

CITY OF ROY, WASHINGTON
ORDINANCE NO 938

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROY, PIERCE COUNTY, WASHINGTON, AMENDING THE ROY CITY CODE TITLE 10, *BUILDING REGULATIONS*, CHAPTER 5, *CRITICAL AREAS CODE*, AND ARTICLE 5A, *WETLANDS*, AND TITLE 12, *SHORELINE MASTER PROGRAM*, CHAPTER 3, *GENERAL SHORELINE PROVISIONS*, TO ENSURE CONSISTENCY WITH STATE LAW AND BEST AVAILABLE SCIENCE IN COMPLIANCE WITH GROWTH MANAGEMENT ACT PERIODIC UPDATE REQUIREMENTS.

WHEREAS, the City is directed to periodically review and update its Comprehensive Plan and development regulations, as needed, to ensure consistency with the Growth Management Act, Puget Sound Regional Council VISION 2040 Growth Strategy, the Pierce County Countywide Planning Policies, and amended state laws; and

WHEREAS, the City is using a phased approach to complete the GMA periodic update, which includes the adoption of amendments to the Comprehensive Plan on August 24, 2015, the adoption of amendments to zoning regulations and the zoning map contained in Title 11 Land Development on August 24, 2015, and the adoption of amendments to the City's critical area regulations and shoreline master program, in the final phase, on May 23, 2016; and

WHEREAS, the City submitted a Notice of Intent to Adopt to the Washington State Department of Commerce on March 21, 2016, which was issued to state agencies for a 60-day comment period ending May 20, 2016 as required pursuant to RCW 36A.70 RCW, and no adverse comments or appeals were received; and

WHEREAS, the City issued a SEPA Determination of Nonsignificance on March 21, 2016 with a 14-day comment period ending April 4, 2016, and no adverse comments or appeals were received; and

WHEREAS, the Planning Commission, pursuant to RCC Chapter 2-1, has the duty to provide implementation measures to assure compliance with the Comprehensive Plan. These measures shall include zoning ordinances, subdivision regulations, and any other rules, actions, or regulations deemed necessary to implement the plan; and

WHEREAS, Planning Commission has the responsibility of holding public hearings and inviting public comments and response on proposed amendments to development regulations; and

WHEREAS, a Planning Commission Public Hearing Notice was published in the Nisqually Valley News on March 18, 2016, posted at City Hall and the US Post Office in Roy, and placed on the City website and City Hall reader board; and

WHEREAS, the Planning Commission conducted a public hearing on April 12, 2016, to accept public testimony and comment on the proposed amendments and voted unanimously to recommend to the City Council approval of the April 12, 2016 draft amendments to the City's critical areas code; and

WHEREAS, a City Council Public Hearing Notice was published in the Nisqually Valley News on April 29, 2016, posted at City Hall and the US Post Office in Roy, placed on the City website and City Hall reader board, and mailed to agencies, organizations, property owners and other stakeholders identified as having possible interests in the matter; and

WHEREAS, the Roy City Council conducted a public hearing on May 9, 2016, and continued the hearing to May 23, 2016, to consider the recommendations of the Planning Commission and accept additional public testimony; and

WHEREAS, after consideration of public testimony, including state agency input, the City Council hereby adopts the following findings in support of approval of the proposed critical areas regulation and shoreline master program amendments, in consideration of the criteria listed in RCC Section 11-36-4:

(a) The proposed amendments and the resultant critical areas and shoreline master program regulations as amended are consistent with the goals, objectives and policies of the comprehensive plan, in particular:

ENVIRONMENTAL QUALITY

GOAL LU7

Land uses and development and redevelopment projects should be managed to preserve and improve the natural environment as well as the built environment.

Policy LU7.1

The city should enforce standards that will achieve environmentally sensitive development when it occurs within and adjoining shoreline planning areas, critical areas, natural buffers, and areas designated as open space.

Policy LU7.2

Wetlands should be sized and categorized with respect to their natural features rather than with respect to city boundaries. Wetlands that are contiguous across jurisdictional boundaries should be treated according to their total size and characteristics.

Policy LU7.3

To allow reasonable use of property while protecting the environment, reduction or variation of residential lot sizes, density bonuses, planned developments, clustering of housing, and innovative development techniques should be considered when designed to preserve open space, protect critical areas, or provide vegetative buffers.

Policy LU7.4

Performance standards should be considered as a regulatory alternative to fixed zoning regulations in and around environmentally sensitive areas.

Policy LU7.7

The city should seek to protect wildlife habitat resources by preventing the indiscriminate and unnecessary removal of native trees, shrubs, and ground covers; by promoting the protection of

areas that provide food, cover, resting, and nesting areas for wildlife; and by protecting and enhancing the quality of Muck Lake and Muck Creek waters.

Policy LU7.8

The city should support the preservation, protection and, where possible, restoration of natural habitat critical for the conservation of salmonid species listed under the Federal Endangered Species Act. Aquatic ecosystems, associated habitats and aquifers should be protected and maintained or restored through the use of management zones, development regulations, incentives for voluntary efforts of private landowners and developers, land use designations, habitat acquisition programs or habitat restoration projects. The city should support efforts to remove invasive species and re-plant cleared areas with native plants.

Policy LU7.10

The city should ensure that there is “no net loss” of wetlands by function and values.

Policy LU7.13

Development activities and land uses within the city should be managed to minimize noise; light and glare; and water, soil, and air pollution.

B. The proposed amendment will promote, rather than detract from, the public health, safety, morals and general welfare by using regulation that is based on the Best Available Science and reflective of local ecosystem conditions and characteristics to protect environmentally sensitive areas, specifically wetlands and their buffers, while ensuring that property rights will be protected.

NOW THEREFORE, be it ordained by the City Council of the City of Roy, Washington

Section 1. That Roy City Code Section 10-5-3 is amended as follows:

10-5-3 DEFINITIONS:

Unless context clearly indicates otherwise, the following definitions shall apply throughout this chapter:

ALTER:	To change a critical area or its buffer, including grading, filling, dredging, clearing, construction, compaction, excavation, and pollution.
ANADROMOUS:	Refers to fish that spawn and rear in freshwater and mature in saltwater.
APPLICANT:	A person who applies for a development permit from the city.
AQUIFER:	A geological formation capable of yielding water to a well or spring.
BEST MANAGEMENT PRACTICES:	Actions known to protect soil, water quality, vegetation, and critical areas.
BUFFER:	An area contiguous to and required for protection of a critical area.
CHANNEL MIGRATION ZONE:	The lateral extent of likely movement of a stream or river during the next one hundred (100) years as evidenced by movement over the past one hundred (100) years.
CONSERVATION EASEMENT:	A legal agreement that the property owner enters into to restrict uses of the land in a manner that conserves natural functions.
CRITICAL AQUIFER RECHARGE AREA:	An area with a critical recharging effect on aquifers used for potable water, as discussed in Washington administrative code 365-190-080(2). Within such areas, pollutants seeping into the ground are likely to contaminate the water supply.
CRITICAL AREA:	Those areas listed in section 10-5-6 of this chapter.

DEVELOPMENT:	Any land use or action that alters a critical area or its buffer, including city approvals that establish patterns of use such as subdivisions, short subdivisions, rezones, and conditional use permits.
FISH HABITAT:	Habitat used by fish at any life stage at any time of the year.
FLOODPLAIN:	The land area subject to inundation by a 100-year flood.
FLOODWAY:	The watercourse channel and adjacent land area that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water elevation more than one foot (1').
FUNCTIONS AND VALUES:	The benefits conferred by critical areas, including water quality protection, fish and wildlife habitat, food chain support, flood storage and conveyance, ground water recharge, erosion control, and protection from hazards. "Function" means the benefit, "value" means the magnitude of the benefit.
HAZARDOUS SUBSTANCE:	A liquid, solid, or gas that exhibits any of the properties described in Washington administrative code 173-303-090 or 173-303-100.
HISTORIC:	Existing before the area was altered by human activity.
IMPACT:	To adversely affect a natural system or increase the hazard which a natural system poses to human life and property.
IMPERVIOUS:	Refers to a hard surface area that retards the entry of water into the soil.
LOWEST FLOOR:	Excludes unfinished enclosures usable only for parking, building access, or storage.
MONITORING:	Assessing the performance of mitigation measures by collection and analysis of data on changes in natural systems.
100-YEAR FLOOD:	A flood having a one percent (1%) chance of being equaled or exceeded in any given year.
ORDINARY HIGH WATER MARK:	That mark on the bed or bank below which inundation is so common in ordinary years that the soil and/or vegetation are distinct from that of the abutting upland.
PERSON:	Any person, organization, or other group.
PRIMARY ASSOCIATION:	A relationship between a species and a habitat area whereby the species regularly uses or otherwise needs the habitat area to thrive.
RIPARIAN HABITAT:	Streamside areas that influence the aquatic ecosystem by providing shade, debris, or insects and provide habitat for riparian wildlife.
SPECIES:	A group of animals commonly classified by the scientific community as a species or subspecies.
SUBSTANTIAL IMPROVEMENT:	Any repair, reconstruction, or improvement of a structure, the cost of which exceeds fifty percent (50%) of the structure's market value before the improvement, or, if the structure was damaged, before the damage occurred.
WATERCOURSE:	Flowing waters of the state, perennial or intermittent, excluding artificial waterways such as ditches or canals not created by human alteration of a natural watercourse.
WETLAND:	<u>Wetlands are those areas, designated in accordance with the approved federal wetland delineation manual and applicable regional supplements, that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.</u>
WETLAND MITIGATION BANK:	A site where wetlands are restored, created, or enhanced to mitigate, in advance, authorized impacts to similar resources. (Ord. 695, 11-22-2004)

Section 2. That Roy City Code Section 10-5-7 is amended as follows:

10-5-7 EXEMPTIONS:

The following shall be exempt from this chapter unless otherwise required by title 13, "Flood Control", of this code:

A. **Immediate Action:** Emergency actions immediately necessary to prevent injury or property damage, provided the action minimizes impact to critical areas and buffers. The person undertaking the action shall notify the city planner within one day following commencement of the emergency action. The city planner shall determine if the action was allowable under this subsection and commence enforcement if not. Within one year of the date of the emergency, the person undertaking the action shall fully mitigate any resulting impacts to the critical area and buffers in accordance with an approved critical area report and mitigation plan.

B. **Maintenance Or Repair Of Existing Structures, Roads:** Normal operation, maintenance, or repair of existing structures, utilities, roads, levees, drainage systems, or similar improvements, including vegetation management, if the action does not alter or increase the impact to or encroach upon the critical area or buffer, and if the action accords with best management practices and maintenance, and does not impact an endangered or threatened species.

C. **Passive Outdoor Activities:** Passive outdoor activities such as recreation, education, and scientific research that do not degrade the critical area.

D. **Forest Practices:** Forest practices in accordance with Revised Code Of Washington chapter 76.09 and Washington administrative code title 222, other than forest practice conversions.

E. **Modification Of Existing Legal Structures:** Structural modifications of, additions to, or replacements of existing legal structures without altering or increasing the impact to the critical area; provided, that the city's regulations regarding legal nonconforming uses are complied with. This includes most tenant improvements.

F. **Improved Public Rights Of Way:** The following work within improved public rights of way or private street easements: construction, replacement, or modification of streets, utilities, lines, mains, equipment, or appurtenances, excluding electrical substations; provided, that actions that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater shall be subject to the following requirements wherever possible:

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

2. Native vegetation shall be retained and replanted along the right of way improvement.

G. **Minor Utility Projects:** Minor utility projects such as placement of a utility pole, street sign, anchor, or vault, which do not significantly impact critical areas function or values, if constructed using best management practices.

H. **Noxious Plants:** Removal with hand labor and light equipment of invasive or noxious plants, as designated by the city planner, including:

1. English ivy (*Hedera helix*);

2. Himalayan blackberry (~~Rebus~~ *Rubus armeniacus* ~~Rebus discolor~~, *R. procerus*); and

3. Evergreen blackberry (~~Rebus~~ *Rubus laciniatus*).

I. **Trees:** Thinning or removal of trees which a qualified arborist, landscape architect, or forester has documented as posing a threat to public safety and which do not provide critical habitat such as eagle perches; provided, that removed trees and thinnings are left on site, and for each tree removed, two (2) replacement trees

shall be planted in the same or nearly same location within one year in accordance with a plan approved by the city planner. The replacement trees shall be of species native and indigenous to the site. Deciduous trees shall be at least one inch (1") in diameter at breast height. Evergreen trees shall be at least six feet (6') in height measured from the top of the root ball.

J. Insects: Measures to control fire or halt the spread of disease or damaging insects consistent with the state forest practices act²; provided, that the removed vegetation shall be replaced with the same or similar native species within one year in accordance with an approved plan.

K. Herbicides, Pesticides, Fertilizers: Application of herbicides, pesticides, or fertilizers; if necessary, provided that their use shall conform to department of fish and wildlife management recommendations and the regulations of the department of agriculture and the U.S. environmental protection agency.

L. Surveys: Minor clearing or digging necessary for surveys, soil logs, percolation tests, and similar activities, provided critical area impacts are minimized and disturbed areas are immediately restored.

M. Navigational Aids: Navigational aids and boundary markers.

N. Critical Area Review: Proposed developments that have undergone critical area review at a previous stage of permit review, provided the earlier permit has not expired.

O. Wild Crops: Harvesting of wild crops without injuring their natural reproduction, tilling the soil, planting crops, applying chemicals, or altering the critical area.

P. Conservation Measures: Conservation measures of soil, water, vegetation, fish, and other wildlife that do not adversely impact ecosystems.

Q. Environmental Impact Remediation: Required environmental impact remediation.

R. Agricultural Activities: Existing and ongoing agricultural activities where the land has not lain idle so long that modifications to the hydrological regime are necessary to resume operations.

S. ~~Wetlands: Development of isolated wetlands less than three thousand (3,000) square feet in size. All isolated~~ Category III and IV wetlands less than 1,000 square feet that:

1. Are not associated with riparian areas or buffers;
2. Are not part of a wetland mosaic; and
3. 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 10-5.

Section 3. That Roy City Code Section 10-5-11 is amended as follows:

10-5-11 MITIGATION PLAN REQUIREMENTS:

If the city allows conformance with this chapter's substantive requirements to be achieved by mitigation, the critical area report shall include a mitigation plan consisting of:

- A. An analysis of the anticipated impacts.
- B. A strategy for mitigating the impacts, including site selection factors.
- C. An analysis of the anticipated functions and values that will result from the mitigation, including an assessment of risks.
- D. A review of the best available science relative to the proposed mitigation.

- E. Specific standards for evaluating whether the mitigation is successful.
- F. Detailed construction plans, including:
 - 1. Construction timing;
 - 2. Grading and excavation details;
 - 3. Erosion and sediment control features;
 - 4. Planting plan; and
 - 5. Measures to protect plants until established.
- G. A program for monitoring the mitigation over at least five (5) years.
- H. Potential corrective measures should the monitoring indicate standards are not being met.
- I. Wetland mitigation plans shall meet the requirements established in subsection 10-5A-4.D.

Section 4. That Roy City Code Section 10-5-13 is amended as follows:

10-5-13 SUBSTANTIVE REQUIREMENTS:

- A. Treatment: All treatment of critical areas shall be in accordance with best available science as defined in Washington administrative code 365-195-900 through 365-195-925, which is hereby adopted by reference, along with the Washington state department of community development's "Citations Of Recommended Sources Of Best Available Science For Designating And Protecting Critical Areas".
- B. Activities Allowed: Critical areas and their buffers shall be left undisturbed except the following may be permitted if best management practices are used:
 - 1. Authorized functional restoration;
 - 2. In buffers: utility poles and utility lines which do not require excavation;
 - 3. In the outer ~~fifty percent (50%)~~twenty-five percent (25%) of buffers: permeable surfaced walkways, trails, and minimal wildlife viewing structures;
 - 4. Developments for which mitigation is allowed per subsection E of this section; and
 - 5. Other uses specifically authorized by this chapter.
- C. Loss Of Functions Or Values: No development shall occur which results in a net loss of the functions or values of any critical area except reasonable use variances per subsection 10-5-14B of this chapter. The predevelopment and postdevelopment functional comparison shall be on a per function basis unless otherwise authorized by ~~this chapter~~section 10-5A-6.I.
- D. Unreasonable Hazard: No development shall occur in critical areas and their buffers which results in an unreasonable hazard to the public health and safety.
- E. Sequencing: These substantive requirements shall be met via one or more of the following methods, listed in preferential sequence (commonly known as "sequencing"). ~~The methods used shall be those which are highest on the list yet consistent with the objectives of the proposed development. Mitigation shall be required in the following order of preference:~~
 - 1. Avoid the impact altogether by not taking a certain action or parts of an action.

2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reduce or eliminate the impact over time by preservation and maintenance operations.

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

6. Monitor the impact and take appropriate corrective measures.

~~1. Avoid the impact altogether by not taking the proposed action.~~

~~2. Minimize the impact by limiting the action's magnitude or changing the project design, location, or timing.~~

~~3. Mitigate (compensate for) the impact on natural system functions and values by enhancing or replacing other natural systems and ensuring that the mitigation serves its purpose over time. Mitigation should occur near the site of impact and should replace values on a function by function basis unless it is more cost-effective to mitigate lost functions at a larger scale, such as at a wetland mitigation bank within the impacted wetland's drainage basin. The city reserves the right to disallow mitigation that would be located outside the UGA.~~

F. Permit Approval Requirements: As a condition of any permit approval, the city may require that:

1. The outer edge of the critical area or buffer be marked, signed, or fenced to protect the resource. Such protection may be temporary, during construction, or permanent such as to protect the resource from livestock or people. The city planner shall specify the design and sign message, if applicable, of such markers, signs, and fencing.

2. The applicant file a notice with the county records and elections division stating the presence of the critical area or buffer and the application of this chapter to the property, to inform subsequent purchasers of the property.

3. The critical area and/or buffer be placed in a critical area tract or conservation easement, the purpose of which is to set aside and protect the critical area. The critical area tract or conservation easement shall be:

a. Held by the city, a homeowner's association, a land trust or similar conservation organization, or by each lot owner within the development in an undivided interest;

b. Recorded on all documents of title of record for the affected parcels;

c. Noted on the face of any plat or recorded drawing; and

d. Delineated on the ground with permanent markers and/or signs in accordance with local survey standards.

G. Averaging Of Buffer Widths: The city may allow averaging of buffer widths if a qualified professional demonstrates that:

1. Functions and values are not adversely affected;

2. The total buffer area is not reduced; and

3. At no location is the buffer width reduced more than ~~forty percent (40%)~~ twenty-five percent (25%).

H. **Building Setbacks:** Unless otherwise provided, buildings and other structures shall be set back a distance of ten feet (10') from the edges of all critical areas and critical area buffers. The same protrusions into this setback area shall be allowed as the zoning code allows into property line setback areas.

I. **Subdivisions And Short Plats:** Lots created through subdivisions or short plats may contain critical areas and buffers, provided they contain adequate buildable area to build upon. Subdivision and short plats shall show, on their face, any applicable critical area limitations.

J. **Conflicts, More Protection Required:** When any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

K. **More Restrictive Requirements Apply:** When critical areas of two (2) or more types coincide, the more restrictive buffer and requirements shall apply.

L. **Allowable Residential Units Per Acre:** Subject to approval through the planned residential development process, or approval by the city planner, depending on who is the applicable decision maker, in calculating allowable residential units per acre, up to one hundred percent (100%) of the acreage of critical areas and buffers may be counted and this density transferred to buildable portions of the site.

M. **Requirements Peculiar To Type Of Critical Area:** The substantive requirements peculiar to the type of critical area shall also be complied with. See articles A through E of this chapter.

Section 5. That Roy City Code Section 10-5-16 is amended as follows:

10-5-16 RECORD PER WAC 365-195-915 AND 365-195-920:

A. **Implement Comprehensive Plan:** This chapter is designed to implement the city comprehensive plan's natural environment element policies regarding protection functions and values of critical areas.

B. **Based On Best Available Science:** This chapter is based on best available science. See subsection 10-5-13A of this chapter. This chapter largely derives from the "Example Code Provisions For Designating And Protecting Critical Areas" prepared by the Washington department of community, trade, and economic development, which in turn is based on documented best available science. This chapter is also based on "Guidance Document For The Establishment Of Critical Aquifer Recharge Areas Ordinances", and "Wetlands and CAO Updates – Guidance for Small Cities", each published by the Washington department of ecology.

C. **Preserve Fisheries:** The city took special consideration to preserve or enhance anadromous fisheries, as evidenced in subsections 10-5-14A, 10-5E-3E, and 10-5E-5H of this chapter.

D. **Economic, Political And Legal Factors:** In addition to scientific information, economic, political, and legal factors were also considered in determining certain substantive requirements. Where this chapter's buffer widths differ from those in the "Example Code Provisions For Designating And Protecting Critical Areas", the purpose is to develop the economy, protect property rights, and implement the growth management act requirement that growth be accommodated in urban growth areas. The city identifies no substantial risk to critical areas in enacting these alternative substantive requirements.

Section 6. That Roy City Code Article 10-5A is amended as follows:

ARTICLE A. WETLANDS

SECTION:

10-5A-1: Designation

10-5A-2: Rating

10-5A-3: Regulated Activities

~~10-5A-34:~~ Contents Of Critical Area Reports

~~10-5A-45:~~ BuffersSubstantive Requirements

10-5A-56: Compensatory Mitigation Requirements

10-5A-1 DESIGNATION:

Wetlands are those areas, designated in accordance with the approved federal wetland delineation manual and applicable regional supplements"Washington State Wetland Identification And Delineation Manual (1997)", that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. The city has maps showing RCC Title 12, Appendix 1 Figures 1a and 1b (Proposed SMP Boundary Minimum Jurisdiction) identify the approximate location and extent of wetlands in Roy. However, these maps are only a guide, and will be updated as critical areas become better known. The exact location of a wetland boundary Identification of wetlands and delineation of their boundaries, however, shall be determined in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and subject to the provisions of this chapter above stated manual as required by Revised Code of Washington 36.70A.175 (ecology publication 96-94, 1997).

10-5A-2 RATING:

A. Wetlands shall be rated category I, II, III, or IV according to the department of ecology's "2004 Washington State Wetland Rating System For Western Washington – 2014 Update" (Ecology Ppublication 04-06-02914, October 2014) or as revised by Ecology. (See Washington administrative code 365-190-080(1)(a).) Wetland categories shall apply to the wetland as it exists on the date the city adopts the rating system, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

B. Wetland Rating Categories

1. Category I. Category I wetlands are: (A) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetland; (B) bogs (C) mature and old growth forested wetlands larger than one acre; and (D) wetlands that perform many functions well (scoring between 23 and 27 points). These wetlands are those that: (A) represent unique or rare wetland types; or (B) are more sensitive to disturbance than most wetlands; or (C) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (D) provide a high level of functions.
2. Category II. Category II wetlands are: wetlands with a moderately high level of functions (scoring between 20 and 22 points).
3. Category III. Category III wetlands are those wetlands with a moderate level of functions (scoring between 16 and 19). Wetlands scoring between 16 and 19 points generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV. Category IV wetlands are those wetlands with the lowest levels of functions (between 9 and 15 points) and are often heavily disturbed. These are wetlands that are possible to replace, and in some cases 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.

10-5A-3 REGULATED ACTIVITIES:

A. For any regulated activity, a critical areas report (see Chapter 10-5 of this Title) may be required to support the requested activity.

B. The following activities are regulated if they occur in a regulated wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
2. The dumping of, discharging of, or filling with any material.
3. The draining, flooding, or disturbing of the water level or water table.
4. Pile driving.
5. The placing of obstructions.
6. The construction, reconstruction, demolition, or expansion of any structure.
7. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
8. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222- 12-030, or as thereafter amended.
9. Activities that result in:
 - a. A significant change of water temperature.
 - b. A significant change of physical or chemical characteristics of the sources of water to the wetland.
 - c. A significant change in the quantity, timing, or duration of the water entering the wetland.
 - d. The introduction of pollutants.

C. Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

1. Land that is located wholly within a wetland or its buffer may not be subdivided.
2. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
 - a. Located outside of the wetland and its buffer; and
 - b. Meets the applicable minimum lot size requirements of Title 11.

10-5A-34 CONTENTS OF CRITICAL AREA REPORTS:

In addition to the general critical area report requirements of section 10-5-9 of this title, critical area reports for wetlands shall include: must meet the requirements of this section. Critical area reports for two or more types of critical areas must

meet the report requirements for each relevant type of critical area.

A. —Delineation Map: Wetland delineation map as surveyed in the field. Buffer boundaries shall be marked in the field by a licensed surveyor using wood or steel posts, four feet (4') to five feet (5') tall above the ground surface, permanently affixed, carrying identification signs approved by the city, to be obtained from the planning commission. The charge for these signs shall be one dollar (\$1.00) per sign.

B. —Assessment Of Wetlands: Assessment of wetlands, including acreage, category, required buffers, evidence of past illegal alterations, soil, topography, hydrology, ecology, and functional evaluation using a recognized method.

~~C.— Preservation Of Wetland Functions: Discussion of measures to preserve wetland functions and values, including the "sequencing" set forth in subsection 10-5-13E of this title.~~

~~D.— Mitigation Plan: If mitigation is proposed, a mitigation plan including the existing and proposed status of:~~

- ~~1. Wetland acreage;~~
- ~~2. Vegetation and fauna;~~
- ~~3. Surface and subsurface hydrology;~~
- ~~5. Soils, substrate, and topography;~~
- ~~6. Required wetland buffers; and~~
- ~~7. Property ownership.~~

~~E.— Management And Monitoring: Proposed wetland management and monitoring.~~

A. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a minimum of five years' experience in the field of wetland science and with experience preparing wetland reports.

B. Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

1. The project area of the proposed activity;
2. All wetlands and recommended buffers within 300 feet of the project area; and
3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 300 feet of the project area.

C. Minimum Standards for Wetland Reports. In addition to the minimum required contents in Section 10-5-9, a critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

1. A written assessment and accompanying maps of the wetlands and buffers within 300 feet of the project area, including the following information at a minimum:
 - a. Wetland delineation and required buffers;
 - b. Existing wetland acreage based on a professional survey from the field delineation (acres for on-site portion and entire wetland area including off-site portions);
 - c. Wetland rating and category based on entire wetland complex;
 - d. Cowardin classification of vegetation communities including vegetation characterization;
 - e. Habitat elements;
 - f. Soil and substrate conditions based on site assessment and/or soil survey information;
 - g. Topographic elevations, at two-foot contours;
 - h. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – algal mats, flood debris, and sediment deposits); and

i. Hydrogeomorphic (HGM) classification.

2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.
4. Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.
5. A scale map of the development proposal site and adjacent area.
6. A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.
7. A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.
8. Title Notification. All activity in critical area protection areas shall be accompanied by a notice on title.

D. Compensatory Mitigation Reports. When a project involves wetland and/or buffer impacts, a compensatory mitigation report shall be required (in addition to the wetland critical area report), meeting the following minimum standards:

1. Preparation by a Qualified Professional(s). A compensatory mitigation report for wetland or buffer impacts shall be prepared by one or more qualified professional(s) including someone who is a certified professional wetland scientist or a noncertified professional wetland scientist; either of them must have a minimum of five years' experience designing compensatory mitigation designs that have been installed and monitored for a minimum of two years to verify success. In addition, the design team may include civil engineers, landscape architects or landscape designers depending upon the complexity of the project.

2. Minimum Standards for Compensatory Mitigation Report. This report shall include a written report and plan sheets that contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Ecology Publication #06-06-011b, March 2006).

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

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

ii. Description of the existing wetland and buffer areas proposed to be impacted including: acreages (or square footage) based on professional surveys of the delineations; Cowardin classifications including dominant vegetation community types (for upland and wetland habitats); the results of a functional assessment for the entire wetland and the portions proposed to be impacted; wetland rating based on the provisions of this chapter;

iii. An assessment of the potential changes in wetland hydroperiod from the proposed project and how the design has been modified to avoid, minimize or reduce adverse impacts to the wetland hydroperiod;

iv. A description of the proposed conceptual compensation actions for wetland and upland areas. A description of future vegetation community types for years one, three, five, 10 and 25 post-installation including the succession of vegetation community types and dominants expected. A description of the successional sequence of expected changes in hydroperiod for the compensation site(s) for the same time periods as vegetation success. A description of the change in habitat characteristics expected over the same 25-year time period;

v. An assessment of existing conditions in the zone of the proposed compensation, including: vegetation community structure and composition, existing hydroperiod, existing soil conditions, and existing habitat functions. An estimate of future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);

vi. The field data collected to document existing conditions and on which future condition assumptions are based for hydroperiod (e.g., soil pit data – hand dug or mechanically trenched; soil boring data). Soil survey data is not sufficient to rely upon for establishing existing conditions;

vii. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs;

viii. A bond estimate for the entire compensatory mitigation including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring; and

ix. Proof of establishment of a notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

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

i. Existing wetland and buffer surveyed edges, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;

ii. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Existing cross-sections of on-site wetland areas that are proposed to be impacted. Cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;

iii. Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Illustration of how data for existing hydrologic conditions were utilized to inform the estimates of future hydrologic regimes;

iv. Proposed conditions expected from the proposed actions on site including future HGM types, vegetation community types by dominant species (wetland and upland), and future hydrologic regimes;

v. Required wetland buffers for existing wetlands and proposed compensation areas. Zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;

vi. A plant schedule including all species by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, “typical” clustering patterns, total number of each species by community type, and timing of installation;

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

annum.

E. Additional Information. When appropriate, the city planner may also require the critical area report to include an evaluation by the state Department of Ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.

1. If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit, which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the proposed site and whether the applicant previously had been found in violation of this title. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.

2. The city planner shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health safety, and welfare, consistent with the goals, purposes, objectives and requirements of Chapter 10-5 RCC and this chapter.

10-5A-45 BUFFERS SUBSTANTIVE REQUIREMENTS:

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

1. The use of the standard buffer widths requires the implementation of the measures in Table 2, where applicable, to minimize the impacts of the adjacent land uses.

2. If an applicant chooses not to apply the mitigation measures in Table 2, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.

3. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is un-vegetated, 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.

4. Standard buffer widths are widened for wetlands with higher habitat scores. For example, a Category I wetland with a habitat score of 8 to 9 points would require a buffer of 225 feet.

Table 1 Wetland Buffer Requirements

<u>Wetland Category</u>	<u>Standard Buffer Width Required for Habitat Score</u>	<u>Buffer Width Required for Habitat Score</u>	<u>Buffer Width Required for Habitat Score</u>	<u>Buffer Width Required for Habitat Score</u>
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>75 ft</u>	<u>105 ft</u>	<u>165 ft</u>	<u>225 ft</u>
<u>Category I: Bogs; Natural Heritage Wetlands</u>	<u>190 ft</u>	<u>NA</u>	<u>NA</u>	<u>225 ft</u>
<u>Category I: Forested</u>	<u>75 ft</u>	<u>105 ft</u>	<u>165 ft</u>	<u>225 ft</u>
<u>Category II: Based on score</u>	<u>75 ft</u>	<u>105 ft</u>	<u>165 ft</u>	<u>225 ft</u>
<u>Category III (all)</u>	<u>60 ft</u>	<u>105 ft</u>	<u>165 ft</u>	<u>NA</u>
<u>Category IV (all)</u>	<u>40 ft</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>

Table 2 Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
<u>Lights</u>	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u>
<u>Noise</u>	<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>
<u>Toxic runoff</u>	<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>
<u>Stormwater runoff</u>	<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 (per Low Impact Development Technical Guidance Manual for Puget Sound)</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>
<u>Disruption of corridors or connections</u>	<ul style="list-style-type: none"> • <u>Maintain connections to offsite areas that are undisturbed</u> • <u>Restore corridors or connections to offsite habitats by replanting</u>

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

- a. The wetland is used by a plant or animal species listed by the federal government or the state as

endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

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

c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

6. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

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

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

7. Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

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

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

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

d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

B. To facilitate long-range planning using a landscape approach, the city planner may identify and pre-assess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The city planner will prepare maps of wetlands that have been pre-assessed in this manner.

C. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

D. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

E. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond or other financial guarantee approved by the city.

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

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

2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical

area report, including:

- a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
 - b. Wildlife-viewing structures.
3. Educational and scientific research activities.
 4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
 5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
 6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.
 7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
 8. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
 - a. No other location is feasible; and
 - b. The location of such facilities will not degrade the functions or values of the wetland; and
 - c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.
 9. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

G. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the city planner prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
2. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter, the city planner may require the applicant to install permanent signs along the boundary of a wetland or buffer.
 - a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the city planner:

Protected Wetland Area

Do Not Disturb
Contact City of Roy
Regarding Uses, Restrictions, and Opportunities for Stewardship

b. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing

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

b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

In addition to the substantive requirements of section 10-5-13 of this title, the following requirements shall apply to "developments" (see definitions in section 10-5-3 of this title) in wetlands, except as exempted above.

A.— **Sequencing:** The higher the wetland category (category I is highest), the greater shall be the emphasis on higher priority "sequencing" methods per subsection 10-5-13E of this title.

B.— **Standard Buffer Width Table:** The following table establishes the standard buffer width that shall apply to each wetland category, depending on the intensity of the potential land use on the upland side of the buffer as determined by the city planner. Buffers shall be measured from the wetland boundary as surveyed in the field. These buffer widths presume that healthy native plant communities dominate the buffer. If wetland enhancement is proposed, the category of the wetland after enhancement shall pertain.

Intensity Of The Potential Land Use On The Upland Side Of The Buffer			
	High (Including commercial areas, industrial areas, residential areas at 4 or more units per net acre, and areas of high intensity agriculture or recreation)	Moderate (Including residential areas at less than 4 units per net acre, parks and trails)	Low (Including passive recreation and open space)
Category I	250 feet	200 feet	150 feet
Category II	150 feet	100 feet	75 feet
*Category III	75 feet	50 feet	35 feet
*Category IV	35 feet	25 feet	15 feet
*For exemption of small wetlands, see subsection 10-5-7S of this title.			

C.— **Measuring Buffers:** Buffers shall be measured from the wetland boundary as surveyed in the field. If wetland enhancement is proposed, the category of the wetland after enhancement shall pertain.

D.— **Healthy Native Vegetation:**

1. The above standard buffer widths presume that the buffer is moderately endowed with healthy native vegetation and other factors affecting its ability to protect the wetland, such as favorable topography.

~~2. The city planner may increase the required buffer width or require buffer enhancement if the buffer lacks healthy native vegetation or is otherwise handicapped in its ability to protect the wetland.~~

~~3. The city planner may reduce the required buffer width if the buffer is, or after enhancement will be, well-endowed with healthy native vegetation or otherwise unusually able to protect the wetland.~~

~~E.— Authority To Increase Or Reduce Buffer Width: The city planner may increase or reduce the standard buffer width if the function(s) served by the particular wetland needs more or less buffer width, as indicated by a wetland functional analysis.~~

~~F.— Native Vegetation Retained; Weed Removal: Except as provided elsewhere in this chapter 5 (including articles A through E), all existing native vegetation in wetland buffers shall be retained without disturbance, mowing, or hard surfacing, nor shall any action be taken to inhibit volunteer regrowth of native vegetation. Invasive weeds shall be removed for the duration of any mitigation bond. Storm water management facilities, bioswales, and treated water outfalls are permitted in the outer fifty percent (50%) of the buffer of category III or IV wetlands, provided wetland functions and values are not significantly lost through fluctuations in wetland hydrology and construction integrates best management practices.~~

10-5A-56 COMPENSATORY MITIGATION REQUIREMENTS:

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

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

B. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State, part 2: Developing Mitigation Plans – Version 1* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selected Wetland Mitigation Sites using a Watershed Approach (Western Washington)*, (Publication #09-06-32, Olympia, WA, December 2009).

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

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

D. Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:

1. Restoration (re-establishment and rehabilitation) of wetlands.
2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is

conductive for the wetland community that is anticipated in the design.

3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements.

4. Preservation. Preservation of high quality, at-risk wetlands as is generally acceptable when done in combination with restoration, creation or enhancement, provided that a minimum 1:1 acreage replacement is provided by re-establishment or creation.

E. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except when all of the following apply:

1. There are no reasonable on-site or in-subdrainage basin opportunities (e.g., on-site options would require elimination of high functioning upland habitat), or opportunities on-site or within in-subdrainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat;

3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland; and

4. Off-site locations shall be in the same subdrainage basin unless:

a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site;

b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the certified bank's instrument; and

c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

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

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

G. Wetland Mitigation Ratios. The following ratios shall apply to creation or re-establishment, rehabilitation, or enhancement, that is in-kind, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation**</u>	<u>Enhancement</u>
<u>All Category IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>
<u>All Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>All Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>Category I: Mature Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>
<u>Category I: Based on score for functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>Category I: Bog, Natural Heritage site</u>	<u>Not considered possible*</u>	<u>Case-by-case</u>	<u>Case-by-case</u>

* Natural Heritage sites and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetlands.

** Rehabilitation ratios are based on the assumption that actions judged to be most effective for that site are being implemented.

H. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- a. The bank is certified under state rules;
- b. The city planner determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- c. The proposed use of credits is consistent with replacement ratios specified in the certified bank instrument.

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

I. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance "Wetland Mitigation in Washington State Parts I and II" (Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the city planner 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).

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

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the

applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.

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

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

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

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

N. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

O. Alternative Mitigation Plans. The city planner may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The city planner shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication #09-06-32, Olympia, WA, December 2009).

2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.

3. Mitigation according to Section E is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.

4. There is clear potential for success of the proposed mitigation at the proposed mitigation site.

5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in subsection 10-5A-6.M

6. The plan shall be reviewed and approved as part of overall approval of the proposed use.

7. A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

8. Mitigation guarantees shall meet the minimum requirements as outlined in subsection 10-5A-4D.2.a.viii.

9. Qualified professionals in each of the critical areas addressed shall prepare the plan.

10. The City may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

A. Wetland Alterations: Mitigation for alterations to wetlands may be by restoring former wetlands, creating wetlands, or enhancing degraded wetlands, consistent with the "Department Of Ecology Guidelines For Developing Freshwater Wetlands Mitigation Plans And Proposals, 2004", as revised.

~~B.— Replacement Of Wetland Functions: Mitigation shall generally replace wetland functions lost from the altered wetland, except that the city may permit out-of-kind replacement when the lost functions are minimal or less important to the drainage basin than the functions that the mitigation action seeks to augment.~~

~~C.— Use Of Same Drainage Basin: Mitigation shall be in the same drainage basin as the altered wetland. Wetland mitigation shall be in the same subbasin unless a higher level of ecological functioning would result from an alternate approach.~~

~~D.— Time For Completion: Mitigation projects shall be completed as quickly as possible consistent with such factors as rainfall and seasonal sensitivity of fish, wildlife, and flora.~~

~~E.— Design: Mitigation projects shall be designed with reference to "Wetland Replacement Ratios: Defining Equivalency", Washington department of ecology, 1992, publication 9208; "Freshwater Wetlands In Washington State", volume 2, appendix 8-C; and similar science. Mitigation projects shall score the impact site and the mitigation site using the wetland rating data form of the "Revised Washington State Wetlands Rating System For Western Washington". The aggregate total of wetland functions and values after mitigation, altered and mitigation sites combined, shall be at least fifty percent (50%) greater than the aggregate total before mitigation; provided, that this replacement ratio (1.5 to 1, nonacreage based) shall be increased as necessary to compensate for mitigation that:~~

- ~~1. Has a greater than usual risk of failure;~~
- ~~2. Is out-of-kind;~~
- ~~3. Is outside the subbasin;~~
- ~~4. Produces its functions and values significantly after the alteration; or~~
- ~~5. Remedies unauthorized alterations.~~

~~F.— Based On Functions And Values: Because the replacement ratio in subsection E of this section is based on a before and after count of functions and values, not acreage, it accounts, without need for further adjustment, for mitigation that would result in a lower category wetland than the wetland being impacted, and mitigation that would enhance as opposed to create or restore a wetland. In the case of enhancement, wetland acreage may decline though wetland functions and values would increase. Enhancement proposals shall be based on a sound understanding of the mitigation site's premitigation and postmitigation functions and values.~~

~~G.— Credits From Certified Wetland Mitigation Bank: Credits granted from a certified wetland mitigation bank shall be consistent with the bank's certification and service area.~~

Section 7. That Roy City Code Subsection 12-3.B.3. is amended as follows:

3. Critical Areas

The Critical Areas Code (CAO), Ordinance No. 695 as amended by Ordinance No. 938 and as codified under Title 10, regulates critical areas in the shoreline jurisdiction. Chapter 5 of the RCC is herein incorporated into this SMP except as noted below.

1. If there is a conflict between the provisions of the CAO and other parts of the SMP, the provisions most protective of the shoreline jurisdiction shall apply, as determined by the City.
2. Provisions of the CAO that are not consistent with the SMA, Chapter 90.5885 RCW, and supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction, as follows:
 - a. The provisions of the CAO do not extend shoreline jurisdiction beyond the limits specified in this SMP. For regulations addressing critical area buffer areas that are outside shoreline jurisdiction, see Chapter 10-5 of the CAO.
 - b. Provisions of the CAO relating to variance procedures and criteria do not apply in shoreline jurisdiction. Specifically, Section 10-5-14B of the CAO does not apply. Variance procedures and criteria have been established in this SMP, Chapter 7 Section C and in Washington Administrative Code WAC 173-27-170.4.

c. In the shoreline jurisdiction, identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements, per WAC 173-22-035. ~~Specifically, the identification and delineation portion of Section 10-5A-1 of the CAO does not apply.~~

3. Provisions of the CAO that create exemptions not authorized by the Shoreline Management Act do not apply in shoreline jurisdiction. Specifically, Section 10-5-7S of the CAO does not apply.

Section 8. This ordinance shall be in full force and effective five (5) days from and after its passage, approval and publication as provided by law.

Section 9. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 10. All acts consistent with this ordinance are hereby authorized.

Passed and approved this 23rd day of May, 2016.

Michelle B. Walker
Michelle Walker, Mayor

Attest:

Debra Dearing
Debra Dearing
City Clerk-Treasurer

Approved as to Form:

Susan Drummond
Susan Drummond
City Attorney

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Second Reading: May 23, 2016
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