

ORDINANCE NO. 4249

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 11.06 of the Kent City Code, entitled "Critical Areas," to revise the procedure for allowing the use of wetland mitigation banks and in-lieu fee programs.

RECITALS

A. Pursuant to the state Growth Management Act, Chapter 36.70A RCW (GMA), the city of Kent ("City") previously amended its critical areas ordinance (CAO) on July 21, 2015 (Ordinance 4159).

B. The city has received numerous permit applications and inquiries requesting the use of mitigation banking and in-lieu fee programs.

C. It is the goal of the City to uphold no net loss of wetlands through the preservation, enhancement, establishment, and restoration of ecological functions within its watersheds.

D. Mitigation banks and in-lieu fee programs provide a watershed based approach that may offer an environmentally preferable option compared to onsite permittee responsible mitigation. The U.S. Army

Corps of Engineers and U.S. Environmental Protection Agency have determined mitigation banks and in-lieu fee programs are the preferred forms of compensatory mitigation because they use a watershed approach, consolidate resources, reduce temporal loss of functions, and reduce uncertainty over project success.

E. As currently written, the critical areas ordinance requires mitigation banks and in-lieu fee programs that are to be used for projects located in the city to be certified by the U.S. Army Corps of Engineers and Washington Department of Ecology under applicable federal and state mitigation rules. Prior to certification of a mitigation bank or in-lieu fee program, Ecology and the Army Corps are advised by an Interagency Review Team (IRT), which consists of representatives from the U.S. Environmental Protection Agency, the National Oceanographic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Washington Department of Fish and Wildlife, as well as representatives from several local Tribes. One such certified in-lieu fee program is the King County Department of Natural Resources' "Mitigation Reserves Program," which is operated in conjunction with the Washington Department of Ecology and the U.S. Army Corps of Engineers with review and approval by the IRT of all mitigation sites that are to be implemented by the program. At the time of passing this ordinance, the King County Mitigation Reserves Program (MRP) is the only in-lieu program that is currently available to projects within the city of Kent. Until another in-lieu fee program or mitigation bank is approved by the IRT, Army Corps and Ecology, it is anticipated that the MRP is the program that will be utilized.

F. On May 15, 2017, staff made a presentation to the Public Works Committee at a public meeting to discuss the proposed code amendment.

G. The City's State Environmental Policy Act (SEPA) Responsible Official has determined that the proposed amendment is procedural in nature and thus categorically exempt from further SEPA review.

H. Under the GMA, the City is required to submit proposed amendments to its development regulations to the Washington State Department of Commerce for review and comment. On May 24, 2017, the City requested expedited review under RCW 36.70A.106 from the Washington State Department of Commerce regarding the proposed code amendment. The Washington State Department of Commerce granted the request for expedited review on June 12, 2017. No comments were received from State agencies.

I. On June 12, 2017, the Economic and Community Development Committee held a public hearing regarding the proposed code amendment and recommended to the full City Council adoption of the proposed code amendment.

J. At its regularly scheduled meeting on June 20, 2017, the City Council considered the recommendation of the Economic & Community Development Committee and voted to adopt the proposed amendment to the Critical Areas Regulations.

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

ORDINANCE

SECTION 1. - *Amendment.* Section 11.06.660 of the Kent City Code, entitled "Compensating for wetland impacts," is amended as follows:

Sec. 11.06.660. Compensating for wetland impacts.

A. *Condition of approval.* As a condition of any approval allowing alteration of wetlands 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 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 No. 06-06-011b, Olympia, WA, March 2006 or as revised) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication No. 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 No. 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. *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 nonnative 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.

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 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.

Category and Type of Wetland Impacts	Re-establishment or Creation	Re-establishment or Creation (R/C) and Enhancement (E)
Category IV	1.5:1	1:1 R/C and 1:1 E
Category III	2:1	1:1 R/C and 2:1 E
Category II	3:1	1:1 R/C and 4:1 E
Category I	6:1	1:1 R/C and 10:1 E
Category I Wetlands of High Conservation Value	Not considered possible	R/C Not considered possible
Category I Bog	Not considered possible	R/C Not considered possible

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 to one is provided. In such a case, the mitigation must be in place, monitored for three growing seasons and be deemed a success prior to allowing any alterations.

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

G. *Wetland 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.

H. *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.

J. *Location.* Compensatory mitigation actions shall be conducted onsite or within the same sub-basin as the impact site unless 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. Compensation is not practical due to potentially adverse impacts from surrounding land uses.

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

5. 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.

K. *Offsite compensation.* Offsite compensation shall occur within the Green River watershed, 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.

L. *Offsite compensation site selection.* When considering offsite 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 or significantly degraded wetlands. Such wetlands are typically small; have only one wetland class; and have one 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.

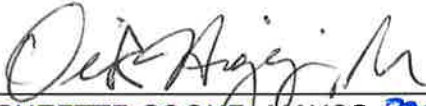
M. *Timing.* Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, or immediately after activities that will temporarily disturb wetlands, or prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction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

N. *Completion of mitigation construction.* On completion of construction, any approved mitigation project must be signed off by the applicant's qualified professional and approved by the department. A signed letter from the 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.

SECTION 2. – *Severability.* If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 3. - 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 4. - Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication, as provided by law.



~~SUZETTE COOKE~~, MAYOR **PRO TEM**
DENNIS HIGGINS

ATTEST:



KIMBERLEY A. KOMOTO, CITY CLERK

APPROVED AS TO FORM:



TOM BRUBAKER, CITY ATTORNEY

PASSED: 20 day of June, 2017.

APPROVED: 20 day of June, 2017.

PUBLISHED: 23 day of June, 2017.

I hereby certify that this is a true copy of Ordinance No. 4249
passed by the City Council of the City of Kent, Washington, and approved
by the Mayor of the City of Kent as hereon indicated.

 (SEAL)
KIMBERLEY A. KOMOTO, CITY CLERK