet ⁴

Notes:

1. Height and setback requirements apply to all fence and fence/wall combination locations, height restrictions for hedges apply in front yards, corner lots and double fronting lots.
2. Height can go to six feet if the top two feet are 50% open fencing to not obscure visual connectivity.
3. Except within the sight triangle, then the maximum height is limited to 42 inches.
4. A landscape buffer of a minimum of three feet is required between the fence and the public right-of-way.

14.52.080 Design.

- (a) When a fence is located on top of a retaining wall, any portion of the wall and fence above a height of six feet (exposed wall height) shall be an open fence.
- (b) Where continuous fencing and or a retaining wall/rockery along a street between intersections is allowed due to the length and/or number of side and/or rear lot lines abutting that street, landscaping shall be required between the fence and the property line in order to mitigate the adverse aesthetic impacts of such fencing.
- (c) On any through lot (also known as a double-fronting lot), the city will allow fencing along the public right-of-way in conjunction with a landscaping buffer between the fence and right-of-way. The landscaping buffer shall be a minimum of three feet in width and be comprised of a combination of trees or shrubs and groundcover.

14.52.090 Exceptions.

- (a) Where a fence and a wall lying within a building setback area are within five feet of each other, the combined height of the fence and rockery or retaining wall shall not exceed a maximum of six feet except as provided below.
 1. Staff may approve a modification to the combined height limit for fences and rockeries or retaining walls if either:
 - (a) The City's Building Code requires additional height, such as where a guard rail is required to be placed atop a retaining wall or rockery; or

- (b) The design of the rockery or retaining wall includes terraces, no less than three feet in depth to incorporate landscaping or other techniques that reduce the visual mass of the wall and the fence is constructed of material that is at least 50 percent open fence.
- 2. The Planning and Community Development Director or designee may approve a modification to the combined height limit for fences and walls if the modification is necessary because of the size, configuration, existing topography subject to Chapter 14.16C.120 LSMC.
- 3. Combination cut walls with guard rails or safety fences that support existing topography may be allowed to exceed height limitations, fill walls must meet setback requirements.

Part III. Retaining Walls

Walls, including but not limited to block walls, rockeries, poured-in-place walls provide different functions and purposes depending upon need; ranging from landscaping walls that are solely for aesthetic purposes to retaining walls and rockeries that support structural loads and surcharges. Additionally, walls may be needed where fill exists or is proposed versus needing a wall to stabilize a natural slope.

14.52.100 Permits.

- (a) A building permit is required for retaining walls exceeding four feet in height.
- (b) Retaining walls four feet in height or less (measured from the bottom of the footing) are exempt from the requirement to obtain a building permit unless they will retain a surcharge.

14.52.110 Height.

- (a) The height of retaining walls shall be the lowest necessary to achieve its intended functional purpose.
- (b) The maximum height limit on retaining walls and rockeries located in a setback shall be four feet of exposed wall height; outside of a setback shall be six feet of exposed wall height. See Section 14.52.090 for exceptions.
- (c) See Chapter 14.08 LSMC for the definition of exposed and retained wall height.
- (d) Fences constructed on top of walls shall not exceed a maximum total height of the fence/wall combination of six feet unless specifically excepted as allowed in Section 14.52.090.

14.52.120 Setbacks.

- (a) No part of a retaining wall/rockery may extend into an adjacent lot.

- (b) Retaining walls or rockeries greater than four feet shall be considered structures and are subject to building setbacks.

14.52.130 Critical Areas.

Walls are prohibited within wetlands but may be allowed within the building setback to the wetland buffer per Chapter 14.88 LSMC. Walls are allowed within the slope buffers of geologically hazardous areas or on slopes if required by a geotechnical engineer for stability. All walls proposed to be located within critical areas shall demonstrate compliance with the provisions of Chapter 14.88.

14.52.140 Design.

- (a) Any retaining wall requiring a building permit shall be engineered by a professional engineer registered in the State of Washington.
- (b) Drainage control of the area behind the retaining wall or rockery shall be provided.
- (c) Walls and rockeries exceeding six feet in height shall be terraced with landscaping. See Section 14.52.090 for additional detail.
- (d) Elevations shall be provided for the wall profile with the applicable permit for staff review.
- (e) The wall profile must comply with the desired community look and feel for walls, the design guidelines and the City's adopted Beautification Plan.

Chapter 14.08

BASIC DEFINITIONS AND INTERPRETATIONS

Corner lot. All properties located on a corner with roadway on two sides. Corner lots are considered to have two front yards. The yard opposite the designated front shall be a rear yard.

Fence. A fence is a structure that encloses an area, typically outdoors, usually consisting of posts that are connected by boards, wire, rails or netting. A fence may be solid in appearance or construction and does not have grade separation.

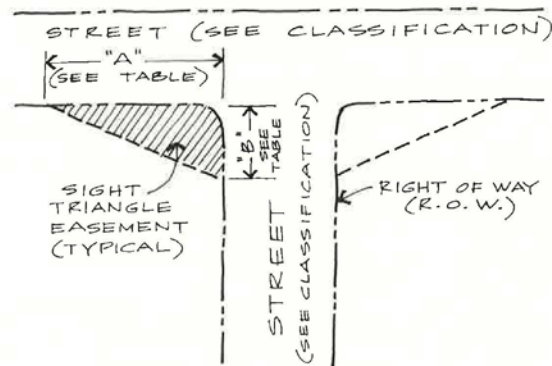
Structure. Anything constructed or erected. Not included are fences less than six feet in height, retaining walls, rockeries, and similar improvements of a minor character less than four feet in height unless retaining a surcharge.

Wall. A continuous vertical brick or stone structure that encloses or divides an area of land and has a solid foundation with grade separation.

Open fence: A fence or gate constructed in such a way so that no more than fifty (50%) percent of the surface area obstructs a ground level view through the fence or gate.

Through lot. A lot that fronts upon two parallel streets or that fronts upon two streets that do not intersect at the boundaries of the lot.

Sight triangle. A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.



REQUIREMENT BY STREET CLASSIFICATION (MEASURED ALONG R.O.W.)		"B" (DISTANCE IN FEET)		
		LOCAL STREET	COLLECTOR STREET	ARTERIAL STREET
"A" (DISTANCE IN FEET)				
30	LOCAL STREET	30	100	130-150
100	COLLECTOR STREET	30	100	130-150
130-150	ARTERIAL STREET	30	100	130-150

SIGHT TRIANGLE

~~14.44.420 — Fence Permit Required.~~

~~(a) — A building permit shall be obtained for any new fence which exceeds six feet in height.~~

~~(b) — Where allowed, fences taller than six feet shall meet the requirements of the International Building Code (IBC).~~

~~(c) — The Department of Planning and Community Development shall approve a building permit for a fence if it finds that the proposed fence is consistent with Chapter 14.80 (Building and Construction) and:~~

~~(1) — Meets all applicable setback requirements;~~

~~(2) — Does not exceed applicable height requirements;~~

~~(3) — Does not adversely impact utility or access easements;~~

~~(4) — Does not create a traffic hazard, in the opinion of the Public Works Director, by limiting sight lines for vehicles at locations such as road and alley intersections, and where vehicles cross sidewalks;~~

~~(5) — Will not be detrimental to the public health, safety and general welfare.~~

~~(d) — It shall be the responsibility of the property owner to ensure the fence is placed in the proper location. Exceptions to setback requirements for fences are located in Section 14.48.050(e). (Ord. 811, Sec. 53, 2010; Ord. 746, Sec. 6, 2007; Ord. 676, Sec. 42, 2003)~~

14.48.040 Building Setback Requirements.

(a) Table 14.48-I sets forth the minimum building and freestanding sign setbacks required from lot lines, ultimate street rights-of-way and street centerlines.

(1) If the ultimate street right-of-way line is readily determinable (by reference to the Comprehensive Plan Transportation Plan, a recorded map, set irons, adopted plan, or other means), the setback shall be measured from the ultimate right-of-way line. If it is not so determinable, the setback shall be measured from the actual street centerline.

(2) As used in this section, the term “lot line, tract or easement” refers to all easements and lot boundaries other than those that abut streets. Setbacks from access easements and access tracts are considered lot line setbacks.

(3) As used in this section, the term “building” includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. It also includes any element that is substantially a part of the building, such as bay windows and chimneys, and not a mere appendage, such as a flagpole. Without limiting the generality of the foregoing, for the purpose of determining setbacks the following structures are to be considered buildings:

- (i) Gas pumps and overhead canopies or roofs;
- (ii) Fences, ~~walls, and~~ hedges taller than ~~48~~ inches.

(4) Eaves and other minor architectural features may project into the required setback up to 18 inches.

(b) Whenever a lot in a residential district abuts a nonresidential district, and its required setback is greater than that of the nonresidential lot, the nonresidentially zoned lot shall observe the more restrictive setback. Where a lot zoned General or Light Industrial shares a boundary with a residentially zoned lot, the setback for the industrial property along that common boundary shall be 30 feet.

(c) In the High Urban Residential District, one five-foot interior side yard setback of a lot may be reduced to zero feet for portions of the house that share a common wall with the home on the adjacent lot. Portions of a house which do not share a common wall must be set back a minimum of five feet. The Fire and Building Codes have special building requirements which must be met when setbacks are less than five feet.

(d) All docks and other permissible overwater structures shall be set back pursuant to the Shoreline Master Program, Chapter 4, Section C.3. For the purposes of this section each property line extending into the lake shall be construed as extending at the same angle as the property line on shore. (Ord. 903, Sec. 38, 2013; Ord. 898, Sec. 7, 2013; Ord. 796, Sec. 8, 2009; Ord 666, Sec. 8, 2002; Ord. 612, Sec. 1, 1999; Ord. 590, 1998; Ord. 468, 1995)

14.48.050 Exceptions to Building Setback Requirements.

(a) The following modifications to the setback requirements identified in Section 14.48.040 shall be allowed:

(1) In the Suburban Residential and Waterfront Residential districts only, where the high point of the roof or any appurtenance of an accessory building exceeds 12 feet in height, the accessory building shall be set back from the rear lot lines, tracts or easements an additional one foot for every foot of height exceeding 12 feet.

(2) In single-family residential zones, accessory structures may be located within the exterior side yard of a corner lot, provided the accessory structure meets the following conditions:

- (i) The gross floor area of all accessory structures within the reduced setback area does not exceed 200 square feet.
- (ii) The height of the accessory structure does not exceed eight feet.
- (iii) The accessory structure is screened to a minimum height of six feet with an opaque fence or densely planted vegetation.

(iv) The accessory structure respects the minimum front yard setback and shall be no closer to the front property line than that of the principal house.

(v) The accessory structure is located no closer than 10 feet to the exterior side property line.

(b) In all single-family residential zones, the building setbacks from the street of the underlying zone may be reduced by five feet for living portions of the principal house only. This reduction does not apply to garages or other nonhabitable areas.

(c) In all single-family residential zones, the setback from a critical area buffer may be reduced to five feet for uncovered decks, provided sufficient room is provided to construct and maintain the deck without disturbing the buffer area.

(d) In all single-family residential zones, unenclosed front porches may be constructed to be as close as 15 feet of the ultimate street right-of-way.

(e) In all residential zones, fences, ~~walls, and hedges which do not exceed six feet in height may be located along property lines which do not abut a public right of way. No fence may exceed 48 inches in height, or less, except if within the sight triangle or retaining a surcharge, within the front yard setback abutting a public right of way or within 10 feet of an exterior side yard right of way. On exterior side yards, the area between the fence and sidewalk shall be maintained by the property owner. Where fences are built or hedges are maintained on top of or within five feet of a retaining wall on the uphill side, the retaining wall and fence or hedge shall be measured as one structure for the purposes of determining setback requirements. The height shall be the vertical distance measured from the mean elevation of the finished grade around the perimeter of the retaining wall to the highest point of the hedge or fence.~~ (Ord. 903, Sec. 39, 2013; Ord. 811, Sec. 56, 2010; Ord. 741, Sec. 7, 2007; Ord. 676, Sec. 45, 2003; Ord. 666, Sec. 9, 2002; Ord. 595, 1999; Ord. 468, 1995)

14.48.060 Building Height Limitations.

(a) For purposes of this section the height of a building shall be the vertical distance measured from the mean elevation of the finished grade around the perimeter of the building to the highest point of the building. The height of fences, walls, and hedges are as set forth in Section 14.52.

(b) Building height limitations in the various zoning districts shall be as listed in Table 14.48-I.

(c) The following features are exempt from the district height limitations set forth in subsection (b) of this section, provided they conform to the standards contained in subsection (d) of this section:

- (1) Chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage;
- (2) Flagpoles and similar devices;
- (3) Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.

(d) The features listed in subsection (c) of this section are exempt from the height limitations set forth in subsection (b) of this section if they conform to the following requirements:

- (1) Not more than one-third of the total roof area may be consumed by such features.
- (2) The features described in subsection (c)(3) of this section must be set back from the edge of the roof a minimum distance of one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.
- (3) The permit-issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the features listed in subsections (c)(1) and (3) of this section from view.

(e) In any zoning district the vertical distance from the ground to a point of access to a roof surface of any nonresidential building or any multifamily residential building containing four or more dwelling units may not exceed 35 feet unless the Fire Chief certifies to the permit-issuing authority that such building is designed to provide adequate access for firefighting personnel or the building inspector certifies that the building is otherwise designed or equipped to provide adequate protection against the dangers of fire. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than 75 percent are regarded as walls.

(f) Towers and antennas which exceed the height limit of the zone district are allowed to the extent authorized in the Table of Permissible Uses, use classification 18.000. (Ord. 676, Sec. 46, 2003; Ord. 590, 1998; Ord. 468, 1995)

Lake Stevens Municipal Code
Chapter 14.80 BUILDING AND CONSTRUCTION

~~14.80.090 — Fences.~~

~~(a) — Building permits shall be required for all fence construction for fences over six feet in height from median grade.~~

~~(b) — Height and setbacks shall comply with Section 14.48.050(e).~~

~~(c) — Fence permits shall be approved as set forth in Section 14.44.420. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 811, Sec. 71, 2010; Ord. 778, Sec. 2, 2008; Ord. 746, Sec. 11, 2007)~~

~~14.80.100 — Retaining Walls.~~

~~Building permits shall be required for all retaining walls four feet and higher in height, measured from the bottom of the footing. Building permits shall be required for all retaining walls with a surcharge. All retaining walls over four feet in height from the bottom of the footing shall be engineered by a professional engineer registered in the State of Washington. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 811, Sec. 72, 2010; Ord. 778, Sec. 2, 2008; Ord. 746, Sec. 12, 2007)~~