ORDINANCE NO. O2012-005

AN ORDINANCE of the City Council of the City of Tumwater, Washington, related to implementation of the Shoreline Master Program, amending TMC 16.20 Geologically Hazardous Areas, 16.24, Aquifer Protection Standards, 16.28 Wetland Protection Standards, 16.32 Fish and Wildlife Habitat Protection and 18.38 Floodplain Overlay to integrate critical areas regulations into the new Tumwater Shoreline Master Program and revising the method for calculating wetland buffer widths as more particularly set forth herein.

WHEREAS, the State Shoreline Management Act (RCW 90.58) requires the City of Tumwater to update its Shoreline Master Program; and

WHEREAS, pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by Chapter 107, Laws of 2010 (EHB 1653), shoreline master programs must provide for management of critical areas located within shorelines of the state with policies and regulations that provide a level of protection that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources; and

WHEREAS, the City of Tumwater intends to incorporate its critical areas regulations by reference into the new Shoreline Master Program to comply with RCW 90.58.090(4) and 36.70A.480(3); and

WHEREAS, amendments include a disclaimer that, if provisions of the critical areas regulations and Shoreline Master Program conflict, the provisions of the Shoreline Master Program shall apply, consistent with RCW 90.58.090(4); and

WHEREAS, amendments are made to the method for calculating wetland buffer width standards in TMC 16.28 by adopting new calculation tables based on the guidance in Appendix 8–C, Guidance on Buffers and Ratios – Western Washington (2005) of “Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands”; and

WHEREAS, the City of Tumwater has prepared the amendments to the Tumwater Municipal Code (TMC) that are included in this ordinance, in accordance with the City of Tumwater Citizen Participation and Intergovernmental Coordination procedures set forth in the City’s Comprehensive Plan; and

WHEREAS, these amendments meet the intent of and are consistent with the State Shoreline Management Act, State Growth Management Act, County-wide Planning Policies, and internal goals and policies of the Tumwater Comprehensive Plan; and
WHEREAS, the Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property (Dec. 2006) on takings was reviewed and utilized by the City in objectively evaluating the amendments proposed by this ordinance.

WHEREAS, the Tumwater Planning Commission held a public hearing on April 10, 2012 and April 24, 2012, and considered all testimony and evidence before making a recommendation to City Council; and

WHEREAS, the City of Tumwater forwarded Ordinance No. O2012-005 to the State Department of Commerce for review, as required by RCW 36.70A.106. The Department of Commerce received the subject ordinance on May 4, 2012; and

WHEREAS, a Determination of Nonsignificance was issued on June 11, 2012, in accordance with the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) and in compliance with Chapter 16.04 of the Tumwater Municipal Code; and

WHEREAS, the Tumwater City Council held a public hearing on the recommendation on June 19, 2012, to accept public testimony relating to this matter; and

WHEREAS, the Tumwater City Council, after considering all of the testimony and evidence, finds that the amendments support the health, safety and welfare and are in the best interests of the residents of the City of Tumwater;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Section 16.20.015, Relationship to Shoreline Master Program, of the Tumwater Municipal Code is hereby created:

16.20.015 Relationship to Shoreline Master Program

If there are any conflicts between the Shoreline Master Program and the Geologically Hazardous regulations which apply in shoreline jurisdiction, the requirements of the Shoreline Master Program apply.

Section 2. A new Section 16.24.015, Relationship to Shoreline Master Program, of the Tumwater Municipal Code is hereby created:
16.24.015 Relationship to Shoreline Master Program

If there are any conflicts between the Shoreline Master Program and the Aquifer Protection Standards which apply in shoreline jurisdiction, the requirements of the Shoreline Master Program apply.

Section 3. Section 16.28.030 of the Tumwater Municipal Code is hereby amended:

16.28.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Applicant" means a person who files an application for any permit subject to this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

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

C. "Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

D. "Bog" means a wetland that is dominated by organic soils, low nutrients and low pH (between 3.5 and 5.0). Plants growing in these sensitive wetlands are specifically adapted to such conditions and are not commonly found elsewhere. Bogs provide habitat for unique species of plants and animals.

E. "Compensation project" means actions necessary to replace project-induced wetland and/or wetland buffer losses, including land acquisition, planning, engineering, construction, monitoring and contingency actions.

F. "Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Restoration" means actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.

2. "Creation" means actions performed to intentionally establish a wetland at a site where it did not formerly exist.
3. "Enhancement" means actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

4. "Preservation" means actions taken to ensure the permanent protection of existing wetlands.

G. "Buildable area" means an area outside of wetlands and wetland buffers.

H. "Department" means the Washington State Department of Ecology.

I. "Emergent wetland" means a regulated wetland with at least thirty percent of the surface area covered by erect, rooted, hermaceous vegetation as the uppermost vegetative strata.

J. "Essential habitat" means habitat necessary for the survival of federally listed threatened, endangered and sensitive species and state listed priority species.

K. "Exotic" means any species of plants or animals that are foreign to the planning area.

L. "Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years.

M. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the city when these actions would prevent all reasonable economic use of the parcel.

N. "Forested wetland" means a regulated wetland with at least twenty percent of the surface area covered by woody vegetation greater than twenty feet in height that is at least partially rooted within the wetland.

O. "Functions," "beneficial functions," or "functions and values" means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

P. "High-intensity land use" includes land uses which are associated with high levels of human disturbance or substantial wetland habitat impacts including, but not limited to: commercial, industrial, institutional, residential densities of one or more units per acre, new agricultural uses (high-intensity processing such as dairies, nurseries and green houses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields) and hobby farms.

Q. "Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper stratum. The presence of hydric soil shall be determined following the methods described in the approved federal delineation manual and applicable regional supplements. Washington State Wetland Identification Manual (Ecology Publication No. 94-96) as currently
adopted and hereafter amended for the delineation of wetlands that is adopted in accordance with applicable state law.

R. "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the approved federal wetland delineation manual and applicable regional supplementsWashington State Wetland Identification Manual—Ecology Publication No. 94-06 as currently adopted and hereafter amended.

S. "Infrastructure" means facilities such as water and sewer transmission lines or pipes and their appurtenances, telephone, fiber optic cable, gas and electrical transmission and distribution facilities, and streets and roads.

TS. "In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement within the same wetlands rating category.

UT. "Isolated wetlands" means those regulated wetlands which:

1. Are outside of and not contiguous to any one-hundred-year floodplain of a lake, river, or stream; and

2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

UV. "Low-intensity land use" includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, passive recreation, open space, or forest management land uses.

WV. "Mitigation" includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation, in the following order of preference, is defined as:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;

2. Minimizing 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. Rectifying the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

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

6. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.

XW. "Moderate-intensity land use" means land uses which are associated with moderate levels of human disturbance or substantial habitat impacts including, but not limited to, not more than one residential dwelling unit per acre, moderate-intensity open space (parks), and moderate agricultural uses (orchards, hay fields), and paved trails.
"Native vegetation" means plant species which are indigenous to the area in question.

"Off-site compensation" means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

"On-site compensation" means to replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

"Out-of-kind compensation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement out of the wetland rating category.

Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration costs, existing technology, and logistics in light of overall project purposes, and having less impacts to regulated wetlands.

"Priority habitats" means a habitat type or elements with unique or significant value to one or more species as classified by the Washington State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional state, or a specific structural element.

"Priority species" are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened and sensitive species.

"Regulated wetlands" means those areas 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 typically adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetland modified for approved land use activities shall be considered as regulated wetlands. All category I wetlands shall be considered regulated wetlands. Regulated 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 nonwetland areas to mitigate the conversion of wetlands. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, the city shall consider the approved federal wetland delineation manual and applicable regional supplements/Washington State Wetland Identification Manual (Ecology Publication No. 94-06) as currently adopted and hereafter amended.

"Regulated activities" means any of the following activities which are directly undertaken or originate 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, discharging, or filling with any material;
3. The draining, flooding, or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

“Repair or maintenance” means an activity that restores the character, scope, size and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.

“Scrub-shrub wetland” means a regulated wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.

“Serviceable” means presently usable.

“Unavoidable and necessary impacts” are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practicable alternative exists for the proposed project.

“Water-dependent” means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation 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 nonwetland areas to mitigate conversion of wetlands. The approved federal wetland delineation manual and applicable regional supplements Washington State Wetland Identification Manual (Ecology Publication No. 94-09) as currently adopted and hereafter amended shall be used for identifying and delineating a wetland.
“Wetland buffers” or “wetland buffer zones” is an area that surrounds and mitigates the adverse impacts to the functions and values of a regulated wetland.

“Wetland rating system” is defined in TMC 16.28.090.

“Wetland permit” means any permit issued, conditioned or denied specifically to implement this chapter.

“Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

“Wetland mosaic” means a patchwork of wetlands that is considered one unit where each patch of wetland is less than one acre; each patch is less than one hundred feet on average; and the areas delineated as vegetated wetland are more than fifty percent of the total area of the wetlands and uplands together.


Section 4. Section 16.28.060 of the Tumwater Municipal Code is hereby amended:

16.28.060 Applicability.

A. When any provision of any other chapter of the city of Tumwater conflicts with this chapter, that which provides more protection of wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter; provided that if there are any conflicts between the Shoreline Master Program and the Wetland Protection standards which apply in shoreline jurisdiction, the requirements of the Shoreline Master Program apply.

B. The city is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. The city of Tumwater shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer prior to fulfilling the requirements of this chapter. Such permits and approvals include but are not limited to the following:

Building permit; conditional use permit; franchise right-of-way construction permit; binding site plan; grading; land clearing permit; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zoning code amendment; rezone; land division; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(Ord. 1278, Added, 08/20/1991)

Section 5. Section 16.28.080 of the Tumwater Municipal Code is hereby amended:
16.28.080 Determination of regulatory wetland boundary.

A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in TMC 16.28.030. A qualified wetlands professional shall perform wetland delineations using the approved federal wetland delineation manual and applicable regional supplements. Washington State Wetland Identification Manual (Ecology Publication No. 94-96) as currently adopted and hereafter amended. The applicant is required under TMC 16.28.140(C) to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

B. The city, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The city shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be required to reimburse the city for costs incurred for this service including administration costs.

C. Where the city performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination.

D. Where the applicant has provided a delineation of the wetland boundary, the city shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city shall, at the applicant’s expense, obtain expert services to render a final delineation.


Section 6. Section 16.28.115 of the Tumwater Municipal Code is hereby amended:

16.28.115 Exceptions – Infrastructure Public agency and utility.

A. If the application of this title would prohibit a development proposal by a public agency, ex-public utility, or a private entity installing public or private infrastructure utilities that are in compliance with the comprehensive transportation, capital facilities or utility plans of Tumwater and are approved by Tumwater, the agency or utility may apply for an exception pursuant to this section.

B. Exception Request and Review Process. An application for an infrastructure public agency and utility exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The community development director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal’s ability to comply with
infrastructure public agency and utility exception review criteria in subsection D of this section.

C. Hearing Examiner Review. The hearing examiner shall review the application and the community development director's recommendation, and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the infrastructure public agency and utility exception review criteria in subsection D of this section.

D. Infrastructure Exception Public Agency and Utility Review Criteria. The criteria for review and approval of infrastructure public agency and utility exceptions follow:

1. There is no other practical alternative to the proposed development with less impact on critical areas;
2. The application of this title would unreasonably restrict the ability to provide utility services to the public;
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with other applicable regulations and standards.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.


Section 7. Section 16.28.170 of the Tumwater Municipal Code is hereby amended:

16.28.170 Wetland buffers.

A. Standard Buffer Zone Widths. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of TMC 16.28.080. The width of the wetland buffer zone shall be determined according to wetland category, the functions and special characteristics of the wetland, and the proposed land use. Natural heritage wetlands, bogs, and forested wetlands shall have the buffers shown in the table below independent of points scored for habitat in the rating system.

Table 1: Wetland Buffer Widths

Table 1: Category I Wetland Buffer Widths
<table>
<thead>
<tr>
<th>Wetland Characteristics</th>
<th>Buffer Widths by Impact of Land Use (Apply Most Protective)</th>
<th>Other Measures Recommended for Protection</th>
</tr>
</thead>
</table>
| Natural Heritage Wetlands | Low – 125 ft  
Moderate – 190 ft  
High – 250 ft | No additional discharges to wetland or tributaries of surface-water.  
No septic systems within 300 ft of wetland.  
Restore degraded parts of buffer |
| Bogs | Low – 125 ft  
Moderate – 190 ft  
High – 250 ft | No additional surface discharges to wetland or its tributaries.  
Restore degraded parts of buffer |
| Forested | Buffer width size to be based on score for habitat functions or water quality functions | If forested wetland scores high for habitat, need to maintain connection and connectivity to other habitat areas.  
Restore degraded parts of buffer |
| High level of function for habitat (score for habitat 31 – 36 pts.) | Low – 150 ft  
Moderate – 225 ft  
High – 300 ft | Maintain connectivity to other habitat natural areas.  
Restore degraded parts of buffer |
| High level of function for habitat (score for habitat 30 pts.) | Low – 140 ft  
Moderate – 215 ft  
High – 280 ft | Maintain connectivity to other habitat areas.  
Restore degraded parts of buffer |
| High level of function for habitat (score for habitat 29 pts.) | Low – 130 ft  
Moderate – 195 ft  
High – 260 ft | Maintain connectivity to other habitat areas.  
Restore degraded parts of buffer |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 20 - 28 pts.) | Low – 75129 ft  
Moderate – 110189 ft  
High – 150249 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 27 pts.) | Low – 110 ft  
Moderate – 165 ft  
High – 220 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 26 pts.) | Low – 100 ft  
Moderate – 150 ft  
High – 200 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 25 pts.) | Low – 90 ft  
Moderate – 135 ft  
High – 180 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 24 pts.) | Low – 80 ft  
Moderate – 120 ft  
High – 160 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 23 pts.) | Low – 70 ft  
Moderate – 105 ft  
High – 140 ft | |
|-------------------------------------------------------------|---------------------------------------------------------------|
| Moderate level of function for habitat (score for habitat 22 pts.) | Low – 60 ft  
Moderate – 90 ft  
High – 120 ft | |
| High level of function for water quality improvement (24 – 32 pts.) and low for habitat (less than 20pts.) | Low – 50 ft  
Moderate – 75 ft  
High – 100 ft | No additional discharges of untreated runoff |
| Not meeting any of the above criteria. | Low – 50 ft  
Moderate – 75 ft  
High – 100 ft |  |
<table>
<thead>
<tr>
<th>Wetland Characteristics</th>
<th>Buffer Widths by Impact of Land Use (Apply Most Protective)</th>
<th>Other Measures Recommended for Protection</th>
</tr>
</thead>
</table>
| High level of function for habitat (score for habitat 31 – 36 pts.) | Low – 150 ft  
                      Moderate – 225 ft  
                      High – 300 ft | Maintain connectivity to other habitat natural areas |
| High level of function for habitat (score for habitat 30 pts.) | Low – 140 ft  
                      Moderate – 215 ft  
                      High – 280 ft |  |
| High level of function for habitat (score for habitat 29 pts.) | Low – 130 ft  
                      Moderate – 195 ft  
                      High – 260 ft |  |
| Moderate level of function for habitat (score for habitat 20 – 28 pts.) | Low – 75 ft  
                      Moderate – 110 ft  
                      High – 150 ft  
                      Low – 75120 ft  
                      Moderate – 110180 ft  
                      High – 150240 ft |  |
| Moderate level of function for habitat (score for habitat 27 pts.) | Low – 110 ft  
                      Moderate – 165 ft  
                      High – 220 ft |  |
| Moderate level of function for habitat (score for habitat 26 pts.) | Low – 100 ft  
                      Moderate – 150 ft  
                      High – 200 ft |  |
| Moderate level of function for habitat (score for habitat 25 pts.) | Low – 90 ft  
                      Moderate – 135 ft  
                      High – 180 ft |  |
| Moderate level of function for habitat (score for habitat 24 pts.) | Low — 80 ft  
| Moderate — 120 ft  
| High — 160 ft |

| Moderate level of function for habitat (score for habitat 23 pts.) | Low — 70 ft  
| Moderate — 105 ft  
| High — 140 ft |

| Moderate level of function for habitat (score for habitat 22 pts.) | Low — 60 ft  
| Moderate — 90 ft  
| High — 120 ft |

| High level of function for water quality improvement and low for habitat (score for water quality 24 – 32 pts.; habitat less than 204 pts.) | Low — 50 ft  
| Moderate — 75 ft  
| High — 100 ft |

| Not meeting above criteria | Low — 50 ft  
| Moderate — 75 ft  
| High — 100 ft |

Table 3: Category III Wetland Buffer Widths

<table>
<thead>
<tr>
<th>Wetland Characteristics</th>
<th>Buffer Widths by Impact of Land Use</th>
<th>Other Measures Recommended for Protection</th>
</tr>
</thead>
</table>
| Moderate level of function for habitat (score for habitat 20 – 28 pts.) | Low — 75 ft  
| Moderate — 110 ft  
| High — 150 ft |

No additional discharges of untreated runoff |
<table>
<thead>
<tr>
<th>Not meeting above criteria</th>
<th>Low – 40 ft</th>
<th>Moderate – 60 ft</th>
<th>High – 80 ft</th>
</tr>
</thead>
</table>

**Table 4: Category IV Wetland Buffer Widths**

<table>
<thead>
<tr>
<th>Wetland Characteristics</th>
<th>Buffer Widths by Impact of Land Use</th>
<th>Other Measures Recommended for Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score for functions less than 30 pts.</td>
<td>Low – 25 ft</td>
<td>Moderate – 40 ft</td>
</tr>
</tbody>
</table>

B. Increased Wetland Buffers Zone Width.

1. The recommended buffer widths are based on the assumption that the buffer is vegetated with a native plant community appropriate for the region or performs similar functions. If the existing buffer is not vegetated, sparsely vegetated, or vegetated with species that are not native that do perform needed functions, the buffer should either be planted with appropriate species or widened to ensure proper functioning of the buffer.

2. If the buffer for a wetland is based on the score for its ability to improve water quality rather than habitat or other criteria, then the buffer should be increased by fifty percent if the slope is greater than thirty percent.

C. Buffer Width Reduction. The buffer widths recommended for land uses with high-intensity impacts to wetlands can be reduced to those widths recommended for moderate-intensity impacts under the following conditions:

1. For wetlands that score moderate or high for habitat (twenty points or more), the width of the buffer around the wetland can be reduced if both the following criteria are met:
   a. A relatively undisturbed vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat via some type of legal protection such as a conservation easement; and
   b. Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 5, are applied.

2. For wetlands that score less than twenty points for habitat, the buffer width can be reduced to that required for moderate land use impacts if measures to minimize
impacts of different land uses on wetlands, such as the examples summarized in Table 5, are applied.

**Table 5: Measures to Minimize Impacts to Wetlands**

<table>
<thead>
<tr>
<th>Examples of Disturbance</th>
<th>Examples of Measures to Minimize Impacts</th>
<th>Activities that Cause the Disturbance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lights</td>
<td>Direct lights away from wetland.</td>
<td>Parking lots, warehouses, manufacturing, residential</td>
</tr>
<tr>
<td>Noise</td>
<td>Locate activity that generates noise away from wetland.</td>
<td>Manufacturing, residential</td>
</tr>
<tr>
<td>Toxic runoff*</td>
<td>Route all new runoff away from wetland. Establish covenants limiting use of pesticides within 150 ft of wetland. Apply integrated pest management.</td>
<td>Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping</td>
</tr>
<tr>
<td>Change in water regime</td>
<td>Infiltrate or treat, detain, and disperse new runoff into buffer.</td>
<td>Impermeable surfaces, lawns, tilling</td>
</tr>
<tr>
<td>Pets</td>
<td>Plant dense vegetation around buffer, such as rose, hawthorn, etc.</td>
<td>Residential areas</td>
</tr>
<tr>
<td>Human disturbance</td>
<td>Plant buffer with impenetrable natural vegetation appropriate for region.</td>
<td>Residential areas</td>
</tr>
<tr>
<td>Dust</td>
<td>Utilize best management practices to control dust.</td>
<td>Tilled fields</td>
</tr>
</tbody>
</table>

*These examples are not necessarily adequate to meet the rules for minimizing toxic runoff if threatened or endangered species are present at the site.

D. Standard Wetland Buffer Width Averaging. Standard wetland buffer zones may be modified by averaging buffer widths if it will improve the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel. Averaging cannot be used in conjunction with the provisions for reductions in buffer widths. Wetland buffer width averaging shall be allowed only where a qualified wetlands professional demonstrates all of the following:
1. 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; and

2. 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; and

3. The total area contained in the buffer area after averaging is not less than that which would be contained within the standard buffer; and

4. The buffer at its narrowest is never less than three-fourths of the standard width.

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

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

2. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated in the critical area report; and

3. The total buffer area after averaging is equal to the area required without averaging; and

4. The buffer at its narrowest point is never less than three-fourths of the standard width.

F. Except as otherwise specified, wetland buffer zones shall be retained in their natural undisturbed condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

G. Permitted Uses in a Wetland Buffer Zone. Regulated activities shall not be allowed in a buffer zone except for the following:

1. Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low-intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short-term scientific or educational activities, and sports fishing or hunting.

2. With respect to category III and IV wetlands, surface level stormwater management facilities may be allowed in the outer twenty-five percent of the wetland buffer using best management practices; provided, that all of the following determinations are made by the community development director:

   a. No other location is feasible.

   b. The location of such facilities will not degrade the functions or values of the wetland.

3. Stormwater management facilities are not allowed in buffers of category I or II wetlands.

H. Signs and Fencing of Wetlands.

1. Temporary Markers. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and is subject to inspection by the community development director 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 these requirements, the community development director may require the applicant to install permanent signs along the boundary of a wetland or buffer. Permanent signs shall be made of an enamel coated metal face and attached to a metal post, or another untreated material of equal durability. Signs must be posted at an interval of one per lot or every fifty feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the community development director:

Protected Wetland Area

Do Not Disturb

Contact Tumwater Community Development 754-4180

Regarding Uses and Restrictions

3. Fencing. The community development director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the community development director shall condition any permit or authorization issued pursuant to these regulations to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland. The applicant will be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

Section 8. Section 16.28.190 of the Tumwater Municipal Code is hereby amended:

16.28.190 Reasonable use exception.
A. After it has been determined by the city pursuant to TMC 16.28.180 that lessee of wetland and/or wetland buffer are necessary and unavoidable or that all reasonable economic use has been denied, an exception may be applied for pursuant to this section.
B. An application for a reasonable use exception shall be made to the city and shall include a critical area report and mitigation plan if necessary, and any other project related documents, such as permit applications to other agencies, special studies and environmental documents. The application must be submitted with payment of the necessary fee as established in the city’s fee resolution, as written or hereafter amended. The community development director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal’s ability to comply with reasonable use exception criteria in subsection D of this section.
C. The hearing examiner shall review the application and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal’s ability to comply with all the reasonable use exception criteria in subsection D of this section.
D. The criteria for review and approval of reasonable use exceptions are:
   1. The application of this title would deny all reasonable use of the property;
   2. No other reasonable use consistent with existing zoning of the property has less impact on the critical area;
   3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
   4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this title, or its predecessor;
   5. The proposal does not pose an unreasonable threat to public health, safety, or welfare on or off the development proposal site; and
   6. The proposal is consistent with other applicable regulations and standards.

Section 9. A new Section 16.32.025, Relationship to Shoreline Master Program, of the Tumwater Municipal Code is hereby created:

16.32.025 Relationship to Shoreline Master Program.
If there are any conflicts between the Shoreline Master Program and the Fish and Wildlife Habitat Protection standards which apply in shoreline jurisdiction, the requirements of the Shoreline Master Program apply.
Section 10. Section 16.32.030 of the Tumwater Municipal Code is hereby amended:

16.32.030 Definitions.

A. “Allowed uses and activities” means any authorized land use or activity allowed alone or in conjunction with another use.

B. “Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine (salt water) environment.

C. “Areas with which endangered, threatened and sensitive species have a primary association” are defined as seasonal ranges and habitats with which federal- and state-listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

D. “Buffer” is defined as an area of land used or created for the purpose of insulating or separating a structure or land use from a fish and/or wildlife habitat area in such a manner as to reduce or mitigate any adverse impacts of the developed area.

E. “Infrastructure” means facilities such as water and sewer transmission lines or pipes and their appurtenances, telephone, fiber optic cable, gas and electrical transmission and distribution facilities, and streets and roads.

F. “Lakes, ponds, streams, and rivers planted with game fish” are defined to include game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which support priority fish species as identified by the Department of Wildlife.

G. “Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat” are defined as naturally occurring ponds not including ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years’ duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

H. “Nonconforming use or structure” means a building or use, lawfully existing on the effective date of the ordinance codified in this chapter, which does not conform with the regulations of TMC Chapter 16.32.

I. “Priority habitat, local” or “local priority habitat” means a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus and wetlands.
“Priority habitat, state” or “state priority habitat” means a seasonal range or habitat element, so identified by the Washington State Department of Wildlife, with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative diversity or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

“Priority species, local” or “local priority species” means those species that may not be endangered or threatened from a statewide perspective, but are of local concern due to their population status or their sensitivity to habitat manipulation and have been designated as such.

“Priority species, state” or “state priority species” means those species that are so identified by the Washington State Department of Wildlife due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened and sensitive species.

“Residential density” means the permissible number of dwelling units that may be developed on a specific amount of land area measured in number of dwelling units per acre.

“Qualified professional” means a person with experience and training in the applicable critical area. A qualified professional for habitats must have obtained a B.S. or B.A. or equivalent degree in biology, and at least two years of work experience related to the subject species or habitat.

“Riparian habitat” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

“Sensitive species” means wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats.

“Site” means any lot, tract, parcel, large lot holding, either owned or leased, intended to be developed.

“Species” means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

“Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

“Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.
“Waters of the state” are defined in WAC Title 222, the Forest Practice Rules and Regulations; further defined as the classification system established in WAC 222-16-030 and 222-16-031 as exists now or hereafter amended.

Section 11. Section 16.32.070 of the Tumwater Municipal Code is hereby amended:

16.32.070 Habitat areas – Allowed uses and activities.

The following activities may be permitted within a riparian habitat area, pond, lake, water of the state, or associated buffer when the activity complies with the provisions set forth in the city of Tumwater shoreline regulations and wetland protection standards, if applicable, and subject to the standards of this section. The standards that provide the most protection to protected habitat and species shall apply.

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

1. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1 and ending on October 31 of each year. This period may be extended or shortened by the community development director on a case-by-case basis, determined by weather conditions, soil types and topography.

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

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

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

5. Erosion and sediment control that meets or exceeds the standards set forth in the Drainage Design and Control Manual for the Thurston Region, as exists now or hereafter amended, shall be provided.

B. Fish hatcheries, associated appurtenances, and related interpretive centers are permitted in accordance with an approved critical area report that demonstrates the following:

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

2. The aquaculture facilities will not degrade fish or wildlife habitat conservation areas or associated wetlands.

3. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the proposed aquaculture facilities.
C. Vegetation management within an authorized lake management district and with a vegetation management plan approved by the city is permitted in accordance with an approved critical area report that demonstrates the following:

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

2. The vegetation management will not degrade fish or wildlife habitat conservation areas or associated wetlands.

3. A minimum of forty percent of the native vegetation must be retained within the area proposed for treatment.

4. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the proposed vegetation management activities.

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

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

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

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

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

E. Stream Bank Stabilization. Stream bank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report. An engineered plan and mitigation plan are also required.

F. Launching Ramps – Public or Private. Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:

1. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-fourth mile of the site;

2. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands; and

3. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the ramp.

G. Docks. Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:

1. There is no increase of shade for predator species or eelgrass;

2. There is no expansion in over water coverage;
3. There is no new spanning of waters between three and thirteen feet deep;
4. There is no increase in the size and number of pilings; and
5. There is no use of toxic materials (such as creosote) that come in contact with the water.
   a. New docks on lakes and ponds may be allowed, provided there is no use of toxic materials and in accordance with an approved critical area report.
H. Roads, Trails, Bridges, and Rights-of-Way. Construction of trails, roadways, roadway expansions and minor road bridging may be permitted in accordance with an approved critical area report subject to the following standards:
   1. There is no other feasible alternative route with less impact on the environment;
   2. The crossing minimizes interruption of downstream movement of wood and gravel;
   3. Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
   4. Trails should be located on the outer edge of the riparian area or buffer, except for viewing platforms, designated access points and crossings. Trails may also be located within the riparian area or buffer to provide controlled public access for viewing wildlife and other recreational activities, provided they are located and designed to minimize impacts on the riparian habitat;
   5. Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;
   6. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
   7. Stream crossing structures (bridges and culverts) are designed according to the Washington State Department of Fish and Wildlife “Fish Passage Design at Road Culverts,” 2003, as written or hereafter amended, and the National Marine Fisheries Service “Guidelines for Salmonid Passage at Stream Crossings,” 2000; and
   8. Trails and associated viewing platforms shall not be made of continuous impervious materials.
I. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report, if they comply with the following standards:
   1. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
   2. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
   3. The utilities shall cross at an angle less than thirty degrees of the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
   4. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
5. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and

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

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

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

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

1. No other feasible alternatives with less impact exist;
2. Mitigation for impacts is provided;
3. Stormwater conveyance facilities shall incorporate fish habitat features; and
4. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds to retard erosion, filter out sediments, and shade the water.

M. On-Site Sewage Systems and Wells. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure for which it is not feasible to connect to a public sanitary sewer system. Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:

1. Connection to an available public sanitary sewer system;
2. Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with Thurston County health department regulations; or
3. Repair to the existing on-site septic system.

N. Activities within the improved right-of-way including but not limited to construction of new utility facilities or improvements or upgrades to existing utility facilities that take place within existing improved right-of-way or existing impervious surface.

O. Operation, Maintenance or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in
accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of a regular ongoing maintenance, do not expand further into the critical areas, are not the result of an expansion of the structure or utility; and do not directly impact endangered species.

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

1. There is no practical alternative to the proposed activity with less impact on critical areas;
2. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility;
3. The activity involves disturbance of no more than seventy-five square feet.

Q. Emergencies. Those activities necessary to prevent an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use all reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within thirty days, the community development director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the community development director determines that the action taken was beyond the scope of an allowed emergency action, then inspection and remedial action would be required. If remedial action is required and not completed, then enforcement provisions would apply.


Section 12. Section 16.32.097 of the Tumwater Municipal Code is hereby amended:

16.32.097 Reasonable use exception.

A. After it has been determined by the city that losses of fish and wildlife habitat are necessary and unavoidable or that all reasonable economic use has been denied, an exception may be applied for pursuant to this section.
B. An application for a reasonable use exception shall be made to the city and shall include a critical area report and mitigation plan if necessary, and any other project related documents, such as permit applications to other agencies, special studies and environmental documents. The application must be submitted with payment of the necessary fee as established in the city's fee resolution, as written or hereafter amended. The community development director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection D of this section.

C. The hearing examiner shall review the application and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all the reasonable use exception criteria in subsection D of this section.

D. Criteria for review and approval of reasonable use exceptions follow:
   1. The application of this title would deny all reasonable use of the property;
   2. No other reasonable use consistent with existing zoning of the property has less impact on the critical area;
   3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
   4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this title, or its predecessor;
   5. The proposal does not pose an unreasonable threat to public health, safety, or welfare on or off the development proposal site;
   6. The proposal is consistent with other applicable regulations and standards.


Section 13. Section 16.32.098 of the Tumwater Municipal Code is hereby amended:

16.32.098 Exceptions – Infrastructure Public agency and utility.

A. If the application of this title would prohibit a development proposal by a public agency, ex-public utility, or a private entity installing public or private infrastructure utilities that is are in compliance with the comprehensive transportation, capital facilities or utility plans of Tumwater and are approved by Tumwater, the agency or utility may apply for an exception pursuant to this section.

B. Exception Request and Review Process. An application for an infrastructure public agency and utility exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The community development
director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with infrastructure public agency and utility exception review criteria in subsection D of this section.

C. Hearing Examiner Review. The hearing examiner shall review the application and the community development director's recommendation, and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the infrastructure public agency and utility exception review criteria in subsection D of this section.

D. Infrastructure Exception Public Agency and Utility Review Criteria. The criteria for review and approval of infrastructure public agency and utility exceptions follow:

1. There is no other practical alternative to the proposed development with less impact on critical areas;
2. The application of this title would unreasonably restrict the ability to provide utility services to the public;
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with other applicable regulations and standards.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O2006-026, Added, 04/03/2007)

Section 14. A new Section 18.38.015, Relationship to Shoreline Master Program, of the Tumwater Municipal Code is hereby created:

18.38.015 Relationship to Shoreline Master Program. If there are any conflicts between the Shoreline Master Program and the Floodplain Overlay regulations which apply in shoreline jurisdiction, the requirements of Shoreline Master Program apply.

Section 15. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 16. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 17. Severability. The provisions of this ordinance are declared 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 the ordinance, or the validity of its application to other persons or circumstances.

**Section 18. Effective Date.** This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this 15th of March 1, 2014.

CITY OF TUMWATER

[Signature]

Pete Kmet, Mayor

ATTEST:

[Signature]

Melody Valient, City Clerk

APPROVED AS TO FORM:

[Signature]

Karen Kirkaeptrick, City Attorney

Published: 03-20-2014

Effective Date: 04-19-2014