

**ORDINANCE NO. 4159**

**AN ORDINANCE** of the City Council of the city of Kent, Washington, amending Chapter 11.06 of the Kent City Code, entitled "Critical Areas."

**RECITALS**

A. Pursuant to the state Growth Management Act, Chapter 36.70A RCW (GMA), the city of Kent ("City") hereby amends its critical areas ordinance ("CAO"). This ordinance is the product of extensive study, review and evaluation of the City's development regulations to identify and protect the functions and values of critical areas as required under the GMA, consistent with RCW 36.70A.172 and WAC 365-195-900. The CAO has been updated to comply with state law, federal law, and best available science. The City has identified, collected and assessed the available scientific information offered by staff, by the City's environmental consultants, by state agency representatives, and by the public in order to interpret the nature, scope, and application of best available science to protect the functions and values of the City's critical areas, which exist in a highly complex, natural, and built urban environment.

B. Throughout this process, the City's intent has been to develop and implement a comprehensive, balanced, and fair regulatory program that requires avoidance, minimization, and mitigation of critical

areas and their buffers, in that order of preference, by anyone whose activities affect critical areas. To that end, the City also desires to protect the public from injury, loss of life, or loss of property or other financial impact, to the extent reasonably possible.

C. On August 4, 2014, staff made a presentation to the Public Works Committee to discuss the update to the CAO by June, 2015, as required by the Growth Management Act. Staff further discussed that the update process is required to include best available science, as well as compliance with state, regional and local mandates.

D. On August 11, 2014, the Land Use and Planning Board ("LUPB") held a workshop to discuss the update to the Kent Comprehensive Plan, including the CAO update element of the plan; compliance with state, regional and local mandates; the proposed timeline; and public outreach activities.

E. On November 24, 2014, the LUPB held a workshop to generally discuss the update CAO process, best available science rule, and timeline.

F. On February 9, 2015, the LUPB held a workshop to discuss preliminary findings from the best available science recommendations, comments from staff and the public, and draft regulations.

G. On February 12, 2015, the City provided the required sixty day notification under RCW 36.70A.106 to the Washington State Department of Commerce ("Department") for the City's proposed CAO. Comments from the Department were received and considered.

H. On March 16, 2015, the City received comments on the CAO update from the Washington State Department of Ecology. These comments were also considered.

I. On April 3, 2015, 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).

J. On April 13, 2015, the LUPB held a public hearing on the draft CAO and recommended updating Chapter 11.06 KCC, accordingly.

K. Staff made a presentation to the Public Works Committee on April 20, 2015, on the recommended revisions to the CAO.

L. Following certain substantive changes by staff to the proposed ordinance, the LUPB held a second public hearing regarding the revised CAO on June 8, 2015, and recommended passage of the revised ordinance.

M. Staff made a presentation regarding the revised CAO to the Economic and Community Development Committee at its meeting on July 13, 2015, and the Committee voted to forward its recommendations to the full City Council.

N. At its regularly scheduled meeting on July 21, 2015, the City Council considered the recommendations and voted to adopt the proposed amendments to the CAO.

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 is hereby amended as follows:

**Article I. Procedural and Administrative Provisions**

**Sec. 11.06.010. Title.** This chapter shall be hereinafter known as the city of Kent critical areas code.

**Sec. 11.06.020. Purpose and intent.**

- A. The city of Kent contains numerous areas that can be identified and characterized as critical ~~or environmentally sensitive~~. Such areas within the city include wetlands, streams, wildlife and fisheries habitat, geologic hazard areas, frequently flooded areas, and critical aquifer recharge areas.
- B. The city finds that these critical areas perform a variety of valuable and beneficial biological, physical and economic functions that benefit the city and its residents. Alteration of certain critical areas may pose a threat to public safety, private property, and the environment. The city finds, therefore, that identification, regulation, and protection of critical areas is necessary to protect the public health, safety, and general welfare. The city further finds that the functions of critical areas, and the purpose of these regulations, include the following:

1. *Wetlands.* Wetlands perform a variety of functions that include maintaining water quality; storing and conveying storm water and floodwater; recharging groundwater; providing important fish and wildlife habitat; and providing areas for recreation, education, scientific study, and aesthetic appreciation.

Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient, and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect wetland resources from harmful intrusion.

The primary goals of wetland regulation are to avoid wetland impacts; to achieve no net loss of wetland function and value, ~~acreage may also be considered in achieving the overall goal;~~ to provide levels of protection that reflect the sensitivity of individual wetlands and the intensity of proposed land uses; and to restore ~~and/or~~ enhance existing wetlands, where possible.

The city of Kent's program for wetland protection is a combination of regulatory and nonregulatory programs designed to collectively provide for protection of wetland functions and values in a manner which is consistent with best available science and the other goals and objectives of the Growth Management Act, Chapter ~~36~~7.70A RCW.

Protection of the water quality and hydrologic functions of wetlands is accomplished in Kent by a combination of storm water management controls (including both water quality controls and flow controls) regulated pursuant to ~~Chapters~~ 6.02, 7.07, and 7.14 KCC, and wetland buffers imposed pursuant to this chapter. Taken together these programs will

provide adequate water quality and hydrologic protection to meet best available science requirements.

2. *Fish and wildlife habitat conservation areas.*

a. Streams and their associated riparian corridors provide important fish and wildlife habitat, including habitat for threatened and endangered species; help maintain water quality; store and convey storm water and floodwater; recharge groundwater; and serve as areas for recreation, education, scientific study, and aesthetic appreciation. Stream buffers serve to moderate storm water runoff volume and flow rates; reduce sediment, chemical nutrient, and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect stream resources from harmful intrusion.

The primary goals of stream regulation are to avoid or otherwise mitigate significant impacts to streams and associated riparian corridors; to protect threatened and endangered species; to protect water quality through appropriate management techniques; and, where possible, to provide for stream enhancement and rehabilitation.

b. Wildlife habitat provides opportunities for food, cover, nesting, breeding, and movement for fish and wildlife within the city; maintains and promotes diversity of species and habitat within the city; integrates habitat protection with elements of the city's open space system; helps maintain air and water quality; helps control erosion; serves as areas for recreation, education, and scientific study and aesthetic appreciation.

The primary goals of wildlife habitat regulations are to identify and protect fish and wildlife habitat; to avoid impacts to critical habitats for fish and wildlife; to implement the goals of the Endangered Species Act; to promote connectivity between habitat areas to allow for wildlife movement; to provide multi-purpose open space corridors; and where possible to enhance and rehabilitate wildlife habitat.

3. *Geologic hazard areas.* Geologic hazard areas include lands characterized by geologic, hydrologic, hydrogeologic, and topographic and vegetative conditions that render them susceptible to varying degrees of risk ~~offrom~~ landslides, erosion, seismic or volcanic activity.

The primary goals of regulating geologic hazards are to avoid and minimize potential impacts to life and property; to regulate land uses where necessary; and to conduct appropriate levels of analysis to ensure sound engineering and construction practices to address, mitigate, and potentially avoid identified hazards.

4. *Critical aquifer recharge areas.* Aquifer recharge areas provide a source of potable water and contribute to stream discharge/flow during periods of low flow. The city finds that certain locations are susceptible to contamination of water supplies by infiltration of pollutants through soil to groundwater aquifers.

The primary goals of aquifer recharge regulations are to protect critical aquifer recharge areas and groundwater quality by avoiding or limiting land use activities that pose potential risk of aquifer contamination; and to minimize impacts to significant aquifer recharge areas through the application of performance standards.

5. *Frequently flooded areas.* Floodplains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property. The primary goals of flood hazard regulations are to limit the effects of flooding on human health and safety, and to protect public facilities and services. The city of Kent's Flood Hazard Regulations, located in Chapter 14.09 KCC, regulate activities within frequently flooded areas in order to promote public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in the city, to the extent reasonably possible.

~~5. *Specific flood hazard regulations.* This section of the Kent City Code, and other sections as incorporated by reference, contain standards, procedures, criteria, and requirements intended to identify, analyze, and mitigate potential impacts to the city's critical areas and to enhance and restore degraded resources where possible. The general intent of these regulations is to avoid impacts to critical areas. In appropriate circumstances, impacts to specified critical areas resulting from regulated activities may be minimized, rectified, reduced, and/or compensated for, consistent with the requirements of this chapter.~~

### **Sec. 11.06.030. Regulated activities.**

A. ~~The provisions of t~~This chapter shall apply to any regulated activity that ~~potentially may~~ affects a critical area or a potential critical area, or its buffer, unless otherwise exempted by these regulations. Regulated activity that takes place within an area shown as a critical area on the critical areas inventory maps maintained by the department pursuant to KCC 11.06.050 raises a rebuttable presumption that the activity affects a potential critical area or its buffer. This presumption may be overcome by information properly submitted by a qualified professional and confirmed by the



department. Applicable activities are as follows include, but are not limited to, the following:

1. Removing, excavating, disturbing, or dredging soil, sand, gravel, minerals, organic matter or materials of any kind.
2. Dumping, discharging, or filling with any material.
3. Draining, flooding, or disturbing the water level or water table, or diverting or impeding water flow.
4. Driving pilings or placing obstructions.
5. Constructing, substantially reconstructing, demolishing, or altering the size of any structure or infrastructure.
6. Destroying or altering vegetation through clearing, grading, harvesting, shading, or planting vegetation that would negatively affect the character of a critical area.
7. Activities that result in significant changes in water temperature, physical or chemical characteristics of water sources, including quantity and pollutants.
8. Any other activity potentially affecting a critical area or buffer not otherwise exempt from the provisions of this chapter as determined by the department.
9. The construction of new recreation trails within the buffer<sup>7.2</sup> which shall be low intensity, designated, and constructed of

~~permeable materials which protect water quality, allow adequate surface water and groundwater movements, do not contribute to erosion, and are located where they do not disturb nesting, breeding, and rearing areas, and designed to avoid or reduce the removal of trees.~~

Where a regulated activity would be partly within and partly outside a critical area or its buffer, the entire activity shall be reviewed pursuant to the requirements of this chapter.

B. To avoid duplication, all permits and approvals identified in ~~Chapter~~ 12.01 KCC shall be subject to, and coordinated with, the requirements of this chapter.

C. Nonproject actions, including but not limited to rezones, comprehensive plan map amendments, annexations, and the adoption of plans and programs, shall be subject to ~~the requirements of this chapter~~. However, the department may, at its discretion, permit any studies or evaluations required by this chapter to use methodologies and provide a level of detail appropriate to the action proposed.

D. Activities within the Green River ~~N~~natural ~~R~~resources ~~A~~area shall be subject to this chapter with the exception of activities allowed by Resolution 922, adopted by the city of Kent in March 1981.

#### **Sec. 11.06.040. Exemptions.**

A. The following activities, when performed on sites containing critical areas, or on sites that may affect 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 nonwetland 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 public, residential, or commercial structures, facilities, and landscaping; provided, however, that reconstruction of any structures ~~may~~does not increase itsthe ~~previous~~preexisting footprint~~;~~, and further provided, that the provisions of ~~this chapter are followed.~~

6. The addition of floor area within an existing building ~~which~~that 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, however, that any disturbance of the critical area shall must only be the absolute 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 h~~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; provided the division of land was for a specified use, and that the development is consistent with that approved use.

12. Removal of invasive plants and planting of native vegetation in wetlands, ~~and or~~ in wetland or stream buffers, for the purpose of

enhancing habitat values of these areas pursuant to an approved mitigation plan.

13. 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.

14. 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 section, 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, and educational and recreation activities that will not have a significant effect on a critical area,~~ 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~~that 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 nonconforming use is discontinued for a period of ~~one (1) year~~six months, that use cannot be reestablished.

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

**Sec. 11.06.045. Review and inspection fees.** The city council shall, by resolution, establish the fees to be assessed to implement and operate the regulations adopted in this chapter. The resolution may require that certain fees be pre-paid and ~~or~~ designated to be nonrefundable because staff time and materials will be expended whether or not the permit applied for is approved by the city or pulled by the applicant. In the event of any conflict or ambiguity regarding any fees authorized under this chapter and established by council resolution, the ~~public works~~ director is authorized to interpret the applicable fee schedule(~~s~~) to resolve that conflict or ambiguity.

**Sec. 11.06.050. Critical areas maps.** The approximate location and extent of critical areas within the city are shown on the critical areas inventory maps. ~~These~~Except as provided in KCC 11.06.030.A, these maps shall be used for informational purposes and as a general guide only, for the assistance of property owners and other interested parties; the boundaries and locations shown are generalized. The actual presence or

absence, type, extent, boundaries, and classification of critical areas on a specific site shall be identified in the field by a qualified—consultant professional and confirmed by the department, according to the procedures, definitions, and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the city's maps and the criteria or standards of this chapter, the criteria and standards shall prevail. Maps are adopted pursuant to this chapter and regularly updated with new information from resources deemed reliable by the director. These maps shall be kept on file at the permit center, posted on the city's website, and made available for public inspection upon request.

**Sec. 11.06.060. Relationship to other regulations.**

A. These critical area regulations shall apply as an overlay and in addition to zoning, land use, and other regulations established by the city of Kent. In the event of any conflict between these regulations and any other city regulations, those regulations which provide greater protection to environmentally critical areas shall apply, as determined by the director.

B. Areas characterized by specific critical areas may also be subject to other regulations established by this chapter due to the overlapping or multiple functions of some critical areas. Wetlands, for example, may be defined and regulated according to the wetland, wildlife habitat, and stream management provisions of this chapter. In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply, as determined by the director.

C. Compliance with this chapter does not constitute compliance with other federal, state, or local regulations or permit conditions that may be required, including but not limited to the Washington Department of Fish and Wildlife hydraulic project approval (HPA), Army Corps of Engineers Section 404 permits, Ecology Section 401 permits, and National Pollution Discharge Elimination System (NPDES) permits. The applicant is responsible for complying with these requirements, in addition to the processes established in this chapter.

**Sec. 11.06.070. Critical area review process and application requirements.**

A. *Pre-application conference.*

1. ~~For those projects subject to environmental review pursuant to SEPA, the pre-application requirements of Chapter 12.01 KCC shall apply.~~

2. ~~For projects which are subject to this chapter but are exempt from the SEPA requirements,~~ the applicant is encouraged to meet with the city prior to submitting an application, as described in the pre-application guidelines of Chapter 12.01 KCC.

32. The purpose of these meetings shall be to discuss the city's critical area requirements, processes, and procedures; to review any conceptual site plans prepared by the applicant; to identify potential impacts to critical areas and appropriate mitigation measures; and to the extent it can be determined, generally inform the applicant of any known federal or state regulations or approvals applicable to the subject critical area. Such conference shall be for the convenience of the applicant, shall not constitute legal advice or scientific opinion, and any recommendations shall not be binding on the applicant or the city. It shall be the applicant's



sole responsibility to identify and secure all necessary permits from any agencies with jurisdiction notwithstanding that the city of Kent may also have the authority to issue a permit.

B. *Application requirements.*

1. *Timing of submittals.* Concurrent with submittal of a SEPA checklist, or concurrent with submittal of an application for projects exempt from SEPA, a critical area report must be submitted to the city for review. The purpose of the report is to determine the extent, characteristics, and functions of any critical areas located on or potentially affected by activities on a site where regulated activities are proposed. The report will also be used by the department to determine the appropriate critical area rating or classification, where applicable, and to establish appropriate buffer requirements.

2. *Report contents.* Reports and studies required to be submitted by this chapter shall contain, at a minimum, ~~the information indicated in the subsequent sections of attachments to this chapter~~ applicable to each critical area, and the following:

a. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

b. Addresses and parcel numbers of the critical areas;

c. A map, to scale, depicting critical areas, buffers, flag and test pit numbers, the development proposal, and any areas to be cleared; and

d. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.

e. The names and qualifications of all people involved in preparing the report and documentation of any fieldwork performed on the site, as well as the dates on which fieldwork took place;

f. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

g. A statement specifying the accuracy of the report, and all assumptions made and relied upon;

h. An assessment of the probable impacts to critical areas resulting from development of the site, the proposed development, and potential impacts from critical areas to the proposed development of the site;

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to KCC 11.06.380 to avoid, minimize, and mitigate impacts to critical areas;

j. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with KCC 11.06.550, including, but not limited to:

i. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area, and the potential adverse impact of a critical area to the development; and

ii. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

k. A discussion of the performance standards applicable to the critical area and all proposed activity;

l. Financial guarantees, in a form and for an amount acceptable to both the director and the city attorney, to ensure compliance; and

m. Any additional information required for the critical area as specified in the corresponding chapter.

3. The department may tailor the information required to reflect the complexity of the proposal and the sensitivity of critical areas that may potentially be present.

4. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director.

5. The director may require additional information to be included in the critical area report when the director deems it to be necessary for proper review of the proposed activity in accordance with this Title. Additional information that may be required includes, but is not limited to:

a. Historical data, including original and subsequent mapping; aerial photographs; data compilations and summaries; and

available reports and records relating to the site or past operations at the site;

b. Grading and drainage plans; and

c. Information specific to the type, location and nature of the critical area involved.

~~The department may tailor the information required to reflect the complexity of the proposal and the sensitivity of critical areas that may potentially be present.~~

C. *Critical area consultants*~~professionals~~ – *Qualifications and city review.* All reports and studies required of the applicant by this section shall be prepared by a qualified ~~consultant~~professional as defined in these regulations. The ~~department~~director may, at its ~~the director's~~ discretion, retain a qualified ~~consultant~~ professional to review and confirm the applicant's reports, studies, and plans. Such review shall be paid for by the applicant.

D. *Review process.* This section is not intended to create a separate critical area review permit process for development proposals. To the extent possible, the city shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations, reviews, and approvals. Any permits required by separate codes or regulations, such as shoreline substantial development permits, shall continue to be required.

#### **Sec. 11.06.080. Procedural provisions.**

A. *Interpretation and conflicts.* The director ~~of the department or his/her designee~~ shall have the authority to administer the provisions of this chapter, to make determinations with regard to the applicability of the regulations, to interpret the intent of unclear provisions, to require additional information, to determine the level of detail and appropriate methodologies for critical area reports and studies, to prepare application and informational materials as required, and to promulgate procedures and rules for unique circumstances not anticipated by the standards and procedures contained within this chapter.

B. *Penalties and enforcement.* Compliance with these regulations and penalties for their violation shall be enforced pursuant to the procedures set forth in ~~Ch.~~Chapter 1.04 KCC.

C. *Appeals from critical area review decisions.* Appeals from critical area review decisions shall be governed by the procedures set forth in KCC 12.01.190 and ~~Ch.~~Chapter 2.32 KCC.

D. *Burden of proof.* The burden of proving that a proposed activity meets the standards established by this chapter shall be on the applicant.

**Sec. 11.06.090. Reasonable use provision.**

A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.

B. Applications for a reasonable use exception shall be processed as a Process III application, pursuant to ~~Ch.~~Chapter 12.01 KCC.

C. An applicant requesting relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1. No reasonable use with less impact on the critical area and its buffer is possible.

2. There is no feasible and reasonable onsite alternative to the activities proposed, considering possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.

3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values ~~and/or~~ the risks associated with proposed development.

4. All reasonable mitigation measures have been implemented or assured.

5. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, ~~such as by including, but not limited to segregating or dividing the property and creating in a manner that created an undevelopable condition, or exacerbating an existing condition to such a degree that reasonable economic use is no longer possible under the terms of this chapter.~~

6. The applicant adequately undertook reasonable efforts to acquire sufficient knowledge of existing limitations on the subject property at the time when the applicant acquired the property. For purposes of this section, "reasonable efforts" includes, but is not limited to: visual inspection of the site; review of critical area maps; site assessment by a qualified professional; and a price comparison to other properties that are comparable in terms of size, location, zoning and access.

7. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

D. No reasonable use application shall be approved if the city can demonstrate, by a preponderance of the evidence, that the applicant had actual or constructive knowledge of existing conditions, at any time prior to the applicant's acquisition of the subject property, that would significantly lessen the applicant's distinct, investment-backed expectations in acquiring the subject property.

DE. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city regulations.

#### **Sec. 11.06.100. Variances.**

A. Applications for variances from the strict application of the terms of this chapter to a specific property may be submitted to the city. All variances except administrative variances per subsection (B) of this section shall be considered by the hearing examiner as a Process III application, pursuant to ~~KCC~~Chapter 12.01-040, KCC. Approval of variances from the

strict application of the critical area requirements shall be consistent with the following criteria:

1. There are unique physical conditions peculiar and inherent to the affected property ~~which~~that ~~makes~~ it difficult or infeasible to strictly comply with the provisions of this chapter.

2. The variance is the minimum necessary to accommodate the building or structure footprint and access.

3. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety, and general welfare, or to public or private property.

4. The proposed variance would not adversely affect properties surrounding the subject site.

5. Adverse impacts to critical areas resulting from the proposal are minimized.

6. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner.

7. The variance shall not constitute a grant of special privilege.

B. Other minor buffer modifications may be permitted by the director, as outlined in the provisions of this chapter.

## **Article II. Definitions**



**Sec. 11.06.105. Definitions.** The following words, terms, and phrases, when used in this chapter, shall have the meaning ascribed to them in this article, except where the context clearly indicates a different meaning.

**Sec. 11.06.110. Applicability.** The definitions contained in this chapter are those that are generally used throughout this code, except for those definitions specified in ~~Chs.~~Chapters 14.09 KCC and 15.02 KCC, which are specific to those respective sections and chapters.

**Sec. 11.06.115. Adjacent wetland.** *Adjacent wetland* means a wetland bordering, contiguous to, or neighboring a river, stream, or lake.

**Sec. 11.06.120. Applicant.** *Applicant* means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects or may affect a critical area or potential critical area, or its buffer.

**Sec. 11.06.125. Aquifer.** *Aquifer* is, generally, any water bearing soil unit or geologic formation. Specifically, a body of soil unit or geologic formation that contains sufficient saturated permeable material to conduct groundwater and yield economically significant quantities of groundwater to wells or springs.

**Sec. 11.06.130. Aquifer susceptibility.** *Aquifer susceptibility* is a contributory factor of potential contamination of an aquifer that results from soil, rock, and groundwater characteristics within a recharge area.

**Sec. 11.06.135. Aquifer vulnerability.** *Aquifer vulnerability* means the combined effect of aquifer susceptibility and contaminant loading potential: it includes hydrogeologic, land use, and other factors that affect the potential for groundwater contamination.

**Sec. 11.06.140. Artificially created wetland.** *Artificially created wetland* means a wetland created from nonwetland sites through purposeful, legally authorized human action, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

**Sec. 11.06.145. Best available science (BAS).** *Best available science (BAS)* is the current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925, as amended.

**Sec. 11.06.150. Best management practices (BMPs).** *Best management practices (BMPs)* means the conservation practices or systems of practices and management measures that: (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and (2) minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of critical areas.

**Sec. 11.06.155. Bog.** *Bog* means a wet, spongy, poorly-drained area that is usually rich in very specialized plants, such as acidophilic mosses, particularly sphagnum; contains a high percentage of organic remnants and residues; and frequently is associated with a spring,

seepage area, or other subsurface water source. A bog sometimes represents the final stage of the natural process of eutrophication by which lakes and other bodies of water are very slowly transformed into land areas. ~~Bog is a peat-accumulating wetland that has no significant inflows or outflows and supports acidophilic mosses, particularly sphagnum.~~

**Sec. 11.06.160. Buffer or buffer area.** *Buffer or buffer area* is a vegetated zone contiguous to and surrounding a critical area that protects the critical area from adverse impacts to its integrity and value. Buffers are necessary for the continued maintenance, function, and/or structural stability of a critical area, and are an integral part of the resource's ecosystem. Buffers may either be enhanced and/or revegetated, or both, where they are degraded or as part of a mitigation program. Buffers shall be measured perpendicular from the edge of the critical area.

**Sec. 11.06.165. Building setback line (BSBL).** *Building setback line (BSBL)* means an area in which structures, including but not limited to sheds, homes (including overhangs), buildings, and awnings shall not be permitted within, or allowed to project into, a critical area buffer. Roads, parking areas, uncovered at-grade decks, patios, lawns, and landscaping are permitted within the BSBL.

**Sec. 11.06.170. Clearing.** *Clearing* means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site, which exposes the earth's surface of the site, or any actions ~~which~~that disturb the existing ground surface.

~~**Sec. 11.06.175. Compensatory flood storage.** *Compensatory flood storage* means any new, excavated flood storage volume equivalent to any flood storage capacity which has been or would be eliminated by~~

~~filling or grading within the flood fringe. The compensatory flood storage must be hydraulically associated with the floodway.~~

**Sec. 11.06.180. Compensatory mitigation.** *Compensatory mitigation* means restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. ~~the replacement of a project-related critical area that has been impacted, including, but not limited to, the following:~~

1. *Restoration* means actions performed to reestablish stream or wetland functional characteristics and processes, which have been lost by alterations, activities, or catastrophic events within an area ~~which~~that no longer meets the definition of a stream or wetland.
2. ~~*Creation*~~ *Establishment* means actions performed to intentionally ~~establish~~ create a wetland at a site where it did not formerly exist.
3. *Enhancement* means actions performed to improve the condition of existing wetlands or riparian areas so that the functions they provide are of a higher quality.

**Sec. 11.06.185. Comprehensive plan.** *Comprehensive plan* means the document, including maps, adopted by the city council, which outlines the city's goals and policies relating to management of growth, and prepared in accordance with Chapter 36.70A RCW. The term also includes adopted subarea plans. ~~means the adopted city of Kent comprehensive plan and amendments thereto.~~

**Sec. 11.06.190. Contaminant loading potential.** *Contaminant loading potential* means the availability within an aquifer recharge area of any potential physical, chemical, biological, or radiological substance that enters the hydrological cycle and may cause a deleterious effect on groundwater resources.

**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.

**Sec. 11.06.195. Creation of critical areas.** *Creation of critical areas* means the purposeful and legally authorized construction or forming of a wetland or stream from an upland (nonwetland or dry) site through artificial means.

**Sec. 11.06.200. Critical area ~~or environmentally sensitive area.~~** *Critical area ~~or environmentally sensitive area~~* means an area that possesses important natural functions and embodies a variety of important natural and community values. Such areas include wetlands, streams, fish, and wildlife habitat, geologic hazard areas, critical aquifer recharge areas, and flood hazard areas. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.

**Sec. 11.06.205. Critical area report.** *Critical area report* means a report prepared by a qualified ~~consultant~~ professional to determine the

presence, type, class, size, function, and/or value of an area subject to these regulations.

**Sec. 11.06.210. Critical aquifer recharge areas.** *Critical aquifer recharge areas* means areas designated wellhead protection areas pursuant to adopted wellhead protection plans ~~or via the calculated fixed radius method~~, susceptible groundwater areas pursuant to Chapter 173-100 WAC, and special protection areas pursuant to WAC 173-200-090.

**Sec. 11.06.215. Critical facilities.** *Critical facilities* means those facilities necessary to protect the public health, safety, and general welfare which are defined under the occupancy categories of essential facilities and special occupancy structures in the International Building Code, as the same may be amended ~~(or subsequent amendment)~~.

~~**Sec. 11.06.220. Critical habitat, or critical wildlife habitat, or critical fish and wildlife conservation area.** *Critical habitat, or critical wildlife habitat, or critical fish and wildlife conservation area* means habitat areas associated with threatened, endangered, sensitive, monitor or priority species of plants or wildlife and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term. Such areas are identified herein with reference to lists, categories, and definitions of species promulgated by the Washington Department of Fish and Wildlife (nongame data system special animal species) as identified in WAC 232-12-011 or 232-12-014; in the priority habitat and species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.~~

**Sec. 11.06.225. Dedication.** *Dedication* means conveyance of land to the city or other not-for-profit entity by deed, easement, or other legal instrument of conveyance.

**Sec. 11.06.227. Degraded wetland buffer.** *Degraded wetland buffer* means a buffer area which cannot adequately protect its adjacent wetland due to one ~~(1)~~ or more of the following existing conditions: (1) lack of vegetative cover or presence of bare soils (resulting from disturbance, fill, debris, or trash); (2) significant cover (over fifty ~~(50)~~ percent) in nonnative vegetation; (3) significant cover (over fifty ~~(50)~~ percent) in invasive species or noxious weeds; or (4) presence of existing nonconforming structures or improvements.

**Sec. 11.06.230. Delineation manual or wetland delineation manual/methodology.** *Delineation manual or wetland delineation manual/methodology* means the manual and methodology used for the identification of wetlands and delineation of their boundaries pursuant to this chapter. Work shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements as set forth in WAC 173-22-035, as amended. ~~to identify wetlands in the field, as described in the Washington State Wetlands Identification and Delineation Manual, adopted by the Department of Ecology in 1997 (pursuant to RCW 90.58.380/36.70A.175), and which is based on the~~

~~U.S. Corps of Engineers Wetlands' Delineation Manual (1987). Use of this manual is required by RCW 90.58.380/36.70A.175.~~

**Sec. 11.06.235. Department.** *Department* means the city of Kent department of public work~~economic and community development~~ or successor agency, unless the context indicates a different city department.

**Sec. 11.06.240. Director.** *Director* means the director of the city of Kent department of public works economic and community development director or his/her the director's designee.

**Sec. 11.06.245. Earth/earth material.** *Earth/earth material* means the naturally occurring rock, soil, stone, sediment, sand, or any combination thereof.

**Sec. 11.06.250. Elevated construction.** *Elevated construction* means a construction technique that employs posts or pilings to raise a structure so that waters can flow freely beneath the structure.

**Sec. 11.06.255. Emergent wetland.** *Emergent wetland* means a wetland with at least thirty (30) percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

**Sec. 11.06.260. Enhancement.** *Enhancement* means the improvement of an existing viable wetland, stream, or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, increasing structural diversity, or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream or habitat area. See also "Restoration."

**Sec. 11.06.265. Erosion.** *Erosion* means a process whereby gravity, wind, rain, water, freeze-thaw, and other natural agents mobilize and transport soil particles.



**Sec. 11.06.270. Erosion hazard areas.** *Erosion hazard areas* means areas within the city of Kent underlain by soils which are subject to severe erosion when disturbed. Such soils include, but are not limited to, those delineated in the "Soil Survey, King County Area, Washington" (USDA, 1973) as having a moderate to severe, severe, or very severe erosion hazard potential. These soils consist of the following: Alderwood gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (AgD); Alderwood and Kitsap soils, very steep (AkF); Arents, Alderwood Material, six (6) to fifteen (15) percent slopes (AmC); Beausite gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (BeD); Beausite gravelly sandy loam, forty (40) to seventy-five (75) percent slopes (BeF); Everett gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (EvD); Indianola loamy fine sand, fifteen (15) to thirty (30) percent slopes (InD); Kitsap silt loam, eight (8) to fifteen (15) percent slopes (KpC); Kitsap silt loam, fifteen (15) to thirty (30) percent slopes (KpD); Ovall gravelly loam, fifteen (15) to twenty-five (25) percent slopes (OvD); Ovall gravelly loam, forty (40) to seventy-five (75) percent slopes (OvF); Pilchuck loamy fine sand (Pc); Ragnar fine sandy loam, fifteen (15) to twenty-five (25) percent slopes (RaD); Ragnar-Indianola association, moderately steep (RdE); and Riverwash (Rh).

**Sec. 11.06.275. Essential habitat.** *Essential habitat* means habitat necessary for the survival of federally listed threatened, endangered, ~~and~~ or sensitive species, and state-listed priority species.

**Sec. 11.06.280. Excavation.** *Excavation* means the removal or displacement of earth material by human or mechanical means.

**Sec. 11.06.285. Existing and ongoing agricultural activities.** *Existing and ongoing agricultural activities* includes those activities

conducted on lands defined in RCW 84.34.020(2), as amended, and those activities involved in the production of crops and livestock, provided that such activity was actively being conducted. ~~Such activity must have been in existence~~ as of the effective date of the ordinance codified in this chapter. The definition includes, but is not limited to: operation and maintenance of farm and stock ponds or drainage ditches; irrigation systems; changes between agricultural activities or crops; and normal operation, maintenance, or repair of existing serviceable structures, facilities, or improved areas. Activities ~~which~~that bring an area into agricultural use from a previous nonagricultural use are not considered part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for ~~a period of~~ longer than five ~~(5)~~consecutive years, unless the idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

~~**Sec. 11.06.290. Exotic.** *Exotic* means any species of plant or animal that is foreign and not indigenous to the Kent area.~~

**Sec. 11.06.295. Fen.** *Fen* means a peat-accumulating wetland that receives some drainage from surrounding mineral soil and usually supports marsh-like vegetation.

**Sec. 11.06.300. Fill/fill material.** *Fill/fill material* means a deposit of earth or other material placed by human or mechanical means. Earth material is defined in KCC 11.06.245. Other material may include, but is not limited to plastics, construction debris, wood chips, overburden from excavation activities, or materials used to create any structure or infrastructure.

**Sec. 11.06.305. Filling.** *Filling* means the act of transporting or placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.

**Sec. 11.06.307. Fish and wildlife habitat conservation area.** *Fish and wildlife habitat conservation area* means and includes the following: habitat where federally and state endangered, threatened, and sensitive species have a primary association; state priority habitats and areas associated with state priority species; habitats and areas associated with species of local importance (as determined by the city); naturally occurring ponds less than twenty acres and their submerged aquatic beds, which provide fish or wildlife habitat; and waters of the state.

**Sec. 11.06.310. Forested wetland.** *Forested wetland* means a wetland defined by the Cowardin system with at least thirty ~~(30)~~ percent of the surface area covered by woody vegetation greater than twenty ~~(20)~~ feet in height that is at least partially rooted in the wetland.

**Sec. 11.06.315. Functions, beneficial functions, or functions and values.** *Functions, beneficial functions, or functions and values* means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

**Sec. 11.06.320. Geologic hazard areas.** *Geologic hazard areas* means lands or areas characterized by geologic, hydrologic, hydrogeologic, vegetative and topographic conditions that render them susceptible to varying degrees of potential risk of landslides, erosion, or seismic or volcanic activity; and areas characterized by geologic, hydrogeologic and hydrologic conditions that make them vulnerable to contamination of groundwater supplies through infiltration of contaminants to aquifers.

**Sec. 11.06.325. Grading.** *Grading* means any excavating, filling, clearing, leveling, movement or redistribution—~~contouring~~ of the ground surface by human or mechanical means.

**Sec. 11.06.330. Growing season.** *Growing season* means the average frost-free period of the year in Kent as recorded in National Oceanic and Atmospheric Administration Frost/Freeze Data from Climatology of the U.S., No. 20, supplement No. 1, or in equivalent U.S. government agency records. Growing season, for the purposes of these regulations, may be considered to be the period from March 1st through October 31st of any calendar year.

**Sec. 11.06.335. Habitat management.** *Habitat management* means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.

**Sec. 11.06.340. Hydric soil.** *Hydric soil* means soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the federal manual.

~~**Sec. 11.06.345. Hydrologically isolated.** *Hydrologically isolated* means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any one hundred (100) year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.~~

**Sec. 11.06.350. Hydrophytic vegetation.** *Hydrophytic vegetation* means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the federal manual.

**Sec. 11.06.355. In-kind compensation or mitigation.** *In-kind compensation or mitigation* means replacement of wetlands or other critical areas with substitute wetlands or resources whose characteristics closely approximate those destroyed or degraded by a regulated activity.

**Sec. 11.06.357. Inundation Zone.** *Inundation zone* means an area where deposition or flow of debris, mudflows or related flooding events from geologic and volcanic events on Mount Rainier may occur within the city.

**Sec. 11.06.360. Intentionally created streams.** *Intentionally created streams* means manmade streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. This definition does not include stream modifications

performed pursuant to city authorization, such as changes or redirection of stream channels, and does not include streams created as mitigation. Purposeful creation must be demonstrated through documentation, photographs, statements, and/or other evidence. Intentionally created streams are excluded from regulation under this chapter, except manmade streams that provide "critical habitat," as designated by federal or state agencies, for anadromous fish.

**Sec. 11.06.363. Isolated Wetlands.** *Isolated wetlands means those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river or stream, and which have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands. Any project involving filling or altering an isolated wetland is subject to regulation by the State Department of Ecology under the Water Pollution Control Act, Chapter 90.48 RCW, as amended, in addition to this chapter. While wetland fill is also regulated by the U.S. Army Corps of Engineers under the Federal Clean Water Act, isolated wetlands are not subject to federal review.*

**Sec. 11.06.365. Lahar.** *Lahar means mudflows or debris flows associated with volcanic activity, and which pose a threat to life, property, and/or structures.*

**Sec. 11.06.370. Landslide.** *Landslide means episodic downslope movement of a mass of soil or rock.*

**Sec. 11.06.375. Landslide hazard areas.** *Landslide hazard areas means and includes:*

1. Any existing active or dormant landslide or debris flow that has shown movement during the Holocene epoch (from ten thousand ~~(10,000)~~ years ago to the present) or that are underlain or covered by mass wastage debris of that epoch.

2. Areas delineated in the Soil Survey, King County Area, Washington (USDA, 1973) as having a "severe" limitation for building site development. These soils consist of the following: Alderwood gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (AgD); Alderwood and Kitsap soils, very steep (AkF); Beausite gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (BeD); Beausite gravelly sandy loam, forty (40) to seventy-five (75) percent slopes (BeF); Everett gravelly sandy loam, fifteen (15) to thirty (30) percent slopes (EvD); Indianola loamy fine sand, fifteen (15) to thirty (30) percent slopes (InD); Kitsap silt loam, eight (8) to fifteen (15) percent slopes (KpC); Kitsap silt loam, fifteen (15) to thirty (30) percent slopes (KpD); Ovall gravelly loam, fifteen (15) to twenty-five (25) percent slopes (OvD); Ovall gravelly loam, forty (40) to seventy-five (75) percent slopes (OvF); Ragnar fine sandy loam, fifteen (15) to twenty-five (25) percent slopes (RaD); and Ragnar-Indianola association, moderately steep (RdE).

3. Areas designated as quaternary slumps, earth flows, mudflows, or landslides on maps published by the U.S. Geological Survey, Washington Department of Natural Resources, ~~or~~ geologic consultant reports completed for the city of Kent, or as identified on LIDAR maps completed for the city of Kent.

4. Areas with all three of the following characteristics: slopes steeper than fifteen ~~(15)~~ percent; slopes intersecting granular material over silts or

clays; and springs or groundwater seepage or evidence of seasonal springs or groundwater seepage.

5. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

6. Slopes subject to failure during seismic shaking.

7. Areas potentially unstable as a result of rapid stream incision or stream bank erosion.

8. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding.

9. Any area with a slope of forty ~~(40)~~ percent or steeper and with a vertical relief of ten ~~(10)~~ or more feet. A slope is delineated by establishing its toe and top and measured by averaging the inclination over ten ~~(10)~~ feet of vertical relief.

**Sec. 11.06.380. Mitigation Sequencing.** Mitigation Sequencing means that applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such an alteration shall be avoided, minimized, or compensated for in the following sequential order of preference, pursuant to WAC 197-11-768, as amended:

*Mitigation* includes:



1. Avoiding the impact altogether by not taking a certain action or parts of actions.
  2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  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.
  6. The enhancement, restoration, or creation of critical areas as compensation for impacts resulting from development activities.
- While monitoring without additional actions is not considered mitigation for the purposes of these regulations, it may be part of a comprehensive mitigation program.

Also see KCC 11.06.180, "Compensatory mitigation."

**Sec. 11.06.385. Native vegetation.** *Native vegetation* means plant species indigenous to the Puget Sound region that could occur or could have occurred naturally on the site, which are or were indigenous to the area in question.

~~**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.~~

**Sec. 11.06.388. Naturally occurring pond (deepwater aquatic habitat).** *Naturally occurring pond (deepwater aquatic habitat)* means a pond less than twenty acres in size and its submerged aquatic beds, which provide fish or wildlife habitat. Also see definition of "Wetlands" for exclusions of certain types of ponds from regulation.

**Sec. 11.06.390. Offsite mitigation.** *Offsite mitigation* means performance of mitigation actions, pursuant to standards established in this chapter, on a site or in an area other than that proposed for conduct of a regulated activity.

**Sec. 11.06.395. Onsite mitigation/compensation.** *Onsite mitigation/compensation* means replacing wetlands or other resources at or adjacent to the site on which a wetland or other resource has been impacted adversely affected by a regulated activity.

**Sec. 11.06.397. Ordinary high water mark.** *Ordinary high water mark* means that mark on all lakes, streams, and tidal water that may 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 June 1, 1971, as it may naturally change thereafter, or

as it may change thereafter in accordance with permits issued by the city of Kent or Department of Ecology; provided, however, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

**Sec. 11.06.400. Out-of-kind mitigation.** *Out-of-kind mitigation* means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed, or degraded by a regulated activity.

**Sec. 11.06.405. Permanent erosion control.** *Permanent erosion control* means continuous onsite and offsite control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants after development, construction, or restoration.

**Sec. 11.06.410. Plant association of infrequent occurrence.** *Plant association of infrequent occurrence* means one ~~(1)~~ or more plant species, which, because of the rarity of the habitat and/or the species involved, or for other botanical or environmental reasons, do not often occur in the city of Kent. Examples include but are not limited to:

1. Wetlands with a coniferous forested class or subclass consisting of trees such as western red cedar, Sitka spruce, or lodge pole pine growing on organic soils;
2. Bogs with a predominance of sphagnum moss, or those containing sphagnum moss, and typically including one ~~(1)~~ or more species such as Labrador tea, sundew, bog laurel, or cranberry.

~~**Sec. 11.06.415. Pond (deepwater aquatic habitat).** *Pond (deepwater aquatic habitat)* means areas of open surface water that are less than twenty (20) acres in size that are either permanently inundated at mean annual water depths greater than six and six tenths (6.6) feet, or permanently inundated at less than six and six tenths (6.6) feet in depths that do not support rooted emergent or woody plant species [Source: Washington State Wetland Delineation Manual, DOE, 1997]. Also see definition of "wetlands" for exclusions of certain types of ponds from regulation.~~

**Sec. 11.06.420. Practicable alternative.** *Practicable alternative* means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts ~~to~~ of a negative effect on critical areas. It may involve using an alternative site in the general region that is available to the applicant and may feasibly be used to accomplish the project.

**Sec. 11.06.425. Priority habitat/species, or priority wildlife habitat/species.** *Priority habitat/species, or priority wildlife habitat/species* means habitats and species of local importance and concern in urban areas, as identified by the Washington Department of Fish and Wildlife priority habitat and species (PHS) program. "Priority species" are wildlife species of concern due to their population status and their sensitivity to habitat alteration. "Priority habitats" are areas with one ~~(1)~~ or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat; significant wildlife seasonal ranges; significant movement corridors for wildlife; limited availability; and/or high vulnerability. General types of priority habitat identified in the PHS program – some of which do not occur

in the city of Kent – include Aspen stands, cliffs, meadows, oak woodlands, old-growth/mature forests, riparian areas, shrub-steppe, snag-rich areas, and wetlands.

**Sec. 11.06.430. Qualified ~~consultant~~professional.** *Qualified ~~consultant~~professional* means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905, as amended. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, geology, environmental studies, fisheries, geomorphology, or a related field, or have at least five years of related work experience. A qualified engineer, geologist, and hydrogeologist must have an active license to practice within the State of Washington.

1. A qualified professional for wetlands must be a professional wetland scientist, or meet the education requirements in this section and have at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manuals and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.

2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.

3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

4. A qualified professional for critical aquifer recharge areas must be a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

~~a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology or horticulture/arboriculture for wetlands, streams, and wildlife habitat and significant vegetation; geology; and/or a civil engineer licensed in the state of Washington for geologic hazards and aquifer recharge areas), and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage, and mitigate impacts to the critical area in question. For purposes of wetland studies and planning, a qualified consultant is one who has obtained certification by the Society of Wetland Scientists as a professional wetland scientist or wetland professional in training. For the purpose of geologic hazards, a qualified consultant shall be a professional geologist, professional engineering geologist or licensed engineer with the state of Washington.~~

~~**Sec. 11.06.435 Regulated activity.** *Regulated activity* means activity that has a potential to significantly impact a critical area that is subject to the provisions of this chapter. Regulated activities generally include but are not limited to any filling, dredging, dumping, or stockpiling, draining, excavating, flooding, clearing, or grading, constructing or reconstructing, driving pilings, obstructing, shading, clearing, or harvesting.~~

~~**Sec. 11.06.440. Repair or maintenance.** *Repair or maintenance* means an activity that restores the character, scope, size, and design of a structure or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project~~

beyond the original design and drain, dredge, fill, flood, or otherwise alter additional critical areas are not included in this definition.

**Sec. 11.06.445. Restoration.** *Restoration* means actions taken to reestablish wetland, stream, or habitat functional values and characteristics that have been destroyed or degraded by past alterations (e.g., filling or grading). See also "Enhancement."

**Sec. 11.06.450. Secondary habitat.** *Secondary habitat* means areas that offer less diversity of animal and plant species than priority habitat but that are important for performing the essential functions of habitat.

**Sec. 11.06.455. Seismic hazard areas.** *Seismic hazard areas* means areas subject to a risk of earthquake damage due to soil liquefaction. These areas generally contain saturated alluvial sediments, normally-consolidated glacial deposits, vegetated materials (peat) that either are or can become saturated, and poorly compacted fill that either is or can become saturated. These areas are generally mapped as Category I and Category II liquefaction susceptibility areas on maps contained within: Palmer, Walsh, Logan, Gerstel, Liquefaction Susceptibility for the Auburn and Poverty Bay 7.5-Minute Quadrangles, Washington, Washington State Department of Natural Resources, September 1995; Palmer, Shasse and Norman, Liquefaction Susceptibility for the Des Moines and Renton 7.5-Minute Quadrangles, Washington, Washington State Department of Natural Resources, December 1994; and slopes that could fail during an earthquake. In the city of Kent, these slope areas are generally mantled with consist of Vashon ice-contact deposits in areas of fifteen (15) percent slope or steeper. Vashon ice-contact deposits (Qvi) are mapped in: Luzier, Water Supply Bulletin No. 28, Geology and Ground-Water Resources of

Southwestern King County, Washington, State of Washington Department of Water Resources, 1969; Booth DB, and Waldron HH, Geologic Map of the Des Moines Quadrangle, King County, Washington, 2004; Booth DB, Waldron HH and Troost KG, Geologic Map of the Poverty Bay Quadrangle, King County, Washington, 2004.

**Sec. 11.06.460. Scrub-shrub wetland.** *Scrub-shrub wetland* means a wetland with at least thirty ~~(30)~~ percent of its surface area covered by woody vegetation less than twenty ~~(20)~~ feet in height as the uppermost strata.

**Sec. 11.06.465. Sensitive area tract.** *Sensitive area tract* means a separate tract that is created to protect ~~at~~ the ~~sensitive~~ critical area and its buffer.

**Sec. 11.06.470. Site.** *Site* means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels, where a proposed activity may ~~impact~~ affect a critical area.

**Sec. 11.06.475. Slope.** *Slope* means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

**Sec. 11.06.480. Slope, top.** *Slope, top* means the uppermost limit of an area where the ground surface drops ten ~~(10)~~ feet or more vertically within a horizontal distance of twenty-five ~~(25)~~ feet on slopes greater than forty ~~(40)~~ percent.



**Sec. 11.06.485. Streams.** *Streams* means those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area ~~which~~that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not intended to include artificially created irrigation ditches, canals, storm or surface water devices, or other entirely artificial watercourses, unless they are used by salmonids or created for the purposes of stream mitigation.

**Sec. 11.06.490. Stream reconnaissance report.** *Stream reconnaissance report* means a type of critical area report prepared by an applicant's qualified ~~consultant~~professional to describe a stream and to characterize its conditions, wildlife, habitat values, and water quality.

**Sec. 11.06.495. Structural diversity, vegetative.** *Structural diversity, vegetative* means the relative degree of diversity or complexity of vegetation in a wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer, and tree canopy); the variety of plant species; and the spacing or pattern of vegetation.

**Sec. 11.06.505. Sub-basin.** *Sub-basin* means a smaller drainage basin that is part of a larger drainage basin or watershed.

**Sec. 11.06.500. Substantial improvement or reconstruction.** *Substantial improvement or reconstruction* means any repair, reconstruction, or improvement the cost of which is more than fifty (50) percent of the market value of the structure either (1) before the improvement is started or (2) before the damage occurred if the structure

damaged is being replaced. An improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. Substantial improvement does not include (1) an improvement to comply with existing state or local health, sanitary or safety (International Building Code/International Fire Code) specifications which are necessary to assure safe conditions; or (2) alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

**Sec. 11.06.505. Substrate.** *Substrate* means the soil, sediment, decomposing organic matter, or combination of those located on the bottom surface of the wetland, lake, stream, or river.

**Sec. 11.06.510. Temporary erosion control.** *Temporary erosion control* means onsite and offsite control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

**Sec. 11.06.515. Unavoidable and necessary impacts.** *Unavoidable and necessary impacts* means impacts to wetlands a critical area or applicable buffers that remain after an applicant has demonstrated that no practicable alternative exists for the proposed project. These impacts are subject to the mitigation provisions contained in this chapter.

**Sec. 11.06.520. Utility.** *Utility* means natural gas, electric, telephone, and telecommunications, cable communications, water, sewer, or storm drainage and their respective facilities, lines, pipes, mains, equipment, and appurtenances.

**Sec. 11.06.525. Volcanic hazard area.** *Volcanic hazard area* means an area subject to a risk of inundation by lahars or other related flooding events resulting from volcanic activity originating from Mount Rainier. These areas are mapped as Inundation Zones for Class M lahars on maps contained within: Hoblitt, R.P., Walder, J.S., Driedger, C.L., Scott, K.M., Pringle, P.T., and Vallance, J.W., *Volcano Hazards from Mount Rainier, Washington, U.S. Geologic Survey Open File Report 98-428, 1998.*

**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 construction or alteration of a public road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate conversion of wetlands. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements as set forth in WAC 173-22-035, as amended. ~~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 approved federal wetland delineation manual ~~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).

**Sec. 11.06.535. Wetland class.** *Wetland class* means the U.S. Fish and Wildlife Service wetland classification scheme that uses an hierarchy of systems, subsystems, classes, and subclasses to describe wetland types (refer to USFWS, December 1979, Classification of Wetlands and Deepwater Habitats of the United States for a complete explanation of the wetland classification scheme). Eleven (~~11~~) class names are used to describe wetland and deepwater habitat types. These include: forested wetland, scrub-shrub wetland, emergent wetland, moss-lichen wetland, unconsolidated shore, aquatic bed, unconsolidated bottom, rock bottom, rocky shore, streambed, and reef.

**Sec. 11.06.540. Wetland edge.** *Wetland edge* means the boundary of a wetland as delineated based on the definitions in this chapter and the procedures specified in this chapter.

**Sec. 11.06.543. Wetlands of high conservation value (previously known as natural heritage wetland).** *Wetlands of high conservation value* means wetlands 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. Wetlands of high conservation

value inventories are available from the Washington State Department of Natural Resources.

**Sec. 11.06.545. Wildlife habitat.** *Wildlife habitat* means areas that provide food, protective cover, nesting, loafing, breeding or movement for fish and wildlife and with which individual species have a primary association. Wildlife habitat includes naturally occurring ponds less than under-twenty (20)-acres in areaisize.

**Sec. 11.06.547. Wildlife-passable fence.** *Wildlife-passable fence* means a fence that is designed and placed to allow wild animals of all sizes to pass beneath or through, in order to promote wildlife mobility and habitat corridors. A wildlife-passable fence may include split-rail cedar, or other non-pressure treated fencing type approved by the director.

### **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 as identified in KCC 11.06.380~~in this chapter~~. Proposals ~~which~~that 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 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.

4. In the case of isolated emergent Category III or IV wetlands less than five thousand square feet in size, avoidance of impacts is not required. However, replacement wetland area must be created pursuant to KCC 11.06.660.D.

C. Mitigation banking and in-lieu fee mitigation. The city may approve mitigation banking or in-lieu fee mitigation as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and the use of a mitigation bank/in-lieu fee program will provide equivalent or greater replacement of critical area functions and values when compared to conventional permittee-responsible mitigation. Mitigation banks and in-lieu fee

programs shall only be used when it can be demonstrated that they provide significant ecological benefits including long-term conservation of critical areas, important species, and habitats or habitat linkages, and when they are documented to provide a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals. Mitigation banks and in-lieu fee programs shall not be used unless they are certified in accordance with applicable federal and state mitigation rules and expressly authorized through city legislative action.

**Sec. 11.06.560. Location and timing of compensatory mitigation.**

A. Mitigation shall be provided onsite where possible, unless the director agrees that a higher function and value can be accomplished offsite within the same drainage basin. Mitigation may be allowed offsite only when the director determines ~~it is determined, through the SEPA review process,~~ that onsite mitigation is not scientifically feasible or practical due to physical features of the property. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided onsite.

B. When mitigation cannot be provided onsite, mitigation shall be provided in the same drainage basin as the permitted activity on property owned, secured, or controlled by the applicant where such mitigation is practical and beneficial to the critical area and associated resources. Mitigation sites shall be located within the city, unless otherwise approved by the director.

C. In-kind mitigation shall be provided except when the applicant demonstrates, and the director concurs, that greater function and value can be achieved through out-of-kind mitigation.

D. When wetland, stream, or habitat mitigation is permitted by these regulations onsite or offsite, the mitigation project shall occur near an adequate water supply (river, stream, groundwater) with a hydrologic connection to the critical area to ensure a successful mitigation or restoration. A natural hydrologic connection is preferential as compared to one which relies upon manmade features requiring routine maintenance.

E. Any agreed upon mitigation plan shall be completed prior to issuance of a building or construction permit, unless a phased or concurrent schedule that assures completion prior to occupancy has been approved by the department.

**Sec. 11.06.570. Mitigation monitoring.**

A. For any actions permitted by this chapter which require a mitigation plan, a monitoring program shall be prepared and implemented by the applicant to evaluate the success of the mitigation project and to determine necessary corrective actions. This program shall determine if the original goals and objectives of the mitigation plan are being met. The monitoring program shall be submitted to, reviewed, and approved by the department as a part of the mitigation plan.

B. The monitoring program shall include a contingency plan in the event that implementation of the mitigation plan fails to satisfy the approved goals and objectives. A ~~performance and maintenance bond~~financial guarantee or other ~~acceptable security device~~, acceptable to



both the director and the city attorney, is required to ensure the applicant's compliance with the terms of the approved mitigation plan. The amount of the ~~financial guarantee performance and maintenance bond~~ shall equal one hundred twenty-five (125) percent of the cost of the mitigation project for the length of the monitoring period. Financial guarantees shall not be reduced or released until the maintenance and monitoring period is complete and has been approved in writing by the director.

C. The following elements shall be incorporated into monitoring programs prepared to comply with this chapter and shall be a part of the approved mitigation plan:

1. Appropriate, accepted, and unbiased qualitative or precise and accurate quantitative sampling methods to evaluate the success or failure of the project.

2. Quantitative sampling methods that include permanent photopoints installed at the completion of construction and maintained throughout the monitoring period, permanent transects, sampling points (e.g., quadrants or water quality or quantity monitoring stations), and wildlife monitoring stations.

3. Clearly stipulated qualitative and quantitative sampling methods.

4. Appropriate qualitative and/or quantitative performance standards that will be used to measure the success or failure of the mitigation. These will include, at a minimum, standards for plant survival and diversity, including structural diversity, the extent of wetland hydrology, hydric soils, and habitat types and requirements as appropriate.

Where plantings are proposed, a soil analysis is required. Soil amendments shall be considered as appropriate for site conditions.

5. Monitoring programs shall be for a period of at least five (5) years and include at a minimum: preparation of an as-built plan; annual monitoring and preparation of annual monitoring reports following implementation; and a maintenance plan. Monitoring periods may be reduced to three years at the discretion of the director if the annual monitoring report proves that the mitigation project has met established performance standards. More stringent monitoring requirements may be required on a case-by-case basis for more complex mitigation plans.

6. Monitoring reports shall be submitted to the department at intervals identified in the approved mitigation plan. A schedule for the submittal of monitoring reports and maintenance periods shall be described in the approved mitigation plan. The reports shall be prepared by a qualified ~~consultant~~ professional and must contain all qualitative and quantitative monitoring data, photographs, and an evaluation of each of the applicable performance standards. If performance standards are not being met, appropriate corrective or contingency measures must be identified and implemented to ensure that performance standards will be met.

7. The director may extend the monitoring period beyond the minimum time frame if performance standards are not being met at the end of the initial five (5)-year period; and may require additional financial ~~securities or bonding~~ guarantees to ensure that any additional monitoring and contingencies are completed to ensure the success of the mitigation.

#### **Article IV. Wetlands**

**Sec. 11.06.580. Wetlands rating system.**

A. Wetlands are classified as Category I, II, III, or IV based on the 2014 Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology Publication No. ~~04-06-02514-06-029~~, published ~~October, August 2004-2014~~.

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. The approved federal wetland delineation manual and applicable regional supplements shall be used to conduct wetland delineations. 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~~of wetlands on adjacent properties may have an impact on 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 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); field delineation data sheets, wetland rating forms, 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, a discussion of the wetland's hydrologic regime, discussion of existing wetland functions, landscape setting, and discussion of potential direct or indirect impacts that may occur to the wetland due to the proposed 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~~that has been ~~confirmed~~approved by the department pursuant to a properly vested and valid city permit or land use

approval SEPA review for a proposed project shall be binding upon the city and the applicant. If the department has approved a wetland delineation report ~~has that is not part of a properly vested and valid city permit or land use approval, gone through SEPA review as a part of the application process,~~ and/or the city department has approved a wetland delineation report for another purpose, the wetland delineation report shall be valid for a period of five~~two (2)~~ years from the date of the approved report.

**Sec. 11.06.600. Wetland buffers and building setback lines.**

A. Purpose.

1. The establishment of buffers is required for all development proposals and activities in or adjacent to wetlands. The purpose of the buffer is to protect the integrity, function, value, and resources of the wetland. Buffers shall typically consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. No buildings, structures, impervious surfaces or nonnative landscaping are allowed in a buffer unless otherwise permitted by this chapter. Where flexible buffer widths are permitted by this chapter, such enhancement shall be considered in determining appropriate buffer widths. Buffers must be protected during construction by placement of a temporary barricade, notice of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls.

2. Required buffer widths shall reflect the functions and values of the wetland, the risks associated with development, and the type and intensity of human activity proposed to be conducted near the wetland in those circumstances where such activity is permitted by these regulations.

B. 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 No. ~~14-06-02904-06-025~~, published ~~October, August 2004~~2014. Standard buffers shall be applied to wetlands unless otherwise reduced pursuant to subsection (CB) of this section, increased pursuant to subsection (DC) of this section, or otherwise adjusted under other provisions of this chapter. Standard buffers (in feet) and reduced buffers permitted pursuant to subsection B(C) of this section are provided in the following table:

<u>Habitat Score (Points)</u>	<u>3-4 points</u>	<u>3-4 points w/ Subsection C of This Section</u>	<u>5-7 points</u>	<u>5-7 points w/ Subsection C of This Section</u>	<u>8-9 points</u>	<u>8-9 points w/ Subsection C of This Section</u>
<u>Habitat Score (Points)</u>	<u>&lt;20</u>	<u>&lt;20 w/ Subsection B of This Section</u>	<u>20-28</u>	<u>20-28 w/ Subsection B of This Section</u>	<u>29+</u>	<u>29+ w/ Subsection B of This Section</u>
<b>Category I</b>	125	100	150	125	225	200
<b>Category II</b>	100	75	125	110	200	175
<b>Category III</b>	75	60	125	110	n/a	n/a
<b>Category IV</b>	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.

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(C)~~ of this section.

4. ~~Natural heritage wetlands~~ Wetlands of high conservation value 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(C)~~ of this section.

CB. Reduced buffer widths. Standard buffer widths, as noted in subsection (B) of this section, may be reduced through a combination of buffer enhancement and mitigation measures. The applicant must demonstrate that by enhancing the buffer and use of applicable mitigation measures identified in the following table, the reduced buffer will function at a level equivalent to or greater than the level of the standard buffer.

1. Prior to approval of a reduced buffer, a critical areas application shall meet all of the criteria listed below. A reduced buffer will be approved only if:

a. It will provide an overall improvement in water quality;

b. It will provide an overall enhancement to fish, wildlife, or their habitat;

c. It will not result in an alteration of current drainage and stormwater detention capabilities;

d. It will not lead to unstable earth conditions or create an erosion hazard;

e. It will not be materially detrimental to any other property or the city as a whole; and

f. All exposed areas are stabilized with native vegetation, as appropriate.

2. Standard buffer widths as noted in subsection A-(B) 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:

<b>Examples of Disturbance</b>	<b>Activities and Uses That Cause Disturbances</b>	<b>Examples of Measures to Minimize Impacts</b>
Lights	<ul style="list-style-type: none"><li>• Parking lots</li><li>• Warehouses</li><li>• Manufacturing</li><li>• Residential</li></ul>	<ul style="list-style-type: none"><li>• Direct lights away from wetland</li></ul>



<b>Examples of Disturbance</b>	<b>Activities and Uses That Cause Disturbances</b>	<b>Examples of Measures to Minimize Impacts</b>
Noise	<ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Residential</li> </ul>	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> </ul>
Toxic runoff*	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Manufacturing</li> <li>• Residential areas</li> <li>• Application of agricultural pesticides</li> <li>• Landscaping</li> </ul>	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetlands</li> <li>• Apply integrated pest management</li> </ul>
Change in water	<ul style="list-style-type: none"> <li>• _____Impermeable surfaces</li> </ul>	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain,</li> </ul>

<b>Examples of Disturbance</b>	<b>Activities and Uses That Cause Disturbances</b>	<b>Examples of Measures to Minimize Impacts</b>
regime	<ul style="list-style-type: none"> <li>• Lawns</li> <li>• Tilling</li> </ul>	and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Residential areas	<ul style="list-style-type: none"> <li>• 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</li> <li>Contain pets to prevent disturbance.</li> </ul>

<b>Examples of Disturbance</b>	<b>Activities and Uses That Cause Disturbances</b>	<b>Examples of Measures to Minimize Impacts</b>
		i.e. dog run, chicken coop
Dust	• Tilled fields	• Use best management practices to control dust
<p>* These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>		

DE. *Increased buffer widths.*

1. If a Category I or II wetland with a habitat score greater than ~~fivetwenty (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(B) 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 subsection B(C) of this section.

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.

~~3. 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.~~

ED. *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 are equivalent to or greater than the functions and values before averaging as determined by a qualified ~~consultant~~professional 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-twenty five (50)~~ percent of the standard buffer or be less than ~~twenty-five (25)~~ thirty-seven and one half 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-five (3)~~ years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570, including an appropriate financial guarantee until the maintenance and monitoring period is completed and has been approved by the city.

FE. 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-five (3)~~ years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570, including an appropriate financial guarantee until the maintenance and monitoring period is completed and has been approved by the city. 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.

FG. *Required report for buffer averaging—reduction and/or reduction averaging.* A request to reduce the buffer or buffer average pursuant to subsections D(C) or (E) of this section 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.

HG. *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.

IH. *Buffer utilization for landscape requirements.* Enhanced wetland buffers may be used to satisfy landscaping requirements in ~~Ch.~~Chapter 15.07 KCC ~~where~~when 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.~~Chapter 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.~~Chapter 15.07 KCC.

J. *Permitted uses in a wetland buffer.* Activities shall not be allowed in a wetland buffer except for the following, and then only when properly mitigated and conducted in a manner so as to minimize impacts to the buffer and the adjacent wetland:

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, pedestrian or bicycle trails, according to the following criteria:

a. Designed to minimize impact on the wetland system.

~~a. Constructed of permeable materials.~~

~~b. Designed to minimize impact on the stream system.~~

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



bd. Where feasible, located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the wetlandstream, except to cross a wetlandstream when approved by the city and all other applicable agencies and except as appropriate to provide outlook points or similar locations for recreational, 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 structures, such as fishing piers, boat launches, ~~and benches,~~ and picnic tables.

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~~ feasible bythrough 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. Ongoing city maintenance activities by 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 nonnative vegetation, maintenance of existing vegetation as necessary, restoration, enhancement, and sign and fence maintenance.

~~K3.~~ *Building setback lines.* A minimum ~~building setback line~~ BSBL 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 ~~does~~ does 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 I 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 regulated 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.B.~~ Filling of a hydrologically an 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).

~~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 wetlands, and Category III wetlands which score less than 20 points for habitat functions), 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.~~

**Sec. 11.06.630. Fencing and signage.** All development and subdivisions to which this chapter applies shall construct a wildlife-passable fence along the entire wetland buffer edge, unless otherwise approved by the director. ~~Wetland~~ Critical sensitive area signs must also be attached to the fence or located just inside the wildlife-passable fence attached to a four (4) by four (4) inch cedar post (or other nonpressure treated materials approved by the city). Signs must be located at a rate of one (1) sign per residential lot and one (1) sign per one hundred (100) feet for all public rights-of-way, trails, parking areas, playgrounds, and all other uses located adjacent to wetlands and associated buffers.

**Sec. 11.06.640. Sensitive area tracts, ~~and~~ easements.**

A. *Condition of approval.* As a condition of approval pursuant to this chapter, the director shall require creation of a separate sensitive area tract containing the areas determined to be wetlands ~~and~~ or wetland buffers. Sensitive area tracts ~~and~~ or easements are separate tracts containing wetlands and wetland buffers with perpetual deed restrictions requiring that the tracts remain undeveloped. Sensitive area tracts are an integral part of the lot in which they are created, are not intended for sale, lease,

or transfer, and may be included in the area of the parent lot for purposes of subdivision method and minimum lot size.

B. *Protection of ~~wetlands/ and buffers~~sensitive area tracts.* The director shall require that a ~~sensitive~~critical area be protected by one ~~(1)~~ of the following methods:

1. Protection of a regulated wetland and its associated buffer shall be provided by placing it in a separate tract on which development is prohibited; executing an easement in favor of the city, in a form and manner acceptable to both the director and the city attorney; dedication to a conservation organization or land trust; or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the wetland and its buffer shall be shown on the face of the deed or plat, as applicable, to the property and shall be recorded with the King County recorder's office; ~~or The applicant shall dedicate to the city, or other public or nonprofit entity specified by the director, an easement or tract for the protection of native vegetation within a wetland and/or its buffer; or~~

2. The applicant shall record against the property a permanent and irrevocable deed restriction on all lots containing a sensitive area tract or tracts created as a condition of approval. ~~Such~~All deed restriction(s) shall be approved by the director and the city attorney and shall prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the city and any other agency with jurisdiction over such activity.

**Sec. 11.06.650. Notice on title.** The owner of any property with field-verified presence of wetlands or wetland buffers for which a permit application is submitted shall, as a condition of permit issuance, record a notice of the existence of such wetland or wetland buffer against the property with the King County recorder's office. The notice shall be approved by the director and the city attorney for compliance with this provision. The titleholder will have the right to challenge this notice and to have it released if the wetland designation no longer applies; however, the applicant shall be responsible for completing a wetland delineation report, which will be subject to approval by the director. Any unapproved alterations of a wetland will ~~constitute~~ result in a code violation and will be enforced to the fullest extent of the Kent City Code.

**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-creates as nearly as practicable or improves the original wetlands in terms of acreage, function, geographic location, and setting. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised) and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009), and may incorporate guidance from

Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington (Ecology Publication #10-06-011, Hruby. 2012).

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.~~ Preference of Mitigation Actions. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (re-establishment and rehabilitation) of wetlands:

a. The goal of re-establishment is returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres and functions. Activities could include removing fill material, plugging ditches, or breaking drain tiles.

b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain.

2. Establishment (creation) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native

species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

a. If a site is not available for wetland restoration to compensate for expected wetland or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

iv. The proposed wetland and buffer is designed to be self-sustaining with little or no long-term maintenance.

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



purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:

a. How the proposed enhancement will increase the wetland's or the buffer's functions;

b. How this increase in function will adequately compensate for the impacts; and

c. How all other existing wetland functions at the mitigation site will be protected.

~~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 in the table below; however, the director may choose to double mitigation ratios in instances where wetlands are filled or ~~impacted~~negatively affected 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 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 1/2) 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 II 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 III wetlands shall be accomplished as follows:~~

~~a. By creation of new wetlands at a ratio of two (2) 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) 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 1/2) 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).~~

<u>Category and Type of Wetland Impacts</u>	<u>Re-establishment or Creation</u>	<u>Re-establishment or Creation (R/C) and Enhancement €</u>
Category IV	1.5:1	1:1 R/C and 1:1 E

<u>Category III</u>	<u>2:1</u>	<u>1:1 R/C and 2:1 E</u>
<u>Category II</u>	<u>3:1</u>	<u>1:1 R/C and 4:1 E</u>
<u>Category I</u>	<u>6:1</u>	<u>1:1 R/C and 10:1 E</u>
<u>Category I Wetlands of High Conservation Value</u>	<u>Not considered possible</u>	<u>R/C Not considered possible</u>
<u>Category I Bog</u>	<u>Not considered possible</u>	<u>R/C Not considered possible</u>

**NOTE: Category I, II, and III** wetland alterations can also be made by a combination of creation of new wetlands and enhancement of existing wetlands within the range of the ratios set out in the table so long as a minimum one to one creation ratio is met (*for example, creation of new wetlands at a one and one-half to one ratio along with enhancement of existing wetlands at a ratio of five to one may be acceptable for a Category I wetland.*)

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

GF. Wetland/habitat mitigation bank or in-lieu fee program. The city may approve mitigation banking or in-lieu fee mitigation as a form of compensatory mitigation for wetland impacts when the provisions of this chapter require mitigation and when the use of a mitigation bank or in-lieu fee program will provide equivalent or greater replacement of wetland functions and values when compared to conventional permittee-responsible mitigation. Mitigation banks and in-lieu fee programs shall only be used when it can be demonstrated that they provide significant ecological benefits, including long-term conservation of critical areas, important species, habitats or habitat linkages, and when they are documented to provide a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals. Mitigation banks and in-lieu fee programs shall not be used unless they are certified in accordance with applicable federal and state mitigation rules and expressly authorized through city legislative action. ~~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.~~

GH. 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).

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

JH. Location. Compensatory mitigation actions shall be conducted onsite or within the same sub-basin as the impact site unless the applicant can demonstrate that: ~~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.

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

~~3.2.~~ Compensation is not practical due to potentially adverse impacts from surrounding land uses.

~~4.3.~~ Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values.

~~5.4.~~ 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.

~~KI.~~ *Offsite compensation.* Offsite compensation shall occur within the Green River Watershed same drainage basin as the wetland loss occurred, unless:

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

2. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or

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

~~the applicant can demonstrate extraordinary hardship.~~

~~LJ.~~ *Offsite compensation site selection.* ~~In selecting compensation sites for creation or enhancement,~~ When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

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.

MK. *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 fisheries, wildlife, and flora.

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

## **Article V. Fish and Wildlife Habitat Conservation Areas**

### **Sec. 11.06.670. Stream classifications and rating.**

A. To promote consistent application of the standards and requirements of this chapter, streams within the city of Kent shall be rated



or classified according to their characteristics, function, and value, and/or their sensitivity to disturbance.

B. Classification of streams shall be determined by the department based on consideration of the following factors:

1. Approved technical reports submitted by qualified consultants professionals in connection with applications for activities subject to these regulations must contain those criteria outlined in section 11.06.070, and the following:

a. Hydrologic mapping showing patterns of water movement into, through, and out of the site area; and

b. Specific descriptions of streams, including gradient and flow characteristics; stream bed condition; stream bank and slope stability; presence of fish or habitat for fish; presence of obstructions to fish movement; general water quality; stream bank vegetation; and a summary of existing stream value for fisheries habitat.

2. Application of the criteria contained in these regulations; and

3. Maps adopted pursuant to this chapter.

C. Streams shall be designated Types 1 through 3 as follows:

1. Type 1 Water means all shorelines identified in the Kent shoreline master program.

2. Type 2 Water means salmonid bearing segments of natural waters not classified as Type 1 Water, with documented salmonid use. This

~~category also refers to lakes, ponds, or impoundments having a surface area of one (1) acre or greater at seasonal low water. Salmonid bearing waters are used by fish for spawning, rearing or migration.~~

3. Type 3 Water means nonsalmonid segments of natural waters not classified as Type 1 or 2 Water. These are stream segments within the bankfull width of defined channels that are perennial and intermittent nonsalmonid habitat streams. These waters begin at a point along the channel where documented salmonid fish use ends.

**Sec. 11.06.680. Stream buffer areas, setbacks, fencing and signage.**

A. Purpose~~General provisions.~~

1. The establishment of buffers ~~shall be~~ required for all development proposals and activities in or adjacent to streams. The purpose of the buffer ~~shall be~~ to protect the integrity, function, value, and resources of the stream. Buffers shall typically consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. No buildings, structures, impervious surfaces or nonnative landscaping ~~shall be~~ allowed in a buffer unless otherwise permitted by this chapter. ~~If the site has previously been disturbed, the buffer area shall be revegetated pursuant to an approved enhancement plan.~~ Where flexible buffer widths are permitted by this chapter, such enhancement shall be considered in determining appropriate buffer widths. Buffers ~~shall~~ must be protected during construction by placement of a temporary barricade, notice of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls.

~~Restrictive covenants or conservation easements will be required to provide long-term preservation and protection of buffer areas.~~

2. Required buffer widths shall reflect the functions and values of the stream, the risks associated with development, and the type and intensity of human activity proposed to be conducted on or near the stream in those circumstances where such activity is permitted by these regulations.

~~3. All stream buffers shall have a minimum building setback line, as defined by this chapter, of fifteen (15) feet from the edge of all stream buffers.~~

~~4. All stream buffers shall have a wildlife passable fence installed at the edge of the buffer. Fencing shall consist of split rail cedar fencing (or other nonpressure treated materials approved by the city). The fencing shall also include sensitive area signage at a rate of one (1) sign per lot or one (1) sign per one hundred (100) feet for large parcels and along public right-of-way whichever is greater.~~

B. *Standard buffer widths.* The following standard buffers are established for streams, as measured from the ordinary high water mark.

<b><i>Stream Type</i></b>	<b><i>Standard Buffer</i></b>
Type 1	Per Kent SMP
Type 2	100 feet
Type 3	40 feet

C. *Valley stream buffers.* A special stream buffer and mitigation/enhancement program shall apply to the industrialized areas adjacent to portions of Mill Creek, Garrison Creek, and Springbrook Creek on the valley floor. These areas are substantially developed for industrial uses and existing, historical setbacks are typically less than fifty (50)-feet. Existing buffers are degraded. These areas are generally identified by the valley stream overlay map. The valley stream overlay area is generally described as that area beginning at the Kent city limits where the Green River and South 180th Street intersect, following South 180th Street easterly to the eastern right-of-way line to SR 167, then moving south along the SR 167 eastern right-of-way line to the intersection of 898th Avenue South, then along the Green River Valley floor to West Smith Street, then east along West Smith Street to East Titus Street, then along East Titus Street to Central Avenue, then following the Green River Valley floor to the Green River, then following the eastern edge of the Green River to the point of beginning. The following standards shall apply to development proposals adjacent to streams within the overlay:

1. Stream buffers shall be fifty (50)-feet.

2. The goal of the special program applicable to these streams shall be to enhance existing vegetation and habitat to accomplish sediment removal and erosion control, pollutant removal, placement of large woody debris, and particularly to control water temperature. These objectives can be accomplished with the required buffers.

3. The entire stream buffer shall be enhanced pursuant to aA buffer management and enhancement plan ~~shall be required,~~ consistent with the mitigation performance standards in this section.

4. Buffer reductions ~~or averaging shall~~ are not be ~~permitted~~ allowed except as permitted through the reasonable use provisions of KCC 11.06.090 or the variance provision of KCC 11.06.100.

D. *Increased buffers.* A buffer width greater than the standard may be required by the city based on the findings of site-specific studies prepared consistent with these regulations, or to comply with state or federal plans to preserve endangered or threatened species.

E. *Buffer averaging reduction with enhancement.* Standard buffer widths for degraded buffers may be reduced for Type 2 streams only, subject to the following criteria~~The department may permit buffer widths to be averaged for Type 2 streams only, and in accordance with the stream report, subject to the following criteria:~~

1. Stream and riparian functions will not be reduced.
2. Salmonid habitat will not be adversely affected.
3. Additional enhancement of habitat is provided in conjunction with the reduced buffer.

~~4. The total area contained in the buffer area after averaging is not less than what would be contained in the standard buffer.~~

45. The buffer width is not reduced by more than fifty twenty five ~~(50)~~ percent in any location.

56. All reduced buffers shall be mitigated through buffer enhancement pursuant to the requirements of KCC 11.06.550.

F. *Activities within buffer.* No structures or improvements ~~shall be~~are permitted within the stream buffer area, including buildings, decks, and docks, except as otherwise permitted by this section, by the city's adopted shoreline master program, or under one of the following circumstances, and then only when properly mitigated:

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

2. Construction of new public roads and utilities, and accessory structures, when no feasible alternative location exists; ~~or~~

3. Construction of foot, pedestrian or bicycle 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.~~

~~bd.~~ 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 education, recreation, scientific, and other purposes which will not adversely affect the overall functions and values of the stream.

4. Construction of footbridges and boardwalks;
5. Construction of educational facilities, such as viewing platforms and informational signs;
6. Construction of outdoor recreation structures, such as fishing piers, boat launches, benches, and picnic tables;
7. Maintenance of existing facilities or temporary uses having minimal adverse impacts on buffers and no adverse impacts on streams. These may include but are not limited to: maintenance of existing drainage facilities, and 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 feasible through 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; or
9. Ongoing city maintenance activities by its public works and parks department vegetation and management divisions shall be permitted to continue general maintenance of streams and associated buffers. Maintenance shall include but not be limited to trash removal, removal of nonnative vegetation, maintenance of existing vegetation as necessary, restoration, enhancement, and sign and fence maintenance.

~~6. Stormwater discharge points and energy dissipation structures, provided mitigation and enhancement is completed and approved by the city.~~

G. *Protection of streams/buffers.* Long-term protection of a regulated stream and its associated buffer shall be provided by placing it in a separate tract on which development is prohibited; executing an easement in favor of the city, in a form and manner acceptable to both the director and the city attorney; dedication to a conservation organization or land trust; or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the stream and its buffer shall be shown on the face of the deed or plat, as applicable, to the property and shall be recorded with the King County recorder's office.

~~H. *Buffer width variances.* Required buffers shall not deny all reasonable use of property. A variance from buffer width requirements may be granted by the city subject to the variance criteria set forth in KCC 11.06.100 of these regulations. Variances to buffers shall require a buffer enhancement plan pursuant to KCC 11.06.550, including bonding pursuant to KCC 11.06.570. Prior to obtaining a variance, the applicant must demonstrate that all other reasonable alternatives including avoidance, minimization, and buffer averaging have been explored and would prohibit all reasonable economic use of the property.~~

HI. *Buffer enhancements.* The applicant may propose to implement one or more enhancement measures, listed in order of preference below, which will be considered in establishing buffer requirements:



1. Removal of fish barriers to restore accessibility to anadromous fish.
2. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan.
3. Creating or enhancing the surface channel if approved by the Washington Department of Fish and Wildlife.
4. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/ or recreational value.
5. Landscaping outside the buffer area with native vegetation or a reduction in the amount of clearing outside the buffer area.
6. Enhancement of wildlife habitat by adding structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.
7. Additional mitigating measures may include but are not limited to the following:
  - a. Creating a surface channel where a stream was previously culverted or piped.

b. Removing or modifying existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities which are not detrimental to fish.

c. Upgrading retention/detention facilities or other drainage facilities beyond required levels.

d. Similar measures determined to be appropriate by the department.

I. *Buffer restoration required.* If the stream buffers, including both standard buffers and reduced buffers, 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 five years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570, including a financial guarantee until the maintenance and monitoring period is completed and has been approved by the city. Where it can be demonstrated that there will be no impacts from the proposed development to the stream or stream buffer, the director shall have the authority to waive or modify this requirement.

J. *Building setback lines.* A minimum BSBL of fifteen feet shall be required from the edge of a stream buffer, provided the director may reduce the building setback limit by up to five feet if construction, operation and maintenance of the building does 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, and may require mitigation such as buffer enhancement.

K. *Fencing and signage.* All development and subdivisions to which this chapter applies shall construct a wildlife-passable fence along the entire stream buffer edge, unless otherwise approved by the director. Critical area signs must also be attached to the fence or located just inside the wildlife-passable fence attached to a four by four inch cedar post or other nonpressure treated materials approved by the city. Signs must be located at a rate of one sign per residential lot and one sign per one hundred feet for all public rights-of-way, trails, parking areas, playgrounds, and all other uses located adjacent to streams and associated buffers.

**Sec. 11.06.690. Alteration or development – Standards and criteria.** Alteration of streams and/or their established buffers may be permitted by the department subject to the criteria of this section. Standards for mitigation of impacts to critical areas are identified in KCC 11.06.550.

A. Alteration shall not degrade the functions and values of the stream.

B. Activities located in water bodies and associated buffers used by anadromous fish shall give special consideration to the preservation and enhancement of fish habitat, including but not limited to the following:

1. The activity is timed to occur only within the allowable work window for the particular species as identified by the Washington Department of Fish and Wildlife.

2. The activity is designed so as not to degrade the functions and values of the habitat and any impacts are mitigated.

3. An alternate location or design is not feasible.

C. Relocation of a Type 2 or 3 stream solely to facilitate general site design shall not be permitted. Relocation of a stream may be permitted only when it is part of an approved mitigation or enhancement/restoration plan, and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream.

~~D. Bridges shall be used to cross Type 1 streams; boring/micro-tunneling may be considered for utility crossings if it would result in the same or lower impacts as bridging.~~

E. All new culverts shall be designed following guidance provided in the Washington Department of Fish and Wildlife's document: Water Crossing Design Guidelines, 2013~~Design of Road Culverts for Fish Passage, 2003~~ (or most recent version thereof). The applicant shall obtain a HPA from the Department of Fish and Wildlife. Culverts are allowed only in Types 2 and 3.

EF. The applicant or successors shall, at all times, keep any culvert free of debris and sediment to allow free passage of water and, if applicable, fish.

EG. The city may require that a culvert be removed from a stream as a condition of approval, unless the culvert is not detrimental to fish habitat or water quality, or removal would be a long-term detriment to fish or wildlife habitat or water quality.

**Sec. 11.06.700. Mitigation performance standards.** The performance standards in this section, and the standards in KCC 11.06.550 and 11.06.560 shall be incorporated into mitigation plans submitted to the city for impacts to streams. Mitigation plans are subject to approval by the directoreity of Kent.

A. Use plants native to the Puget lowlands or Pacific Northwest ecoregion; ~~nonnative, introduced plants,~~ or plants listed by the Washington State Department of Agriculture as noxious weeds (Chapter 16-750 WAC) shall not be used.

B. Use plants adapted to and appropriate for the proposed habitats and consider the ecological conditions known or expected to be present on the site.

C. Avoid planting significant areas of the site with species that have questionable potential for successful establishment, such as species with a narrow range of habitat tolerances.

D. Specify plants that are commercially available from native-plant nurseries or available from local sources; if collecting some or all native plants from donor sites, collect in accordance with ecologically accepted methods, such as those described in the Washington Native Plant Society's Policy on Collection and Sale of Native Plants, that do not jeopardize the survival or integrity of donor plant populations.

E. Use perennial plants in preference to annual species; ~~annuals shall be planted following the second or third year after initial installation of plantings to determine the success of initial plantings and maintenance~~

practices. Annual plants shall only be used if mitigation monitoring determines that native plants are not naturally colonizing the site or if species diversity is unacceptably low compared to approved performance standards.

F. Use plant species high in food and cover value for native fish and wildlife species that are known or likely to use the mitigation site (according to reference wetlands, published information, and professional judgment).

G. Install a temporary irrigation system and specify an irrigation schedule unless a sufficient naturally occurring source of water is demonstrated.

H. Confine temporary stockpiling of soils to upland areas. Unless otherwise approved by the public works department, comply with all applicable best management practices for clearing, grading, and erosion control to protect any nearby surface waters from sediment and turbidity.

I. Show densities and placement of plants. These should be based on the ecological tolerances of species proposed for planting.

J. Provide sufficient specifications and instructions to ensure proper placement diversity and spacing of seeds, tubers, bulbs, rhizomes, springs, plugs, and transplanted stock, and other habitat features, to provide a high probability of success, and to reduce the likelihood of prolonged losses of ~~wetland~~ functions from proposed development. Prepare contingency plans as described in KCC 11.06.550570 for all mitigation proposals.

K. Do not rely on fertilizers and herbicides to promote establishment of plantings. If fertilizers are used, they must be approved in writing by the department and other applicable agencies, and shall be applied per manufacturer specifications to planting holes in organic or time-release forms, such as Osmocote® or comparable formulations, and never broadcast on the ground surface; if herbicides are used to control invasive species or noxious weeds and to help achieve performance standards, only those approved for use in aquatic ecosystems by the Washington Department of Ecology shall be used. Herbicides shall only be used in conformance with all applicable laws and regulations and be applied per manufacturer specifications by an applicator licensed in the state of Washington.

**Sec. 11.06.710. Wildlife habitat classification and rating.**

Wildlife habitat areas subject to these regulations include habitat classified as ~~"critical" habitat and "ponds"~~"fish and wildlife habitat conservation areas" and "naturally occurring ponds" according to the criteria in this section.

A. ~~*Fish and wildlife habitat conservation areas*~~*Critical habitats* are those habitat areas which meet any of the following criteria:

1. The documented presence of federally or state listed endangered, threatened, or sensitive species.

~~The documented presence of species or habitat listed by federal or state agencies as "endangered," "threatened," "candidate," "sensitive," or "priority."~~

2. The documented presence of species and habitats found on the Washington Department of Fish and Wildlife Priority Habitats and Species databases, current city habitat maps, or other relevant databases.

~~3.2.~~ The presence of unusual nesting or resting sites such as heron rookeries or raptor nesting trees. This provision shall be limited to raptors which are included within the listed categories of wildlife noted in subsection (A)(~~2~~1) of this section, and shall apply to active nests.

~~To demonstrate that a nesting site is inactive and not subject to these regulations, an applicant must monitor the nesting site during construction and submit a report documenting that it is not currently being used by the relevant species.~~

B. *Naturally occurring Pponds (deepwater aquatic habitat)*, as defined in this chapter, which are important to and support a wide variety of species of fish, wildlife, or vegetation.

#### **Sec. 11.06.720. Wildlife habitat buffer areas and setbacks.**

A. Buffer widths for fish and wildlife habitat conservation areas ~~critical habitat areas~~ shall be determined by the department, based on a critical area report prepared by ~~the applicant~~ a qualified professional pursuant to this chapter and in consideration of the following factors:

1. Research and evaluation of best available science sources relevant to species and habitat present within the city, as documented in City of Kent Best Available Science Review for Fish and Wildlife Habitat Conservation Areas, 2004, or amendments thereto.

2. Species-specific management guidelines of the Washington Department of Fish and Wildlife.



3. Recommendations contained in the wildlife study submitted by a qualified professionaleconsultant, following the reporting requirements of these regulations.

4. The nature and intensity of land uses and activities occurring on the site and on adjacent sites. Buffers are encouraged but are not required for secondary habitat.

B. The critical area report must meet the criteria listed in section 11.06.070 of this code in addition to the following conditions:

1. A narrative summary of existing habitat functions and values.

2. The documented presence of species and habitats found on the Washington Department of Fish and Wildlife Priority Habitats and Species databases, current city habitat maps, or other relevant databases.

3. A description and location of any migration or movement corridors.

4. Identification of any areas that have previously been disturbed or degraded by human activity or natural processes.

5. Identification of edges between habitat types and any species commonly associated with those habitats.

6. Monitor each nesting site prior to construction and submit a report documenting that it is not currently being used by the relevant species to demonstrate that the nesting site is inactive and not subject to these regulations.

~~BC.~~ Buffers for ponds shall be seventy-five (75) feet plus a fifteen (15) foot BSBL.

~~C.~~ Wildlife habitat buffer widths may be modified by averaging buffer widths. If buffer averaging is approved, it shall include enhancement or restoration of buffer quality.

D. Certain uses and activities ~~which~~that are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted by the department within the buffer depending on the sensitivity of the habitat area. Examples of uses and activities with minimal impact which may be permitted in appropriate cases include permeable pedestrian trails, fishing piers and viewing platforms, and utility easements; provided, that any impacts to the buffer resulting from permitted facilities shall be mitigated. When permitted, such facilities ~~shall~~should be located in the outer ten (10) feet of the buffer, unless otherwise approved by the director.

E. Long-term protection of a fish and wildlife habitat conservation area and its critical habitat areas and their associated buffer(s) shall be provided by placing them in a separate tract on which development is prohibited; protection by execution of an easement in favor of the city, in a form and manner acceptable to both the director and the city attorney; dedication to a conservation organization or land trust; or a similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the ~~habitat~~fish and wildlife habitat conservation area and its buffer shall be shown on the face of the deed or plat, as applicable, to the property and shall be recorded with the King County recorder's office.

**Sec. 11.06.730. Performance standards - Alteration or development of wildlife habitat.**

A. Fish and wildlife habitat conservation areas~~Critical habitat.~~  
Alterations of fish and wildlife habitat conservation areas ~~critical habitat~~ shall be avoided, subject to the variance or reasonable use provisions of this chapter.

B. Where permitted by these regulations, alteration shall not degrade the functions and values of the habitat.

C. Specific habitat: endangered, threatened, and sensitive species.

1. No development shall be allowed within a fish and wildlife habitat of importance or buffer, with which state or federally endangered, threatened, or sensitive species have a primary association, except as otherwise approved through this chapter. For fish habitat of importance on lands regulated under the Kent shoreline master program, development also must meet the use and development requirements of the Kent shoreline master program.

2. Whenever activities are proposed adjacent to a fish and wildlife habitat of importance with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical areas report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the fish and wildlife habitat of importance or its buffer shall not occur prior to

consultation with the Department of Fish and Wildlife and the appropriate federal agency.

D. Specific habitat: great blue heron rookery.

1. A buffer, measured from the outermost nest tree in the rookery, shall be established around an active rookery. This area shall be maintained in native vegetation.

The table below includes the year-round buffers for great blue heron rookeries recommended by the Washington Department of Fish and Wildlife Management Recommendations.

<b>Great Blue Heron Rookery Recommended Buffers</b>		
<b>Feet</b>	<b>Setting</b>	<b>% built within ¼ mile of the nest colony</b>
984	Undeveloped	0 - 2%
656	Suburban/Rural	2 - 50%
197	Urban	≥ 50%

2. Between January 1st and July 31st, no clearing, grading or land disturbing activity shall be allowed within the applicable buffer listed above unless otherwise approved by the city and the Washington Department of Fish and Wildlife.

3. Approval of permits for activities within a heron rookery buffer shall not occur prior to the approval of a habitat management plan by the city and the Washington Department of Fish and Wildlife.

E. Specific habitat: anadromous fish.

1. All activities, uses and alterations proposed to be located in water bodies used by anadromous fish or in buffer areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

b. An alternative alignment or location for the activity is not feasible;

c. The activity is designed so that it will provide an overall improvement in the functions or values of the fish habitat or other critical areas; and

d. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical areas report.

**Sec. 11.06.740. Performance standards for mitigation planning.**

A. The performance standards in this section, and the general standards in KCC 11.06.550, shall be incorporated into mitigation plans submitted to the department for impacts to wildlife habitat. The following additional mitigation measures shall be incorporated in mitigation planning:

1. Locate buildings and structures in a manner that minimizes adverse impacts on fish and wildlife habitat conservation areas~~critical habitats~~ used by priority, threatened, or endangered species and identified by the Washington State Department of Fish and Wildlife, National Marine Fisheries Services, and U.S. Fish and Wildlife Services.

2. Integrate retained habitat into open space and landscaping.

3. Wherever possible, consolidate fish and wildlife habitat conservation areas~~critical habitats~~ into larger, unfragmented, contiguous blocks.

4. Use native plant species for landscaping of disturbed or undeveloped areas and in any habitat enhancement or restoration activities.

5. Create habitat heterogeneity and structural diversity that emulates native plant communities described in Natural Vegetation of Oregon and Washington (Franklin, J.F. and C.T. Dyrness 1988) or other regionally recognized publications on native landscapes.

6. Remove ~~and/or~~ control any noxious and invasive weeds or ~~exotic non-native~~ animals ~~which~~that are problematic to the critical habitat area as determined by the department.

7. Preserve significant or existing native trees, preferably in stands or groups, consistent with achieving the goals and standards of this chapter.

B. On completion of construction, any approved mitigation project must be signed off by the applicant's qualified ~~consultant~~professional and approved by the department. A signed letter from the ~~consultant~~qualified professional will indicate that the construction has been completed as approved, and approval of the installed mitigation plan will begin the monitoring period if appropriate.

## **Article VI. Geological Hazard Areas**

### **Sec. 11.06.750. Buffers and setbacks.**

A. A buffer shall be established to protect geologic hazard areas. Buffers and setbacks shall be established from the top, bottom, and sides of critical areas. Unless permitted by the director, native vegetation within buffer areas shall not be ~~impacted~~altered, and shall remain in ~~their~~its natural state. The width of the buffer shall be established by the department based on consideration of the following factors:

1. The recommendations contained in the geologic/geotechnical report required by this chapter, ~~provided and that it is~~ prepared by a qualified ~~consultant~~professional.

2. The sensitivity of the geologic hazard in question.

3. The type and intensity of the proposed land use, whether the proposed use may affect the geologic hazard, or whether the use itself will be affected by the geologic hazard.

B. All buffers shall include a minimum fifteen ~~(15)~~-foot BSBL.

C. When the geotechnical report demonstrates that, due to application of design and engineering solutions, lesser buffer and setback distances will meet the intent of this regulation, such reduced buffer and setback distances may be permitted.

1. Minimum buffer width from identified ~~for~~ landslide hazard areas shall be equal to the vertical height of the landslide hazard or fifty ~~(50)~~ feet, whichever is greater, for all landslide hazard areas that measure ten ~~(10)~~ feet or more in vertical elevation change from top to toe of slope, as identified in the geotechnical report, maps, and field-checking. No disturbance may occur within the buffer except as provided within this chapter.

2. The buffer may be reduced when a qualified professional demonstrates to the department's satisfaction that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area. In no case shall the buffer be less than twenty-five ~~(25)~~ feet.

3. To increase the functional attributes of the buffer, the department may require that the buffer be enhanced through planting of indigenous species.

4. The edge of the buffer area shall be clearly staked, flagged, and 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 engineer has submitted written notice to the department that buffer requirements of this regulation are met. Field marking shall remain until all construction and clearing



phases are completed and final approval has been granted by the department.

**Sec. 11.06.760. Alterations of geologic hazard areas.**

A. *Criteria.* Alterations of geological hazard areas or associated buffers may only occur for activities that meet the following criteria:

1. Will not increase the existing threat of the geological hazard to adjacent properties;
2. Will not adversely impact other critical areas;
3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
4. Are certified as safe as designed under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

The department may condition or deny proposals as appropriate to achieve these criteria. Conditions may include limitations of proposed uses, modification of density, alteration of site layout, and other appropriate changes to the proposal.

B. *Essential/Necessary public facilities.* Public emergency, health, and safety facilities, and public utilities shall not be sited within geologically hazardous areas, or in areas that could be affected by geologic hazards, such as landslide run out zones, unless there is no other practicable alternative.

C. *Landslide hazard areas.*

1. Alterations to landslide hazard areas may be permitted based on the findings and recommendations of a geologic report prepared consistent with the requirements of this chapter and certifying that the development complies with the criteria in subsection (A) of this section.

2. Unless otherwise provided or as a necessary part of an approved alteration, removal of any vegetation from a landslide hazard area or buffer shall be prohibited, except for removal of hazard trees as verified by the department.

3. Vegetation on slopes within a landslide hazard area or buffer which has been damaged by human activity or infested by noxious and invasive weeds may be replaced with vegetation native to Kent pursuant to an enhancement plan approved by the department. The use of hazardous substances, pesticides, and fertilizers in landslide hazard areas and their buffers is prohibited unless otherwise approved by the department in writing.

4. All alterations shall be undertaken in a manner to minimize disturbance to the landslide hazard area, slope, and vegetation unless the alterations are necessary for slope stabilization.

D. *Erosion hazard areas.*

1. Clearing in an erosion hazard area is not limited to time of year, except when such restrictions are recommended in the geotechnical report and approved by the department.

2. Alterations to erosion hazard areas may only occur for activities for which a hazard analysis has been completed and submitted certifying that the development complies with the criteria in subsection (A) of this section. The hazard analysis must be completed in general accordance with the requisites described in the geologic report.

3. Where the department determines that erosion from a development site in an erosion hazard area poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water or the sensitivity of the receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. Monitoring reports shall be submitted to the department based on provisions in an approved mitigation plan. If the project does not meet state water quality standards, the department may suspend further development work on the site until such standards are met.

4. The use of hazardous substances, pesticides, and fertilizers in erosion hazard areas is prohibited unless otherwise approved by the department.

E. *Seismic hazard areas.*

1. Alterations to seismic hazard areas may be allowed only as follows:

a. The evaluation of site-specific subsurface conditions shows that the proposed development site is not located in a seismic hazard area;

b. Mitigation based on the best available engineering and geotechnical practices shall be implemented which either eliminates or minimizes the risk of damage, death, or injury resulting from seismically induced settlement or soil liquefaction. Mitigation shall be consistent with the requirements of ~~Ch.~~Chapter 14.01 KCC and shall be approved by the building official; and

c. Mobile homes may be placed in seismic hazard areas without performing special studies to address the seismic hazard. Such mobile homes may be subject to special support and tie-down requirements.

F. *Volcanic hazard areas.* The city shall maintain a map that indicates the location of volcanic hazards areas. Sites ~~which~~that are located on or within two hundred (~~200~~) feet of an identified volcanic hazard area shall include a notation on the title to the affected property disclosing the presence of the hazard.

## **Article VII. Critical Aquifer Recharge Areas**

### **Sec. 11.06.770 Critical aquifer recharge areas designation, rating and mapping.**

A. *Critical aquifer recharge areas designation.* Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(~~32~~). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of groundwater resources or contribute

significantly to the replenishment of groundwater. These areas include the following:

1. *Wellhead protection areas.* Wellhead protection areas shall be defined by the boundaries of the ten (~~10~~)-year time of groundwater travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where groundwater time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

2. *Susceptible groundwater management areas.* Susceptible groundwater management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted groundwater management program developed pursuant to Chapter 173-100 WAC.

3. *Special protection areas.* Special protection areas are those areas defined by WAC 173-200-090.

4. *Private wells.* Private wells are not governed by this code; however, all provisions of the King County Board of Health Code 12.24.010 shall be applicable.

B. *Mapping of critical aquifer recharge areas.*

1. The approximate location and extent of critical aquifer recharge areas are shown on the wellhead protection area inventory map, maintained by the department.

2. These maps are to be used as a guide for the city of Kent, project applicants and/or property owners, and may be continuously

updated as new critical areas are identified or when updates to the city of Kent wetland wellhead protection program are completed. They are a reference and do not provide a final critical area designation.

3. This mapping does not include private water wells for single-family residences.

**Sec. 11.06.780. Critical aquifer recharge area reporting requirements.**

A. *Activities that require a critical area report.* If located within a CARA, the following land use proposals shall be required to complete a critical aquifer recharge area report. The report shall be submitted to, and reviewed and approved by the department for:

1. Above ground storage tanks.
2. Dry cleaners.
3. Pipelines (hazardous liquid transmission).
4. Auto repair shops (including oil/lube facilities).
5. Underground storage tanks.
6. Gas stations.
7. Other land use types as determined by the director that may have the potential to significantly impact groundwater resources.

B. *Requirements for critical aquifer recharge area reports.*

1. A critical aquifer recharge area report shall be prepared by a qualified professional who is a hydrogeologist, or engineer, who is licensed

in the state of Washington and has experience in preparing hydrogeologic assessments.

2. A critical aquifer recharge area report shall include the following site- and proposal-related information at a minimum:

a. Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located onsite or immediately adjacent to the site, and permeability of the unsaturated zone based on available information.

b. Groundwater depth, flow direction, and gradient based on available information.

c. Currently available data on wells and springs within one thousand three hundred (~~1,300~~) feet of the project area.

d. Location of other critical areas, including surface waters, within one thousand three hundred (~~1,300~~) feet of the project area.

e. Available historic water quality data for the area to be affected by the proposed activity.

f. Best management practices proposed to be utilized.

g. Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five (~~5~~) year period based on available information.

- h. Groundwater monitoring plan provisions.
- i. Discussion of the effects of the proposed project on the groundwater quality and quantity, including:
  - i. Predictive evaluation of groundwater withdrawal effects.
  - ii. Predictive evaluation of contaminant transport based on potential releases to groundwater.
- j. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact for construction periods and for general operating business procedures post-construction. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

**Sec. 11.06.790. Critical aquifer recharge area performance standards.**

**A. General requirements.**

1. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

2. The proposed activity must comply with the water source protection requirements and recommendations of the federal



Environmental Protection Agency, State Department of Health, and the Seattle-King County Health Department.

3. The proposed storm water management facilities must be designed and constructed in accordance with the ~~King County~~ Kent Surface Water Design Manual, as adopted by the city of Kent pursuant to ~~Ch. Chapter~~ 7.07 KCC, including any amendments thereto.

B. *Specific uses.*

1. *Storage tanks.* All storage tanks proposed to be located in a critical aquifer recharge area must comply with all applicable codes including, but not limited to, the Washington State Department of Ecology and local code requirements and must conform to the following:

a. *Underground tanks.* All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

i. Prevent releases due to corrosion or structural failure for the operational life of the tank.

ii. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances.

iii. Use material in the construction or lining of the tank that is compatible with the substance to be stored.

b. *Aboveground tanks.* All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

i. Not allow the release of a hazardous substance to the ground, groundwaters, or surface waters.

ii. Have primary containment areas enclosing or underlying the tank or part thereof.

iii. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

iv. All outside above ground storage tanks shall be covered to prevent rainwater from filling secondary containment areas.

2. *Vehicle repair and servicing.* Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

3. *Dry wells.* No dry wells shall be allowed in critical aquifer recharge areas. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.

4. *Residential use of pesticides and nutrients.* Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

5. *Spreading or injection of reclaimed water.* Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the Departments of Ecology and Health.

a. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.010(10) and 90.46.080.

b. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

**Sec. 11.06.800. Prohibited uses.** The following activities and uses are prohibited in critical aquifer recharge areas:

A. *Landfills.* Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills.

B. *Underground injection wells.* Class I, III, and IV wells and subclasses F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5W20, 5X28, and 5N24 of Class V wells.

C. *Mining.*

1. Metals and hard rock mining.

2. Sand and gravel mining is prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable.

D. *Wood treatment facilities.* Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade)

E. *Storage, processing, or disposal of radioactive substances.* Facilities that store, process, or dispose of radioactive substances.

F. *Private wells.* Any property within the city of Kent using a private well for water supply shall abate the well in accordance with Department of Ecology standards, when development is proposed and can be serviced by a municipal water purveyor. Retention of exempt wells shall not be permitted for irrigation purposes to prevent potential cross-contamination issues.

1. All property currently with a private well, or within two hundred (~~200~~)-feet of a private well, shall follow all conditions of the King County Board of Health Code 12.24.010 in the design of the development of the property. Any proposed development plans shall show all private wells within two hundred (~~200~~)-feet.

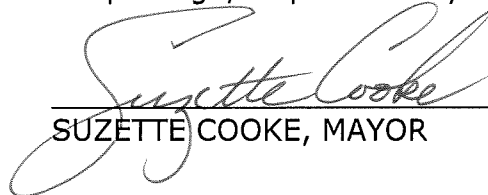
G. *Other uses.* Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source or activities that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream.

**SECTION 2.** - *Corrections by City Clerk or Code Reviser.* Upon approval of the City Attorney, the City Clerk and the code reviser are

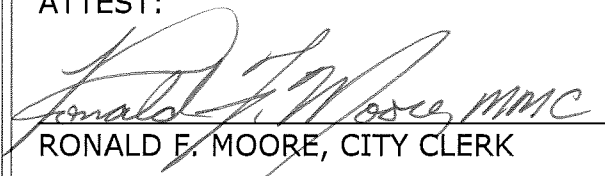
authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

**SECTION 3.** - *Severability.* If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this ordinance and that remaining portion shall maintain its full force and effect.


**SECTION 4.** - *Effective Date.* This ordinance shall take effect and be in force thirty (30) days after its passage, as provided by law.

  
\_\_\_\_\_  
SUZETTE COOKE, MAYOR

ATTEST:

  
\_\_\_\_\_  
RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ARTHUR FITZPATRICK, ACTING CITY ATTORNEY

PASSED: 21<sup>ST</sup> day of JULY, 2015.

APPROVED: 21<sup>ST</sup> day of JULY, 2015.

PUBLISHED: 24<sup>TH</sup> day of JULY, 2015.

I hereby certify that this is a true copy of Ordinance No. 4159  
passed by the City Council of the City of Kent, Washington, and approved  
by the Mayor of the City of Kent as hereon indicated.

  
RONALD F. MOORE, CITY CLERK

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