

Ordinance No. 3805

(Amending or Repealing Ordinances)

CFN=961 – Capital Facilities Plan
Passed – 8/15/06
Critical Areas Ordinance - Revision

Amends Ords. 3439;3600;3643;3746;3770

ORDINANCE NO. 3805

AN ORDINANCE of the city council of the city of Kent, Washington, amending chapter 11.06 of the Kent City Code, entitled "Critical Areas," to provide for wetland categorization and wetland buffer widths as required pursuant to a decision by the Central Puget Sound Growth Management Hearings Board, making other related amendments, and amending Kent City Code section 15.08.400 for consistency with these critical areas amendments.

RECITALS

A. On April 19, 2005, the Kent City Council passed its Ordinance No. 3746, which enacted new city of Kent critical areas regulations, pursuant to the state Growth Management Act (GMA). The council passed these regulations only after an extended period of scientific study, regulatory review, and community participation. The recitals embodied in Ordinance No. 3746 describe this process in detail and are incorporated into this ordinance by this reference.

B. Subsequent to enactment of Ordinance No. 3746, the state of Washington, through the Department of Ecology (DOE) and the Department of Community, Trade, and Economic Development (CTED), filed an action before the Central Puget Sound Growth Management Hearings Board (GMHB) appealing certain aspects of the city's ordinance. The state's appeal centered on the city council's application of best available science requirements under the GMA with respect to the ordinance's 3-tiered wetlands classification system, wetland buffer widths, and also the ordinance's treatment of certain artificially created wetlands. The state argued that the city should have used a 4-tiered wetlands classification

system with larger wetland buffers and with a stronger focus on wetland and buffer habitat impacts.

C. The city opposed this appeal and argued that its ordinance was consistent with the GMA and adequately incorporated BAS, particularly when balancing other GMA goals.

D. One year after passage of the city's ordinance, the GMHB issued a decision and order on April 19, 2006, finding in favor of the state and specifically finding that the appealed portions of the city's critical areas ordinance did not comply with the GMA. The GMHB decided that the city should not have used the 3-tiered classification system, should have incorporated larger buffer widths, and should amend its treatment of artificially created wetlands to comply with GMA requirements.

E. The city appealed the GMHB decision to the King County Superior Court. Subsequently, all parties sought direct review before the state Court of Appeals, Division I. That court granted direct review on July 28, 2006. The appeal of the GMHB decision is currently pending before the Court of Appeals, but a final decision is not expected for many months, and if appealed again by either party from the Court of Appeals to the Washington State Supreme Court, may not be finally resolved for a period of years. As a result, the controversy, and the firmly held beliefs of all parties, remain active and under dispute.

F. During the pending period of this appeal, however, certain state agencies have relied on the GMHB's finding that the city does not comply with the GMA. In particular, the Washington State Public Works Board sent a letter to the city on May 24, 2006, stating that, because of the GMHB's finding of non-compliance, the city was not eligible to apply for grants from the Public Works Trust Fund. The city had, at that time, a pending application for a \$7 million dollar low interest loan, and city staff, based on previous history of applications and awards through this agency, had a firm belief that the Public Works Board would likely award most, if not all, the requested amount. Moreover, city staff intended to use this award as seed money to obtain another \$10 million from other state grant and loan funds through agencies like the Freight Mobility

Strategic Action Board (FMSIB) and the Transportation Improvement Board (TIB).¹

G. Other city grant and loan resources were similarly threatened. The InterAgency Committee (IAC) regularly authorized grants to the city's parks and recreation system. The IAC awards its grants on a point score formula based on the answers provided by applicant jurisdictions. These grants and the attendant scores are highly competitive, and score differences of as little as a few hundredths of a point can make a substantial difference in an applicant's final standing in the grant award queue. One of the questions asked in these standardized application forms is whether or not the applicant agency is in compliance with the GMA. An IAC determination that the city did not comply with the GMA based on the GMHB's decision and order would also severely affect the city's grant eligibility.

H. Even though the city council maintains that its Ordinance No. 3946 did in fact comply with the GMA, and even though the city intends to vigorously appeal the GMHB decision, the city council, in an effort to maintain its eligibility with these agencies and in an effort to demonstrate its willingness to comply with the GMHB, with the direction of DOE and CTED, and with the Office of the Governor, has determined to amend its critical areas ordinance to comply with the GMHB decision during the pendency of the city's appeal of the decision.

I. As a result, the city council directed staff, on July 5, 2006, to consult with DOE and CTED, and to develop amendments to the city's critical areas regulations that would comply with the GMA. City staff has entered into these consultations with staff from the state agencies, has obtained their approval of the amendments contained in this ordinance, and by this ordinance, amends the city's critical areas regulations so as to comply with the GMHB decision and order and with the GMA.

J. Having received staff approval of the amendments contained in this ordinance, the city council, after providing appropriate public notice, and

¹ Because of a technical error in the applicable Washington Administrative Code section, the board subsequently reversed this decision and allowed the city to apply. However, were it not for this technicality, the city could not have applied for Public Works Trust Fund loans

after completing appropriate State Environmental Policy Act (SEPA) review, has determined to enact this ordinance, which is intended to obtain compliance with the GMA during the period that the Ordinance 3946 appeal is under review.

K. The city conducted and completed environmental review under the State Environmental Policy Act (SEPA), issuing an Addendum to its Comprehensive Plan Environmental Impact Statement (EIS) on August 7, 2006. Additionally, on July 6, 2006, the city provided notification under RCW 36.70A.106 to the state of Washington on the city's proposed amendment to the critical areas ordinance, and sought expedited review under RCW 36.70A.106(3)(b). Expedited review was granted by the Department of Community Trade and Economic Development on July 24, 2006.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Chapter 11.06 of the Kent City Code, entitled "Critical Areas," is amended to read as follows:

Chapter 11.06

CRITICAL AREAS

Article I. Procedural & Administrative Provisions

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Sec. 11.06.040. Exemptions.

A. The following activities performed on sites containing critical areas as defined by this chapter shall be exempt from the provisions of these regulations:

1. Conservation or preservation of soil, water, vegetation, fish, and other wildlife that does not entail changing the structure or functions of the critical area.

2. Existing and ongoing agricultural activities, as defined in this chapter.

3. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to, grass-lined swales, irrigation and drainage ditches, retention or detention facilities, and landscape features, except wetlands or streams created as mitigation or that provide critical habitat for anadromous fish.

4. Operation, maintenance, repair, and reconstruction of existing structures, roads, trails, streets, utilities, and associated structures, dikes, levees, or drainage systems; provided, that reconstruction of any facilities or structures is not "substantial reconstruction," may not further encroach on a critical area or its buffer, and shall incorporate best management practices.

5. Normal maintenance, repair, and reconstruction of residential or commercial structures, facilities, and landscaping; provided, that reconstruction of any structures may not increase the previous footprint, and further provided that the provisions of this chapter are followed.

6. The addition of floor area within an existing building which does not increase the building footprint.

7. Site investigative work and studies that are prerequisite to preparation of an application for development including soils tests, water quality studies, wildlife studies, and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies.

8. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, birdwatching, boating, swimming, fishing, and hiking, that will not have a significant effect on the critical area.

9. The harvesting of wild crops and seeds to propagate native plants in a manner that is not injurious to natural reproduction of such crops, and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the critical area by changing existing topography, water conditions, or water sources.

10. Emergency activities necessary to prevent an immediate threat to public health, safety, property, or the environment which requires immediate action within a time too short to allow full compliance with this chapter as determined by the department.

11. Development of lots vested and/or legally created through a subdivision, short subdivision, or other legal means and approved prior to the effective date of the ordinance codified in this chapter.

~~12. Previously legally filled wetlands or wetlands accidentally created by human actions prior to July 1, 1990. The latter shall be documented through photographs, statements, and/or other conclusive evidence and be agreed to by the director.~~

123. Removal of invasive plants and planting of native vegetation in wetland and stream buffers for the purpose of enhancing habitat values of these areas pursuant to an approved mitigation plan.

134. Stabilization of sites where erosion or landsliding threatens public or private structures, utilities, roadways, driveways, or publicly maintained trails or where erosion or landsliding threatens any lake, stream, wetland, or shoreline. Stabilization work shall be performed in a manner which causes the least possible disturbance to the slope and its vegetative cover. This activity shall be performed in accordance with approved site stabilization plans.

145. Minor activities not mentioned above and determined in advance and in writing by the director to have minimal impacts to a critical area.

B. Notwithstanding the exemptions provided by this subsection, any otherwise exempt activities occurring in or near a critical area or its buffer shall comply with the intent of these standards and shall consider onsite alternatives that avoid or minimize significant adverse impacts. Emergency activities shall mitigate for any impacts caused to critical areas upon abatement of the emergency.

C. With the exception of emergency actions, and existing and ongoing agricultural activities, no property owner or other entity shall undertake exempt activities prior to providing fourteen (14) days' notice to the director and receiving confirmation in writing that the proposed activity is exempt. In case of any question as to whether a particular activity is exempt from the provisions of this section, the director's determination shall prevail and shall be confirmed in writing.

D. Legally established uses, developments, or structures that are nonconforming solely due to inconsistencies with the provisions of this chapter shall not be considered nonconforming pursuant to KCC 15.08.100. Reconstruction or additions to existing structures which intrude into critical areas or their buffers shall not increase the amount of such intrusion except as provided by KCC 11.06.100(A). Once a non-conforming use is discontinued for a period of one-year, that use cannot be re-established.

E. The exemptions established by this section shall apply only to activities that are otherwise permitted by federal, state, and/or local laws.

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Article II. Definitions

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Sec. 11.06.193. Corridor. *Corridor* means a continuous strip of undisturbed vegetation connecting two (2) critical areas, protected in perpetuity from development via a restrictive covenant in the form of a Conservation Easement, Sensitive Area Easement, or Sensitive Area Tract.

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Sec. 11.06.387. Natural heritage wetland. *Natural heritage wetland* means a wetland identified by the Washington State Department of Natural Resources Natural Heritage Program as either high quality undisturbed wetlands or wetlands that support state threatened, endangered, or sensitive plant species. Natural heritage wetland inventories are available from the Washington State Department of Natural Resources.

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Sec. 11.06.530. Wetland. *Wetland or wetlands* means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate conversion of wetlands. For identifying and delineating wetlands, the Washington State Wetland Identification and Delineation Manual (Ecology, 1997) shall be used. Wetlands determined prior converted cropland (PCC) by federal agencies may still be considered wetlands by the city of Kent. If these wetlands meet requirements of the Washington State Department of Ecology Manual, the wetlands shall be regulated, and the critical area shall be protected like any other wetland pursuant to this code.

Sec. 11.06.533. Wetland category. *Wetland category* means the numeric designation (I through IV) assigned to a wetland to provide an indication of that wetland's overall function and value. Wetland categories rank the city's wetlands from highest (Category I) to lowest (Category IV).

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Article III. General Mitigation and Monitoring

Sec. 11.06.550. Mitigation standards.

A. Mitigation sequencing shall be avoidance, minimization, mitigation. Any proposal to impact a critical area shall demonstrate that it is unavoidable or will provide a greater function and value to the critical area.

B. Adverse impacts to critical area functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in this chapter. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:

1. All feasible and reasonable measures have been taken to reduce impacts and losses to the critical area, or to avoid impacts where avoidance is required by these regulations; provided, that avoidance is not required where an applicant proposes to fill and replace a hydrologically isolated emergent Category III or IV~~class 3~~ wetland less than five thousand (5,000) square feet in size pursuant to KCC 11.06.610(C). For the purposes of this section a hydrologically isolated wetland shall be determined by the U.S. Army Corps of Engineers.

2. The restored, created, or enhanced critical area or buffer will at a minimum be as viable and enduring as the critical area or buffer area it replaces.

3. In the case of wetlands and streams, no overall net loss will occur in wetland or stream functions and values. The mitigation shall be functionally equivalent to the altered wetland or stream in terms of hydrological, biological, physical, and chemical functions.

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Article IV. Wetlands

Sec. 11.06.580. Wetlands rating system.~~The following rating system is hereby adopted for the purpose of determining the size of wetland buffers and for the review of permits under this chapter. For the purposes of this section, the U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS-79-31 (Cowardin et al., 1979) contains the descriptions of wetland classes and subclasses.~~

~~A. Category 1 wetlands. Wetlands which meet any of the following criteria:~~

~~1. The documented presence of species proposed or listed by the federal or state government as endangered, threatened, or other species identified by the State Department of Natural Resources through its natural heritage data or by~~

~~the State Department of Wildlife as a priority species, or the presence of critical or outstanding actual habitat for those species.~~

~~2. Wetlands equal to or greater than two (2) acres in size having forty (40) percent to sixty (60) percent permanent open water in dispersed patches with two (2) or more classes of vegetation.~~

~~3. Wetlands equal to or greater than ten (10) acres in size and having three (3) or more wetland classes, one of which is open water.~~

~~4. The presence of bogs or fens.~~

~~B. Category 2 wetlands. Wetlands which meet any of the following criteria, and which are not Category 1 wetlands:~~

~~1. Wetlands greater than one (1) acre in size.~~

~~2. Wetlands equal to or less than one (1) acre in size and having three (3) or more wetland classes.~~

~~3. Wetlands equal to or less than one (1) acre, but greater than 1000 square feet, that have a forested wetland class.~~

~~4. Wetlands that contain the documented presence of heron rookeries or raptor nesting sites.~~

~~C. Category 3 wetlands. Wetlands which meet the following criteria, and which are not Category 1 or 2 wetlands.~~

~~1. Wetlands that are equal to or less than one (1) acre in size and that have two (2) or fewer wetland classes.~~

A. Wetlands are classified as Category I, II, III, or IV based on the Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology Publication 04-06-025, published August 2004.

B. Wetland rating categories shall not recognize illegal modifications that have been made to a wetland or its buffers.

Sec. 11.06.590. Determination of wetland boundary by delineation.

A. Delineations shall be required when a development is proposed on property containing wetlands identified on the city of Kent wetland inventory or when any other credible evidence may suggest that wetlands could be present. Delineations shall also be performed when the evidence suggests that buffers from wetlands on adjacent properties may impact the proposed development.

B. The exact location of the wetland boundary shall be determined through the performance of a field investigation applying the wetland definition of this chapter. An applicant may request the department to perform the delineation, provided the applicant pays the department for all necessary expenses associated with performing the delineation. The department shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. Where the applicant has provided a delineation of the wetland boundary, the department shall verify the accuracy of, and may render adjustments to, the boundary delineation. The decision of the department may only be appealed pursuant to procedures outlined in this chapter.

C. The delineation shall contain the following information:

1. A written assessment and accompanying maps of wetlands and buffers within ~~one hundred (100)~~ two hundred seventy-five (275)-feet of the project area, including the following information at a minimum: all known wetland inventory maps (including a copy of the city of Kent wetland inventory map); wetland delineations and required buffers; existing wetland acreage; wetland category; vegetative, faunal, and hydrologic characteristics; soil and substrate conditions; and topographic data.

2. A discussion of measures, including avoidance, minimization, and mitigation proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance onsite habitat and wetland functions.

D. A wetland delineation which has been confirmed by the department pursuant to SEPA review for a proposed project shall be binding upon the city and the applicant. If a wetland delineation report has not gone through SEPA review as a part of the application process, and the city has approved a wetland delineation report for another purpose, the wetland delineation report shall be valid for a period of two (2) years from the date of the approved report.

Sec. 11.06.600. Wetland buffers and building setback lines.

A. *Standard buffer widths.*

1. Standard buffers shall be determined by the wetland category pursuant to KCC 11.06.580 and the Habitat Score from the Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology Publication 04-06-025, published August 2004. Standard buffers shall be applied to wetlands unless otherwise reduced pursuant to subsection (B) of this section, increased pursuant to subsection (C) of this section, or otherwise adjusted under other provisions of ch. 11.06 KCC. Standard buffers (in feet), and reduced buffers permitted pursuant to subsection (B) of this section, are provided in the following table:

Habitat Score (Points)	<20	<20 w/ 11.06.600(B)	20-28	20-28 w/ 11.06.600(B)	29+	29+ w/ 11.06.600(B)
Category I	125	100	150	125	225	200
Category II	100	75	125	110	200	175
Category III	75	60	125	110	n/a	n/a
Category IV	50	40	n/a	n/a	n/a	n/a

2. Wetland buffer zones shall be required for all regulated activities adjacent to wetlands. Any wetland created, restored, or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field.

The width of the wetland buffer zone shall be determined according to the rating assigned to the wetland.

Wetland Category	Standard Buffer
1	100 feet
2	50 feet
3	25 feet

3. Bogs shall have a standard buffer of two hundred fifteen (215) feet. However, a twenty-five (25) foot reduction is allowed with implementation of subsection (B) of this section.

4. Natural heritage wetlands shall have a standard buffer of two hundred fifteen (215) feet. However, a twenty-five (25) foot reduction is allowed with implementation of subsection (B) of this section.

B. *Reduced buffer widths.* Standard buffer widths as noted in subsection (A) of this section may be reduced, as provided in that subsection's table, if the applicant implements all applicable mitigation measures identified in the following table:

Examples of Disturbance	Activities and Uses that Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking Lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Toxic runoff*	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential Areas • Application of Ag Pesticides • Landscaping 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150-feet of wetlands • Apply integrated pest management
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns

<u>Pets and human disturbance</u>	• <u>Residential areas</u>	• <u>Use privacy fencing; plant dense native vegetation to delineate buffer edge and discourage disturbance; place wetland and buffer/corridor in a separate tract or easement</u>
<u>Dust</u>	• <u>Tilled fields</u>	• <u>Use best management practices to control dust</u>
<ul style="list-style-type: none"> • <u>These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present.</u> • <u>This is not a complete list of measures. Other similar measures may be proposed by the applicant for approval by the director or his/her designee.</u> • <u>Applicant shall discuss all applicable mitigation measures in the mitigation plan, including benefits to the wetlands for those used and rationale for not including specific measures.</u> 		

CB. Increased buffer widths.

1. If a Category I or II wetland, with a habitat score greater than twenty (20) points is located within three hundred (300) feet of a Priority Habitat Area as defined by the Washington State Department of Fish and Wildlife, or as mapped by the city of Kent as a priority habitat area in accordance with the Washington State Department of Fish and Wildlife definitions, the buffer established in subsection (A) of this section shall be increased by fifty (50) feet unless:

a. The applicant provides a relatively undisturbed vegetated corridor at least one hundred (100) feet wide between the wetland and all Priority Habitat Areas located within three hundred (300) feet of the wetland. The corridor shall be protected for the entire distance between the wetland and the Priority Habitat Area pursuant to KCC 11.06.640; and

b. The applicant incorporates all applicable mitigation design criteria pursuant to KCC 11.06.600(B).

±2. The director may require increased buffer widths on a case-by-case basis when a larger buffer is necessary to protect species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or habitats. Such increased buffers shall be based on

recommendations by a qualified professional wetland biologist and, if applicable, best management practices for protection of the species adopted by an agency with jurisdiction.

32. Applicants for development permits may volunteer to provide increased buffers pursuant to the following procedures:

a. If an applicant provides a buffer which is permanently protected pursuant to the requirements of this chapter and is at least twenty-five (25) feet wider than the buffers required pursuant to subsection (A) of this section, the applicant may apply for a ten (10) percent increase in the number of residential units permitted per acre pursuant to the requirements of KCC 15.08.400, planned unit development, PUD.

b. If an applicant provides a buffer which is permanently protected pursuant to the requirements of this chapter and is at least fifty (50) feet wider than the buffers required pursuant to subsection (A) of this section, the applicant may apply for a twenty (20) percent increase in the number of residential units permitted per acre pursuant to the requirements of KCC 15.08.400, planned unit development, PUD.

DE. *Buffer averaging.*

1. Wetland buffer width averaging shall be allowed where the applicant demonstrates the following:

a. The ecological functions and values of the buffer after averaging is equivalent to or greater than the functions and values before averaging as determined by a qualified consultant and as approved by the city. Properly functioning buffers shall not be reduced through buffer averaging except in exceptional circumstances, such as a need to gain access to property or other similar circumstances, to be approved by the director.

b. Averaging will not adversely impact the wetland functions and values.

c. The total area contained within the wetland buffer after averaging shall be no less than the total area contained within the standard buffer prior to averaging.

d. At no point shall the buffer width be reduced by more than fifty (50) percent of the standard buffer or be less than twenty-five (25) feet.

e. The additional buffer shall be contiguous with the standard buffer and located in a manner to provide buffer functions to the wetland.

f. If the buffers are degraded pursuant to KCC 11.06.227, they shall be restored pursuant to an approved restoration/enhancement plan.

g. If restoration or enhancement of the buffer is required in order to establish a suitable growth of native plants, maintenance, and monitoring of the buffer for a period of at least three (3) years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570.

ED. *Buffer restoration required.* If the buffers, including both standard buffers and buffers which are averaged, are degraded, they shall be restored during development pursuant to an approved restoration plan. If the plan includes establishing a suitable growth of native plants, maintenance and monitoring of the buffer for a period of at least three (3) years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570. Where it can be demonstrated that there will be no impacts from the proposed development to the wetland or wetland buffer, the director shall have the authority to waive or modify this requirement.

EE. *Required report for buffer averaging and/or reduction.* A request to buffer average pursuant to subsection (ED) shall be supported by a buffer enhancement/restoration plan prepared by a qualified professional. The plan shall assess the habitat, water quality, storm water detention, groundwater recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed decreased or modified buffer on those functions; and address the applicable criteria listed in this section. A buffer restoration and/or enhancement plan shall also provide the following: (1) a map

locating the specific area of restoration and/or enhancement; (2) a planting plan that uses native plant species indigenous to this region including groundcover, shrubs, and trees; and (3) provisions for monitoring and maintenance throughout the monitoring period.

GF. *Buffer condition.* Except as otherwise allowed by this section, wetland buffers shall be retained in their natural condition. Where buffer disturbance has occurred during construction, re-vegetation with native vegetation shall be required pursuant to an approved restoration/enhancement plan consistent with this code.

HG. *Buffer utilization for landscape requirements.* Enhanced wetland buffers may be used to satisfy landscaping requirements in Ch. 15.07 KCC where all of the following criteria are satisfied:

1. The buffer, as enhanced by applicant, will provide equivalent or greater protection of wetland functions.

2. The enhanced buffer will meet the landscaping requirements as outlined in Ch. 15.07 KCC. The proposed landscape vegetation satisfies wetland buffer vegetation requirements.

3. The enhanced buffer is of the full landscape width required by Ch. 15.07 KCC.

IH. *Permitted uses in a wetland buffer.* Activities shall not be allowed in a buffer except for the following and then only when properly mitigated:

1. When the improvements are part of an approved enhancement, restoration, or mitigation plan.

2. For construction of new public or private roads and utilities, and accessory structures, when no practicable alternative location exists.

3. Construction of foot trails, according to the following criteria:

a. Constructed of permeable materials.

b. Designed to minimize impact on the stream system.

c. Of a maximum width of eight (8) feet.

d. Where feasible, located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the stream, except to cross a stream when approved by the city and all other applicable agencies and except as appropriate to provide outlook points or similar locations for educational, scientific, and other purposes which will not adversely affect the overall functions and values of the wetland.

4. Construction of footbridges and boardwalks.

5. Construction of educational facilities, such as viewing platforms and informational signs.

6. The construction of outdoor recreation such as fishing piers, boat launches, benches.

7. Maintenance of pre-existing facilities or temporary uses having minimal adverse impacts on buffers and no adverse impacts on wetlands. These may include but are not limited to: maintenance of existing drainage facilities, low intensity passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short-term scientific or educational activities, and sports fishing.

8. Stormwater discharge outlets with energy dissipation structures as approved by the city of Kent. Unless otherwise approved by the director, these shall be located as close to the outer perimeter of the buffer as allowed by proper design and function of the discharge system. To the extent that construction of such outlets impacts vegetation in the buffer, restoration of the vegetation shall be required.

9. On-going city maintenance activities by ~~the city of Kent~~ vegetation management division ~~of its~~ public works and parks department vegetation and management divisions shall be permitted to continue general maintenance of wetlands and associated buffers. Maintenance shall include but not be limited to trash removal, removal of non-native vegetation, maintenance of existing

vegetation as necessary, restoration, enhancement, and sign and fence maintenance.

11. *Building setback lines.* A minimum building setback line of fifteen (15) feet shall be required from the edge of a wetland buffer provided the director may reduce the building setback limit by up to five (5) feet if construction, operation, and maintenance of the building do not and will not create a risk of negative impacts on the adjacent buffer area. Alterations of the building setback lines shall not be permitted to create additional lots for subdivisions. Approval of alterations of the BSBL shall be provided in writing by the director, or his/her designee, and may require mitigation such as buffer enhancement.

Sec. 11.06.610. Avoiding wetland impacts. Regulated activities shall not be authorized in Category 11 wetlands except where it can be demonstrated that the impact is both unavoidable and necessary as described below, or that all reasonable economic uses are denied.

A. Where water-dependent activities are proposed, unavoidable, and necessary impacts may be permitted where no reasonable alternatives exist which would not involve wetland impacts; or which would not have less of an adverse impact on a wetland; and that would not have other significant adverse environmental consequences.

B. Where nonwater-dependent activities are proposed, the applicant must demonstrate that:

1. The basic project purpose cannot reasonably be accomplished using an alternative site in the general region that is available to the applicant.

2. A reduction in the size, scope, configuration, or density of the project as proposed; and all alternative designs of the project as proposed that would avoid or result in less adverse impacts on a wetland or its buffer will not accomplish the basic purpose of the project.

3. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of

infrastructure, or parcel size, the applicant has made a reasonable attempt to remove or accommodate such constraints.

C. Filling of a hydrologically isolated emergent Category III or Category IV wetland less than five thousand (5,000) square feet in size shall be permitted, provided a replacement wetland area is created pursuant to KCC 11.06.660(D)(3)(a). For the purposes of this section, a hydrologically isolated wetland shall be determined by the U.S. Army Corps of Engineers.

Sec. 11.06.620. Limits of impacts to wetlands.

A. For wetlands where buffers are not connected to riparian corridors, (Category IV~~3~~ wetlands, and Category III~~2~~ wetlands which score less than 20 points for habitat functions~~are not Category 3 wetlands only because they exceed one (1) acre in size~~) the following applies: regulated activities which result in the filling of no more than ten thousand (10,000) square feet of a wetland may be permitted if mitigation is provided consistent with the standards.

B. In computing the total allowable wetland fill area under this section, the director shall include any areas that have been filled since January 1, 1991. For example, if five thousand (5,000) square feet of a wetland were filled in February, 1991, future applicants would only be allowed a maximum of five thousand (5,000) additional square feet under this section. Any proposed fill over ten thousand (10,000) square feet must demonstrate unavoidable and necessary impacts.

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Sec. 11.06.660. Compensating for wetland impacts.

A. *Condition of approval.* As a condition of any approval allowing alteration of wetlands and/or wetland buffers, or as an enforcement action, the director shall require that the applicant engage in the restoration, creation, or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan that provides for construction, maintenance, and monitoring of replacement wetlands and/or buffers and, as appropriate, land acquisition that re-create as

nearly as practicable or improves the original wetlands in terms of acreage, function, geographic location, and setting.

B. *Goal.* The overall goal of any compensatory mitigation project shall be no net loss of overall wetland acreage or function and to replace any wetland area lost with wetland(s) and buffers of equivalent functions and values. Compensation shall be completed prior to wetland destruction, where practicable. Compensatory mitigation programs shall incorporate the standards and requirements contained in KCC 11.06.550 and 11.06.560.

C. *Restoration and creation of wetlands and wetland buffers.* Any person who alters wetlands shall restore or create wetlands of equivalent functions and values to those altered in order to compensate for wetland losses. Any created or restored wetlands shall be protected by the provisions of this chapter.

D. *Acreage replacement and enhancement ratio.* Wetland alterations shall be replaced or enhanced using the formulas below; however, the director may choose to double mitigation ratios in instances where wetlands are filled or impacted as a result of code violations. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered. These ratios do not apply to remedial actions resulting from illegal alterations.

1. Compensation for alteration of Category ~~1~~I wetlands shall be accomplished as follows:

a. By creation of new wetlands at a ratio of six (6) to one (1);

b. By creation of new wetlands at a ratio of one (1) to one (1) and by enhancement of existing wetlands at a ratio of ten (10) to one (1); or

c. By a combination of creation of new wetlands and enhancement of existing wetlands within the range of the ratios set out in subsections (D)(1)(a) and (b) of this section, so long as a minimum one (1) to one (1) creation ratio is met (for example, creation of new wetlands at a one and one-half (1.5) to one (1) ratio along with enhancement of existing wetlands at a ratio of five (5) to one (1) may be acceptable).

2. Compensation for alteration of Category ~~2II~~ wetlands shall be accomplished as follows:

a. By creation of new wetlands at a ratio of three (3) to one (1);

b. By creation of new wetlands at a ratio of one (1) to one (1) and by enhancement of existing wetlands at a ratio of four (4) to one (1); or

c. By a combination of creation of new wetlands and enhancement of existing wetlands within the range of ratios set out in subsections (D)(2)(a) and (b) of this section, so long as a minimum one (1) to one (1) creation ratio is met.

3. Compensation for alteration of Category ~~III3~~ wetlands shall be accomplished as follows:

a. By creation of new wetlands at a ratio of ~~two (2) one and one-half (1.5)~~ to one (1);

b. By creation of new wetlands at a ratio of one (1) to one (1) and by enhancement of existing wetlands at a ratio of ~~two (2) one (1)~~ to one (1); or

c. By a combination of creation of new wetlands and enhancement of existing wetlands within the range of ratios set out in subsections (D)(3)(a) and (b) of this section, so long as a minimum one (1) to one (1) creation ratio is met.

4. Compensation for alteration of Category IV wetlands shall be accomplished as follows:

a. By creation of new wetlands at a ratio of one and one-half (1.5) to one (1); or

b. By creation of new wetlands at a ratio of one (1) to one (1) and by enhancement of existing wetlands at a ratio of one (1) to one (1).

E. *Decreased replacement ratio.* The director may decrease the required replacement ratio where the applicant provides the mitigation prior to altering the wetland, and a minimum acreage replacement ratio of one (1) to one (1) is provided. In such a case, the mitigation must be in place, monitored for three (3) growing seasons and be deemed a success prior to allowing any alterations.

F. *Wetland/habitat bank.* Mitigation may be allowed within a wetland/habitat mitigation bank located within the city of Kent once a bank is formed. Proposed developments must continue to demonstrate avoidance, minimization, and mitigation prior to being allowed to mitigate using a wetland bank site. A review of the feasibility of onsite mitigation will be required to be prior to allowing mitigation credits from a mitigation bank.

G. *Wetland type.* In-kind compensation shall be provided except that out-of-kind compensation may be accepted where:

1. The wetland system to be replaced is already significantly degraded and out-of-kind-replacement will result in a wetland with greater functional value.

2. Technical problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impracticable.

3. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

H. *Location.* Onsite compensation shall be provided except where the applicant can demonstrate that:

1. The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the onsite loss.

Onsite compensation is not feasible due to problems with hydrology, soils, or other factors.

2. Compensation is not practical due to potentially adverse impacts from surrounding land uses.

3. Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values.

4. Adopted goals for flood storage, flood conveyance, habitat, or other wetland functions have been established and strongly justify location of compensatory measures at another site.

I. *Offsite compensation.* Offsite compensation shall occur within the same drainage basin as the wetland loss occurred, unless the applicant can demonstrate extraordinary hardship.

J. *Offsite compensation site selection.* In selecting compensation sites for creation or enhancement, applicants shall pursue siting in the following order of preference:

1. Upland sites which were formerly wetlands and/or significantly degraded wetlands. Such wetlands are typically small; have only one (1) wetland class; and have one (1) dominant plant species or a predominance of exotic species.

2. Idle upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation.

3. Other disturbed upland.

K. *Timing.* Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, or immediately after activities that will temporarily disturb wetlands, or prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.

L. *Completion of mitigation construction.* On completion of construction, any approved mitigation project must be signed off by the applicant's qualified

consultant and approved by the department. A signed letter from the consultant will indicate that the construction has been completed as approved, and approval of the installed mitigation plan will begin the monitoring period if appropriate.

SECTION 2. - *Amendment.* Section 15.08.400 of the Kent City Code, entitled "Planned unit development, PUD," is amended to read as follows:

15.08.400 Planned unit development, PUD. The intent of the PUD is to create a process to promote diversity and creativity in site design, and protect and enhance natural and community features. The process is provided to encourage unique developments which may combine a mixture of residential, commercial, and industrial uses. The PUD process permits departures from the conventional siting, setback, and density requirements of a particular zoning district in the interest of achieving superior site development, creating open space, and encouraging imaginative design by permitting design flexibility. By using flexibility in the application of development standards, this process will promote developments that will benefit citizens that live and work within the city.

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C. *Development standards.* The following development standards are minimum requirements for a planned unit development:

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2. *Minimum site acreage.* Minimum site acreage for a PUD is established according to the zoning district in which the PUD is located, as follows:

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Zones	Minimum Site Acreage
Multifamily (MR-D, MR-G, MR-M, MR-H, MRT 12, MRT 16)	None
Commercial, office and manufacturing zones	None
SR zones (SR-1, SR-2, SR-3, SR-4.5, SR-6, SR-8) consisting entirely of detached single-family dwellings as defined in KCC 15.02.115	5 acres
SR zones (SR-1, SR-2, SR-3, SR-4.5, SR-6, SR-8) consisting entirely of detached single-family dwellings as defined in KCC 15.02.115 and if providing increased wetland buffers pursuant to KCC 11.06.600(B)(2)(C)(3).	0 acres
SR zones (SR-1, SR-2, SR-3, SR-4.5, SR-6, SR-8) not comprised entirely of detached single-family dwellings as defined in KCC 15.02.115	100 acres

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SECTION 3. - Savings. The existing chapters and sections of the Kent City Code, which are repealed and amended by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 4. - Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 5. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.


 SUZETTE COOKE, MAYOR

ATTEST:


 BRENDA JACOB, CITY CLERK



APPROVED AS TO FORM:



TOM BRUBAKER, CITY ATTORNEY

PASSED: 15 day of August, 2006.

APPROVED: 15 day of August, 2006.

PUBLISHED: 19 day of August, 2006.

I hereby certify that this is a true copy of Ordinance No. 3805
passed by the city council of the city of Kent, Washington, and approved by the
mayor of the city of Kent as hereon indicated.


BRENDA JACOBES, CITY CLERK

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