

## Chapter 17.05

### AUTHORITY AND PURPOSE

Sections:

- 17.05.005 Authority and title.
- 17.05.010 Purpose and goals.
- 17.05.015 Intent.
- 17.05.020 Interpretation.

**17.05.005 Authority and title.**

This title is established pursuant to the requirements of the Growth Management Act (RCW 36.70A.060) and the State Environmental Policy Act (Chapter 43.21C RCW).

This title shall be known as “Critical Areas.”

(Ord. 343 § 1, 2002).

**17.05.010 Purpose and goals.**

The purpose of this title is to establish regulations pertaining to development in critical areas. The purpose of these regulations is to protect critical areas in the City of University Place. This title seeks to implement the following goals:

- A. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to water, and develop parks.
- B. Protect the environment and enhance the State’s high quality of life, including air and water quality, and the availability of water.
- C. Protect habitat for fish and wildlife.
- D. Protect the public from unsafe and unstable development.

(Ord. 343 § 1, 2002).

**17.05.015 Intent.**

Erosion hazard areas, landslide hazard areas, flood hazard areas, wetlands, fish and wildlife habitat areas, aquifer recharge areas and buffers associated with the above listed areas constitute critical areas. All of these areas are of special concern to the people of University Place, Pierce County and the State of Washington. The intent of this title is to protect critical areas of the City by establishing minimum standards for development of sites that contain critical areas and thus promote the public health, safety, and welfare by:

- A. Mitigating unavoidable impacts by regulating development;
- B. Protecting from impacts of development;
- C. Protecting the public against losses from:
  - 1. Costs of public emergency rescue and relief operations where the causes are avoidable;
  - 2. Degradation of the natural environment and the expense associated with repair or replacement;
  - 3. Long term costs to the community resulting from incremental disturbances to and loss of environmental resources.
- D. Preventing adverse impacts on water availability, water quality, wetlands, and creeks.

- E. Protecting and improving the essential livability of the urban environment.
- F. Providing City officials with necessary information to adequately protect critical areas when approving, conditioning, or denying public or private development proposals;
- G. Providing the public with necessary information and notice of potential risks associated with development in critical areas;
- H. Implementing the goals and requirements of the Growth Management Act, the State Environmental Policy Act, the Puget Sound Water Quality Management Plan, the City Comprehensive Plan, and the Endangered Species Act including all updates and amendments, and other land use policies formally adopted or accepted by the City.

(Ord. 343 § 1, 2002).

**17.05.020 Interpretation.**

In the interpretation and application of this title, all provisions shall be:

- A. Considered the minimum necessary except as pursuant to a variance or reasonable use exception permit;
- B. Liberally construed to serve the purposes of this title; and
- C. Deemed neither to limit nor repeal any other powers under state statute.

(Ord. 343 § 1, 2002).

## Chapter 17.10

### GENERAL REQUIREMENTS

Sections:

17.10.005	Definitions.
17.10.010	Acronyms.
17.10.015	Applicability and mapping.
17.10.020	Permitted uses.
17.10.025	Regulated uses/activities.
17.10.030	Process.
17.10.035	Exemptions.
17.10.040	Variances.
17.10.045	Reasonable use exception permits.
17.10.050	Current use assessment.
17.10.055	Nonconforming structures and uses.
17.10.060	Financial guarantees.
17.10.065	Penalties, enforcement and civil infractions.
17.10.070	Fees.
17.10.075	Title and plat notification.
17.10.080	Appeals.
17.10.085	Appendixes.

#### **17.10.005 Definitions.**

For the purpose of this title, the following definitions shall apply:

“Activity” means any use conducted on a site.

“Agricultural activities” means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW and WAC Title 222 are not included in this definition.

“Animal containment area” means a site where three or more animal units are kept per acre, and/or where a high volume of waste material is deposited in quantities capable of impacting ground water resources.

“Animal unit” means the equivalent of 1,000 pounds of animal.

“Applicant” means a person, party, firm, corporation, or other legal entity that proposes a development on a site.

“Aquifer” means a saturated geologic formation that will yield a sufficient quantity of water to serve as a private or public water supply.

“Aquifer recharge area” means areas where the prevailing geologic conditions allow infiltration rates, which create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the “100-year flood.”

“Best management practices” means systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins;
2. Control the movement of sediment and erosion caused by land alteration activities;

3. Minimize adverse impacts to surface and ground water quality, flow and circulation patterns; and

4. Minimize adverse impacts to the chemical, physical and biological characteristics of a critical area.

“Buffer” means an area contiguous with a landslide hazard area, erosion hazard area, fish and wildlife habitat area or wetland, which is required for the integrity, maintenance, function, and structural stability of the above-referenced area.

“Building footprint” means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and/or accessory buildings on a lot.

“Class” means one of the wetland classes in the United States Fish and Wildlife Service (USFWS) December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.

“Classification” means defining value and hazard categories to which critical areas will be assigned.

“Clearing” means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth’s surface of the site.

“Compensatory mitigation” means mitigation to compensate for loss of critical area functions due to regulated activities occurring within critical areas.

“Creation” means producing or forming a wetland through artificial means from an upland (nonwetland) site.

“Creek” means surface waters that flow into or become connected to other surface waters no less frequently than once per year. Creeks include natural waterways modified by man. Creeks do not include irrigation or roadside ditches, canals, operational spillways, storm or surface water runoff facilities or other entirely artificial watercourses, unless they are used by salmonids, are used to convey naturally occurring creeks or result from modification to a natural watercourse.

“Critical areas” means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, geologically hazardous areas and associated buffer areas.

“Degraded” means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.

“Delineation” means a wetland study conducted in accordance with the Washington State Wetland Identification and Delineation Manual.

“Delineation report” means a written document prepared by a wetland specialist, which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.

“Department” means the City of University Place Planning and Development Services Department.

“Development” means any manmade change to improved or unimproved real estate including but not limited to buildings or other structures, placement of manufactured homes/mobile homes, mining, dredging, clearing, filling, grading, stockpiling, paving, excavation, drilling, or the subdivision or short subdivision of property.

“Director” means the Director of the Planning and Development Services Department or duly authorized designee.

“DRASTIC” means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.

“Enhancement” means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or solid waste).

“Erosion hazard areas” means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

“Existing” means those uses legally established prior to incorporation whether conforming or nonconforming.

“Fill/fill material” means a deposit of earth material, placed by human or mechanical means.

“Filling” means the act of placing fill material on any surface, including temporary stockpiling of fill material.

“Fish and wildlife habitat areas” means:

1. Areas which have a primary association with Federally listed endangered, threatened or candidate species, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term; or
2. Areas that have been documented by WDF&W as habitat for State listed endangered or threatened species; or
3. Creeks listed in UPMC 17.25.040.

“Fisheries biologist” means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years’ professional experience as a fisheries biologist.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood hazard areas” means areas of land located in floodplains that are subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

“Floodplain” means the total area subject to inundation by the base flood, including the flood fringe and the floodway areas.

“Floodway” means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.

“Geological assessment” means an assessment that details the surface and subsurface conditions of a site and delineates the areas of a property that might be subject to specified geologic hazards.

“Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, or other geological events, may pose a risk to the siting of commercial, residential, or industrial development consistent with public health, environmental or safety concerns.

“Geotechnical report” means a report evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.

“Grading” means any excavating, filling, clearing, or creating of impervious surfaces or combination thereof.

“Ground water” means all water found beneath the ground surface, including slowly moving subsurface water present in aquifers and recharge areas.

“Habitat assessment” means a report that identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.

“Habitat management plan” means a report that discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

“Hazardous substance(s)” means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.

“Hazardous substance processing or handling” means use, manufacture, storage or treatment authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container. Hazardous substances shall not be disposed on site unless in compliance with Dangerous Waste Regulations, Chapter 173-303 WAC and any pertinent local ordinances, such as sewer discharge standards.

“Hazardous waste” means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

“Hydrogeologic assessment” means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of ground water supplies.

“Impervious surface” means natural or human-produced material on the ground that does not allow surface water to penetrate into the soil. Impervious surfaces may consist of buildings, parking areas, driveways, roads, sidewalks, and any other areas of concrete, asphalt, plastic, compacted gravel, etc.

“In-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics, functions and values are required to replicate those destroyed or degraded by a regulated activity.

“Interdunal wetlands” means wetlands that are located in small interdunal depressions to extensive deflation plains behind stabilized foredunes.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a land spreading disposal facility.

“Landslide hazard areas” means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

“Mitigation” means to avoid, minimize or compensate for adverse critical area impacts.

“Ordinary high water mark” means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of the ordinance codified in this chapter or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the City, State or Federal regulatory agency; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Out-of-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.

“Permeable surfaces” means sand, noncompacted gravel, and other penetrable deposits on the ground which permit movement of ground water through the pore spaces, and which permit the movement of fluid to the ground water.

“Person” means an individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons, however organized.

“Regulated activities” means creation of lots or building sites, construction or alteration of any structure or improvement or alteration of the condition of any land, water or vegetation that could adversely affect any critical area.

“Restoration” means the re-establishment of a viable wetland from a previously filled or degraded wetland site.

“Riparian habitat areas” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems, which mutually influence each other.

“Seismic” means subject to or caused by an earthquake or earth tremor.

“Site” means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed, in progress or completed.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

“Sludge” means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or system or other sources, including septage sludge, sewage sludge, and industrial sludge.

“Sludge land application site” means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

Sludge land application sites are classified under the following five-category system:

1. Sites of less than one acre with an application rate of less than 10 dry tons of sludge per acre per five-year period.
2. Sites with an application rate of less than 20 dry tons of sludge per acre per 10-year period or less than an annual application of two dry tons of sludge per acre.
3. Sites with an application rate of more than 20, but less than 43, dry tons of sludge per 10-year period or 4.3 dry tons per acre per year.
4. Sites with one-time applications greater than 43 dry tons per acre and cumulative limits for metals greater than State-designated practices for agricultural cropland application.
5. Sites that are permanent landfill disposal facilities.

“Stockpiling” means the placement of material with the intent to remove it at a later time.

“Toe of slope” means a distinct topographic break in slope at the lower-most limit of the landslide or erosion hazard area.

“Top of slope” means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

“Underground tank” means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

“Utility line” means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, telecommunications, cable television and sanitary sewers.

“Wetland” or “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. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands generally 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. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the City.

“Wetland specialist” means a person with experience and training in wetlands issues, and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

1. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Washington State Wetlands Identification and Delineation Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or
2. Four years of related work experience and training, with a minimum of two years’ experience delineating wetlands using the Washington State Wetlands Identification and Delineation Manual and preparing wetland reports and mitigation plans;
3. The person should also be familiar with the City site development regulations, the City wetland management policies, and the requirements of this title.

“Wildlife biologist” means a professional with a degree in wildlife, or certification by the Wildlife Society, or with five years’ professional experience as a wildlife biologist.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 423 § 51, 2004; Ord. 343 § 1, 2002).

**17.10.010 Acronyms.**

“BMP” means best management practices.

“DOE” means Department of Ecology.

“EIA” means Environmental Impact Assessment.

“EIS” means Environmental Impact Statement.

“ESA” means Endangered Species Act.

“FEIS” means Final Environmental Impact Statement.

“SEPA” means State Environmental Policy Act.

“TPCHD” means Tacoma Pierce County Health Department.

“UPMC” means University Place Municipal Code.

“WDF&W” means Washington Department of Fish and Wildlife.

(Ord. 343 § 1, 2002).

**17.10.015 Applicability and mapping.**

A. Applicability. This title shall apply to all properties within the City of University Place that contain critical areas. When the requirements of this title are more stringent than those of other City codes and regulations, the

requirements of this title shall apply. Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this title.

B. Mapping. Maps have been developed by the City that show the general location of critical areas for informational purposes. The actual presence of critical areas and the applicability of these regulations shall be determined by field conditions and the classification criteria established for each critical area.

(Ord. 343 § 1, 2002).

**17.10.020 Permitted uses.**

Uses permitted on properties identified as critical areas shall be the same as those permitted in the zone classification shown in the Comprehensive Plan map unless specifically prohibited by this title.

(Ord. 343 § 1, 2002).

**17.10.025 Regulated uses/activities.**

Unless the requirements of this title are met, no person shall create lots or building sites, or construct or alter any structure or improvement or alter the condition of any land, water or vegetation that adversely affects any critical area. Appendix A lists examples of regulated uses/activities.

(Ord. 343 § 1, 2002).

**17.10.030 Process.**

A. The Department shall perform a critical areas review of any regulated activity on a site, which includes one or more critical areas unless otherwise provided in this title.

B. As part of all development applications the Department shall:

1. Require and evaluate any studies or plans required by this title which are needed to determine the type and extent of the critical area;
2. Determine whether the development proposal is consistent with this title;
3. Determine whether any proposed alterations to the development are necessary to mitigate impacts;
4. Determine if the mitigation and monitoring plans proposed by the applicant are sufficient to protect the public health, safety and welfare consistent with the goals, purposes, objectives and requirements of this title.

C. A SEPA threshold determination may not be made prior to Departmental review of any special studies or technical reports required by this title, except where the applicant requests a determination of significance so that an environmental impact statement review is required.

D. The Department may approve, approve with conditions, or deny any development proposal in order to comply with the requirements and carry out the goals, purposes, objectives and requirements of this title.

E. Approval of a development proposal does not discharge the obligation of the applicant to comply with the provisions of this title.

F. Unless otherwise specified in this chapter, permits shall be processed in accordance with UPMC Title 22, Administration of Development Regulations.

(Ord. 343 § 1, 2002).

**17.10.035 Exemptions.**

The following activities are exempt from the provisions of this title. Such activities are not exempt from the shoreline master program requirements in UPMC Title 18 unless explicitly named as an exempt activity under WAC 173-27-040, in accordance with UPMC 18.15.030.

A. Existing Agricultural Activities. The activities cease to be existing when the area on which they were conducted has been converted to a nonagricultural use or has lain idle more than five years or so long that modifications to the hydrological regime are necessary to resume agricultural activities. Land registered in a Federal or State soils conservation program shall meet the criteria for this exemption.

B. Reconstruction, repair or maintenance of existing roads, paths, bicycle ways, trails, bridges, and storm drainage facilities; provided, that reconstruction does not involve expansion of facilities; and provided, that work is conducted pursuant to BMPs. This exemption shall not apply to reconstruction that is proposed as a result of structural damage associated with a critical area, such as, but not limited to, slope failure in a landslide hazard area.

C. The following utility line activities, when undertaken pursuant to BMPs to avoid impacts to critical areas:

1. Normal and routine maintenance or repair of existing utility structures or right-of-way.
2. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency or utility purveyor, which approves the new location of the facilities.
3. Installation or construction in improved City road rights-of-way, and replacement, operation, relocation or alteration of all electric facilities, lines, equipment, or appurtenances with an associated voltage of 55,000 volts or less. Substations shall not be considered exempt.

D. Regular maintenance of existing structures.

E. Remodeling of an existing structure, provided there is no further intrusion into the critical area.

F. Reconstruction or repair of an existing structure unless the reconstruction or repair is necessitated by structural damage occurring as a result of landsliding, slumping or related earth movement.

G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities; provided, that large construction vehicles are not used, and provided disturbed areas are restored to their pre-existing condition immediately following completion of work.

H. Emergency action necessary to prevent serious environmental degradation, imminent threat or danger to public health or safety, or imminent threat to public or private property. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken. Permits may be required subsequently.

I. Control of invasive species, including but not limited to Scotch broom, Himalayan blackberry and evergreen blackberry, and noxious weeds that are included on the State noxious weed list. Control may be by clipping, pulling, digging, or by an alternative plan, such as an integrated pest management plan, upon approval of a plan by the Department.

J. Activities undertaken to comply with a United States Environmental Protection Agency administrative superfund enforcement order or a Washington Department of Ecology administrative enforcement order pursuant to the Model Toxics Control Act, including the following activities:

1. Remediation or removal of hazardous or toxic substances;
2. Source control; and
3. Natural resource damage restoration.

K. A residential building permit for a lot which was subject to previous reports and assessments as required under this title; provided, that the impacts associated with the current development proposal are addressed, and provided the permit is issued subject to the mitigation recommendations of said reports or assessments.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).

**17.10.040 Variances.**

A. Authority. The Examiner shall have the authority to grant a variance to the buffer width provisions of this chapter.

B. Granting of Variances. The Examiner must find that the requested buffer width reduction satisfies all of the following criteria:

1. That the granting of such variance is consistent with the intent of the City Comprehensive Plan;
2. That there are special circumstances applicable to the subject property, that do not apply generally to other property or class of use in the same vicinity;
3. That granting of such variance shall not have a detrimental impact on fish and wildlife habitat within critical areas;
4. That granting of such variance shall not have a detrimental impact on water quality or water temperature;
5. That granting of such variance shall not result in increased erosion or sedimentation;
6. That the variance is necessary for preservation of a substantial property right or use possessed by other property owners in the same vicinity.

(Ord. 343 § 1, 2002).

**17.10.045 Reasonable use exception permit.**

A. If the application of this title would deny all reasonable use of a site, development may be allowed, which is consistent with the general purposes of this title and the public interest, pursuant to a reasonable use exception permit. A reasonable use exception permit may be granted only if the provisions of this title physically eliminate all options for reasonable use of the property.

B. Nothing in this title is intended to preclude all reasonable use of property. An applicant for a development proposal may file a request for a reasonable use exception, which shall be considered by the City Hearings Examiner at a public hearing, following notice, as required by Title 22. The request shall include the following information:

1. A site plan that identifies the portions of the site which are critical areas and the location of the proposed development;
2. A description of the amount of the site that is within setbacks required by other development regulations;
3. A description of the proposed development;
4. An analysis of the impact that the proposed development would have on the critical areas;
5. An analysis of whether any other reasonable use with less impact on the critical area(s) is possible;
6. A design of the proposed development that has the least impact practicable on the critical area(s);
7. An analysis of the modifications needed to the standards of this title to accommodate the proposed development;
8. A description of any modifications needed to the required front, side and rear setbacks, building height, and buffer widths to provide for a reasonable use while providing protection to the critical area(s);
9. Such other information as the Department determines is necessary.

C. The Hearings Examiner may approve the reasonable use exception, if the Examiner determines all of the following criteria are met:

1. There is no other reasonable use or feasible alternative to the proposed development, including phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning and density considerations that would allow a reasonable economic use with less impact on the critical area(s); and
2. The proposed development does not pose a threat to the public health, safety or welfare on or off the site; and
3. Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable use of the property; and
4. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the nondevelopable condition after the effective date of the ordinance codified in this title;
5. The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable use of the site; and
6. The proposed activities will not jeopardize the continued existence of species listed by the Federal government as endangered, threatened or candidate species.

(Ord. 343 § 1, 2002).

**17.10.050 Current use assessment.**

An owner of agricultural land, timberland, or open space desiring current use classification under Chapter 84.34 RCW may file for such current use classification as provided in the City of University Place Zoning Code.

(Ord. 343 § 1, 2002).

**17.10.055 Nonconforming structures and uses.**

An established use or existing structure that was lawfully permitted prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the nonconforming use, nonconforming lot and nonconforming structure provisions of UPMC Title 19, except that the substantial destruction clause, of UPMC 19.80.050(A)(4) shall not apply. In no case shall this section be construed to allow reconstruction or repair necessitated by structural damage occurring as a result of landsliding, slumping or related earth movement.

(Ord. 343 § 1, 2002).

**17.10.060 Financial guarantees.**

The city shall require an applicant to submit a financial guarantee to the city to guarantee any performance, mitigation or monitoring required as a condition of permit approval. The permit shall not be granted until the department receives the financial guarantee.

A. Financial guarantees required under this title shall:

1. Be in addition to the site development construction guarantee required by the city's public works standards;
2. Be submitted on financial guarantee forms provided by the city.
3. Be 125 percent of the estimate of the cost of installation, mitigation or monitoring to allow for inflation and administration should the city have to complete the installation, mitigation or monitoring;
4. Be released by the city only when city officials have inspected the site(s) and the applicant's engineer and/or appropriate technical professional has provided written confirmation that the performance, mitigation or monitoring requirements have been met.

(Ord. 343 § 1, 2002).

**17.10.065 Penalties, enforcement and civil infractions.**

All violations of this title shall be subject to the provisions of Chapter 19.15 UPMC.

(Ord. 343 § 1, 2002).

**17.10.070 Fees.**

The city shall establish an appropriate fee structure for administrative and technical review by separate resolution.

(Ord. 343 § 1, 2002).

**17.10.075 Title and plat notification.**

**Title Notification.** The owner of any site within an erosion hazard area, aquifer recharge area, fish and wildlife habitat area, flood hazard area or wetland area in which a development proposal is submitted, shall record a notice with the Pierce County auditor in the form set forth below:

**FORM OF NOTICE:**

(\_\_\_\_\_ AREA NOTICE)

Parcel Number: \_\_\_\_\_

Address: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Present Owner: \_\_\_\_\_

Notice: This site lies within a(n) \_\_\_\_\_ area as defined by Chapter 17.\_\_\_\_ UPMC. The site was the subject of a development proposal for \_\_\_\_\_ application number \_\_\_\_\_ filed on \_\_\_\_\_ (date).

Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the \_\_\_\_\_ area and any restriction on use.

\_\_\_\_\_

Signature of Owner(s)

**NOTARY ACKNOWLEDGMENT AND NOTARY SEAL**

**Plat and Planned Development District**

**Notification.**

For all proposed short subdivision, subdivision and Planned Development District proposals within landslide hazard areas, erosion hazard areas, aquifer recharge areas, fish and wildlife habitat areas, flood hazard areas, and wetland areas, the applicant shall include a note on the face of the plat or final development plan. The note shall be as set forth below:

Notice: This site lies within a(n) \_\_\_\_\_ area as defined in Chapter 17.\_\_\_\_ UPMC. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

If more than one critical area exists on the site subject to the provisions of this title, then one notice that addresses all of the critical areas shall be sufficient.

(Ord. 343 § 1, 2002).

**17.10.080 Appeals.**

Appeals of a decision issued under this title shall be considered in accordance with UPMC Title 22, Administration of Development Regulations.

(Ord. 343 § 1, 2002).

**17.10.085 Appendixes.**

**Appendix A**

**Examples of regulated uses/activities.**

This list is intended to provide examples of regulated uses and activities. The list is not intended to be inclusive. All uses and activities included in this list may not be a regulated use or activity in every situation. Examples of regulated uses and activities include, but are not limited to:

A. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;

B. Dumping, discharging or filling;

C. Draining, flooding or disturbing the water level or water table. In addition, an activity that involves draining, flooding or disturbing the water level or water table in a wetland or creek, in which the activity itself occurs outside the wetland and buffer, shall be considered a regulated activity;

D. Driving piling or placing obstructions;

E. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, except as specifically exempted;

F. Altering the character of a critical area by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting;

G. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland or creek water sources, including changes in quantity of water and pollutant level;

H. Application of pesticides, fertilizers and/or other chemicals, unless demonstrated not to be harmful to habitat or wildlife.

(Ord. 343 § 1, 2002).

**CHAPTER 17.15**  
**GEOLOGICALLY HAZARDOUS AREAS**

Sections:

- 17.15.005 Purpose.
- 17.15.010 Erosion hazard areas criteria.
- 17.15.015 Landslide hazard areas criteria.
- 17.15.020 Mapping.
- 17.15.025 Restrictions on building.
- 17.15.030 Exemptions.
- 17.15.035 Assessments and reports.
- 17.15.040 Geological assessments.
- 17.15.045 Geotechnical reports.
- 17.15.050 Existing geotechnical reports.
- 17.15.055 Regulation.
- 17.15.060 Title notification.

**17.15.005 Purpose.**

The purpose of this chapter is to protect, preserve and enhance areas that are sensitive to human activities, including steep slopes, and landslide and erosion hazard areas. Additionally, the purpose of this chapter is to regulate development in geologically hazardous areas and associated buffers to avoid unstable slopes and adverse impacts to such areas and adjacent up-slope and down-slope areas.

(Ord. 343 § 1, 2002).

**17.15.010 Erosion hazard areas criteria.**

Erosion hazard areas are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions vulnerable to erosion.

(Ord. 343 § 1, 2002).

**17.15.015 Landslide hazard areas criteria.**

Landslide hazard areas are those areas meeting any of the following criteria:

- A. Areas of historic failures, including areas of old and recent landslides;
- B. Areas with both of the following characteristics:
  - 1. Slopes steeper than 15 percent; and
  - 2. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock.
- C. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems, and fault planes, in subsurface materials;
- D. Slopes having a gradient steeper than 80 percent subject to rock fall during seismic shaking;
- E. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;
- F. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;

G. Any area with a slope of 30 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least 10 feet of vertical relief;

H. Areas that have a “severe” limitation for building site development because of slope conditions, according to the National Resource Conservation Service.

(Ord. 343 § 1, 2002).

**17.15.020 Mapping.**

Mapping. Landslide and erosion hazard areas meeting the criteria established above are delineated on hazard maps created by the Department. The actual presence or absence of landslide or erosion hazard areas shall be determined by field conditions and the classification criteria listed above.

(Ord. 343 § 1, 2002).

**17.15.025 Restrictions on building.**

Restrictions on Building. In areas meeting both of the following characteristics no structure or disturbance of vegetation is permitted:

A. An area with a slope of 100 percent or steeper (45 degrees); and

B. Hillsides intersecting geological contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock.

(Ord. 343 § 1, 2002).

**17.15.030 Exemptions.**

In addition to the exemptions contained in UPMC 17.10.035, the following activities shall be exempt from the requirements of this chapter.

A. Trimming and Limited Cutting of Trees. Any person wishing to engage in clearing activity pursuant to this exemption shall arrange a site visit with Department staff. Staff shall issue a letter of exemption if the proposed activity is consistent with the intent of this chapter and provided:

1. The applicant can clearly demonstrate the activity will not result in a detrimental impact to the landslide or erosion area on or off site;
2. Groundcover shall be retained and the ground surface shall not be disturbed;
3. The clearing activity does not exceed the provisions of the City Zoning Code.
4. The trimming and cutting of trees is consistent with the vegetation conservation requirements specified in UPMC 18.25.100 for properties subject to the Shoreline Master Program provisions in UPMC Title 18.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).

**17.15.035 Assessments and reports.**

Regulation. For all regulated activities proposed within landslide and erosion hazard areas, a geotechnical report shall be submitted. The requirements for a geotechnical report shall be waived where the applicant can clearly demonstrate to the department through submittal of a geological assessment that the regulated activity will not occur within the landslide or erosion hazard area.

(Ord. 343 § 1, 2002).

**17.15.040 Geological assessments.**

A geological assessment shall be prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or by a professional geologist/hydrologist or soils scientist who has earned a bachelor's degree in geology, hydrology, soils science, or closely related field from an accredited college or

university, or equivalent educational training, and has five years' experience assessing erosion and landslide hazards. The geological assessment shall include at a minimum the following:

- A. A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
- B. An evaluation of the analysis area's inherent landslide and erosion hazards; and
- C. A site plan of the area delineating all portions of the site subject to landslide and erosion hazards based on mapping and criteria referenced in this chapter.
- D. The submittal must include a contour map of the proposed site at a scale of one inch = 20 feet or as deemed appropriate by the Department. Slopes shall be clearly identified and differentiated for the ranges between 15 and 29 percent, and 30 percent or greater.

(Ord. 343 § 1, 2002).

**17.15.045 Geotechnical reports.**

The geotechnical report shall be prepared by a professional engineer licensed by the State of Washington with experience in geotechnical engineering and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. Geotechnical reports shall include an analysis of the impacts that a regulated activity may have on adjacent properties. The geotechnical report shall include at a minimum the following:

A. Site Geology Information Required.

- 1. Topographic Data. Submittal must include a contour map of the proposed site, at a scale of one inch = 20 feet or as deemed appropriate by the Department. Slopes shall be clearly identified and differentiated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site-specific conditions indicate the necessity, the Department may require the topographic data to be field surveyed.
- 2. Subsurface data. Submittal must include boring logs and exploration method, soil and rock stratigraphy, ground water levels and seasonal changes of ground water levels.
- 3. Site history. Submittal must include a description of any prior grading, soil instability, or slope failure.
- 4. Seismic hazard. Submittal of data concerning the vulnerability of the site to seismic events.

B. Geotechnical Engineering Information Required.

- 1. Slope stability studies and opinion(s) of slope stability;
- 2. Proposed angles of cut and fill slopes and site grading requirements;
- 3. Structural foundation requirements and estimated foundation settlements;
- 4. Soil compaction criteria;
- 5. Proposed surface and subsurface drainage;
- 6. Lateral earth pressures;
- 7. Vulnerability of the site to erosion;
- 8. Suitability of on-site soil for use as fill;
- 9. Laboratory data and soil index properties for soil samples; and
- 10. Building limitations including setback recommendations.

11. Analysis of any potential landslide run-out associated with the hazard area.

C. Performance Standards. All geotechnical reports shall contain a section that addresses each of the performance standards identified in UPMC 17.15.055.

D. Impacts on Adjacent Properties. Geotechnical reports shall address any impacts to adjacent properties that may result from the proposed regulated activity. Reports shall address both short-term (during construction) impacts and long term (post construction) impacts. All such impacts shall be mitigated per subsection (E) of this section.

E. Mitigation Recommendations. Geotechnical reports shall include a section that identifies mitigation measures necessary to preserve the stability of geologically hazardous and adjacent areas.

(Ord. 343 § 1, 2002).

**17.15.050 Existing geotechnical reports.**

Where a geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, the report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.

(Ord. 343 § 1, 2002).

**17.15.055 Regulation.**

A. Department Approval. The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the geotechnical report, including, but not limited to:

1. The ability of the proposed mitigation or engineering measures to reduce risks to the proposed structure and risks to the erosion or landslide hazard area; and adjacent property; and
2. The proposed development's conformance with the following performance standards.

a. Location and extent of development:

- (1) Development shall be located to minimize disturbance and removal of vegetation; and
2. Structures shall be clustered where possible to reduce disturbance and maintain natural topographic character; and
3. Structures shall conform to the natural contours of the slope and foundations should be tiered where possible to conform to existing topography of the site.

b. Design of development:

1. All development proposals shall be designed to minimize the building footprint and other disturbed areas; and
2. All development shall be designed to minimize impervious lot coverage; and
3. Roads, walkways and parking areas shall be designed to parallel the natural contours; and
4. Access shall be in the least sensitive area of the site, as feasible.

B. Buffer Requirement. A buffer, consisting of undisturbed natural vegetation and measured (as shown in Figure 15-1) in a perpendicular direction from all landslide and erosion hazard areas, shall be required. The buffer shall be required from the top of slope and toe of slope of all landslide or erosion hazard areas that measure 10 feet or more in vertical elevation change from top to toe of slope. The minimum buffer distance requirements from the top of

slope and toe of slope of landslide or erosion hazard areas shall be the same as for setbacks from slopes as identified in the Uniform Building Code, as amended from time to time. Regulated uses/activities that occur outside the buffer required by this subsection, the setback required by subsection (C), and any potential landslide run-out do not require a geotechnical report. The other provisions of this chapter shall apply.

C. Building Setback and Construction Adjacent to Buffer. Eight-foot minimum setback lines (as shown in Figure 15-2) shall be required from the buffer area required in this section for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within the eight foot setback shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged. The setback is required in addition to the buffer regardless of buffer width, except as provided in subsection (D) below.

D. Modifications to Buffer Width. When the geotechnical report demonstrates that a lesser or eliminated buffer and/or setback, together with design and engineering solutions, will meet the intent of this chapter, such reduced or eliminated buffer and/or setback and design and engineering solutions may be permitted. Reduced or eliminated buffer and/or setback width shall not be permitted unless the proposed design, engineering and mitigation provisions adequately reduce risk to proposed structures and to landslide and erosion hazard areas and adjacent areas. Should the geotechnical report indicate that a greater buffer than that required by this section is needed to meet the intent of this chapter, the greater buffer shall be required.

E. Buffer protection. To increase the functional attributes of the buffer, the department may require that the buffer be enhanced through planting of indigenous species. The edge of the buffer area shall be clearly staked, flagged, and/or fenced prior to any site clearing or construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field marking shall remain until all construction and clearing phases are completed, and the department has granted final project approval. Prior to final approval for subdivisions, short subdivisions binding site plans, planned development districts and commercial developments the buffer and slope shall be placed in a separate critical area tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the department. All protected areas identified above shall remain undeveloped in perpetuity, except as they may be altered pursuant to this title.

F. Temporary erosion and sedimentation control plan. Temporary erosion and sedimentation control plans shall be required for all regulated activities in landslide and erosion hazard areas. The temporary erosion and sedimentation control plan shall be consistent with the City's Public Works Standards and must be implemented prior to the start of development activity on-site.

(Ord. 343 § 1, 2002).

**17.15.060 Title notification.**

The owner of any site within a landslide hazard area shall record a notice with the Pierce County Auditor on a form provided by the department, and generally in the form set forth below. This notice shall be in addition to any other title notification statement required by this title, although any such notices may be combined.

Owner(s) on his/her own behalf and on behalf of his/her heirs, successors and assigns hereby waives any right to assert any claim against the City for any loss, or damage to people or property either on or off the site resulting from soil movement by reason of or arising out of issuance of the permit(s) by the City for development on the property except only for such losses that may directly result from the sole negligence of the City. Furthermore, the City makes no promise that in the event of soil movement that adversely affects abutting streets or utilities that such streets or utilities will be restored following such soil movement.

(Ord. 343 § 1, 2002).

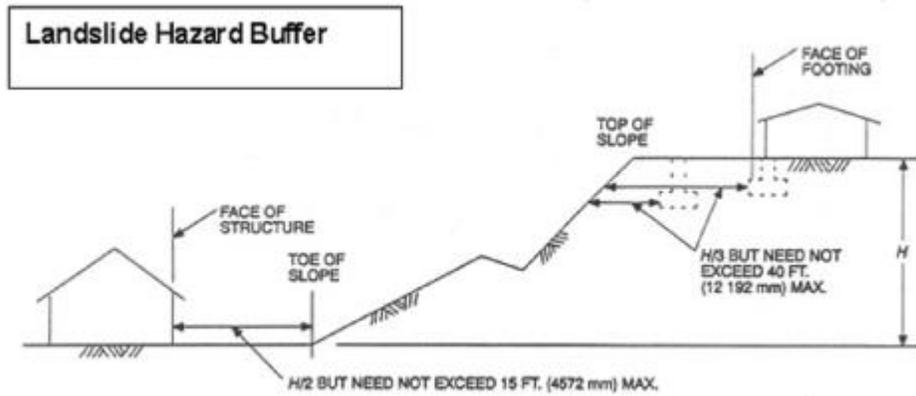


Figure 15-1

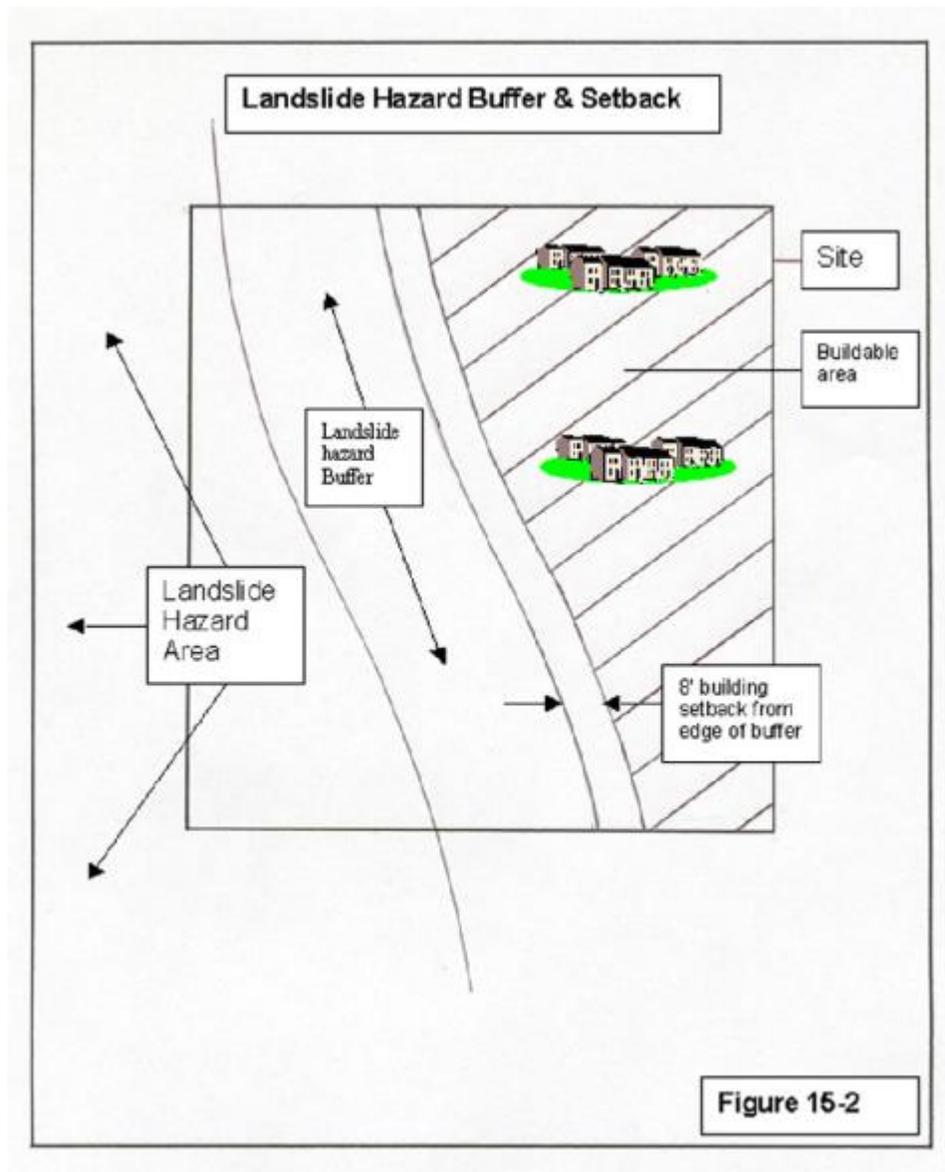


Figure 15-2



**Chapter 17.20**

**AQUIFER RECHARGE AREAS**

Sections:

- 17.20.005 Purpose.
- 17.20.010 Identification and classification.
- 17.20.015 Regulation.

**17.20.005 Purpose.**

The purpose of this chapter is to protect ground water resources in the aquifer system from hazardous substances and hazardous waste pollution by controlling or abating future pollution from new land uses or activities. Additionally, it is the purpose of this chapter to increase public awareness regarding potential impacts to aquifer recharge areas arising from land use and site design.

(Ord. 343 § 1, 2002).

**17.20.010 Identification and classification.**

A. Identification. Aquifer recharge areas are areas where the prevailing geologic conditions allow infiltration rates, which create a high potential for contamination of ground water resources or contribute to the replenishment of ground water.

B. Classification. The entire City is located within an aquifer recharge area as defined by Clover/Chambers Creek Aquifer Basin Boundary, the 10-year wellhead protection areas as identified by TPCHD and the DRASTIC zones that are rated 180 and above.

(Ord. 343 § 1, 2002).

**17.20.015 Regulation.**

A. Permeable Surfaces. Uses that are not identified as a threat to the aquifer shall provide as much open permeable space as possible and impervious surfaces shall be minimized. Carefully planned site layout and design may significantly reduce the need for impervious surfaces, which in turn can help promote the health of the City’s water resources and reduce costs associated with development of surface water control and treatment systems. Property owners shall practice appropriate disposal of hazardous substances and other pollutants to protect aquifer health.

B. Prohibited Uses. The following uses shall be prohibited within the aquifer recharge area:

- 1. Landfills.

C. Conditionally Permitted Uses.

- 1. Uses identified in Table 1 shall only be permitted after review of a hydrogeologic assessment. All mitigation measures required pursuant to the references in Table 1 shall be implemented.

**Table 1. Statutes, Regulations and Guidance Pertaining to Groundwater Impacting Activities**

Activity	Statute – Regulation – Guidance
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Chemical Treatment Storage and Disposal Facilities	WAC 173-303-182
Hazardous Waste Generators (Boat Repair Shops, Biological Research Facilities, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC

Activity	Statute – Regulation – Guidance
Above Ground Storage Tanks	WAC 173-303-640
Below Ground Storage Tanks	Chapter 173-360 WAC
Injection Wells	Federal 40 C.F.R. Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, BMPs to Prevent Stormwater Pollution at Vehicle Recycler Facilities (WDOE 94-146)
On-Site Sewage Systems (Large Scale)	Chapter 173-240
On-Site Sewage Systems > 14,500 gal/day	Chapter 246-272 WAC
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC BMPs to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	WAC 332-18-015

2. In addition to the uses noted in Table 1, the following uses of land shall require a hydrogeologic assessment of the proposed site:

- a. Hazardous substance processing or handling;
- b. Sludge land application sites categorized as S-3, S-4 and S-5;
- c. Animal containment areas;
- d. Wood treatment facilities.

3. The hydrogeologic assessment shall include information as required by TPCHD. Uses requiring a hydrogeologic assessment may be approved, conditioned or denied by the city based upon the TPCHD's evaluation of the hydrogeologic assessment.

4. The Director may grant relief from some or all of the provisions of this chapter if those provisions would be ineffective at a particular site. Alternative measures may be required.

D. Use of Existing Laws and Regulations. Other uses, including but not limited to septic systems and surface water management facilities, shall be regulated pursuant to existing laws, regulations and programs including, but not limited to, UPMC Title 13, City Public Works Standards, the King County Surface Water Design Manual, and the TPCHD Source Protection Program.

(Ord. 343 § 1, 2002).

## Chapter 17.25

### FISH AND WILDLIFE HABITAT AREAS

Sections:

- 17.25.005 Purpose.
- 17.25.010 Applicability and identification.
- 17.25.015 Mapping.
- 17.25.020 Habitat assessments.
- 17.25.025 Habitat management plans.
- 17.25.030 Regulation.
- 17.25.035 Habitat protection for Puget Sound.
- 17.25.040 Habitat protection for creeks.
- 17.25.045 Riparian buffer regulations.
- 17.25.050 Allowable activities within riparian buffers.

**17.25.005 Purpose.**

The purpose of this chapter is to protect fish and wildlife habitat areas, particularly habitat areas for threatened and endangered species. Additionally, the purpose of this chapter is to provide protection for creeks and riparian habitat areas.

(Ord. 343 § 1, 2002).

**17.25.010 Applicability and identification.**

A. Applicability. This chapter applies to regulated activities within fish and wildlife habitat areas.

B. Identification of Fish and Wildlife Habitat areas. Fish and wildlife habitat areas regulated pursuant to this chapter include:

1. Areas which have a primary association with Federally listed endangered, threatened or candidate species and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term; or
2. Areas that have been documented by WDF&W as habitat for State listed endangered or threatened species; or
3. Creeks identified in UPMC 17.25.040.

(Ord. 343 § 1, 2002).

**17.25.015 Mapping.**

Fish and wildlife habitat areas are identified, to the extent possible, on maps provided by the department. The resources listed below provide additional information on fish and wildlife habitat areas:

A. *Puget Sound Environmental Atlas, Puget Sound Water Quality Authority.*

B. *Coastal Zone Atlas of Washington, Volume VII, Pierce County, Washington Department of Ecology.*

C. The following Washington Department of Natural Resources documents and data sources:

1. Stream typing maps.
2. Natural heritage database.

D. The following Washington Department of Fish and Wildlife documents and data sources:

1. *Priority habitats and species program list and maps.*

2. *Wildlife Heritage Database.*

3. *Streamnet database.*

E. Washington Department of Ecology information for Water Resource Index Area 12.

(Ord. 343 § 1, 2002).

**17.25.020 Habitat assessments.**

A. A habitat assessment shall be required for a site that may contain fish and wildlife habitat areas identified in this chapter. The habitat assessment shall be prepared by a wildlife biologist with a degree in wildlife biology. At a minimum the habitat assessment shall contain the following:

1. A discussion of the species or habitats known or expected to be located on the site.
2. A site plan that clearly identifies and delineates fish and wildlife habitats found on the site.
3. Such other information as the Director determines is necessary to adequately evaluate the impact of the regulated activity on fish and wildlife habitat.

B. If a habitat assessment demonstrates to the satisfaction of the Director that fish and wildlife habitat or species are not located on the site, the development can proceed without further requirements under this section; otherwise, a habitat management plan shall be submitted pursuant to UPMC 17.25.025.

(Ord. 343 § 1, 2002).

**17.25.025 Habitat management plans.**

A. Where fish and wildlife habitat is present on a proposed development site, a habitat management plan shall be prepared by a wildlife biologist with a degree in wildlife biology. The habitat management plan shall contain at a minimum the following:

1. A discussion of the project's impacts on fish and wildlife habitat.
2. A discussion of Federal and/or State management recommendations for species or habitats located on the site.
3. A discussion of measures proposed to preserve existing habitats.
4. A discussion of proposed measures that mitigate impacts of the project.
5. A discussion of ongoing management practices that will protect fish and wildlife habitat after the site has been fully developed, including proposed monitoring and maintenance programs.
6. Such further information as the Director determines is necessary to adequately assess the impact of the regulated activity upon the habitat or species.

B. Habitat management plans shall be sent to the WDF&W and appropriate State and Federal agencies for comment.

(Ord. 343 § 1, 2002).

**17.25.030 Regulation.**

A. Development proposals shall consolidate habitat and vegetated open space in linked corridors to provide connectivity to off-site wildlife habitat.

B. Where habitat for Federally listed endangered or threatened species is present, development proposals must comply with the provisions of ESA. Consultation with Federal agencies may be required. Development proposals in such areas shall be denied unless the applicant can show conclusively that the project would not result in the taking of a Federally listed species.

C. Protection of fish and wildlife habitat shall not be required where such habitat is isolated or severely fragmented due to previous development and urbanization. Where an applicant can demonstrate to the satisfaction of the Director, through submittal of a habitat assessment, that protection of on-site fish and wildlife habitat would not result in a viable long-term population, such protection measures shall not be required. For proposals subject to the Shoreline Master Program provisions in UPMC Title 18, the Director may not waive the requirement for protection of fish and wildlife habitat unless the proposal demonstrates how it will comply with the mitigation sequencing requirements per UPMC 18.25.070(C)(2) and achieve no net loss of shoreline ecological function.

The above language does not apply in the case of Federally listed endangered and threatened species and habitat areas that must be preserved pursuant to subsection (B) of this section.

D. All projects may be conditioned based on agency comments and the Director's evaluation of impact to fish and wildlife habitat and species. Projects may be denied if the proposal will result in extirpation or isolation of a regulated fish or wildlife population, species or habitat area.

E. Habitat assessments, habitat management plans and the provisions of this section shall not be required for fish habitat areas where all development is outside of prescriptive creek and/or wetland buffers per UPMC 17.25.040.

F. Additional laws and procedures used to implement this chapter shall include but not be limited to the Washington State Environmental Policy Act (Chapter 43.21C RCW), the City's environmental regulations, the Shorelines Management Act (Chapter 90.58 RCW), the City Shoreline Master Program and Use Regulations, the Federal Endangered Species Act and UPMC Title 22, Administration of Development Regulations.

G. Impacts to fish and wildlife habitat shall be considered and addressed during SEPA environmental review, if required.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).

**17.25.035 Habitat protection for Puget Sound.**

Habitat protection for Puget Sound shall be provided through education and existing laws, including but not limited to those referenced in UPMC 17.25.030(F).

(Ord. 343 § 1, 2002).

**17.25.040 Habitat protection for creeks.**

Regulated activities proposed along creeks shall provide for habitat protection.

A. Habitat protection for creeks shall be provided through riparian buffers.

1. Except as provided in this title, no development activity shall occur in riparian buffers.
2. The riparian buffer shall consist of undisturbed natural vegetation and shall be required along all creeks identified in Table 2. The buffer shall extend landward from the ordinary high water mark on each side of the water body a distance specified in Table 2.
3. The buffers specified in this section are the minimum buffers required. Larger buffers may be required to provide adequate protection for fish and wildlife habitat. Larger riparian buffers may be required when the Department demonstrates that:
  - a. A larger buffer is necessary to maintain viable populations of existing species; or
  - b. The adjacent land is susceptible to severe erosion and erosion control measures will not prevent adverse water quality impacts.
4. The riparian buffer of a creek shall not extend landward beyond an existing substantial linear improvement such as an improved road, dike, or levee, when an applicant can show that such existing improvement significantly reduces the impact the proposed activities would have on the creek.

B. Required Riparian Buffer Widths. Buffers shall be required as shown in Table 2.

**Table 2 - Riparian Buffer Widths**

Creek Name	Buffer Width
Chambers Creek	200'
Leach Creek	100'
Peach Creek	75'
Crystal and Day Creeks	25'
Non-Listed Creeks	10'

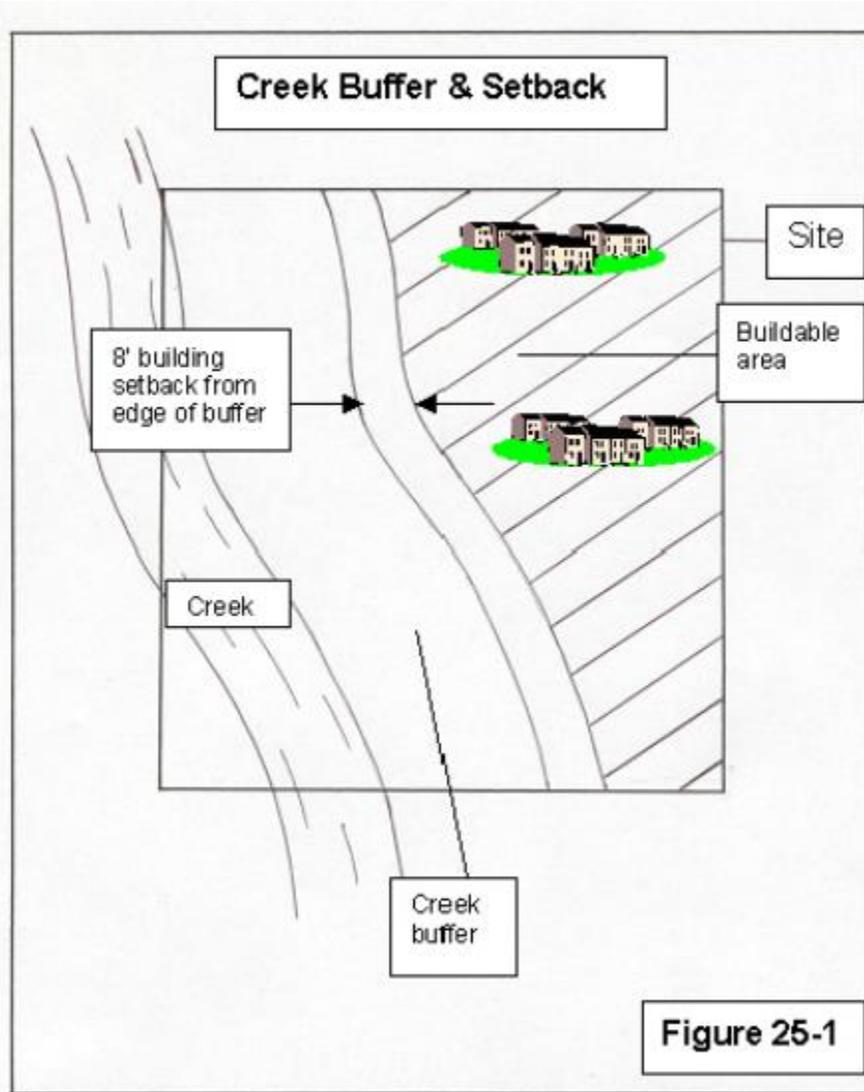
(Ord. 343 § 1, 2002).

**17.25.045 Riparian buffer regulations.**

A. Marking of the Buffer Area. The edge of the riparian buffer area shall be clearly staked, flagged and/or fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground, during construction.

B. Prior to final approval of any project requiring riparian buffers, the creek and required riparian buffer area shall be placed in a separate fish and wildlife habitat tract, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism pursuant to Department approval. The boundary between a fish and wildlife habitat tract, easement, land trust dedication or similarly preserved area and the adjacent land shall be identified with permanent signs. Sign location, size, wording and design specifications shall be subject to Department approval. All protected areas identified above shall remain undeveloped in perpetuity, except as they may be altered pursuant to this title.

C. Building Setback and Construction Adjacent to Buffer. A minimum construction setback of eight feet from the outside edge of the riparian buffer (as shown in Figure 25-1) shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage. The construction setback shall be required in addition to any buffer required pursuant to this chapter. Clearing, grading, and filling within the eight-foot construction buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.



D. Fencing from Farm Animals. Farm animals shall be permanently fenced from creek and buffer areas.

(Ord. 343 § 1, 2002).

**17.25.050 Allowable activities within riparian buffers.**

The following activities may occur within the riparian buffer, after notification to the department; provided, that BMP's are implemented and any required permits are obtained.

A. Removal of diseased trees and trees that present a hazard to improvements. Trees that present a hazard to improvements shall only be removed if trimming or other modification would not eliminate the hazard. Dead trees that provide habitat value and do not threaten existing improvements shall not be removed.

B. Repair of existing fences.

C. Reconstruction, repair or maintenance of existing docks and bulkheads as authorized and pursuant to shoreline management regulations, and as approved pursuant to a hydraulic permit from WDF&W and a section 404 permit from Army Corps of Engineers.

D. Construction, reconstruction, repair or maintenance of a pervious path, primarily running perpendicular to the creek, less than four feet in width, for purposes of private access to the shoreline.

E. Construction, reconstruction, repair or maintenance of public trails and accessory facilities. The width of the trail shall be added to the required buffer width where possible.

F. Reconstruction, repair or maintenance of existing roadways, bridges, rights-of-way, and utility lines where no feasible alternative exists, and where the development minimizes impacts on the stream and buffer area.

G. Placement of utility lines where no feasible alternative exists.

H. Construction or reconstruction of single-family, duplex or condominium units on a lot that was platted, or approved pursuant to a planned development district (PDD), prior to adoption of this ordinance. Structures shall be located outside of buffers in effect when the lot was created and shall be subject to fish and wildlife habitat regulations in effect at that time. A completed building permit application for the construction or reconstruction must be submitted within 5 years of final plat or PDD approval, or this exemption does not apply.

I. Enhancements to natural buffers consistent with education and restoration activities (such as re-vegetation or nest boxes).

(Ord. 343 § 1, 2002).

## Chapter 17.30

### FLOOD HAZARD AREAS

Sections:

- 17.30.005 Purpose.
- 17.30.010 Applicability and classification.
- 17.30.015 Mapping.
- 17.30.020 Regulation.

**17.30.005 Purpose.**

The purpose of this chapter is to regulate land use activity within flood hazard areas to avoid adverse impacts to on-site and off-site improvements, property and persons. Additionally, the purpose of this chapter is to protect water quality in the event flooding should occur.

(Ord. 343 § 1, 2002).

**17.30.010 Applicability and classification.**

A. Applicability. This chapter applies to regulated activities within flood hazard areas.

B. Classification. All flood hazard areas shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying flood insurance rate maps prepared by the Federal Emergency Management Agency (FEMA).

(Ord. 343 § 1, 2002).

**17.30.015 Mapping.**

Flood hazards are delineated on maps created by the Department.

(Ord. 343 § 1, 2002).

**17.30.020 Regulation.**

All development in flood hazard areas shall be according to City codes including, but not limited to International Building Code, City Public Works Standards and Chapter 14.15 UPMC, Flood Damage Prevention.

A. No activity that increases flooding impacts on adjacent properties shall be permitted.

B. No new development served by septic system shall be permitted in the floodway or floodplain.

(Ord. 343 § 1, 2002).

## Chapter 17.35

### WETLANDS

Sections:

- 17.35.005 Purpose.
- 17.35.010 Applicability and mapping.
- 17.35.015 Application and review procedure.
- 17.35.020 Wetland categories.
- 17.35.025 Delineation and wetland analysis requirements.
- 17.35.030 Exemptions.
- 17.35.035 Establishing buffers.
- 17.35.040 Buffer provisions.
- 17.35.045 Mitigation.
- 17.35.050 Residential density and on-site density transfer.
- 17.35.055 Alternative review process, Corps of Engineers Section 404 individual permits.

#### **17.35.005 Purpose.**

The purpose of this chapter is to avoid, or, in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands. Additionally, the purpose of this chapter is to maintain and enhance the biological and physical functions of wetlands with respect to water quality maintenance, storm water and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, education, and historic and cultural preservation. When avoiding impacts is not reasonable, mitigation should be implemented to achieve no net loss of wetlands in terms of acreage, function and value.

(Ord. 343 § 1, 2002).

#### **17.35.010 Applicability and mapping.**

This chapter shall apply to all areas satisfying the criteria for wetland presence. The Department has created wetland maps for general informational purpose. The presence or absence of wetlands on a site shall be based on field conditions observed at the site.

(Ord. 343 § 1, 2002).

#### **17.35.015 Application and review procedure.**

A. When any regulated activity is proposed on a site that may be within 200 feet of a wetland, an application containing the following shall be submitted to the Department:

1. Site plan(s);
2. Wetland analysis report and/or delineation prepared by a qualified wetland specialist, if required;
3. Mitigation plan, if required;
4. Such other information as the Director determines is necessary to adequately evaluate the impact of the regulated activity on the wetland and buffer.

B. The procedure to obtain approval for a regulated activity on a site that contains wetlands and/or buffers shall be in accordance with UPMC Title 22, Administration of Development Regulations, which provides for consolidated and timely permit review.

C. Review and Approval. Approval of a regulated activity on a site that contains wetlands and/or wetland buffers shall be granted upon a determination that the wetland analysis report and mitigation plan meet all applicable requirements and that the mitigation plan, monitoring program and contingency plan, if required, are tied to an acceptable financial guarantee. Except as specifically exempted, regulated activities within wetlands and wetland

buffers shall not be permitted unless the applicant demonstrates that mitigation sequencing is considered pursuant to the mitigation section of this chapter.

D. Expiration. Approvals shall be valid for a period of time equal to the time that any associated land use permit or approval is valid.

(Ord. 343 § 1, 2002).

**17.35.020 Wetland categories.**

Wetland categories shall be determined based upon the *Washington State Wetland Rating System for Western Washington*, current edition. Wetlands shall be generally categorized as follows:

A. Category I wetlands are:

1. Relatively undisturbed estuarine wetlands larger than one acre;
2. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands;
3. Bogs;
4. Mature and old-growth forested wetlands larger than one acre;
5. Wetlands in coastal lagoons; and
6. Wetlands that perform many functions well (scoring 70 points or more).

These wetlands:

1. Represent unique or rare wetland types;
2. Are more sensitive to disturbance than most wetlands;
3. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
4. Provide a high level of functions.

B. Category II wetlands are:

1. Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre;
2. Interdunal wetlands larger than one acre; or
3. Wetlands with a moderately high level of functions (scoring between 51 and 69 points).

C. 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 one acre.

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 wetlands have the lowest levels of functions (scoring less than 30 points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases to be improved upon. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002. Formerly 17.35.030).

**17.35.025 Delineation and wetland analysis requirements.**

Regulated activities shall comply with the following requirements:

A. The Department may require a delineation report per the *Washington State Wetland Identification & Delineation Manual*, latest edition, to determine if a regulated wetland is present on the site or to determine if the proposed activity is within 200 feet of a wetland. A wetland delineation report shall be prepared by a qualified wetland specialist. The delineation report indicates wetland and/or buffer boundaries that may extend onto the site. While the delineation report shall discuss all wetland areas within 200 feet of the site, only those boundaries within the site property lines need be marked in the field. A preliminary site inspection may be required by the Department to determine whether a delineation report is needed.

B. If the Department determines that a regulated wetland is on the site, or within 200 feet of the site so that a wetland buffer boundary may extend onto the site, then the Department shall require a wetland analysis report. A wetland analysis report must be prepared by a qualified wetland specialist. A wetland analysis report shall include the following:

1. Vicinity map;
2. When available, a copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service) and/or a City wetland inventory map identifying the wetlands on or adjacent to the site;
3. A site map setting forth all of the following:
  - a. Surveyed wetland boundaries based upon a delineation by a wetland specialist;
  - b. Site boundary property lines and roads;
  - c. Internal property lines, rights-of-way, easements, etc.;
  - d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
  - e. Contours at the smallest readily available intervals, preferably at two-foot intervals;
  - f. Hydrologic mapping showing patterns of surface water movement and known subsurface water movement into, through, and out of the site area;
  - g. Location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets;
  - h. The Department may require an air photo with overlays displaying the site boundaries and wetland delineation;
4. A report that includes the following:
  - a. Location information (legal description, parcel number and address);
  - b. Delineation report. The wetland boundaries on the site established by the delineation shall be staked and flagged in the field. If the wetland extends outside the site, the delineation report shall discuss all wetland areas within 200 feet of the site, but need only delineate those wetland boundaries within the site;
  - c. General site conditions including topography, acreage, and surface areas of all wetlands identified in the City wetland atlas and water bodies within one-quarter mile of the subject wetland(s);
  - d. Hydrological analysis, including topography, of existing surface and known significant subsurface flows into and out of the subject wetland(s);

e. Analysis of functional values of existing wetlands, including vegetative, faunal, and hydrologic conditions;

5. A summary of proposed activity and potential impacts to the wetland(s);
6. Recommended wetland category, including rationale for the recommendation;
7. Recommended buffer boundaries, including rationale for boundary locations;
8. Proposed on-site residential density transfer from wetlands and/or buffers to upland areas;
9. Site plan of proposed activity, including location of all parcels, tracts, easements, roads, structures, and other modifications to the existing site. The location of all wetlands and buffers shall be identified on the site plan.

C. The Department shall review and approve the wetland analysis report to determine the appropriate wetland category and buffer, and shall include the wetland in the City wetland maps and inventory if not already included. The Department shall approve the report's findings and proposals unless specific, written reasons are provided which justify not doing so.

(Ord. 343 § 1, 2002).

**17.35.030 Exemptions.**

In addition to the activities and uses listed in UPMC 17.10.035, the following activities are exempt from the provisions of this chapter. Such activities are not exempt from the Shoreline Master Program requirements in UPMC Title 18 unless explicitly named as an exempt activity under WAC 173-27-040, in accordance with UPMC 18.15.030.

A. Subject to BMPs, construction or reconstruction of single-family, duplex or condominium units on a lot that was platted, or approved pursuant to a planned development district (PDD), prior to adoption of the ordinance codified in this chapter. Structures shall be located outside of buffers in effect when the lot was created and shall be subject to the wetland regulations in effect at that time. A completed building permit application for the construction or reconstruction must be submitted within five years of final plat or PDD approval, or this exemption does not apply.

B. Pursuant to BMPs, construction of a one-family dwelling and regulated activities accessory to a one-family dwelling on a lot of record that was legally created prior to the effective date of this regulation shall be allowed in the buffer if all of the following provisions are met:

1. Development outside the buffer is not feasible.
2. The applicant demonstrates to the department that adverse impacts to wetlands will be mitigated to the greatest extent possible.
3. The residence and accessory structures are located to minimize intrusion into the buffer to the greatest extent possible.

C. Activities in artificial wetlands, except those artificial wetlands intentionally created for replacement, enhancement or similar purposes.

D. Activities affecting isolated Category III and IV wetlands less than 1,000 square feet that:

1. Are not associated with riparian areas or buffers.
2. Are not part of a wetland mosaic.
3. Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance identified by the City.

E. Placement of access roads, utility lines and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative and if construction activity is conducted in accordance with BMPs.

F. For legally established gardens and landscaped areas existing on the effective date of this regulation, activities to maintain their existing condition and appearance. Activities may include, but are not limited to, mowing lawns, weeding, harvesting and replanting of garden crops, pruning and planting of vegetation. Use of pesticides and chemical fertilizers is prohibited.

G. Activities designed for protection, maintenance and enhancement of wetlands, if approved by the Director.

H. Pursuant to BMPs, activities undertaken on the site of an existing holding pond, water quality facility or similar facility, intended to improve water quality, flow control or other primary function of the facility.

I. Public stormwater retention/detention facilities and stormwater conveyance facilities such as bioswales, open trenches and culverts not designed to drain wetlands may be constructed within Category II, III and IV wetland buffers; provided, that the following conditions are met:

1. No untreated stormwater is released from the facility into the wetland or buffer;
2. The applicant demonstrates that water levels within the wetland will be maintained at pre-existing levels;
3. Water levels are monitored annually to ensure that pre-existing functions of the wetland are not significantly lost through fluctuations in wetland hydrology;
4. Maintenance activity is limited to removal of invasive vegetation and/or removal of sediment accumulation at inflow structures in a manner acceptable to the Department;
5. All construction activity is conducted in accordance with accepted BMPs. This conditional exemption would not apply in situations where there are threatened or endangered species, or sensitive plants, unless approved by the State Department of Fish and Wildlife or Department of Natural Resources, respectively. All permits from other regulatory agencies must be obtained.
6. In shoreline jurisdiction, stormwater facilities shall not be located within the buffer of Category II wetlands unless there is no other feasible option. In Category III and IV wetland buffers within shoreline jurisdiction, these facilities shall be limited to the outer 25 percent of the buffer unless there is no other feasible option.

J. A utility line may be placed in an underground trench within a Category II, III or IV wetland or its buffer, although generally, boring is preferred to trenching unless infeasible for a specific proposal. Such activities are not exempt from the provisions of this chapter when located in an associated wetland as defined in UPMC 18.10.020. These activities should be discouraged where there is a high water table and be limited to the outer 25 percent of buffers unless there is no feasible alternative. Boring and trenching should not be permitted in Category II wetlands or their buffers unless there is no other option, due to the lengthy recovery time from disturbance in such wetlands. There must be no resulting changes in pre-construction contours, and trench excavation materials that are temporarily sidecast must be stabilized to prevent erosion and sedimentation. All sidecast materials shall be replaced within the trench or removed after 90 days, unless the Department grants an extension. The trench shall be the minimum size required to construct the utility line. The top 12 inches of the trench shall be backfilled with topsoil from the trench excavation. Trenches in wetlands shall be backfilled with wetland topsoil from the excavation. Trench excavation should be restricted to the dry season. All permits from other regulatory agencies must be obtained.

K. Subject to BMPs, placement of utility lines which do not require excavation or utility poles, in any part of a buffer for a Category III or IV wetland. They may be placed in a buffer for a Category I or II wetland, provided they are not located closer than one-half the buffer width from the edge of the wetland.

L. Public park improvements, including construction of public trails and associated viewing platforms, subject to BMPs, provided no net loss of wetlands occurs.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002. Formerly 17.35.020).

**17.35.035 Establishing buffers.**

A. Buffers shall be measured perpendicularly to the wetland edge. Buffer widths shall be determined according to Table 3 and the provisions of this section.

**Table 3 – Wetland Buffer Widths**

	<b>Category I</b>	<b>Category II</b>	<b>Category III</b>	<b>Category IV</b>
High Impact Land Use	200' Buffer	150' Buffer	75' Buffer	50' Buffer
Low Impact Land Use	150' Buffer	100' Buffer	50' Buffer	35' Buffer

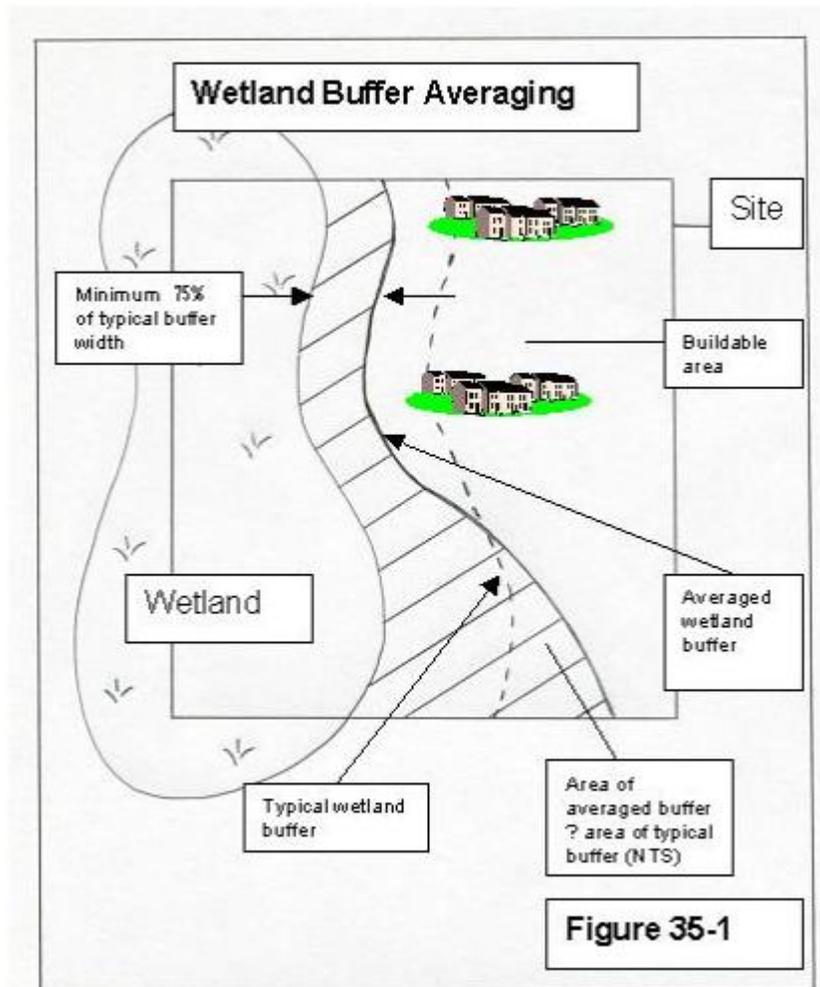
B. The Director shall determine that a use is either high impact or low impact based upon the following performance standards. A proposed use must satisfy five of the following seven criteria to be considered low impact. All other uses shall be considered high impact.

1. No more than 30 percent of the site may be covered with impervious surfacing.
2. Pier, piling or pin foundation systems or other measures that reduce on-site soil compaction shall be used where appropriate.
3. A minimum of 60 percent of the site shall be retained in an undisturbed naturally vegetated state.
4. Permeable paving systems shall be implemented where appropriate.
5. Measures shall be taken to ensure that use of pesticides, herbicides and fertilizers incompatible with wetland functions does not occur.
6. Bio-retention features shall be employed. Examples include rain gardens, roof gardens, tree filter boxes and similar vegetated systems.
7. Roads, driveways and parking areas shall be minimized. Roads and driveways shall primarily run perpendicular to the wetland edge. Parking areas shall be located the maximum distance feasible from the buffer edge.

C. An applicant may propose an alternative plan for achieving low impact development. The Director and the City wetland specialist shall review the plan. If the alternative plan is determined to provide greater than or equal benefit to wetland functions than could be achieved by following the provisions of subsection (B) of this section, development activity implemented subject to such plan shall be considered low impact and a low impact buffer, per Table 3, shall be permitted.

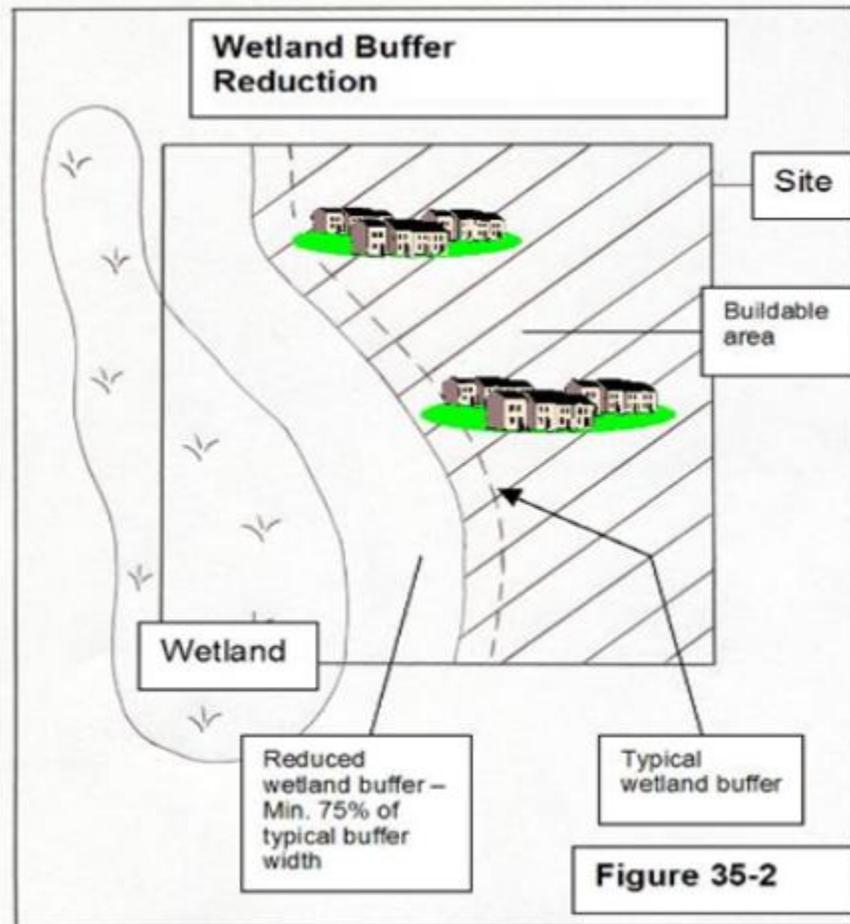
D. Buffer widths may be modified by averaging or reducing. Buffer averaging and buffer reduction shall not be applied to the same wetland.

1. Buffer width averaging may be allowed only where the applicant demonstrates the following:
  - a. The wetland contains variations in sensitivity due to existing physical characteristics; and
  - b. Width averaging will not adversely impact the wetland; and
  - c. The total buffer area after averaging is no less than the buffer area prior to averaging; and
  - d. The minimum buffer width will not be less than 75 percent of the width established in subsection (A) of this section. See Figure 35-1.



2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a 25 percent reduction in the buffer width established in subsection (A) of this section. See Figure 35-2.

- a. The proposed buffer area is extensively vegetated and has less than 15 percent slopes, and the reduction will not result in adverse impacts to the wetland; or
- b. The project includes a buffer enhancement plan, as part of the mitigation required by UPMC 17.35.045. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or
- c. The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan that ensures the reduction will not result in adverse impacts to the wetland.



E. The Department may require increased buffer width when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

1. A larger buffer is necessary to maintain viable populations of existing species; or
2. The wetland is used by species listed by the Federal government or the State as endangered or threatened species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas; or
3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
4. The adjacent land has minimal vegetative cover or slopes greater than 15 percent.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).

**17.35.040 Buffer provisions.**

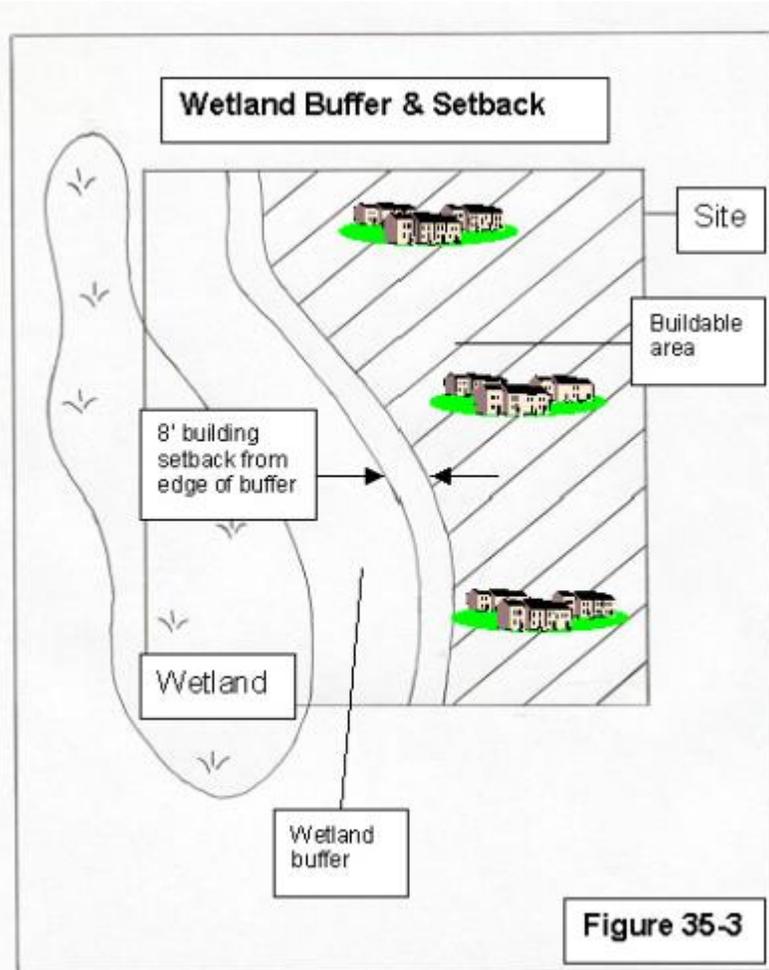
A. When buffer boundaries have been determined they shall be marked in the field by a licensed surveyor. The markers shall be clearly visible, durable, and permanently affixed to the ground.

B. Prior to final project approval, the part of the wetland and/or buffer that is on the site shall be placed in a separate wetland tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the City. All wetland tracts, protective

easements, land trust dedications and other similarly preserved areas shall remain undeveloped in perpetuity, except as they may be altered pursuant to this chapter.

C. Prior to final project approval of any wetland application, the common boundary between a wetland tract, protective easement, land trust dedication, or other similarly preserved area and the adjacent land shall be identified with permanent signs and/or fencing. Sign and fencing locations, wording, and size and design specifications shall be as required by the Department.

D. A building setback line of eight feet shall be required from the outside edge of the buffer (See Figure 35-3). The eight-foot building setback shall be required regardless of the width of the buffer. The eight-foot building setback shall be considered a minimum setback and shall not be construed to reduce or eliminate additional setbacks as required by another regulation, code, or State or Federal law.



E. At any time after a wetland tract, protective easement, land trust dedication, or other similarly preserved area has been established, the owner may submit a delineation report to the Department. If the owner can demonstrate that a natural boundary change has occurred, or that a wetland no longer exists, the wetland tract, protective easement, land trust dedication, or other similarly preserved area may be altered or eliminated, as appropriate. If a wetland boundary has changed or a wetland has been eliminated due wholly or in part to illegal activity, a change or elimination of wetland tract, protective easement, land trust dedication, or other similarly preserved area shall not be permitted.

F. A wetland tract, protective easement, land trust dedication, or other similarly preserved area is not required for utility lines in easements on lands not owned by the jurisdiction conducting the regulated activity.

G. Except as otherwise specified, buffers shall be retained in a natural condition.

H. The wetland buffer shall not extend away from the wetland beyond an existing substantial linear improvement such as an improved road, dike, or levee, where an applicant can show that such existing improvement significantly reduces the impact the proposed activities would have on the wetland.

I. The Department may require protection measures or erosion control measures such as temporary or permanent fencing to provide for protection of a wetland and buffer when any regulated activities are proposed on a site, but are not proposed within a wetland and/or buffer.

(Ord. 343 § 1, 2002).

**17.35.045 Mitigation.**

Regulated activities within wetlands and buffers shall be mitigated pursuant to this chapter. Where SEPA environmental review is required, a threshold determination may not be made prior to Department review of the mitigation plan.

A. All activities in wetlands and/or buffers shall be mitigated according to this section and the Department of Ecology manual: *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (Version 1, Publication No. 06-06-011a, March 2006) and *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication No. 06-06-011b, March 2006). Except as specifically exempted, regulated activities shall not be permitted within wetlands and/or buffers unless an applicant demonstrates that all reasonable attempts have been made to avoid impacts to the wetland and/or buffer. Mitigation is considered in order of preference as noted below with (1) being most preferable and (5) being the least preferable. Applicants must establish that mitigation has been considered in order of preference prior to permit issuance. There may be circumstances when an alternative mitigation strategy is preferable.

1. Avoiding the impact altogether by not taking a certain action or parts of actions within the wetland and/or buffer;
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 reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
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 or providing substitute resources or environments.

Mitigation for individual actions may include a combination of the above measures. Monitoring may be a part of one or more of the above measures.

B. Regulated activities which occur in buffers, and which will not eliminate wetland habitat, shall be mitigated according to a mitigation plan approved by the Department. A mitigation plan for regulated activities in buffers shall contain the following components:

1. General goals of the mitigation plan;
2. Approximated site topography before and after alteration;
3. Location of proposed mitigation area;
4. General hydrologic patterns on the site before and after construction;

5. General plant selection and justification, planting instructions, and approximate planting sequencing and schedule;

6. A maintenance plan;

7. A monitoring and contingency plan;

8. A financial guarantee to ensure maintenance and/or implementation of the contingency plan. The financial guarantee must be equal to or greater than 20 percent of the estimated cost of the mitigation work, but in no case shall be less than is necessary to implement the contingency plan.

C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands. Compensatory mitigation shall be accomplished per the Department of Ecology manual: *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, current edition. The above-referenced document was developed jointly by six agencies including the Washington State Department of Ecology and Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These agencies, together with the City, have regulatory authority over wetland filling and related mitigation. Consistency with the above-referenced document will ensure that submitted plans are adequately detailed for review by all responsible agencies. Replacement ratios for compensatory mitigation shall be pursuant to the subsection below.

1. When regulated activities occur in wetlands, the applicant shall preserve, restore, create, or enhance equivalent areas of wetlands. Equivalent areas shall be determined according to acreage, functional value, type, location, time factors, and projected success. No overall net losses shall occur in wetland acreage, functions and/or values, and any restored, created, or enhanced wetland shall be as persistent as the wetland it replaces. Buffers pursuant to UPMC 17.35.035 shall be provided for created, restored or enhanced wetlands.

2. When an applicant proposes to alter or eliminate wetland, the applicant shall replace, restore and/or enhance acreage at the following ratios:

**Table 4 – Wetland Mitigation Replacement Ratios\***

<b>Category and Type of Wetland</b>	<b>Creation or Re-establishment</b>	<b>Rehabilitation</b>	<b>Enhancement</b>	<b>Preservation</b>
Category I: Bog, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

\*Ratios read as follows: Acreage replaced: Acreage lost

3. Ratios provided are for proposed projects with in-kind replacement that occurs prior to regulated activities on the site. Replaced, restored or enhanced wetlands must be located within the same drainage basin as the filled wetland, but are not required to be located on the same property. The Department may increase the ratios under the following circumstances:

- a. Uncertainty as to the probable success of the proposed restoration, enhancement or creation; or
- b. Significant period of time between destruction and replication of wetland functions; or
- c. Projected losses in wetland functional value; or
- d. Out-of-kind compensation.

4. The Department may allow the minimum acreage replacement ratio to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise, which demonstrate that no net loss of wetland function or value results from the decreased ratio. In no case shall the Department approve a ratio less than 1:1.

5. In-kind compensation shall be provided except where the applicant demonstrates that:

- a. Greater functional and habitat values can be achieved through out-of-kind mitigation; or
- b. The wetland system is already significantly degraded; or
- c. Problems such as the presence of exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation infeasible; or
- d. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

D. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance "Wetland Mitigation in Washington State Parts I and II" (Ecology Publication No. 06-06-01 1a-b, Olympia, WA, March, 2006), the Administrator may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Operational Draft," (Ecology Publication No. 10-06-011, Olympia, WA, February 2011, or as revised).

E. Financial Guarantees. Mitigation shall be accomplished prior to the start of any regulated activity that impacts wetland area.

1. If development permits are issued prior to completion of mitigation work, financial guarantees shall be required to ensure mitigation is completed. Financial guarantees shall be 125 percent of the estimated cost of implementation of the mitigation plan.
2. Appropriate financial guarantees shall be in place to ensure that maintenance, monitoring and/or contingency plans shall be accomplished. Financial guarantees for contingency plans should be 20 percent of the cost of implementation of the mitigation plan.

F. Wetland mitigation banking may be permitted as a flexible alternative to standard compensatory mitigation. Wetland mitigation banking shall be conducted per the requirements of Chapter 173-700 WAC.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
  - a. The bank is certified under State rules;
  - b. The 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, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

G. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with State and Federal rules. The program should address:

1. The identification of sites within the City that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion; and

2. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

H. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to State and Federal rules.

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

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

1. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publication No. 09-06-32, Olympia, WA, December 2009);

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

3. Mitigation according to subsection (E) of this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;

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

5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in subsection (J) of this section;

6. The plan shall be reviewed and approved as part of overall approval of the proposed use, Wetlands Guidance for Small Cities Western Washington Version Page A-23;

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

8. Mitigation guarantees shall meet the minimum requirements as outlined in subsection (B)(8) of this section;

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

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

J. Monitoring Program and Contingency Plan.

1. If the wetland mitigation plan includes compensatory mitigation, a monitoring program shall be implemented to determine the success of the compensatory mitigation project.
2. Specific criteria shall be provided for evaluating the mitigation proposal relative to the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.
3. A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails.
4. Requirements of the monitoring program and contingency plan are as follows:
  - a. During monitoring, use scientific procedures for establishing the success or failure of the project;
  - b. For vegetation determinations, permanent sampling points shall be established;
  - c. Vegetative success equals 80 percent per year survival of planted trees and shrubs and 80 percent per year cover of desirable understory or emergent species;
  - d. Submit monitoring reports of the current status of the mitigation project to the Administrator. The reports are to be prepared by a qualified wetland specialist and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:
    - (1) At time of construction;
    - (2) Thirty days after planting;
    - (3) Early in the growing season of the first year;
    - (4) End of the growing season of first year;
    - (5) Twice the second year;
    - (6) Annually;
  - e. Monitor a minimum of three and up to 10 growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;
  - f. If necessary, correct for failures in the mitigation project;
  - g. Replace dead or undesirable vegetation with appropriate plantings;
  - h. Repair damages caused by erosion, settling, or other geomorphological processes;
  - i. Redesign mitigation project (if necessary) and implement the new design;
  - j. Correction procedures shall be approved by a qualified wetland specialist and the City's environmental official.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).

**17.35.050 Residential density and on-site density transfer.**

The purpose of on-site density transfer is to cluster development in a manner that provides protection for wetlands and allows transfer of residential density from a wetland and/or wetland buffer area to an area on the same site that

is neither wetland nor buffer. Those portions of the wetland and/or wetland buffer in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

A. For sites containing regulated wetland buffer areas, full density credit may be transferred from the buffer area to the non-buffer area.

B. For sites containing regulated wetland areas, density transfer shall be calculated from the following table:

**Table 5 – On-Site Density Transfer**

Percentage of site in wetland	Amount of credit
0–25%	75%
26–50%	50%
50–100%	25%

C. If an on-site density transfer would result in the creation of one or more lots smaller than the minimum lot size specified for lots within a conventional plat, the subdivision shall be designed and processed in accordance with the Design Standards and Guidelines for Small Lot and Multifamily Development adopted by reference in Chapter 19.53 UPMC.

(Ord. 566 § 1, 2010; Ord. 343 § 1, 2002).

**17.35.055 Alternative review process, Corps of Engineers Section 404 individual permits.**

When an Army Corps of Engineers Section 404 permit is required for a project involving wetlands, the Army Corps permitting process may be substituted for the City permitting process, except when the project is located within an associated wetland as defined in UPMC 18.10.020. If a proposal reviewed and conditioned by the Corps satisfies the intent of this chapter, no further wetland review shall be required by the City. All permits and approvals required by other City development regulations shall be required.

(Ord. 630 § 1 (Exh. A), 2013; Ord. 343 § 1, 2002).