Ordinance No. 1485

AN ORDINANCE OF THE TOWN OF STEILACOOM, PIERCE COUNTY, WASHINGTON, AMENDING THE CRITICAL AREAS ORDINANCE TO ALLOW VEGETATION MANAGEMENT IN ACCORDANCE WITH THE URBAN FORESTRY ORDINANCE, AND UPDATE WETLAND REGULATIONS

WHEREAS, the Town has vegetation management policies and procedures concerning Town-owned and leased properties which are not reflected in the Critical Areas Ordinance; and

WHEREAS, avoiding potential conflicts between the Urban Forestry Ordinance and the Critical Areas Ordinance is in the public interest; and

WHEREAS, The Town is currently updating its Shoreline Master Program which will incorporate the Critical Areas Ordinance; and

WHEREAS, The Department of Ecology has reviewed the draft Shoreline Master Program and has made suggestions that impact the Critical Areas Ordinance including the use of an updated delineation manual, classification of wetland types and compensatory mitigation ratios; and

WHEREAS, the Town wishes to maintain uniform critical areas regulations throughout the Town as much as possible; and

WHEREAS, adopting the Department’s suggestions in the Shoreline Management Program without amending the Critical Areas Ordinance might lead to different treatment of similar critical areas depending on whether the critical area was within the shoreline jurisdiction or not; and

WHEREAS, the Town desires to apply the current delineation manual, classification of wetland types and compensatory mitigation ratios throughout Town:

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF STEILACOOM, PIERCE COUNTY, WASHINGTON:

Section 1. Addition to SMC 16.16.150 Allowed activities. SMC 16.16.150 and Ordinance 1380 §2(part), 2004, are each amended to read as follows:

16.16.150 Allowed activities
A. Permits. Allowed activities do not require critical area permits, however, they may require other permits or approvals. The Town Administrator may apply conditions to the other permit or approval to ensure that the allowed activity is consistent with the provisions of this Chapter to protect critical areas.
B. **Best management practices.** Allowed activities shall use best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. Best management practices shall ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party’s expense.

C. **Allowed activities.** The following activities are allowed:

1. **Permit requests subsequent to previous critical area review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) are allowed if all of the following conditions have been met:
   a. The provisions of this Chapter have been previously addressed as part of another approval.
   b. There have been no material changes in the potential impact to the critical area or buffer since the prior review.
   c. There is no new information available that is applicable to any critical area review of the site or particular critical area.
   d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval.
   e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

2. **Modification to existing structures.** Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and does not increase the risk to life or property as a result of the proposed modification or replacement are allowed. Restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.

3. **Activities within the improved right-of-way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a Town authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater are allowed subject to the following:
   a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas.
   b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.
4. **Minor utility projects.** Minor utility projects meeting the all the criteria below are allowed.
   a. The activity involves the placement of a utility pole, street signs, anchor, vault or other small component of a utility facility.
   b. The activity involves disturbance of an area less than 75 square feet.
   c. The activity involves minor or short-duration impacts to critical areas.
   d. The activity does not significantly impact the function or values of a critical area(s).
   e. There is no practical alternative to the proposed activity with less impact on critical areas.
   f. The project utilizes best management practices and restoration measures.
   g. The activity will not result in the transport of sediment or increased stormwater.

5. **Public and private pedestrian trails.** Public and private pedestrian trails, except those in wetlands or fish and wildlife habitat conservation areas, or their buffers, are allowed if the following criteria are met:
   a. The trail surface shall meet all other requirements including water quality standards set forth in SMC 13.50.
   b. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas.
   c. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

6. **Select vegetation removal activities.** The following vegetation removal activities are allowed, provided that no vegetation shall be removed from a critical area or its buffer without approval from the Town Administrator:
   a. The removal of the following vegetation with hand labor and light equipment:
      i. Invasive and noxious weeds listed by the Pierce County Noxious Weed Control Board.
      ii. English Ivy (*Hedera helix*)
      iii. Himalayan blackberry (*Rubus discolor, R. procerus*); and
      iv. Evergreen blackberry (*Rubus laciniatus*);
   b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
      i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees.
      ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags.
      iii. The certified arborist shall determine whether vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer.
iv. The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one (1) year in accordance with an approved restoration plan. Replacement trees may be planted at a nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height (dbh) for deciduous trees and a minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball;

v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods or removal that will minimize impacts.

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

c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act; Chapter 76.09 RCW, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year in accordance with an approved restoration plan.

d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.

7. **Chemical applications.** Application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, are allowed in accordance with Department of Fish and Wildlife Management Recommendations, the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.

8. **Minor site investigative work.** Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation are allowed. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and

9. **Navigational aids and boundary markers.** Construction or modification of navigational aids and boundary markers are allowed.

10. **Authorized alteration of vegetation under the Urban Forestry Ordinance.** Management and alteration of vegetation on town-owned or leased properties conducted in accordance with the provisions of SMC 16.18.100 through 16.18.150 is allowed.
Section 2. Revisions and Additions to SMC 16.16.400 Designation and rating. SMC 16.16.400 and Ordinance 1380 §2(part), 2004, are each amended to read as follows:

**16.16.400 Identification and rating**

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

B. **Wetland ratings.** Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in *Washington State Wetlands Ratings System for Western Washington* (Ecology #04-06-025, or as revised and approved by Ecology) which contains the definitions and methods for determining whether the criteria below are met. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this Chapter or as it exists at the time of an associated permit application.

1. **Wetland rating categories**
   a. **Category I.** Category I wetlands are (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands that are identified by scientist of the Washington Natural Heritage Program/DNR as high quality wetlands; (3) bogs; (4) mature and old growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; and (6) wetlands that perform many functions well (scoring 70 points or more). These wetlands are those that: (1) represent a unique or rare wetland type; or (2) are more sensitive to disturbance than most wetlands; or (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

   b. **Category II.** Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetland larger than 1 acre; (3) disturbed coastal lagoons or (4) wetlands with moderately high level of functions (scoring between 51 and 69 points).

   c. **Category III.** Category III wetlands are (1) wetlands with a moderate level of functions (scoring between 30 and 50 points) and (2) interdunal wetlands between 0.1 and 1 acres in size. Wetlands scoring between 30 and 50 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.

   d. **Category IV.** Category IV wetlands have the lowest levels of functions (scoring fewer than 30 points) and are often heavily disturbed. These are wetlands capable of being replaced, and in some cases be able to improve.
Replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

2. **Illegal Modifications.** Wetland ratings shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

Section 3. Revisions and Additions to SMC 16.16.440. SMC 16.16.440 and Ordinance 1380 §2(part), 2004, are each amended to read as follows:

**16.16.440 Performance standards – Compensatory Mitigation requirements.**

**A. Requirements for compensatory mitigation**

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans 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.

2. Mitigation ratios shall be consistent with Subsection G of this section.

**B. Mitigation Sequencing.** 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 required compensation and take remedial or corrective measures when necessary.

**C. Mitigation for lost or affected functions.** Compensatory Mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:

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 will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

D. Preference of mitigation actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:
   1. Restoration. Restoring wetlands on upland sites that were formerly wetlands.
   2. Creation. Creating 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 a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
   3. Enhancement. Enhancing significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
   4. Preservation. Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided by re-establishment or creation.
      a. Preservation of high-quality, at risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
         i. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.
         ii. There is no net loss of habitat functions within the watershed or basin.
         iii. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.
         iv. The impact area is small (generally <½ acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).
      b. All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

E. Type and location of mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, sub-basin, or drift cell. Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when the all of the following apply:
1. There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity).

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

3. Off-site locations shall be in the same sub-drainage basin unless:
   a. Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
   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 bank’s certification.

F. Mitigation timing.

1. Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

2. The Town Administrator may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, 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 Town of Steilacoom and include a financial guarantee.

G. Wetland Mitigation ratios

1. Acreage replacement ratios. The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is 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.

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<thead>
<tr>
<th>Category and Type of Wetland</th>
<th>Creation or Re-estabishment</th>
<th>Rehabilitation</th>
<th>Enhancement</th>
<th>Preservation</th>
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<tbody>
<tr>
<td>Category I: Bog, Natural Heritage site</td>
<td>Not considered possible</td>
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<td>Case by case</td>
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<td>Category I: Mature Forested</td>
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<td>Category II</td>
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2. Increased replacement ratio. The Town Administrator may increase the ratios under the following circumstances:
   a. Uncertainty exists as to the probable success of the proposed restoration or creation;
   b. A significant period of time will elapse between impact and replication of wetland functions;
   c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
   d. The impact was an unauthorized impact.

3. Reduced ratios for rehabilitation and enhancement. Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a or 1b, Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised).

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 Chapter 173-700 WAC;
   b. The Town Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
   c. The proposed use of credits is consistent with the terms and conditions of the bank’s certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank’s certification.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank’s certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

I. Compensatory Mitigation Plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:
   1. Wetland Critical Area Report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in SMC 16.16.200 and SMC 16.16.420.

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

Section 4: Severability
Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation. The Town Council of the Town of Steilacoom hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Passed by the Town Council of Steilacoom on the 18 day of September, 2012

Approved by the Mayor of the Town Steilacoom on the 18 day of September, 2012

APPROVED:  

MAYOR, Ron Lucas
ATTEST:

CLERK-TREASURER, Paul Loveless

APPROVED AS TO FORM:

TOWN ATTORNEY, Lawrence E. Hoffman

Filed with the Town Clerk: September 7, 2012
Passed by the Town Council: September 18, 2012
Published: September 21, 2012
Effective Date: September 28, 2012