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## **16F.10 GENERAL PROVISIONS**

### **16F.010 Purpose.**

The purpose of this chapter is to:

A. Comply with the Washington State Growth Management Act requirement that cities adopt regulations to designate and protect resource lands and environmentally sensitive (critical) areas functions and values, and that these regulations incorporate Best Available Science;

B. Protect the public health, safety, and welfare by preventing the adverse impacts of development on resource lands and environmentally sensitive (critical) areas;

C. Preserve and protect resource lands and environmentally sensitive (critical) areas by regulating development within and adjacent to them while also allowing for reasonable use of private property;

D. Protect members of the public and public resources from injury, loss of life, or property damage due to landslides, steep slope failures, erosions, seismic events, or flooding.

(Ord. 619, 1992) (Ord. 861, 2005)

### **16F.010.020 Best Available Science**

A. Protection for functions and values and anadromous fish. Critical area reports 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, and their habitat.

B. Best available science to be used must be consistent with criteria. 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 WAC 365-195-925.

C. Characteristics of a valid scientific process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the planning official shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

1. Peer review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

2. Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity;

3. Logical conclusions and reasonable inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;

4. Quantitative analysis. The data have been analyzed using appropriate statistical or quantitative methods;

5. Context. The information is placed in proper context. The assumptions, analytical

techniques, data and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

6. References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

D. Non-scientific information. Non-scientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:

1. Anecdotal information. One or more observations that are not part of an organized scientific effort (for example, “I saw a grizzly bear in that area while I was hiking”);

2. Non-expert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, “I do not believe there are any grizzly bears in the area”); and

3. Hearsay. Information repeated from communication with others (for example, “At a lecture last week, Dr. Smith said there were no grizzly bears in that area”).

E. Absence of valid 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 of permitting an alteration of or impact to the critical area, the planning official shall:

1. Take a “precautionary or a no-risk approach,” that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and

2. Require 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 deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:

a. Address funding for the research component of the adaptive management program;

b. Change course based on the results and interpretation of new information that resolves uncertainties; and

c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and non-regulatory actions affecting protection of critical areas and anadromous fisheries.

(Ord. 820, 2002) (Ord. 861, 2005)

## **Section 16.20.020 Critical area permit process and application requirements. MOVED TO PERMIT PROCESS**

### **16F.20 RESOURCE LANDS**

#### **16F.20.010 Designation and regulation of resource lands.**

A. Designation of Forest, Agriculture, and Mineral Resource Lands. The city declares that there is no forest, agricultural or mineral resource lands of long term commercial significance within the city limits of the city of Langley.

B. Regulation of Lands Adjacent to Resource Lands.

1. For permitted or conditional uses adjacent to lands classified agricultural or forest management by Island County or the city or a surface mining operation:

(a) Setback standards for dwellings, structures and buildings, approved after the effective date of this chapter and adjacent to agriculturally zoned property shall be a minimum of fifty feet unless a mutual covenant is established with adjoining landowners and recorded with the requirement may be modified where it is not feasible to accomplish and still allow reasonable use of the property.

(b) A notation shall be placed on the face of any plat, short plat, PUD, conditional use permit, building permit or similar permit within three hundred feet of any resource lands and

included in documents of conveyance and any recorded covenants stating that the parcel may be subject to noise, dust, smoke, and odors resulting from harvesting, planting, fertilization, and pest control and other activities associated with permitted agricultural, forest management and surface mining practices. The notations shall further state these practices, when performed in accordance with county, state and federal law, shall not be subject to legal action as a public nuisance.

2. For permitted or conditional uses adjacent to lands used for agricultural or forest management purposes or in open space agriculture or forest current use taxation, the notation set forth in subsection (B)(1)(b) of this section may be imposed when found necessary to protect the agriculture or forest management use.

(Ord. 619, 1992) (Ord. 861, 2005)

## **16F.30 AQUIFER RECHARGE AREAS**

### **16F.30.010 Designation and regulation of aquifer recharge areas.**

Through the Island County groundwater management program, all Island County has been designated a critical aquifer recharge area. The city has adopted limitations on the extent of impervious surface allowed with new development. These standards are set forth in Chapter 16C (~~Zoning~~) of the Langley Municipal Code. **CHANGED CODE CITATION**

(Ord. 619, 1992) (Ord. 861, 2005)

## **16F.40 WILDLIFE HABITAT AREAS**

### **16F.40.010 Designation and regulation of wildlife habitat areas.**

#### A. Regulations.

##### 1. Management Plan.

a. Where a protected species or protected habitat is located on a site of proposed development, the applicant shall prepare or cause to be prepared, a management plan which will identify:

- i. The location of the habitat;
- ii. The primary buffer,
- iii. If necessary, the secondary buffer
- iv. Conditions to be imposed during development of the property; and
- v. Conditions to be imposed to protect and maintain the species and/or habitat.

2. In preparing the management plan, the applicant shall consult with the Department of Fish and Wildlife, the Department of Natural Resources, the Department of Ecology and the Washington Natural Heritage Program.

3. The management plan shall be prepared at the cost of the applicant and shall be subject to the approval of the city planning official, who may approve, reject, or approve the plan with conditions. All development shall be consistent with the approved management plan.

#### B. Buffers.

##### 1. Known Habitats.

a. Where a protected species is located on a site of proposed development, all permitted or conditional uses shall maintain a primary buffer around the habitat for the identified species, and a secondary buffer if necessary to adequately protect the species. If the buffer area(s) extends to the adjacent property, the adjacent property owner shall be notified of the potential requirement to provide a buffer area on his/her property.

b. The primary buffer is the most critical area immediately around the habitat. The purpose of the secondary buffer is further to minimize the disturbance and protect the primary buffer.

c. The primary buffer may be modified when necessary to protect or enhance the habitat.

2. Potential Habitat.

a. Suspension of Development. All development activity shall be suspended, pending precise location of a habitat, where:

i. A protected species has been sighted on property proposed for development and the sighting has been confirmed by the city planning official; or

ii. There is evidence of the use of the property as a habitat for a protected species.

b. Location of Habitat. The location of the habitat shall be determined pursuant to subsection (B) (1) of this section. If the habitat is located on the property, it is deemed a known habitat and the applicant shall comply with subsections (B) (1) and (B) (2) (a) of this section.

c. Citizen Reports. The planning official shall investigate all reported sightings or evidence of protected species.

d. Conveyance. Conveyance of a habitat and its buffer(s) identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organizations, or state or federal agency, is encouraged when such conveyance will ensure the long-term protection of the species and/or habitat.

C. List of Protected Habitat and Species. Please refer to list in Appendix 1.  
(Ord. 619, 1992) (Ord. 861, 2005)

## 16F.50 FLOOD HAZARD AREAS

### 16F.50.010 Designation and regulation of flood hazard areas.

#### **(A. Definitions. MOVED TO ADMINISTRATION DEFINITIONS)**

##### A. Protected and Permitted Alterations.

1. Development proposals on sites containing a flood hazard area shall conform to the conditions of this section. In addition, requirements for buffers, critical area tracts, building setback lines, permitted alterations, mitigation, and maintenance for a development proposal site on or adjacent to a flood hazard area shall be established in this chapter for the wetlands, streams, or other areas which form the constituent elements of the floodplain.

2. Development proposals shall not reduce the effective flood storage volume of the floodplain. Grading or other activity which would reduce the effective storage volume must be mitigated by creating compensatory storage on-site or off-site.

3. No development proposal, including permitted new construction or reconstruction, shall cause any increase in the base flood elevation.

4. Construction or placement of new residential or nonresidential structures in the floodway is prohibited.

5. Substantial improvements (value of improvement is fifty percent or greater than existing structure) of an existing structure located in a floodway must meet the requirements set out in WAC 173-158-070 as amended.

6. All elevated construction must be designed and certified by a professional structural engineer registered in the state of Washington and must be approved by the city prior to construction.

7. New residential and nonresidential construction and substantial improvement in the flood fringe outside the floodway shall be elevated to the flood protection level. Portions below the lowest floor area shall provide for openings for floodwaters. Flood-proofing of a nonresidential structure (new or substantial improvement) to the flood protection elevation is allowed, provided that flood-proofing is certified by a professional civil or structural engineer licensed in the state of Washington.

8. Construction of new and substantially reconstructed residential and nonresidential structures shall use materials and methods which are resistant to and minimize flood damage and

shall flood-proof or elevate above the flood protection elevation all electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities.

9. Utilities.

a. All new and replacement utilities shall be flood-proofed to or elevated above the flood protection elevation.

b. Critical facilities may be allowed within the flood fringe of the flood plain only when no reasonable alternative is available. Critical facilities are those necessary to protect the public health, safety, and welfare, including but not limited to schools, hospitals, and police and fire stations.

(Ord. 619, 1992) (Ord. 861, 2005)

## **16F.60 GEOLOGICALLY HAZARDOUS AREAS**

### **16F.60.010 Geologically hazardous areas.**

A. Designation of geologically hazardous areas. Geologically hazardous areas susceptible to erosion, sliding, earthquake or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

1. Erosion hazard;
2. Landslide hazard;
3. Seismic hazard;
4. Other geological events including tsunamis, mass wasting, debris flow, rock falls, and differential settlement.

B. Designation of specific hazard areas.

1. Erosion hazard areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe", "severe", or "very severe" rill and inter-rill erosion hazard.

2. Landslide hazard areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

- a. Areas of historic failures, such as:
  - i. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;
  - ii. Those areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides (URS" or class 5); or
  - iii. Areas designated as quaternary slumps, earth flows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;
- b. Areas with all three of the following characteristics:
  - i. Areas that encompass slopes steeper than fifteen percent (15%), with
  - ii. A relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and
  - iii. Springs or ground water seepage. **SLIGHT CHANGE IN LANGUAGE AND ORGANIZATION**

c. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

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

e. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;

f. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

g. Areas located in a canyon or an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.

3. Seismic hazard areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

a. The magnitude of the earthquake;

b. The distance from the source of an earthquake;

c. The type of thickness of geologic materials at the surface; and

d. The type of subsurface geologic structure.

Settlement and soil liquefaction condition occur in areas underlain by cohesion less, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

4. Tsunami hazard areas. Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as a result of excessive wave action derived from seismic or other geologic events.

5. Other hazard areas. Geologically hazardous areas shall also include areas determined by the planning official to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

C. Development Standards.

1. Development proposals on sites containing steep slope areas shall meet the requirements of this section.

a. Buffers.

i. A minimum buffer shall be established at a horizontal distance of fifty feet from the top or toe (as applicable) of the slope and along all sides of slopes fifteen percent or steeper, provided that this requirement shall not apply to the north side of First Street in the downtown commercial area. The width of the required buffer for steep slopes located in areas other than along the marine shoreline and not associated with another critical area may be reduced to twenty-five (25) feet by the planning official based on:

(A) A study and recommendation prepared by a professional engineer licensed by the State of Washington with experience in geo-technical engineering, and

(B) The installation of appropriate slope protection measures. Existing native vegetation within the buffer area shall be maintained and the buffer shall be extended beyond these limits as required to mitigate landslide and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare. See also following Subsection e – removal or introduction of revegetation on slopes.

ii. The City planning official may reduce the buffer twenty-five percent when an applicant demonstrates that:

(A) The reduction complies with the required findings for variances contained in Section 16H.60, and **CHANGED CODE CITATION**

(B) A study prepared by a professional engineer licensed by the State of Washington with experience in geo-technical engineering, and demonstrating that a lesser buffer width and design

and engineering solutions will meet the intent of this chapter and be consistent with general public health, safety and welfare.

b. Critical Area Tracts. Any continuous slope area and its buffers one acre or greater in size shall be placed in separate critical area tracts in development proposals.

c. Building Setback Lines. A building setback line will be established at a distance of fifteen feet from the edge of the buffer. Development allowed in the building setback line is limited to landscaping (native plants) and uncovered decks, as long as the decks do not extend more than ten feet into the building setback area and extend no more than eighteen inches above existing grade, unless the city planning official determines that topography or unusual site conditions warrant a variation.

d. Alterations. Alterations to steep slopes shall be allowed only as follows:

i. Surface Water Management. Steep slopes may be used for approved surface water conveyance. Installation techniques shall minimize disturbance to the slope and vegetation.

ii. Trails. Construction of public and private trails may be allowed on steep slopes provided they receive site specific approval by the city, but in no case shall trails be constructed of concrete, asphalt or other impervious surface materials which would contribute to surface water runoff unless such construction is necessary for soil stabilization or soil erosion prevention.

iii. Utilities. Construction of public and private utility corridors may be allowed on steep slopes provided that a special study indicates that such alteration will not subject the area to risk of landslide or erosion.

iv. View Corridors. The city may allow the limited trimming and limbing of vegetation on steep slopes for creation/maintenance of views provided that the soils are not disturbed.

e. Removal or introduction of Vegetation on Slopes. Unless otherwise specified, the following restrictions apply to vegetation removal or introduction on slope areas and their buffers.

i. There shall be no removal of any vegetation from any steep slope area or buffer except for the limited plant removal necessary for surveying purposes and for the removal of hazardous trees determined to be unsafe by the city land use coordinator.

ii. On slopes which have been disturbed by human activity or infested by noxious weeds, replacement with native species or other appropriate vegetation may be allowed subject to approval of an enhancement plan by the city planning official.

2. Development proposals on sites containing landslide hazard area shall meet the following requirements:

a. Buffers. A minimum buffer of fifty feet shall be established from all edges of landslide hazard areas. Existing native vegetation within the buffer area shall be maintained, and the buffer shall be extended beyond these limits as required to mitigate steep slope and erosion hazards or as otherwise necessary to protect the public, health, welfare and safety;

b. Critical Area Tracts. Any landslide hazard area and buffer one acre or greater in size shall be placed in separate critical area tracts in the development proposal;

c. Building Setback Lines. Building setback lines of fifteen feet shall be required from the edge of the landslide hazard area buffer.

d. Alterations.

i. A landslide hazard area located on a slope fifteen percent or steeper shall be altered only as allowed under standards for steep slope areas.

ii. Where such alterations are approved, buffers and critical area tracts will not be required.

3. Alteration of a site containing an erosion hazard area shall meet the following requirements:

a. Except for the following, clearing on erosion hazards is allowed only from April 1st to November 1st:

i. Up to five thousand square feet may be cleared on any lot, subject to any other requirement for vegetation retention;

- ii. Timber harvest pursuant to a DNR approved forest practice permit or pursuant to a clearing and grading permit issued by the city may be allowed.
- b. Only that clearing necessary to install temporary sedimentation and erosion control measures shall occur prior to clearing for roadways or utilities.
- c. Clearing limits for roads, sewer, water and storm water utilities, and temporary erosion control facilities shall be marked in the field and approved by the city engineer prior to any alteration of existing native vegetation.
- d. Clearing for roads and utilities shall remain within construction limits which must be marked in the fields prior to commencement of the site work.
- e. The authorized clearing for roads and utilities shall be the minimum necessary to accomplish project specific engineering designs and shall remain within approved rights-of-ways.
- f. Clearing of trees may occur in conjunction with clearing for roadways and utilities.
- g. All trees and understory shall be retained on lots or parcels during clearing for roadways and utilities provided that understory damaged during approved clearing operations may be pruned.
- h. Damage to vegetation retained during initial clearing activities shall be minimized by directional felling of trees to avoid critical areas and vegetation to be retained, and preparation and approval of a skidding plan aimed at minimizing damage to soil and understory vegetation.
- i. Retained trees, understory, and stumps may subsequently be cleared only if such clearing is a specific element of residential, multifamily, or commercial structure site plan approval.
- j. Hydro seeding and/or other erosion control methods as required in temporary erosion control plans shall be required.
- k. All development proposals shall submit an erosion control plan consistent with this section and other adopted requirements prior to receiving approval. (Ord. 619, 1992) (Ord. 733, 1997)(Ord. 788, 2000) (Ord. 820, 2002) (Ord. 861, 2005)

## **16F.70 WETLANDS AND STREAMS**

### **16F.70.010 Wetlands and streams.**

#### **A. MOVED TO DEFINITIONS...RELETTERED REST OF SECTION**

A. Protected Species and Habitats. Please refer to list in Appendix 1.

B. Wetland and Streams as an Overlay Zone.

1. Wetlands have been initially identified in the City of Langley through site specific analyses conducted by private property owners, a wetlands inventory conducted through funding from Washington State Department of Ecology (1991), and by the city of Langley. This combined information serves to notify both the city and the property owner of the potential existence of a wetland or stream depending on the kind and extent of information available, sufficient to identify and clarify a wetland or stream. Otherwise, the process of identifying and classifying wetlands is fulfilled through a routine wetland determination or by analysis conducted by a professional wetland ecologist.

2. The planning official shall make a preliminary determination of the presence of wetlands or streams based on readily available information such as critical areas maps or the soil survey or through a site visit. This determination is final for ordinance implementation or enforcement. The determination may be challenged by the property owner through an inspection and report conducted/prepared by a professional wetlands ecologist at the owner's expense.

3. In making any determination regarding a wetland, the text of this chapter is always controlling. Wetland delineations shall be determined by using the *Washington State Wetlands Identification and Delineation Manual*, March 1997, or as amended hereafter.

4. Wetlands, streams and their buffers shall be regulated in the city of Langley pursuant to the regulations contained in this chapter. An applicant should be aware that Sections 401, 402 and/or 404 of the Federal Clean Water Act and other federal and state statutes may also apply.

5. Wetlands and streams environmentally sensitive areas. Wetlands and streams are declared to be “environmentally sensitive areas” pursuant to WAC 197-11-748 and WAC 197-11-908. (Ord. 619, 1992) (Ord. 714, 1996) (Ord. 861, 2005)

**16F.70.020 Wetlands and streams – purpose, goal and designation criteria.**

A. The primary purpose of these regulations is to preserve wetlands, streams and their buffers in a natural condition to the maximum extent feasible in order to protect the wetlands, streams and riparian corridors for fish and wildlife habitat, protect property from flooding and erosion, and provide recreational opportunities and aesthetic value. It is also the goal that in the short term, there be no net loss of the acreage or functional values of wetlands and streams in the City and that in the long term, to improve the quality and functional values of wetland and stream systems. To realize these preservation goals, the City will use the following methods of impact mitigation in order of preference:

1. Avoiding the impact;
2. Minimizing the impact;
3. Compensating for the impact;
4. Enhancing the impacted wetland or stream.

B. Wetland designation criteria. Wetlands shall be designated according to the criteria in subsections (A) (1) through (3) of this section and streams shall be designated according to the criteria in subsection B of this section. 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, 2004*, Ecology Publication #04-06-025, or as revised hereafter. Wetland delineations shall be determined by using the *Washington State Wetlands Identification and Delineation Manual, March 1997*, or as amended hereafter. As used in this section, the term “regulated wetlands” shall refer to Category I, II, III and IV wetlands, generally described as follows:

1. Category I-Highest quality wetlands; wetlands in coastal lagoons;
2. Category II-Wetlands with significant wetland functions such as water quality enhancement, wildlife habitat, groundwater recharge, etc.;
3. Category III-Wetlands with a moderate level of functions;
4. Category IV-Wetlands having the lowest levels of functions and that are often heavily disturbed.

C. Stream designation criteria. Streams have been identified in the city and are shown on the Comprehensive Plan map contained in the city's adopted Comprehensive Plan. As used in this section, the term “regulated streams” shall refer to Type 1, 2, 3, 4, and 5 streams, generally described as follows:

1. Type 1. All waters, within their ordinary high-water mark, as inventoried as “Shorelines of the State.”
2. Type 2. All waters not classified as Type 1, with 20 feet or more between each bank’s high water mark and a gradient of less than 4%. Type 2 waters have high use and are important from a water quality standpoint for domestic use, public recreation, and fish and wildlife uses.
3. Type 3. Waters that have two or more feet between each bank’s ordinary high water mark, and which have a moderate to slight use and are moderately important from a water quality standpoint for domestic use, public recreation, and fish and wildlife habitat. Segments of natural waters that are not classified as Type 1 or 2.
4. Type 4. All segments of natural waters within the width of defined channels that are perennial non-fish habitat streams. Type 4 includes the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

5. Type 5. All segments of natural waters within the width of the defined channels that are not Type 1, 2, 3, or 4 waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 water. Type 5 waters must be physically connected by an above-ground channel stream to Type 1, 2, 3, or 4 waters. **PLEASE NOTE: THIS SECTION HAS BEEN REFORMATED. BOTH LETTERS AND NUMBERS HAVE BEEN ADDED**  
(Ord. 861, 2005)

**16F.70.030 Wetlands – measures to minimize impacts to wetlands.**

All proposed land uses adjacent to wetlands and their buffers shall comply with the following measures to the maximum extent practicable:

- A. Direct lights away from the wetland.
  - B. Locate activities that generate noise away from the wetland.
  - C. Route all new untreated runoff away from the wetland while ensuring that the wetland is not dewatered.
  - D. Establish covenants limiting the use of pesticides within 150 feet of the wetland and applying integrated pest management to the balance of the site, limiting pesticide use to treatment of noxious weeds or insect infestations only after use of alternative non-toxic measures has failed.
  - E. Limit the use of nitrogen fertilizers.
  - F. Retrofit storm water detention and treatment for roads and existing adjacent development.
  - G. Prevent channelized flow from lawns that directly enter the buffer.
  - H. Infiltrate or treat, detain and disperse into the buffer new runoff from impervious surfaces and new lawns.
  - I. Plant dense vegetation to delineate the buffer edge and to discourage disturbance, using vegetation appropriate for the region.
  - J. Use best management practices to control dust. **UNBOLDED LETTERS**
- (Ord. 619, 1992) (Ord. 861, 2005)

**16F.70.040 Wetlands and streams—Buffers.**

A. General Provisions. The following general provisions shall apply to wetland or stream buffers:

- 1. The buffer width shall be measured perpendicular to the edge of the wetland or stream from the (ordinary high water mark or the delineated wetland boundary;
- 2. No new lot shall be created that is wholly comprised of a wetland, stream and/or the associated buffers or that cannot be developed without violation or alteration of the wetland, stream and/or buffer unless a conservation easement encompassing the lot is established and recorded;
- 3. In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall comply with the buffer requirements unless there is a showing that there is no feasible option to alteration of the buffer
- 4. The wetland or stream edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PUDs, together with any conservation easement(s) and appropriate covenants. The applicant shall be responsible for such delineation. Such delineation may be based on findings by the planning official or if the applicant disagrees with such findings, on the results of a study by a biologist, plant ecologist or similarly qualified professional;
- 5. Development within the buffer shall be limited to passive recreation such as trails, or scientific uses and fences or other barriers necessary to protect habitat and designed to minimize impediments to wildlife movement.

6. Conveyance of wetlands or streams identified as part of project review, to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organization or governmental agency is encouraged when such conveyance will ensure the long-term protection of the wetlands or streams;

7. Streams, wetlands and their buffers may be designated as open space and subject to current use taxation, thereby providing a tax incentive to the landowners to ensure the long-term protection of the aquatic system.

B. Wetland Buffer width Requirements. The following undisturbed buffers shall be established adjacent to all wetlands and streams. These buffers are subject to reduction only through the provisions of Section 16F.70.050 of this chapter. **Changed code citation**

1. Wetland Buffer Requirements.

a. Category I Wetlands. Not less than two hundred and fifty (250) feet from the delineated wetland boundary.

b. Category II Wetlands. Not less than one hundred and fifty (150) feet from the delineated wetland boundary.

c. Category III Wetlands. Not less than one hundred ten (110) feet from the delineated wetland boundary.

d. Category IV Wetlands. Not less than fifty (50) feet from the delineated wetland boundary.

2. Stream Buffer Requirements.

a. Type 1 Two hundred and fifty (250) feet on each side of the stream;

b. Type 2 Two hundred and fifty (250) feet on each side of the stream;

c. Type 3 One hundred (100) feet on **each side of the stream; ADDED IMPLIED FROM CONTEXT**

d. Type 4 and Type 5 – Fifty (50) feet on each side of the stream. Noble Creek is classified as a Type 4 stream. **UNDID ITLAICS FOR TYPE FIVE**

Brookhaven Creek is classified as a Type 4 stream from the south edge of the pavement on 3<sup>rd</sup> Street north to Saratoga Passage. From the south edge of the pavement on 3<sup>rd</sup> Street south to the creek's source, Brookhaven Creek is classified as a Type 3 stream. Saratoga Creek is classified as a Type 3 stream. See Appendix 2.

Measuring buffers. Buffers are measured from the wetland or stream's ordinary high water mark as identified in the field and surveyed or from the edge of the delineated wetland or stream. Buffers shall remain in a natural state except for projects which propose to enhance a buffer or are associated with an approved stream alteration. These buffers are subject to reduction only through the provisions of Section 16F.70.060 of this Chapter. **CHANGED CODE CITATION** (Ord. 861, 2005)

**16F.70.050 Wetlands and streams – buffer width increases, averaging and reductions.**

A. Increased Buffer Width. The width of the wetland or stream buffer may be increased over the required minimum upon a determination by the planning official that the wetland or stream is especially sensitive to disturbance or when development poses unusual impacts and the increased buffer is necessary to protect environmentally sensitive areas described below. Circumstances which may require wider buffers include but are not limited to:

1. When the wetland or stream (or adjacent riparian corridor) is a critical habitat for threatened, endangered or sensitive species, serves a critical fish habitat or is used for spawning or rearing of fish; or receives a high score for habitat values when evaluated using the Washington State Wetland Rating System for Western Washington – Revised;

2. When a larger buffer is deemed necessary to maintain viable populations of existing species; each side of the stream;

3. When the adjacent land is susceptible to severe erosion, and erosion controls will not effectively prevent adverse impacts;

4. When the adjacent land has minimal vegetation or slopes greater than fifteen percent;

5. When the area acts as a critical recharge site in a special focus area defined by the groundwater management plan where recharge is limited and seawater intrusion is a problem; and

6. When a trail, utility corridor, drainage improvement or water quality facility is proposed within the corridor.

7. When the buffer is used by species sensitive to disturbance; and

8. When the buffer is not vegetated with plants appropriate for the region.

B. Wetland and Stream Buffer Width Averaging. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the planning official determines that the proposed use would not adversely affect the valuable functions of the wetland, stream or their buffers and would be consistent with the land use standards and the purposes of this chapter. The planning official may allow buffer width averaging, provided that the total area on the lot contained within the average buffer is not less than that required within the standard buffer.

1. The planning official may require buffer width averaging in order to provide protection to a particular portion of a wetland or stream that is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland or stream. The adjusted minimum buffer width shall not at any location within the buffer measure less than one half the standard requirement.

2. Buffer width averaging shall be allowed only where the applicant demonstrates through a report relying on Best Available Science and prepared by a qualified specialist, that:

a. Averaging is necessary to avoid a hardship caused by circumstances to the property;

b. The buffer area contains variations in sensitivity due to existing physical characteristics or the buffer area varies in characteristics such as slope, soils, or vegetation; and it would benefit from a wider area in places and would not be adversely impacted by a narrower area in other places;

c. Lower intensity land uses would be located adjacent to areas where the width of the buffer area is reduced;

d. Buffer width averaging will not adversely impact functions of the riparian habitat;

e. The total area contained within the buffer area after averaging is no less than the required buffer prior to averaging;

f. The buffer will be enhanced consistent with the requirements of C.1.a., below, to improve its over-all quality; and

g. The buffer area will be legally protected in perpetuity.

3. Buffer width averaging within steep slope areas is not allowed.

C. Buffer width reductions. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the planning official determines that the proposed use would not adversely affect the valuable functions of the wetland or stream or their buffers; and would be consistent with the land use standards of this chapter and the purposes of this chapter. Where a legally established, non-conforming use of the buffer exists (such as a road or structure that lies within the width of buffer required for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of non-conformity (i.e., cause any increase in the impacts to the wetland from activities in the buffer.) Buffer reductions may be allowed subject to the following:

1. Outside steep slope areas, the planning official may allow wetland or stream buffer width reductions up to a maximum of twenty-five (25) percent of the required buffer subject to the approval of a buffer enhancement plan or one or more of the other actions identified below:

a. Buffer enhancement—Buffer enhancement includes measures to enhance the buffer, including but not limited to planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or re-establishing riparian area adjacent to a stream where one currently does not exist to result in improved function of the riparian habitat. The enhancement plan shall be completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The enhancement plan

shall be similar to a mitigation plan and shall include provisions for mitigation monitoring and contingency plans similar to the requirements of 16F.70.080.B.8. **CHANGED CODE CITATION**

- b. Fish barrier removal to restore accessibility to resident or anadromous fish;
- c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;
- d. Stream and/or retention/detention pond improvements:
  - i. Creation of a surface channel where a stream was previously culverted or piped, or
  - ii. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities, or
  - iii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels.

2. The planning official may authorize a modification of up to fifty percent of the buffer width to provide a reasonable buildable area for a single-family residence or accessory building on a lot legally established prior to March 18, 1992 provided that for such legally established single-family residential lots under five thousand square feet in size, wetland and stream buffers outside steep slope areas may be reduced by no more than twenty-five percent. These guidelines will be applied in compliance with the reasonable use provisions of Section 16F.70.070.B.1.d.

**CHANGED CODE CITATION**

(Ord. 861, 2005)

#### **16F.70.060 Wetlands and streams— Exemptions.**

The following activities and/or wetlands are exempt from regulation under this chapter and the land use standard section of this code. The burden of proving the existence of an exemption is upon the party claiming the exemption. Prior confirmation of an exemption may be requested from the planning official. . In case of any question as to whether a particular activity is exempt under the provisions of this section, the planning official’s determination shall prevail. To be exempt from this Chapter does not give permission to degrade a regulated habitat or ignore risks from natural hazards. Exempt activities shall comply with the intent of these standards, consider on-site alternatives that avoid or minimize potential impacts, and shall use reasonable methods (i.e. Best Management Practices) to avoid potential impacts to riparian and critical wildlife habitat.

**A.** Drainage and Flood Control facilities. Operation, maintenance and repair of dikes, ditches, reservoirs, settling basins and other structures and facilities which were created or developed as part of normal drainage or flood control activities on or prior to March 18, 1992, except that this exemption does not extend to the permanent alteration of any regulated wetland;

**B.** Irrigation. Operation, maintenance and repair of ditches, reservoirs, ponds and other structures and facilities which were created or developed as part of normal irrigation activities on or prior to March 18, 1992;

**C.** “Artificial wetlands”. All wetlands wherein wetland vegetation is being maintained only because of man-induced hydrology, and it can be determined that the wetland vegetation would no longer exist if the activity (for example, irrigation or pumping water) were to be terminated.

**D.** Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures undertaken pursuant to Public Works Director approved Best Management Practices, provided that activities shall not increase the impervious area and that disturbed areas are restored to their pre-existing condition;

**E.** Normal maintenance and repair of residential or commercial structures, provided that reconstruction of any structures may not increase the previous floor area, and subject to the requirements of 16I.70, Nonconforming Uses, Buildings, and Lots; **CHANGED CODE CITATION**

F. Emergency activities that are required due to landslides, floods earthquakes, other acts of nature, or emergency utility repairs that are necessary to prevent an immediate threat to public health, safety or property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this Chapter. After the emergency, the person or agency undertaking the action shall restore and/or mitigate any impacts to the habitat and buffer resulting from the emergency action in accordance with an approved Habitat Report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of emergency, and completed in a timely manner.

G. Minor activities such as invasive plant management, removal of dead, dying or diseased vegetation, and removal of hazardous trees where adjacent properties are in danger of damage, where such activities are determined by the City to have minimal impact to habitat and/or streams. Any such activities undertaken within a designated Critical Area Easement may require replanting per the requirements of the easement;

H. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat;

I. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies and similar tests and investigations, provided that any disturbance of the habitat shall be the minimum necessary to carry out the work or studies and that the disturbed area shall be restored in accordance with an approved Habitat Report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of the disturbance, and completed in a timely manner; and

J. Educational activities, scientific research and outdoor recreational activities, including but not limited to interpretive field trips, bird watching and hiking, that will not have a significant effect on the habitat area. **RELETTERED TO HAVE LETTERS PROGRESS IN ORDER. UNBOLDED OLD I AND J (ALSO TOOK OUT A AT FIRST PARAGRAPH)**  
(Ord. 619, 1992) (Ord. 861, 2005)

**16F.70.070 Wetlands and streams – permitted uses, uses requiring alteration approval (including reasonable use provisions); exceptions.**

A. Permitted uses.

1. All activities and uses shall be prohibited in wetlands and streams and their buffers except as expressly provided in this chapter (see 2 and 3, below). All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands and streams.

2. All wetlands and streams regulated by this chapter may be used in an emergency situation to provide water to meet fire flow requirements without permission from the city of Langley.

3. The following uses are permitted subject to prior review by the planning official to determine that all conditions are satisfied prior to commencement of activity: **RENUMBERED**

a. Fences. The construction/placement of fences in a wetland, stream or surrounding buffers, is subject to the following conditions:

i. Fences shall be located only in the buffer; and

ii. No motorized equipment shall be used; and

iii. Only minimal disruption and removal of vegetation shall occur, and

iv. Special fence design features may be required as necessary to protect wildlife habitat or other functions of the wetland and/or surrounding buffers.

v. A fence may be placed on or next to a property line in a wetland or stream buffer provided no building permit is required, no motorized equipment is used, only minimal disruption and removal of vegetation occurs, and wildlife passage is not interrupted or hindered.

b. Low impact uses and activities. Low impact uses and activities which are consistent with wetlands, streams and their buffers may be permitted within the buffer depending on the

sensitivity of the wetland or stream. Examples of uses and activities which may be allowed include pedestrian trails, viewing platforms, utility easements, and the installation of necessary utilities. Necessary utilities include storm water management facilities assuming said facility does not impact mature forest vegetation, is designed according to City standards and the discharge water meets State water quality standards, and there is no other feasible location for the facility. Uses permitted within the buffer shall be located in the outer portion of the buffer as far as possible from the stream or wetland. All altered areas shall be mitigated per 16F.70.080.B.8. Dead and dying trees may be removed only with approval of the planning official.

B. Uses requiring alteration approval.

1. Uses not specifically permitted pursuant to 16F.70.070.A., above, that are permitted or conditionally allowed in the underlying zone may be allowed in a wetland, stream or in surrounding buffers only upon alteration approval by the planning official following submittal of a site plan, written description of the proposal, and environmental checklist and after having sought public comment per the procedures established in Section 16I.30.050 of the Langley city code. The planning official shall apply such conditions to the approval as may be necessary to protect the wetland, stream and surrounding buffers and may require a report by a qualified wetland ecologist. **CHANGED CODE CITATION**

a. Alteration of Category I wetlands, type 1 streams or their buffers.

i. Alteration of a Category I wetland is prohibited. Alteration of a Category I buffer may be allowed only upon a determination by the planning official that:

(A) Substantial public benefit will occur through the alteration; and

(B) The public benefit accruing substantially outweighs the public loss occurring through the alteration of the wetland buffer; and

(C) There is no feasible onsite alternative to making the alteration that will have less impact; and

(D) All conditions for modifying a category II wetland can be met.

ii. Alteration of Type 1 streams or their buffers. Category I streams shall be preserved. The planning official may allow alteration only under the following circumstances:

(A) The alteration is solely to expand an existing water-dependent use and the alteration does not act to degrade the functions of the stream or the degradation can be fully mitigated; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots that have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; or

(C) The alteration is an integral part of an approved fishery enhancement project and is the minimum alteration required by the project; and

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

b. Alteration of Category II and III wetlands and their buffers, Type 2 and 3 streams or their buffers.

i. Alteration of a Category II or III wetland or its buffer may be allowed only by the planning official when it is determined that:

(A) The alteration is solely to expand an existing water-dependent use and does not act to degrade the functions of the wetland, or the degradation can be fully mitigated; or

(B) The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

(C) Alteration will preserve, improve or protect the functions; and

(D) Any and all alterations which will not preserve, improve or protect wetland functions will be addressed pursuant to a mitigation or restoration plan required as a condition to the approval of any alteration; and

(E) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

ii. Alteration of a Type 2 and 3 stream or its buffer. Type 2 and 3 streams shall be preserved. The planning official may allow alteration only under the following circumstances:

(A) When the applicant can demonstrate that the alteration enhances the functional value of the stream in terms of water quality, erosion control, and fish and wildlife habitat; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; and

(C) No feasible and reasonable development alternative exists which does not alter or culvert the stream.

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

c. Alteration of a Category IV wetland and its buffer and a Type 4 and 5 stream and its buffer.

i. The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

ii. Alteration will preserve, improve or protect the functions; and

iii. Any and all alterations which will not preserve, improve or protect wetland functions shall be addressed pursuant to a mitigation or restoration plan required as a condition to the approval of any alteration; and

iv. All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

d. Reasonable use alterations. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this chapter. If an applicant can prove that strict application of the above standard will deny reasonable use, development as conditioned will be permitted if the applicant demonstrates all of the following:

i. There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the wetlands; and

ii. The proposed development does not pose a threat to public health, safety and welfare on or off the subject property; and

iii. Any alterations permitted pursuant to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

iv. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property, adjusting a boundary line or other action thereby creating the undevelopable condition after March 18, 1992; and

v. The proposal mitigates the impacts on the wetland to the maximum extent possible, while still allowing reasonable economic use of the lot.

vi. A report shall accompany a reasonable use exception proposal which provides information on the function and value of the wetland, area proposed for alteration, impact of development on the wetland and buffer, what constitutes a reasonable economic use of the property, steps taken to minimize the impact of the alteration, and other information as deemed necessary.

2. Mitigation may be required as a condition to the approval of any alteration.

C. Public agency and utility exceptions.

1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private

applicant may apply for an exception pursuant to this section. The public agency, utility or private applicant shall prepare an application and report justifying the requested exception. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the Planning Advisory Board shall be decided by that board. Projects affecting Category III and Category IV wetlands, and Type 3, 4, or 5 streams shall be decided by the planning official.

2. Applications for a utility exception shall be reviewed based on the following criteria:

a. There is no other feasible and reasonable alternative to the proposed development with less impact on the wetland and/or stream and the associated buffer. A description of alternatives considered must be included in the exception requests; and

b. The proposal minimizes the impact on the wetland and/or stream and buffer and incorporates all reasonable mitigation measures as identified in 16.20.085.B.8; and **CHANGED CODE CITATION**

c. Construction techniques shall minimize both long and short-term impacts to the wetland and/or stream and its buffer.

3. Except as provided above, these exceptions do not extend to dredging, to excavation (including peat mining) or to the filling of wetlands or their buffers.

(Ord. 861, 2005)

#### **16F.70.080 Wetlands and streams— Land use standards.**

A. The land use standards contained in this section supplement the general land use regulations of this chapter and the specific development standards contained in other chapters of the Langley city code.

B. Wetlands, Streams and Their Surrounding Buffers.

1. General Standards. These standards shall apply to all applications for permits and other approvals which may indirectly result in an alteration of a regulated wetland, stream or their buffers, unless modified by the planning director upon a determination that the anticipated alteration will preserve, improve and/or protect the wildlife habitat, natural drainage and/or other natural functions of the wetland or stream and will be consistent with the purposes of this chapter without strict application of the standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The standards shall also apply to applications for approval to alter a regulated wetland, stream or their buffers.

2. Wetland and stream buffers shall be shown on the development site plans or final plat maps along with the notation requirements.

3. Water Quantity and Quality. Uses permitted adjacent to wetlands and streams shall control storm water runoff and protect the natural movement of water according to the following provisions:

**General Provisions. (REMOVED... ODD FORMATING)**

a. All surface water entering wetlands and streams shall be treated and controlled by a storm water management system incorporating accepted best management practices or similarly effective measures approved by the Langley City Engineer in order to assure water quality and control water volumes;

b. The velocity of storm-water runoff entering a wetland shall be limited to predevelopment levels;

c. Water level fluctuations in wetlands or streams shall be minimized during spring breeding season (February through June) through adequate storm water controls;

d. Category I and category II and category III wetlands shall not be modified to function as storm-water retention/detention sites; **changed category to lower case to match section**

e. Septic systems adjacent to wetlands or streams must be properly sited and maintained to prevent water quality degradation.

4. Category I or II Wetlands. In wetlands rated category I or II with no natural point of inflow (i.e., stream) any surface water directed towards the wetland as a result of an approved drainage plan shall filter through the water table or a drainfield to avoid erosion and excess nutrient inflow.

5. Human Access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:

a. No motorized vehicles shall be allowed within a wetland or its buffer, except when specifically approved by the planning official or as provided in this section and/or as the wetland may be traversed by a public or private roadway which existed before March 18, 1992;

b. Any trails within a wetland shall be constructed with minimum disruption to habitat.

6. Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forested areas of Puget Sound by undisturbed corridors.

7. Alteration of a wetland, a stream or their buffers may be permitted only by approval by the city planning official unless otherwise authorized in this chapter. These standards shall be complied with to minimize wetland impacts if development is permitted. If the planning official determines that alteration is not likely to preserve, improve or protect the functions of the wetland, stream or their buffers, mitigation shall be required as a condition of approval.

8. The following conditions shall apply to all mitigation projects:

a. A written ecological assessment and maps of the wetlands to be lost or adversely altered shall be made, at the expense of the applicant, to determine the gross area of loss and the functions, habitat, and types, sizes and quantities of vegetation lost. The assessment shall include the following information: wetland delineation; existing acreage; vegetative flora; hydrophytic characteristics; soils and substrates conditions; topographical elevation;

b. A mitigation plan shall be prepared by a qualified person using Ecology's Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, March 1994 (Ecology Publication #94-29) and Guidance on Wetland Mitigation in Washington State, Part 2, Guidelines for Developing Wetland Mitigation Plans and Proposals, April 2004 (Ecology Publication 04-06-013b). The mitigation plan shall be funded by the applicant and approved by the planning official. In the event the construction of a new wetland is included as a part of that plan, the earth-moving, hydrology and vegetation planting requirements of the plan will be completed prior to the commencement of the proposed alteration. The planning official may call on state and other agencies to provide technical support in evaluating the plan. The mitigation plan shall include but not be limited to, the following:

i. Statement of Goals. Such statements shall include a discussion of the functions and values lost and those planned for replacement,

ii. Methods. Information discussing "what, where, when and how," i.e., acreage of mitigation, wetland habitat types to be enhanced, constructed/restored, location, dates for beginning and completing the project, types of vegetation; detailed construction plans (including grading and excavation requirements, planting implementation, and structures and measures to provide water); maintenance requirements; and maintaining schedule to ensure a successful project,

iii. Standards of Success. A qualitative and, to the extent possible, a quantitative description of what will be considered a successful, functioning wetland shall be provided;

c. Compensation Standards. Due to uncertainties in scientific knowledge and the need for expertise and monitoring, compensatory projects shall be as enduring as the wetland it replaces. Projects shall meet the following standards as well:

i. Restored, created or enhanced wetland projects should be created onsite and be of similar type if possible,

ii. Restored or created wetlands shall be equal to or of a higher quality or functional value than the wetland altered, and

iii. Any proposed compensatory mitigation project shall restore or create equivalent or greater areas of wetland than those altered to compensate for wetland losses. An increase in replacement acreage is required if uncertainties exist in the probable success of the proposed restoration or

creation. The ratios as shown in Table 1, Appendix 2 apply to creation or restoration: The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

The planning official may modify these ratios (increase or decrease) based on the findings of a wetlands mitigation plan that addresses wetland functional values, probable success rate of the proposed restoration or creation, the anticipated elapsed time between the impact and the establishment of wetland functions at the mitigation site and other factors deemed pertinent by a qualified wetland specialist. In no case shall the replacement acreage be less than that which is altered. Preservation as mitigation and mitigation banking may also be considered by the planning official consistent with current State Department of Ecology guidance; and

iv. Monitoring program and contingency plan. A monitoring program shall be included as part of the approved mitigation plan. The mitigation project shall be monitored for a minimum of five years (ten years if the goal is for a forested wetland system), to establish that the performance standards of the approved mitigation plan have been met. A longer monitoring period may be required by the City based on either the initial mitigation plan or a review of subsequent monitoring reports. A plan that complies with the requirements of this chapter may be required by the planning official to outline restorative measures to be taken should the mitigation fail or only partially succeed;

v. Bonding. A performance bond or other security in an amount to enable the city to carry out the mitigation plan should the applicant fail to do so shall be required;

vi. The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;

vii. Native vegetation shall be planted to replace lost habitat for a particular species;

viii. Artificial resting, hiding and breeding sites to replace losses shall be constructed;

ix. Aquatic substrate may be altered to produce an increase in fish, waterfowl and shorebird organisms to replace losses;

x. Silted gravels shall be cleaned in a manner that protects streamside vegetation and downstream sections of streams;

xi. Dredge and/or fill of a wetland or stream or their buffers shall not be permitted unless:

(A) The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water dependent, and

(B) Mitigation areas will be provided which have greater value as a wetland or habitat than the area lost, and

(C) The amount dredged or filled is the minimum necessary to accomplish the proposed use, and

(D) Dredging is not solely for the purpose of obtaining fill, and

(E) Leachate from polluted dredge spoil will be treated and will not enter surface waters, and

(F) The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting; **BRACKETS PUT AROUND LETTERS**

xii. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;

xiii. Cumulative impacts of the proposed development shall be considered. Thus development shall not be considered a precedent allowing further development, and

xiv. Where possible, development should be located in the buffer rather than the wetland.

(Ord. 619, 1992) (Ord. 861, 2005)

## **16F.80 ADDITIONAL PROVISIONS**

### **16F.80.010 Current use taxation of open space land.**

A. Public benefit rating system. RCW 84.34.037 establishes specific criteria to be used in determining the public benefit of applications for open space current use taxation status; and

B. Island County open space policy. Island County has adopted open space policy and criteria for use in evaluating open space application; and

C. City of Langley open space policy. The city of Langley concurs with the open space policy and criteria adopted by Island County.

(Ord. 619, 1992) (Ord. 861, 2005)

**16F.80.020 Identification of resource lands and environmentally sensitive (critical) areas.**

The location of known resource lands and environmentally sensitive (critical) areas are shown on a map available at the Langley city hall. This map is for the purpose of identifying areas to which these regulations could apply but may not be totally inclusive of all such areas that might be identified through review and information.

(Ord. 619, 1992)

**16F.80.030 Bonds for restoration and mitigation activities.**

A. Performance Bonds. Mitigation required pursuant to a development proposal must be completed prior to the city's granting of final approval of the development proposal. If the applicant demonstrates that seasonal requirements or other circumstances beyond its control prevent completion of the mitigation prior to final approval, the applicant may post a performance bond or other security instrument in a form and amount deemed acceptable by the city land use coordinator, which guarantees that all required mitigation measures will be completed no later than the time established by the department in accordance with this chapter.

B. Maintenance/ Monitoring Bonds. The city shall require the applicant whose development proposal is subject to a mitigation plan to post a maintenance/ monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by this chapter for a period up to three years. The duration of maintenance/monitoring obligations shall be established by the land use coordinator after consideration of the nature of the proposed mitigation and likelihood and expense of correcting mitigation failures.

C. Bonds or other security instruments shall be in the form and amount approved by the city land use coordinator and shall remain in effect until the land use coordinator determines in writing that performance and maintenance standards have been met.

(Ord. 619, 1992)

**16F.80.040 Provisions of title—Apply to identified and unidentified sensitive lands.**

A. Penalty and Enforcement. Knowing or intentional violations of this chapter or any provision in this chapter shall be punishable by a fine of up to one thousand dollars of value or a jail sentence of up to ninety days or both such fine and jail time. Any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to violation. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approval for any activity which violates the provisions of this title until all penalties and restorations are made in full.

B. Restorations. Restorations shall include but not be limited to the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such as the biological habitat values will be replaced to the greatest extent possible. Studies by qualified consultants shall be conducted to determine the conditions which

were likely to exist on the lot prior to the alteration. Emergency erosion control measures may be required.  
(Ord. 619, 1992)

*Appendix 1: Protected Species and Habitat*

The following species and habitats are protected in the City of Langley:

1. Species.

The following species are highly sensitive to disturbance or habitat alteration and, therefore, are designated as "protected species":

Bald eagle  
Pileated woodpecker  
Common loon  
Great blue heron  
Trumpeter swan  
Vaux's swift  
Snow goose  
Short eared owl  
River otter  
Black crowned night heron  
Brandt  
Virginia rail  
Bittern  
Salmon  
Smelt  
Muskrat  
Beaver  
Brown creeper  
Peregrine falcon  
Northern sea lion  
Osprey  
Marbled murrelet  
Migratory waterfowl (Pintail, brant, mergansers)  
Great homed owl  
Cavity nesting waterfowl (Golden eyes, woodducks, hooded merganser, harlequin duck)  
Shellfish  
Herring  
Native residential fish  
Red fox  
Harbor seals  
Goshawk.

2. Habitat. The following are considered highly sensitive to alteration and are regionally rare:

Eelgrass beds  
Peat bogs  
Mature forested wetlands  
Riparian habitat with native fish populations or significant wildlife usage  
Kelp beds

**Estuaries/mud flats/rocky shores**  
**Garry oak remnants**  
**Freshwater ponds**  
**Freshwater marshes**  
**Perennial streams.**  
**(Ord. 619, 1992) (Ord. 861, 2005)**

**Appendix 2: WETLAND MITIGATION TYPE AND RATIO**

<b>Wetland</b>	<b>Mitigation Type and Ratio</b>			
<b>Category</b>	<b>Restoration or Creation</b>	<b>Rehabilitation</b>	<b>Restoration or Creation (R/C) <u>and</u> Enhancement (E)</b>	<b>Enhancement Only</b>
<b>Category I</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>Category II</b>	<b>3:1</b>	<b>6:1</b>	<b>1:1R/C and 4:1 E</b>	<b>12:1</b>
<b>Category III</b>	<b>2:1</b>	<b>4:1</b>	<b>1:1R/C and 2:1 E</b>	<b>8:1</b>
<b>Category IV</b>	<b>1.5:1</b>	<b>3:1</b>	<b>1:1R/C and 2:1 E</b>	<b>6:1</b>