

# Ordinance No. 3746

(Amending or Repealing Ordinances)

CFN=961 – Growth Management Plan

Passed – 4/19/2005

Critical Areas – Chapter 11.06

Amend sec. 11.03.510; repeal Ch. 11.05 create new Ch 11.06,  
amending various sections of Ch. 14.09; repeal sec. 15.08.220;  
repeal sec. 15.08.222; repeal sec. 15.08.224;  
amend secs. 15.08.260;15.08.400

Amends Ords. 2329;2369;2494;2511;2547;2818;3282;3573

Repeals Ord. 3109

Amends Ord. 2282;2867;3228;3232

Repeals Ord. 3312 (Sec. 15.08.224)

Amends Ords. 3338;3600;3612;3439;3600;3612;3633;3639;3643;  
3681;3770

Amended by Ord. 3805

Amended by Ord. 3880 (Sec. 14.09.070)

Amended by Ord. 3909 (Secs. 14.09.010;14.09.060;14.09;150;  
14.09;170;14.09.180

**ORDINANCE NO. 3746**

**AN ORDINANCE** of the City Council of the City of Kent, Washington, repealing chapter 11.05 of the Kent City Code, entitled "Wetlands Management;" creating a new chapter 11.06, entitled "Critical Areas;" amending chapter 14.09 of the Kent City Code, regarding flood hazard regulations; amending section 15.08.260 of the Kent City Code entitled "Green River Corridor special interest district regulations," to adjust for the sections established in chapter 11.06; amending section 15.08.400, entitled "Planned unit development, PUD," to provide for a density bonus if wetland buffer widths are increased in a planned unit development; amending chapter 11.03 to add SEPA substantive authority; and making other related amendments.

**RECITALS**

**OVERVIEW:**

A. Pursuant to the state Growth Management Act, Chapter 36.70A RCW (GMA), the City of Kent completed its Comprehensive Plan amendments on July 20, 2004, and, by passage of this ordinance, amends its critical areas ordinance. 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 city undertook an extensive public participation process that allowed numerous opportunities for public comment. This council has used its best efforts to weigh, coordinate, harmonize, apply and incorporate the often lengthy and widely differing written and oral testimony, which revealed considerable scientific evidentiary

disagreement over the interpretation, range, and proper application of best available science in our city. As a designated urban center that already has in place extensive environmental and development regulations, Kent reflects the character and nature of dense, urban development consistent with the urbanized greater Puget Sound region. As one of Washington's largest and oldest cities with a population of approximately 85,000 people, Kent has been incorporated for over a hundred years. We have identified, collected, and assessed the available scientific information offered by staff, 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. Although the council believes it has developed these regulations in accord with the range of best available science, the buffers adopted in these regulations exist on the low end of that range in order to balance the needs of the natural environment against other GMA goals, including maintaining urban densities by encouraging urban growth, reducing sprawl, protecting property rights, and encouraging economic development.

B. Throughout this process, the city council'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 council has also endeavored to protect the public from injury, loss of life, or loss of property or other financial impact.

PROCESS:

C. The following summarizes the course of events as the city developed this CAO, as well as the numerous occasions' public comment and public participation was invited:

- **May 29, 2004:** The Land Use and Planning Board held a workshop to generally discuss the CAO update process, best available science rule and timeline.

- **July 22, 2004:** An open house was held to educate the public and solicit public interest and involvement in the CAO update process.
- **August 9, 2004:** The Land Use and Planning Board held a workshop to discuss preliminary findings from the best available science recommendations, comments from the public open house, and draft regulations.
- **September 8, 2004:** Staff invited interested parties to a focus group meeting to discuss the proposed regulations and seek comments.
- **September 13, 2004:** The Land Use and Planning Board held a public hearing on the draft CAO forwarding staff's recommendation to the city council for consideration.
- **October 4, 2004:** The Planning and Economic Development Committee reviewed the draft CAO. The Committee forwarded the Land Use and Planning Board's recommendation to the city council.
- **October 19, 2004:** The city council held a workshop to discuss with staff the proposed CAO regulations.
- **November 2, 2004:** The city council remanded the CAO back to the Planning and Economic Development Committee for further review. Specifically, the council was concerned about the wetland buffer regulations and the need to provide the maximum amount of flexibility through the administration of the regulations.
- **November 15, 2004:** The Planning and Economic Development Committee directed staff to evaluate options to provide more flexibility to the wetland regulations. Staff and consultants evaluated an option to allow for reductions in the standard wetland buffer width when buffers are degraded, provided that the buffer is restored.
- **November 29, 2004:** The Planning and Economic Development Committee held a public hearing, limited in scope to the wetland buffer regulations. The option before the committee included the administrative buffer reduction language. The committee did not take action at the close of the public hearing.
- **January 4, 2005:** During a city council workshop, staff was directed to include an alternative that would retain Kent's existing wetland buffer widths.
- **January 19, 2005:** The Planning and Economic Development Committee held a public hearing specific to the proposed wetland regulations. Two regulatory options were presented to the Committee. In addition, the Department of Trade and Economic Development and the Department of Ecology requested that the council postpone a decision to allow an opportunity for the state to meet with staff, community members, and stakeholders regarding the wetland regulations. The Committee agreed to suspend the process to the February 28, 2005, meeting to allow interested parties an opportunity to meet to discuss alternatives.

- **February 2, 2005:** The Wetland Focus Group was formed. Members included representatives from the Department of Trade and Economic Development, Department of Ecology, Master Builders Association, Livable Communities Coalition, King County Realtors, and members of the local development community. The purpose of the focus group meetings was to attempt to reach mutual agreement regarding the scope, content, interpretation and application of best available science to the city's critical areas ordinance, specific to the wetland regulations. The Wetland Focus Group met again on **February 9, 2005**, and again on **February 14, 2005**, but was unable, within that time frame to reach consensus.
- **February 28, 2005:** The Planning and Economic Development Committee agreed to allow the Wetland Focus Group additional time to continue discussions related to the wetland regulations. The Committee postponed the Critical Areas Ordinance to the March 21, 2005, meeting date.
- **March 2, 2005:** The Wetland Focus Group reconvened for two more sessions, the second occurring on **March 10, 2005**. Although a consensus was not reached, the group agreed to wetland buffer restoration provisions, increased compensation ratios, and removal of the 'avoidance' criteria for certain small, isolated, Category 3 wetlands. The Group also agreed to include an incentive for larger wetland buffers, through changes to the Planned Unit Development regulations. The Group acknowledged that smaller wetland buffers might not provide long-term protection for certain wetland-dependent wildlife species and therefore included a recommendation for the city to develop a Wildlife Habitat Protection and Restoration Plan. The Group's recommendations (options 3 and 4 out of four options) were presented to the Planning and Economic Development Committee at its March 21, 2005, meeting.
- **March 21, 2005:** The Planning and Economic Development Committee held a public hearing limited to proposed wetland regulations. The Committee was presented with four options which included the recommendations from the Wetland Focus Group.
- **April 4, 2005:** The Planning and Economic Development Committee considered the Critical Areas Ordinance, including the four options related to wetland regulations. The Committee voted 3-0 to forward the Critical Areas Ordinance, selecting Option 3, to the full City Council for consideration.

D. The city also conducted and completed environmental review under the State Environmental Policy Act (SEPA), issuing an Addendum to its Comprehensive Plan Environmental Impact Statement (EIS) on September 3, 2004. Another Addendum to the EIS was issued on January 12, 2005, which included analysis related to additional wetland regulatory options.

E. Additionally, on July 1, 2004, the city provided the required sixty (60) day notification under RCW 36.70A.106 to the state of Washington on the city's proposed critical area ordinance. Comments from the state were received, considered, and entered into the record.

INTERPRETATION AND INCLUSION OF BEST AVAILABLE SCIENCE:

F. As indicated above, many participants in this process disagreed as to the meaning, extent, and application of best available science. A review of the record shows that the applicable scientific conclusions provide a range of results and findings that must be interpreted, and that the interpretation of this range of science varies among experts within the scientific community.

G. In particular, interpretation and application of this range of best available science must be applied to the real, natural, and developed environment in our city. The range of results and findings are highly dependent upon both the specific research question asked and the specific site conditions where the study was conducted (i.e., slope, land use, degree of disturbance, etc.). Additional interpretation is required to apply research that was conducted in widely disparate environments, much of it from outside this state. Moreover, most of this scientific research was not conducted in urban settings like Kent's. Also, no research exists that takes into consideration other environmental regulations already in place, such as the city's existing stormwater protections, development standards, shoreline management regulations, and so forth. Finally, any review and inclusion of best available science must take into account the city's other environmental projects, which are intended to preserve the functions and values of those critical areas in Kent that staff and the city council have identified as most deserving of protection.

H. The city has in place a number of programs and regulatory processes that supplement protection of the functions and values of critical areas in Kent. Most of these processes are monitored by the city's Environmental Engineering section within

the Public Works Department. This group's purpose and task is to facilitate the restoration, enhancement and protection of environmental resources in Kent. The Parks Department, Planning Department and Public Works Operations division also help implement these programs. The most significant of these additional programs and regulatory processes include the following:

- The city has developed and continues to regulate its storm and surface water utility pursuant to Chapter 7.05 of the Kent City Code. This regulation provides authority to ensure that surface flows to the downstream watershed do not increase or cause a degradation to the quality of the water. The city has developed a requirement to maintain water quality through the Resource Stream Protection menu established in the 2002 Kent Surface Water Design Manual. The Resource Stream Protection menu treatment goal is to reduce metals found in urban runoff that are potentially detrimental to the aquatic health of wetlands, streams, and sensitive areas.
- Water quality monitoring—monitoring water quantity and quality at a variety of locations throughout the city.
- Modeling—modeling to identify needs for future capital improvement project solutions to impacts on critical areas. Problems identified may be related to water quality, flooding, or biological issues.
- Development—continued review of proposed developments within the city and within the city's wellhead protection areas outside city limits to ensure continued protection of the biological and hydrologic integrity of the city's water resources, to guarantee stormwater regulations are enforced, and to ensure protection of the city's municipal water supply.
- Solid Waste/Recycling/Conservation—a program is in place to educate the public and to assist with the conservation of the city's water supply, as well as solid waste management, recycling awareness, and other conservation measures.
- Wellhead Protection—protection of the city's groundwater resources, both inside and outside the city limits, are completed through monitoring groundwater conditions, commenting on development review within the wellhead protection areas that are outside our jurisdiction, coordinating with other agencies, and conducting special projects intended to address potential contaminant sources to the city's groundwater resources. Any project located within this designated area must enhance or maintain the water quantity and quality for infiltration to the maximum extent possible.
- FEMA Floodplain Restrictions—Areas mapped within the Federal Emergency Management Act (FEMA) floodplain face further development constraints. Developments within the designated floodplain are required to include compensatory flood storage volumes that are calculated from pre- and post-development to be 50% of the 100-year flood storage volume lost.

- Education—educational opportunities provided by the city include: an annual Water Festival; community workshops; “2000 Trees” program (in which the city, through the efforts of community volunteers, annually plants the same number of trees as the number of each calendar year); the city’s website provides and updates critical areas and environmental information; other volunteer projects; publications; and special requests for city staff to make community presentations.
- NPDES Phase II—the city must comply with all conditions and requirements described in The National Pollutant Discharge Elimination System Phase II (NPDES). 40 CFR 122.34. This Phase II permit program requires that the city implement controls to reduce stormwater pollutants, which have been shown to harm drinking water, human health, and wildlife habitat. The Phase II rule extends coverage of the NPDES program to the city of Kent because it owns and operates a storm drain system, discharges to surface waters, is located in an urbanized area, and is more than 1,000 in population. As a result, the city must apply for a NPDES Phase II Stormwater Permit. As a Permittee, the city must comply with the Minimum Control Measure Requirements as described in 40 CFR 122.34(b). These minimum control measures include public education and outreach on stormwater impacts, public involvement/participation, illicit discharge detection and elimination, construction site stormwater runoff control, post construction stormwater management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations. Complying with these new requirements will benefit water quality and protect critical areas and associated habitat within the city.
- Regional Meetings and Organizations—city representatives from the Environmental Engineering section regularly attend and participate in the following meetings: APWA Stormwater Managers; Cedar River Council; WRIA 8 (Cedar River) and WRIA 9 (Green/Duwamish) Forums and committees; South King County Regional Water Association; South King County Groundwater Management Committee; Green Duwamish Ecosystem Restoration Program; and the Green River Flood Control District. These various organizations create substantive regional regulations that further protect various aspects of the natural environment in Kent.
- Wetland Maintenance Program—the city owns and maintains a large number of wetland resources within the city. Maintenance includes removal of non-native and invasive plants, planting native plants, maintaining fences, providing educational materials, and monitoring wetlands for code violations.
- Volunteer Native Plant Restoration—the city conducts an ongoing native plant restoration program, often through volunteer planting events, which also provide a unique opportunity for public education.
- Eagle Scout Program—the Kent Parks Department helps sponsor an Eagle Scout Program that allows candidates for eagle scout awards to complete a



project in our parks to earn their eagle scout award. Often these projects are environmentally beneficial.

I. Concurrent with these additional regulatory processes and programs, the city has committed hard dollars to a variety of environmental restoration/enhancement and flood remediation/protection projects that will benefit the local environment.

These include the following:

- Green River Natural Resource Area—a 300 acre preserve located in the heart of the city's manufacturing and industrial sector and adjacent to the Green River was constructed, at a cost of approximately eleven million dollars (\$11,000,000), into a multi-faceted facility for flood protection, water quality enhancement, wildlife habitat, preservation of open space, and passive recreational activities. The site has also served as an educational facility to illustrate the importance of protecting watersheds. It also provides opportunities for volunteer groups to plant trees and shrubs from the on-site native plant nursery. The city also has plans to construct a regional watershed interpretive center that will assist with educating the public on watershed issues.
- In the early 1980's, the city began replacing large sections of the Kent Springs Transmission main in order to reduce water losses from leakage on the aging water transmission main. The project was completed in 1996, having replaced nearly 15 miles of large diameter ductile iron piping. The total project cost was 10.5 million dollars (\$10,500,000). Also, beginning in 1997, the city began a comprehensive water system program to test for and find water system leaks. This leak detection program identified and corrected leakage throughout Kent's water distribution system. The water losses for the Kent water system in the 1970's was approximately 15% of the total water produced, and that has been reduced to 3.38% losses as of 2003, significantly below the industry standard of 15 to 20%.
- Kent, as a collection agency that sends sewerage to King County Metro, has participated in, and continues to participate in the County's Infiltration and Inflow (I/I) program. I/I metering was done throughout the Kent collection system. The total project costs (SSES, design, construction, post project flow monitoring, etc.) was \$1,446,900. One unique aspect of the Kent pilot project was that it was totally for private side sewers—no work or rehabilitation was performed on the public sewer system. The project rehabilitated 139 service laterals and 172 side sewers. Post project flow monitoring revealed a 78% I/I reduction was achieved.
- 98<sup>th</sup> Avenue Regional Treatment and Detention Pond (1995)—this project decreased peak flows and improved water quality. (\$2,250,000 including design, permitting, construction, maintenance, and monitoring.)
- Mill Creek Box Culverts: improvements to Central Avenue, Novak Lane, S. 228<sup>th</sup> Street, Fisher Industrial Park (1995)—this project improved fish

passage and implemented flood remediation, which is intended to reduce excessive stream flows. (\$1,170,000 including design, permitting, construction, maintenance, and monitoring.)

- Mill Creek Box Culvert at Bowen Scarff Ford (1997)—this project improved fish passage and implemented flood remediation. (\$622,500 including design, permitting, construction, maintenance and monitoring.)
- Mill Creek Fish Habitat Improvements (1998)—this project benefited fish habitat and improved water quality. (\$277,500 including design, permitting, construction, maintenance, and monitoring.)
- Fish Habitat Enhancement near S. 277<sup>th</sup> Street Corridor (1999)—this project benefited fish and wildlife habitat and improved water quality. (\$328,440 including design, permitting, construction, maintenance, and monitoring.)
- Wetland Mitigation Site Improvements along S. 277<sup>th</sup> Street Corridor (2000)—this project benefited fish and wildlife habitat, implemented flood control, and improved water quality. (\$528,090 including design, permitting, construction, maintenance, and monitoring.)
- Wiesner Drainage Improvements (2001)—this project implemented flood remediation and water quality improvements. (\$176,250 including design, permitting, construction, maintenance and monitoring.)
- West Fork Soosette Creek Box Culvert and Stream Restoration (2003)—this project improved fish habitat, water quality, and flood remediation. (\$1,291,695 including design, permitting, construction, maintenance, and monitoring.)
- Boeing Creek Restoration Improvements (2003)—this project improved fish and wildlife habitat and concomitantly implemented water quality improvements. (\$147,300 including design, permitting, construction, maintenance, and monitoring.)
- Mill Creek Restoration Improvements (2003)—this project benefits fish habitat, flood remediation, and water quality. (\$290,250 including design, permitting, construction, maintenance, and monitoring.)
- Upper Meridian Valley Creek Box Culvert and Stream Restoration (2003)—this project benefits flood remediation, fish habitat, and water quality. (\$897,935 including design, permitting, construction, maintenance, and monitoring.)
- Springbrook Creek Restoration Improvements (2004)—this project benefits fish habitat, implements stream restoration, improves water quality. (\$756,600 including design, permitting, construction, maintenance, and monitoring.)
- S. 192<sup>nd</sup> Street/Springbrook Creek Culvert Replacement (2004)—this project implemented flood remediation. (\$197,850 including design, permitting, construction, maintenance, and monitoring.)

J. In addition, the city council has determined, through its various capital improvement plans, to implement the following projects in the future:

- The Meridian Valley Creek Restoration/256<sup>th</sup> Flume removal (2005)—this project will remove the stream from a concrete flume adjacent to SE 256<sup>th</sup> Street and relocate it into a new stream channel, through a wetland connected to Soos Creek. This will improve fish habitat for one of the most productive Coho streams in the city.
- Lake Meridian Outlet Relocation (2005-2006)—this project will relocate the outlet of Lake Meridian into a new stream channel through a forested area and wetlands, rather than adjacent to 152<sup>nd</sup> Avenue SE.
- Soosette Creek Restoration (2005-2006)—this project would restore Soosette Creek channel south of SE 256<sup>th</sup> Street, add structure to the stream, and restore the buffer with native vegetation.
- Upper Meridian Valley Creek Improvements (2007)—this project would replace culverts at SE 234<sup>th</sup> Street and SE 236<sup>th</sup> Street, thereby improve fish passage and flood remediation.
- North Fork West Branch Soosette Creek Improvements (planned but not scheduled)—this project would add native trees and shrubs to the buffer area north of Kent-Kangley Road.
- Meridian Meadows Detention Pond Fish Passage Improvements (2005-2006)—a low flow fish passage needs will be constructed within the detention pond vault.
- 132<sup>nd</sup> Avenue Stormwater north of 282<sup>nd</sup> Street (2005)—this project includes enhancing the conveyance capabilities of an existing stormwater system and will benefit flood remediation.
- West Fork West Branch Soosette Creek culvert replacement (2006)—with the widening of 116<sup>th</sup> Avenue SE, several driveway culverts will be replaced with larger culverts, enhancing fish passage and flood remediation. In addition, the stream buffer will be moved away from the road and planted with native vegetation to enhance water quality.
- Boeing Creek Restoration (planned)—this project would include relocating Boeing Creek away from S. 212<sup>th</sup> Street and West Valley Highway, adding meanders and structures, including large woody debris, and would include replanting the buffers with native vegetation.
- Johnson Creek Watershed Restoration and Flood Protection (on-going)—this watershed is currently experiencing development pressure which will generate additional stormwater runoff. For those properties within the city of Kent, the provisions of the Green River Flood Management Agreement must be met; however, not all sites in the watershed are within the city and stormwater impacts may be an issue. In addition, the watershed contains some large wetlands in need of restoration. The goal of the project is to complete a watershed based plan to address stormwater, habitat and restoration. Benefits include: flood remediation, water quality, fish and wildlife habitat, open space, steam and wetland restoration.

- Culvert replacement projects within the Mill Creek drainage (2007 and on-going)—there are 5 remaining box culverts that need to be replaced in the Mill Creek watershed. Upon completion, their replacement will benefit flood remediation, fish passage, and wildlife habitat.
- Rosso Property acquisition (2005)—the city of Kent applied for and received a Salmon Recovery Funding (SRF) Board grant to acquire a portion of this property along the Green River. If able to complete this purchase, the city plans to construct back channel habitat, plant native vegetation, remove non-native vegetation, and construct a native plant nursery on-site, which has nearly a mile of Green River frontage.
- Lower Mill Creek Auburn Confluence Property Acquisitions and Restorations (in-progress)—the city has been working with property owners on the potential acquisition along this portion of Mill Creek and has acquired a King County Conservation Futures grant for this purpose. If the property is secured, the city would construct a backchannel and would plant the site with native vegetation.
- Clark Lake outlet gravel augmentation (planned but not scheduled)—the city plans to augment stream bed gravel in the Clark Lake outlet for spawning Coho salmon.
- Green River Riverview Park back-channel (2006-2007)—this project is part of the Green/Duwamish Ecosystem Restoration Plan in which the city is partnering with the United States Army Corps of Engineers and other jurisdictions to restore salmonid habitat in the watershed. This project would construct a backchannel for rearing and refuge on the Riverview Park site including log structures and planting of native vegetation.
- Garrison Creek restoration (2005 and on-going)—this project will restore a portion of Garrison Creek which is currently causing flooding problems on the northbound SR 167/S. 212<sup>th</sup> Street off-ramp. In addition the project will also restore an up-stream portion of Garrison Creek. Benefits of this project will include flood remediation, fish and wildlife habitat, and water quality improvements.

K. All of these programs and projects will serve to protect the functions and values of critical areas in Kent, and will, either specifically or generally, preserve or enhance habitat for all life stages of anadromous fish. As this record shows, the city council has been and continues to be committed to improving, enhancing, and protecting critical areas in this city.

L. Within the context of these programs, projects, and complimentary development regulations, and taking into consideration the broader scientific evidentiary disputes as to the appropriate interpretation and application required to

include best available science, this council, city staff, and the city's environmental consultants have reviewed and considered the best available science in the record and have evaluated and analyzed its relevance to the types and functions and values of the streams, wetlands, and other critical areas found in this city. The city has documented and included the best available science in the record through specific best available science documents prepared for each critical area. These documents and subsequent addenda help provide a framework for this decision.

#### WETLANDS REGULATIONS:

M. The city's review of the best available science for wetlands is based upon scientific references available in 2003 and 2004, as well as relevant studies from the Washington Department of Community Development's *Citations of Recommended Sources for Designating and Protecting Critical Areas* (2002) and the Department of Community, Trade and Economic Development's (CTED) *Critical Areas Assistance Handbook* (2003). Other scientific documents that were relied upon are included in the best available science document that was prepared and included in the record.

N. Two key issues arose during this process. The first was whether the city's existing three-tier wetland rating system was sufficient or whether the city should adopt the Department of Ecology's four-tier wetland rating system. The second major and most significant area of concern was to determine the appropriate buffer regulations, taking into account the existing level of developed land, the acceptable quantity (size), and the appropriate quality (native vegetation and other enhancement) of the proposed buffers.

O. City staff considered the Department of Ecology's four-tiered wetland rating system and compared it to the city's current three-tiered wetland rating system. The system separates wetlands according to habitat function and value, degree of sensitivity to disturbance (i.e., presence of certain sensitive wildlife), rarity (i.e., bogs), and ability to compensate for degradation (i.e., presence or absence of habitat diversity). Although the city's classification system does not fully consider all wetland

functions such as flood control, water quality improvement, etc., the city's three-tiered rating system is scientifically based, does rank wetlands from higher to lower function and value, and meets the requirements under WAC 365-190-180. In 2003 and 2004, Adolphson and Associates, the city's wetlands consultants, assisted the city with development of a full array of regulations and standards for wetlands, not all of which were accepted by this council. This array of regulations works interactively with the three-tiered wetland rating system currently in use and adequately addresses any lingering concerns that may be raised regarding the city's continued use of its three-tier rating system.

P. Moreover, it was not until August, 2004, that the Department of Ecology revised and published its final guidance on the new four-tiered wetland rating system. Although arriving late in the GMA update process, city staff and its environmental consultants reviewed the new Department of Ecology wetland rating system. However, due to the higher level of complexity in the rating form and increased ability for subjectivity between evaluators using the form, we have decided to continue to use the city's three-tiered system. While it is recognized that the Department of Ecology's new 2004 wetland rating system may be appropriate for ranking wetlands at a state or county level where there is a wide diversity of wetland types, urban areas such as Kent find that a simpler system adequately addresses wetland impacts and makes better practical and scientific sense given the lesser diversity of wetland types. Wetland functions and values will be protected, as mandated under the GMA, with the existing city rating system.

Q. As a result, the council has determined, based on consultation with city staff, the city's wetlands consultant, and with the community at large, that the existing three-tier system adequately addresses the requirements in the WAC. This ranking system addresses wetland function, value, and uniqueness in our local environment, and has the added benefit of providing for a rating system that is consistent with past practice, is easily applied and understood, and accordingly minimizes staff and developer misinterpretation. For these reasons, council has determined that

continuation of the three-tier ranking system will not adversely affect the functions and values of critical areas in Kent.

R. In addition, the city and its consultant evaluated the scientific record related to determining appropriate and adequate wetland buffer widths to protect the functions and values of wetlands. There continues to be considerable discrepancy in the scientific literature regarding wetland buffer widths. For example, the scientific research generally indicates that buffers no smaller than 25 feet and as large as 350 feet are needed to protect most wetland functions and values (Sheldon et al., 2003). Buffer widths adequate to protect wetland wildlife, including waterfowl, vary dependent upon the type of wetland, adjacent land use, site conditions, and other site-specific factors. The scientific literature reflects that larger buffer widths (over 100 feet and for some species over 1600 feet) are shown to be needed to protect certain wildlife species that use wetlands habitat. The scientific literature also shows that larger buffers are useful to protect certain water quality improvement functions such as removal of fine sediment.

S. Because of the dramatic spread in buffer width for habitat and other purposes that is shown in the scientific record, the city must select from the range of buffer widths needed to protect the variety of species that may use these habitat buffers. Obviously, the city cannot fully protect all species habitat needs unless the city wants to set all buffers at 1600' or greater. Rather, the city must make a reasoned and measured decision, interpreting the scientific literature, taken in the context of the local environment and within the local regulatory framework. The city has done just that, after extensive public comment and dispute over the appropriate buffer widths.

T. The wetland buffer widths proposed by the city lie within the range of effective buffer widths in the scientific record, albeit at the lower end of that range. Although some participants have argued that smaller wetland buffers widths constitute a departure from state recommendations and from some of the scientific record, the council has determined, however, that this "lower end" is acceptable in light of all

factors at play, which are discussed in detail in these recitals. The city has evaluated the potential risks to the functions and values of wetlands as a result of implementing these buffers and recognizes that the greatest risk to the functions and values of wetlands in our jurisdiction is likely to occur in those Category 2 wetlands that are among the most highly functioning within that category. However, the city's selected buffers will protect the functions and values of wetlands under the new regulatory framework provided here in part because the city also is adding buffer enhancement requirements, increased mitigation ratios, and an increased buffer incentive program as part of the overall regulation. For example, on the highly built-out and developed Kent valley floor, this ordinance focuses on enhancing vegetation within the wetlands buffers, rather than just creating larger, poorly vegetated wetland buffers. The purpose for this is to improve the functioning of existing buffers, which currently are highly degraded on the valley floor.

U. As part of this overall GMA enactment process, this council is concurrently passing a resolution authorizing the Mayor to develop and enact a critical areas Habitat Protection and Restoration Plan (Habitat Plan). The Habitat Plan will be put in place to enhance critical area habitat and to offset any unintended past and present risk of degradation to existing wetland functions and values. Streams will also be included in the Habitat Plan since wildlife that utilize wetlands also utilize streams and their associated buffers. The Habitat Plan will use a "landscape approach" to understand the relationship between stormwater runoff, wetland functions, and fish and wildlife habitat. This plan could include projects to enhance fish and wildlife habitat, stormwater management, and wetland restoration.

V. Taken together, as these regulations pertain to wetlands, their classification, and their attendant buffers, the city council has determined that the regulatory framework enacted in this ordinance, particularly when viewed in the context of the city's other regulatory programs and critical areas enhancement projects, interprets, applies and includes best available science as provided for under law.



## STREAM REGULATIONS.

W. Turning to streams and stream buffers, the city also took a specialized approach in light of the unique conditions in this city. Riparian corridors provide a wealth of benefits to stream ecosystems and to the fish and wildlife species that are dependent on them for some or all of their life history. It is in the interest of the city to provide appropriate stream buffers to help promote the various functions these systems provide, including helping to regulate stream flow by intercepting rainfall, promoting infiltration, and maintaining the natural hydrologic cycle. A review of the best available science was completed which identified a regulatory approach that differs between the valley floor area and the East Hill area of Kent.

X. The practical constraints imposed by existing land use patterns and limitations on stream conditions were recognized factors when developing these new critical areas regulations. Stream buffer vegetation in the valley tends to be highly degraded. A substantial amount of existing and vested development has previously been constructed less than 50 feet from streams based on prior development regulations, and in some instances substantial development (e.g., buildings, parking areas, or other impervious surfaces) exists up to within 15 feet of existing streams. As a result, the ability to “go back in time” and recreate wider buffers would create a disproportionate number of nonconforming uses in the valley. Also, this would not be a practical approach because redevelopment would only occur on an isolated basis, leaving discontinuous and sporadic critical areas with little likelihood of establishing functioning habitat corridors. Finally, dramatic buffer expansion beyond existing setbacks in the valley would likely be an economic disincentive that would be harmful to redevelopment, growth, and employment in the Kent valley. Accordingly, council has determined to adopt a “valley overlay” program for buffers in this area of Kent.

Y. The options considered included a variety of approaches to addressing the functions, conditions, and context of streams within the valley system—Mill Creek (in Kent), Springbrook Creek, and portions of Garrison Creek. The water quality and habitat considerations of these streams was documented and considered, along with

information in the best available science literature applicable to stream functions and values.

Z. Stream reaches in the valley floor provide a limited set of habitat functions for anadromous fish. These include migration passage and juvenile rearing. Because the valley floor streams are nearly flat, the resulting sediments are too fine for spawning habitat. The primary habitat values that function well in these streams include water quality and physical habitat structure. Many of the existing buffers along these streams are dominated by invasive plant species (e.g., reed canary grass, Himalayan blackberry). These species do not contribute to habitat quality and often reduce available oxygen. Dissolved oxygen and temperature are the most important water quality attributes supporting the functions needed by anadromous fish in these reaches.

AA. As indicated, some areas of the valley have existing stream setbacks as narrow as 15 feet. This general area is primarily developed with existing buildings, structures, and impervious surfaces; most are industrial. Past land uses and development patterns have altered the riparian corridors, and there is insufficient land to set aside to meet large minimum stream buffers. These same factors have also resulted in less than desirable habitat and water quality functions in these areas. By focusing on enhancing particular degraded stream functions, improvement of the riparian conditions in the valley floor will be realized over time.

BB. Consequently, these regulations include the best available science in a manner that would provide improved protection of relevant values in the affected valley floor stream segments, while recognizing the existing land use pattern and the economic development functions occurring in the valley.

#### BALANCING GMA GOALS.

CC. As these recitals show, developing and enacting a critical areas ordinance that satisfies the GMA requirements and addresses the needs of the

community has been an arduous task. This council has been told by some participants and even by some city staff that the regulations adopted by this ordinance do not appropriately include best available science. On the other hand, other participants have argued strongly that these regulations are entirely consistent with best available science. Still other speakers have told us plainly that none of the options considered by council are consistent with best available science. At the very least, the widespread disagreement among the various parties that have participated in this lengthy public process show that reasonable minds can and do differ about the meaning, interpretation, and application of best available science under the GMA.

DD. This council recognizes that, in particular, the wetland buffers adopted here are at the low end of the range of best available science. Yet, when coupled with the expanded mitigation ratios, the buffer expansion incentive sections, the buffer enhancement requirements, and the Wildlife Habitat and Restoration Plan, while taking into account the various regulations, programs, and projects already in place in this city, the city council believes that this ordinance does in fact comply with and properly includes best available science as provided for under the GMA.

EE. Nevertheless, despite our conviction that this ordinance properly complies with GMA requirements, we would be naïve to assume that any reviewing body will undoubtedly agree with our determination. On that basis, the council wishes further to discuss its reasons for choosing and applying buffers that are on the lower end of the range of best available science and includes the following non-scientific information.

FF. The city's 2004 Comprehensive Plan, in its Framework Policies, lists the thirteen GMA Planning Goals. GMA's Open Space and Recreation and Environment goals are of key importance to this city, but equally important are the goals of Urban Growth, Housing, Economic Development, and Property Rights. In an urban center like Kent, balancing the competing pressures of accommodating growth and community vitality with the need to protect and preserve the environment is no small

task. This council, with the assistance of city staff and the greater Kent community, has endeavored long and hard to balance these competing goals in the fairest manner that serves all the competing needs voiced by the members of this community who participated in this lengthy process.

GG. The goals and policies established in the Natural Resources Goals and Policies on pages 4-42 through 4-54 of the city's 2004 Comprehensive Plan express the importance of the environment to this city. However, we cannot act in a vacuum. We must also consider other goals and policies in our plan.

HH. Our Housing Needs and Affordable Housing Goals and Policies, pp. 6-12 to 6-15, argue in favor of flexibility in our land use regulations in order to fulfill those goals and policies. Many real estate development representatives spoke strongly and convincingly that the environment should not receive greater emphasis than the need to create additional residential housing in our community, which has become an area that has seen significant single family residential construction.

II. Nor can this council ignore its economic development goals and policies, pp. 12-1 through 12-8. This city is committed to supporting its manufacturing and warehouse distribution center as a significant employment and commercial activity center not just in the greater Seattle area, but along the entire West Coast. The city has, over many years, committed considerable time and effort through land use planning and capital infrastructure projects to facilitate and enhance this center of commercial activity and significant employment source. The city has an equally important commitment to downtown revitalization. Excessive environmental regulation can have a distinct downward effect on this commercial activity, which in many ways is the lifeblood of our city. The goals of environmental protection must be balanced against its impacts on commercial growth and the individuals and organizations that have invested so much in our community's future.

JJ. Finally, though little is discussed about this goal in our Comprehensive Plan, we must consider the effect of environmental regulation on property rights. This in fact could be the one most significant factor calling out for a balanced approach to regulating our natural environment. Although we recognize the need for regulation in order to preserve the public health, safety, and welfare, we also recognize that these regulations sometimes negatively affect property values or restrict, and sometimes eliminate, certain uses on a person's property. The city must consider the negative impacts to individual property rights when implementing its critical areas regulations.

CONCLUSIONS:

KK. This ordinance implements critical areas regulations that include best available science to protect the functions and values of critical areas in Kent, taking into account the broader scientific evidentiary disputes over interpretation of the range of that science when applied to the specific, local environment in Kent, particularly within the context of the other regulations, programs, and projects already in place within our jurisdiction.

LL. These resulting regulations implement goals and policies of the Kent Comprehensive Plan, balancing those pertaining to natural features and environmental protection against housing, economic development, and property rights goals and policies.

MM. The regulations adopted also serve as a basis for the exercise of the city's substantive SEPA authority, while at the same time reducing the city's reliance on project-level SEPA review to develop individualized standards.

NN. These standards will provide consistent criteria and procedures that will enable the city to effectively manage and protect critical areas while accommodating the rights of property owners to use their property in a reasonable manner. At the same time, these regulations will provide greater certainty to property owners regarding uses and activities that are permitted, prohibited, and/or regulated due to the presence of

critical areas. These regulations will also coordinate environmental review and the permitting of proposals involving critical areas with existing development review and approval processes to avoid duplication and delay, consistent with RCW 36.70B.

OO. These regulations are intended to establish conservation and protection measures for threatened and endangered species in compliance with the requirements of the Endangered Species Act and provide special consideration for anadromous fish pursuant to WAC 365-195-925.

PP. These regulations will serve to alert members of the public, including: appraisers, assessors, owners, potential buyers or lessees, to the development limitations of critical areas and their required buffers.

QQ. This ordinance is an exercise of the city's police power to protect the public's health, safety, and general welfare.

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

### **ORDINANCE**

**SECTION 1.** - *Amend.* Section 11.03.510 of the Kent City Code, entitled "Substantive authority," is amended to read as follows:

**Sec. 11.03.510 Substantive authority.**

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.
- B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable significant adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;

2. Such conditions are in writing;

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one (1) or more laws or regulations as provided in Ch. 11.03 KCC and subsection (D) of this section and identified in writing in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of State Environmental Policy Act so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final environmental impact statement or final supplementary environmental impact statement prepared pursuant to this chapter;

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one (1) or more policies identified in subsection (D) below and identified in writing in the license or other decision document.

D. The city designates and adopts by reference the following additional policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of the state safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following city codes, ordinances, and resolutions:

a. The citywide comprehensive plan as prepared and adopted pursuant to the State Growth Management Act and adopted on April 18, 1995 by the Kent city council by Ordinance 3222 and its specific components and elements, and including all amendments thereto.

b. Shoreline master program as adopted by the Washington State Department of Ecology on June 16, 1992 and as adopted by the Kent city council on July 21, 1992 by Ordinance 3056 and including all amendments thereto.



- c. The surface water and drainage code, Ch. 7.07 KCC and including all amendments thereto.
- d. Underground installation of electrical or communications facilities, Ch. 7.10 KCC and including all amendments thereto.
- e. Transportation master plan (Resolution 1014 and amended by Resolution 1032) and Green River Valley transportation action plan (Resolution 1127) as may hereafter be amended and including all amendments thereto.
- f. Wastewater facilities master plan, Ch. 7.09 KCC and including all amendments thereto.
- g. Comprehensive water plan (Ordinances 2829 and 2960) and conservation element Resolution 1361 and including all amendments thereto.
- h. Construction standards for public works, KCC 6.02.010 and 6.02.020 (Ordinance 3117) and including all amendments thereto.
- i. Street use permit requirements, Ch. 6.07 KCC and including all amendments thereto.
- j. Flood hazard protection, Ch. 14.09 KCC and including all amendments thereto.
- k. Subdivisions, Ch. 12.04 KCC and including all amendments thereto.
- l. Mobile home parks, Ch. 12.05 KCC and including all amendments thereto.
- m. Valley studies (as adopted in Resolutions 920, 921, 922, 923, and 924).
- n. Noise control, Ch. 8.05 KCC and including all amendments thereto.
- o. State building code, together with the local implementing ordinances, KCC Title 14 and including all amendments thereto.

p. State fire code, together with the local implementing ordinances, KCC Title 13 and including all amendments thereto.

q. Zoning, KCC Title 15 and including all amendments thereto.

r. Recreational vehicle park, Ch. 12.06 KCC and including all amendments thereto.

s. Water shortage emergency regulations, Ch. 7.13 KCC and Water Conservation Ordinance 2227 and including all amendments thereto.

t. Required public improvements, Chs. 6.02 and 6.03 KCC and including all amendments thereto.

u. Storm and surface water drainage utility, Ch. 7.05 KCC and including all amendments thereto.

v. Storm drainage policies (Ordinance 2547) and including all amendments thereto.

w. Six (6) year transportation improvement plan (Resolution 1444) and including all amendments thereto.

x. Comprehensive sewerage plan (Resolution 915) and including all amendments thereto.

y. Fire master plan (Ordinance 2511) and including all amendments thereto.

z. Critical areas (Ordinance 37 )~~Wetlands management (Ordinance 3109)~~ and including all amendments thereto.

aa. ~~Endangered Species Act development policies (Resolution 1605)~~ including all amendments.

**SECTION 2. – Repeal.** Chapter 11.05 of the Kent City Code, entitled “Wetlands Management,” is hereby repealed in its entirety.

**SECTION 3. – Create.** Chapter 11.06 of the Kent City Code, entitled “Critical Areas,” is hereby created and shall read as follows:

**Chapter 11.06**

**CRITICAL AREAS**

**Article I. Procedural & Administrative Provisions**

**Sec. 11.06.010. Title.**

This code 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 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 stormwater 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 non-regulatory 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, RCW ch. 37.70A.

Protection of the water quality and hydrologic functions of wetlands is accomplished in Kent by a combination of stormwater management controls (including both water quality controls and flow controls) regulated pursuant to KCC ch 7.07, and wetland buffers imposed pursuant to this ordinance. Taken together these programs will provide adequate water quality and hydrologic protection to meet Best Available Science requirements.

## 2. Fish & 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 stormwater and floodwater; recharge groundwater; and serve as areas for recreation, education, scientific study and aesthetic appreciation. Stream buffers serve to moderate stormwater 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 land characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of risk of 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 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. *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 this chapter shall apply to any regulated activity that potentially affects a critical area or its buffer unless otherwise exempt by these regulations. Applicable activities are as follows:

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, which shall be low intensity, designed 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 KCC 12.01 shall be subject to, and coordinated with, the requirements of this chapter.

C. Non-project 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 Natural Resources 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 performed on sites containing critical areas as defined by this chapter shall be exempt from the provisions of these regulations:

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

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

3. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to, grass-lined swales, irrigation and drainage ditches, retention or detention facilities, and landscape features.

except wetlands or streams created as mitigation or that provide critical habitat for anadromous fish.

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

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

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

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

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

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

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

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



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

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

14. 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.

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

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

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

D. Legally established uses, developments or structures that are nonconforming solely due to inconsistencies with the provisions of this chapter, shall not be considered nonconforming pursuant to KCC 15.08.100. Reconstruction or additions to existing structures which intrude into critical areas or their buffers shall not increase the amount of such intrusion except as provided by section 10(A) of this title. Once a non-

conforming use is discontinued for a period of one-year, that use cannot be re-established.

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

**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 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 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 section, the criteria and standards shall prevail.

**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.

**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 KCC 12.01 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.

3. 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 attachments to this chapter applicable to each critical area. 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 - Qualifications & City Review. All reports and studies required of the applicant by this section shall be prepared by a qualified consultant as defined in these regulations. The department may, at its discretion, retain a qualified consultant 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, to promulgate procedures and rules for unique circumstances not anticipated by the standards and procedures contained within this section.

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

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 KCC 2.32.

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 KCC 12.01.

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 on-site 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 segregating or dividing the property and creating an undevelopable condition.

6. 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. 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 shall be considered by the hearing examiner as a Process III application, pursuant to KCC 12.01.040. 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 makes it difficult or infeasible to strictly comply with the provisions of this section.

2. The variance is the minimum necessary to accommodate the building 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 section, 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 title; except for those definitions specified in KCC 14.09 and 15.02, which are specific to those respective sections and chapters.

**Sec. 11.06.115. Adjacent Wetland.**

Adjacent Wetland means wetlands bordering, contiguous 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 a critical area.

**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 wetlands created from non-wetland 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 925.

**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 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 be enhanced and/or re-vegetated 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 disturb the existing ground surface.

**Sec. 11.06.175. Compensatory mitigation.**

Compensatory mitigation means the replacement of project-related critical area that has been impacted, including, but not limited to, the following:

A. 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 no longer meets the definition of a stream or wetland.

B. Creation means actions performed to intentionally establish a wetland at a site where it did not formerly exist.

C. 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. 11.06.180. Comprehensive plan.**

Comprehensive plans means the adopted City of Kent Comprehensive Plan and amendments thereto.

**Sec. 11.06.185. 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. 11.06.190. 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 ground water resources.

**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 (non-wetland or dry) site through artificial means.

**Sec. 11.06.200. Critical area, or environmentally sensitive area.**

Critical area, or environmentally sensitive area means areas that possess important natural functions and embody 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 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 Wellhead Protection plans or via the calculated fixed radius method, Susceptible Groundwater Areas pursuant to WAC 173-100, 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, ( 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 (Non-Game 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 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 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 percent) in non-native vegetative; 3) significant cover (over fifty percent) in invasive species or noxious weeds; or 4) presence of existing non-conforming 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 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 Works 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 or his/her designee.

**Sec. 11.06.245. Earth/earth material.**

Earth/earth material means the naturally occurring rock, soil, stone, sediment, or 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, 15 to 30 percent slopes (AgD); Alderwood and Kitsap soils, very steep (AkF); Arents, Alderwood Material, 6 to 15 percent slopes (AmC); Beausite gravelly sandy loam, 15 to 30 percent slopes (BeD); Beausite gravelly sandy loam, 40 to 75 percent slopes (BeF); Everett gravelly sandy loam, 15 to 30 percent slopes (EvD); Indianola loamy fine sand, 15 to 30 percent

slopes (InD); Kitsap silt loam, 8 to 15 percent slopes (KpC); Kitsap silt loam, 15 to 30 percent slopes (KpD); Ovall gravelly loam, 15 to 25 percent slopes (OvD); Ovall gravelly loam, 40 to 75 percent slopes (OvF); Pilchuck loamy fine sand (Pc); Ragnar fine sandy loam, 15 to 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 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: "Existing and ongoing agricultural activities" includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock. Such activity must have been in existence as of the effective date of 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 bring an area into agricultural use from a previous non-agricultural 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 non-agricultural use or has lain idle for a period of longer than five 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 material placed by human or mechanical means.

**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. 11.06.310. 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 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 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, or 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 1 through October 31 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 100-yr 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. 11.06.360. Intentionally created streams.**

Intentionally created streams means man-made 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. 11.06.365. Lahar.**

Lahar means mudflows or debris flows associated with volcanic activity, and which pose a threat to life, property and 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 include:

1. Any existing active or dormant landslide or debris flow that has shown movement during the Holocene epoch (from ten thousand 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, 15 to 30 percent slopes (AgD); Alderwood and Kitsap soils, very steep (AkF); Beausite gravelly sandy loam, 15 to 30 percent slopes (BeD); Beausite gravelly sandy loam, 40 to 75 percent slopes (BeF); Everett gravelly sandy loam, 15 to 30 percent slopes (EvD); Indianola loamy fine sand, 15 to 30 percent slopes (InD); Kitsap silt loam, 8 to 15 percent slopes (KpC); Kitsap silt loam, 15 to 30 percent slopes (KpD); Ovall gravelly loam, 15 to 25 percent slopes (OvD); Ovall gravelly loam, 40 to 75 percent slopes (OvF); Ragnar fine sandy loam, 15 to 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 US Geological Survey, Washington Department of Natural Resources, or geologic consultant reports completed for the city of Kent.

4. Areas with all three of the following characteristics: slopes steeper than 15 percent; slopes intersecting granular material over silts or clays; and springs or ground water seepage or evidence of seasonal springs or ground water 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 40 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing its toe and top and measured by averaging the inclination over 10 feet of vertical relief.

**Sec. 11.06.380. Mitigation.**

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 "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. 11.06.390. Off-site mitigation.**

Off-site 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 by a regulated activity.

**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 on-site and off-site 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 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 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 20 acres in size that are either permanently inundated at mean annual water depths greater than 6.6 feet, or permanently inundated at less than 6.6 feet in depth 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 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 & 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 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.**

Qualified consultant means 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 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 activities that have 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 and poorly compacted fill that either is or can become saturated. These areas are 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 areas generally consist of Vashon ice-contact deposits in areas of 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.

**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 the sensitive 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 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 feet or more vertically within a horizontal distance of 25 feet on slopes greater than 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 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 to describe a stream and to characterize its conditions, wildlife, habitat values and water quality.

**Sec. 11.06.495. Structural diversity, vegetative.**

Structural diversity, vegetation 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. 11.06.500. Substantial improvement or reconstruction.**

Substantial improvement or reconstruction means any repair, reconstruction or improvement the cost of which is more than fifty percent of the market value of the structure either (a) before the improvement is started or (b) 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 (a) an improvement to comply with existing state or local health, sanitary or safety (Uniform Building Code/Uniform Fire Code) specifications which are necessary to assure safe conditions; or (b) 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 on-site and off-site 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 that remain after an applicant has demonstrated that no practicable alternative exists for the proposed project.

**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 areas subject to a risk of inundation by lahars or other related flooding events resulting from volcanic activity originating from Mount Rainer. These areas are mapped as 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 Rainer, 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 ground water at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm

ponds, and landscape amenities. However, wetlands include those artificial wetlands intentionally created to mitigate conversion of wetlands. Wetlands determined prior converted cropland (PCC) by Federal agencies may still be considered wetlands by the city of Kent. If these wetlands meet requirements of the Washington State Department of Ecology Manual, the wetlands shall be regulated, and the critical area shall be protected like any other wetland pursuant to this code.

**Sec. 11.06.535. Wetland class.**

Wetland class means the U.S. Fish and Wildlife Service wetland classification scheme 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 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. 11.06.545. 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 under 20 acres in area.

### **Article III. General Mitigation and Monitoring**

#### **Sec. 11.06.550. Mitigation standards.**

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

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

1. All feasible and reasonable measures have been taken to reduce impacts and losses to the critical area, or to avoid impacts where avoidance is required by these regulations, provided that avoidance is not required where an applicant proposes to fill and replace a hydrologically isolated emergent Class 3 wetland less than 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 US 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.

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

A. Mitigation shall be provided on-site where possible, unless the director agrees that a higher function and value can be accomplished off-site within the same drainage basin. Mitigation may be allowed off-site only when it is determined, through the SEPA review process, that on-site 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 on-site.

B. When mitigation cannot be provided on-site, 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 on-site or off-site, 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 or other acceptable security device is required to ensure the applicant's compliance with the terms of the approved mitigation plan. The

amount of the performance and maintenance bond shall equal 125 percent of the cost of the mitigation project for the length of the monitoring period.

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.

5. Monitoring programs shall be for a period of at least five 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. 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 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 timeframe if performance standards are not being met at the end of the initial five-year period; and require additional financial securities or bonding 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.** The following rating system is hereby adopted for the purpose of determining the size of wetland buffers and for the review of permits under this chapter. For the purposes of this section, the U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS-79-31 (Cowardin et al., 1979) contains the descriptions of wetland classes and subclasses.

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

1. The documented presence of species proposed or listed by the federal or state government as endangered, threatened, or other species identified by the State Department of Natural Resources through its natural heritage data or by the State Department of Wildlife as a priority species, or the presence of critical or outstanding actual habitat for those species.

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

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

4. The presence of bogs or fens.

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

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

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

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

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

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

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

**Sec. 11.06.590. Determination of wetland boundary by delineation.**

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

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

C. The delineation shall contain the following information:

1. A written assessment and accompanying maps of wetlands and buffers within 100-feet of the project area, including the following information at a minimum: all known wetland inventory maps (including a copy of the city of Kent Wetland Inventory Map); wetland delineations and required buffers; existing wetland acreage;



wetland category; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; and topographic data.

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

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

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

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

A. *Standard buffer widths.* 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.

<u>Wetland Category</u>	<u>Standard Buffer</u>
<u>1</u>	<u>100 feet</u>
<u>2</u>	<u>50 feet</u>
<u>3</u>	<u>25 feet</u>

B. *Increased buffer widths.*

1. 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

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

2. 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 25 feet wider than the buffers required pursuant to KCC 11.06.600(A), 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.

b. If an applicant provides a buffer which is permanently protected pursuant to the requirements of this chapter and is at least 50 feet wider than the buffers required pursuant to KCC 11.06.600(A), 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.

C. *Buffer averaging.*

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

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

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

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

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

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

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

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

D. *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 years shall be provided pursuant to an approved monitoring plan as required by KCC 11.06.570. Where it can be demonstrated that there will be no impacts from the proposed development to the wetland or wetland buffer, the director shall have the authority to waive or modify this requirement.

E. *Required report for buffer averaging and/or reduction.* A request to buffer average pursuant to KCC 11.06.600(C) 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, ground water 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: (a) a map locating the specific area of restoration and/or enhancement; (b) a planting plan that uses native plant species indigenous to this region including groundcover, shrubs, and trees; and (c) provisions for monitoring and maintenance throughout the monitoring period.

F. *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.

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

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

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

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

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

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

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

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

a. Constructed of permeable materials.

b. Designed to minimize impact on the stream system.

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

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

4. Construction of footbridges and boardwalks.
  5. Construction of educational facilities, such as viewing platforms and informational signs.
  6. The construction of outdoor recreation such as fishing piers, boat launches, benches.
  7. Maintenance of pre-existing facilities or temporary uses having minimal adverse impacts on buffers and no adverse impacts on wetlands. These may include but are not limited to: maintenance of existing drainage facilities, low intensity passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing.
  8. Stormwater discharge outlets with energy dissipation structures as approved by the city of Kent. Unless otherwise approved by the director, these shall be located as close to the outer perimeter of the buffer as allowed by proper design and function of the discharge system. To the extent that construction of such outlets impacts vegetation in the buffer, restoration of the vegetation shall be required.
  9. On-going maintenance activities by the city of Kent vegetation management division of public works and parks department shall be permitted to continue general maintenance of wetlands and associated buffers. Maintenance shall include but not be limited to trash removal, removal of non-native vegetation, maintenance of existing vegetation as necessary, restoration, enhancement and sign and fence maintenance.
- I. *Building setback lines.* A minimum building setback line of fifteen (15) feet shall be required from the edge of a wetland buffer provided the director may reduce the building setback limit by up to 5 feet if construction, operation, and maintenance of the building do not and will not create a risk of negative impacts on the adjacent buffer area. Alterations of the building setback lines shall not be permitted to create additional lots for subdivisions. Approval of alterations of the BSBL shall be provided in writing by the director, or his/her designee, and may require mitigation such as buffer enhancement.

**Sec. 11.06.610. Avoiding wetland impacts.** Regulated activities shall not be authorized in Category 1 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 non-water-dependent activities are proposed, the applicant must demonstrate that:

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

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

3. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

C. Filling of a hydrologically isolated emergent Class 3 wetland less than 5,000 square feet in size shall be permitted, provided a replacement wetland area is created pursuant to KCC 11.06.660(D)(2)(a). For the purposes of this section, a hydrologically isolated wetland shall be determined by the US 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 3 wetlands, and Category 2 wetlands which are not Category 3 wetlands only because they exceed one (1) acre in size) the following applies: regulated activities which result in the filling of no more than ten thousand (10,000) square feet of a wetland may be permitted if mitigation is provided consistent with the standards.

B. In computing the total allowable wetland fill area under this subsection, 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 subsection. 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 buffer edge, unless otherwise approved by the director. Wetland Sensitive Area Signs must also be attached to the fence or located just inside the wildlife passable fence attached to a 4 x 4 cedar post (or other non-pressure treated materials approved by the city). Signs must be located at a rate of one sign per residential lot and one sign per 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/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 wetland and/or wetland buffer. Sensitive area tracts\ easements are separate tracts containing wetlands and wetland buffers with perpetual deed restrictions requiring that the tract 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 sensitive area tracts.* The director shall require that a sensitive area be protected by one (1) of the following methods:

1. 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 deed restriction(s) shall be approved by the director and the city attorney and 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 result in a code violation and will be enforced to the fullest extent of 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-create as nearly as practicable or improves the original wetlands in terms of acreage, function, geographic location and setting.

B. *Goal.* The overall goal of any compensatory mitigation project shall be no net loss of overall wetland acreage or function and to replace any wetland area lost, with wetland(s) and buffers of equivalent functions and values. Compensation shall be



completed prior to wetland destruction, where practicable. Compensatory mitigation programs shall incorporate the standards and requirements contained in sections 11.06.550 and 11.06.560, above.

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

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

1. Compensation for alteration of Category 1 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 (a) and (b) above, so long as a minimum one (1) to one (1) creation ratio is met (for example, creation of new wetlands at a one and one-half (1.5) to one (1) ratio along with enhancement of existing wetlands at a ratio of five (5) to one (1) may be acceptable).

2. Compensation for alteration of Category 2 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 (a) and (b) above, so long as a minimum one (1) to one (1) creation ratio is met.

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

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

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); or

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

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

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

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

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

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

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

H. *Location.* On-site 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.

On-site compensation is not feasible due to problems with hydrology, soils, or other factors.

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

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

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

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

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

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

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

3. Other disturbed upland.

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

L. *Completion of mitigation construction.* On completion of construction, any approved mitigation project must be signed off by the applicant's qualified consultant and approved by the department. A signed letter from the consultant will indicate that

the construction has been completed as approved, and approval of the installed mitigation plan will begin the monitoring period if appropriate.

## **Article V. Fish & 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 in connection with applications for activities subject to these regulations

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 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 non-salmonid segments of natural waters not classified as Type 1 or 2 Waters. These are stream segments within the bankfull width of defined channels that are perennial and intermittent non-salmonid 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. 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 non-native 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 re-vegetated 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 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 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 non-pressure 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 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.

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

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 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 180<sup>th</sup> Street intersect, following 180<sup>th</sup> 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 98<sup>th</sup> 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 Green River to the point of beginning.

1. Stream buffers shall be 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. A buffer management and enhancement plan shall be required, consistent with the mitigation performance standards in this section.
4. Buffer reductions or averaging shall not be permitted except as permitted through the reasonable use provisions of section 11.06.090, or the variance provision of section 11.06.100 of these regulations.

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.* The department may permit buffer widths to be averaged for Type 2 streams only, in accordance with the stream report, subject to the following criteria:

1. Stream 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.
5. The buffer width is not reduced by more than 50 percent in any location.
6. All reduced buffers shall be mitigated through buffer enhancement pursuant to the requirements of section 11.06.550.

F. *Activities within buffer.* No structures or improvements shall be permitted within the stream buffer area, including buildings, decks, docks, except as otherwise permitted by this section, by the city's adopted Shoreline Master Program, or under one of the following circumstances:

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 trails, according to the following criteria:
  - a. Constructed of permeable materials.
  - b. Designed to minimize impact on the stream system.
  - c. Of a maximum width of eight (8) feet.
  - d. 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.

4. Construction of footbridges and boardwalks.

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

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; 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 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 section 11.06.100 of these regulations. Variances to buffers shall require a buffer enhancement plan pursuant to section 11.06.550, including bonding pursuant to section 11.06.560. 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.

I. *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/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.

**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 section 11.06.550 of these regulations.

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.

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: "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 Type 2, and 3.

F. 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.

G. 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 sections 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 city 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 (WAC 16-750) 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 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 section 11.06.550 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” according to the criteria in this section.

A. “Critical Habitat” are those habitat areas which meet any of the following criteria:

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

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 paragraph (a), above, 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. “Ponds” (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 critical habitat areas shall be determined by the department, based on an critical area report prepared by the applicant pursuant to this chapter and 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 consultant, 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. Buffers for ponds shall be 75 feet plus a 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 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 should be located in the outer ten feet (10') of the buffer, unless otherwise approved by the director.

E. Long term protection of 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; dedication to a conservation organization or land trust; or a similar permanent protective mechanism acceptable to the city. The location and limitations associated with the habitat and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King County Recorder's Office.

**Sec. 11.06.730. Alteration or development of wildlife habitat.**

A. Critical Habitat: Alterations of 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.

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

A. The performance standards in this section, and the general standards in Section 11.06.550 of this chapter, 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 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 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 animals which 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 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 VI. Geological Hazard Areas**

### **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.

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 public facilities.* Public emergency, health, and safety facilities and public utilities shall not be sited within geologically hazardous areas 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. above.

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. 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 KCC 14.01 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. Sites which are located on or within 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.

**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, and shall remain in their 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 report required by this chapter and prepared by a qualified consultant.

2. The sensitivity of the geologic hazard in question.

3. The type and intensity of the proposed land use.

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 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 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 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.

## **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 (CARA) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030 (2). CARA have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. 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 ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

2. Susceptible ground water management areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to Chapters 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 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, reviewed and approved by the department.

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. An aquifer recharge area critical 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 hydro-geologic 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 on site or immediately adjacent to the site, and permeability of the unsaturated zone based on available information.

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

c. Currently available data on wells and springs within 1,300 feet of the project area.

d. Location of other critical areas, including surface waters, within 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. Ground water monitoring plan provisions.

i. Discussion of the effects of the proposed project on the ground water quality and quantity, including:

(1) Predictive evaluation of ground water withdrawal effects.

(2) Predictive evaluation of contaminant transport based on potential releases to ground water.

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 stormwater management facilities must be designed and constructed in accordance with the King County Surface Water Design Manual as adopted by the city of Kent pursuant to KCC Chapter 7.07.

**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:

(1) Prevent releases due to corrosion or structural failure for the operational life of the tank.

(2) Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances.

(3) 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:

(1) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters.

(2) Have primary containment areas enclosing or underlying the tank or part thereof.

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

(4) 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 ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).

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

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, woodwaste, 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 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 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 baseflow to a regulated stream.

**SECTION 5. – Amendment.** Chapter 14.09 of the Kent City Code is amended as follows:

**Chapter 14.09  
FLOOD HAZARD REGULATIONS\***

**Sec. 14.09.010. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Appeal* means a request for review of any final action pursuant to this chapter, or of the interpretation of any provision of this chapter by any city official.

*Area of shallow flooding* means the land within the floodplain where the base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.

*Area of special flood hazard* means the land within the floodplain which is subject to a one (1) percent or greater chance of flooding in any given year.

*Base flood* means the flood having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood.

*Base flood elevation* means the actual elevation (in mean sea level) of the water surface of the base flood determined by the federal flood insurance administration or other qualified person or agency as described in this chapter.

*Critical facility* means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to: schools, nursing homes, hospitals, police, fire and emergency response installations; and public and private facilities which produce, use, or store hazardous materials or hazardous waste as defined by State Department of Ecology.



*Development* means any proposed or actual manmade changes to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within flood hazard areas and other site preparation activities.

*Director* means the director of the department of public works of the city.

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

1. The overflow of inland or tidal waters;
2. The unusual and rapid accumulation of run-off of surface water from any source.

*Flood insurance rate map (FIRM)* means the official map on which the federal flood insurance administration has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

*Flood insurance study* means the official report provided by the federal insurance administration that includes flood profiles, the flood boundary and floodway map, flood insurance rate map, and the water surface elevation of the base flood.

*Flood season* means the period from November 1 to March 31 during which, historically, the frequency, distribution and volume (inches of rainfall) of storms in the Green River Basin have been the largest and all known major floods have occurred.

*Floodplain* means that portion of a river or stream channel and adjacent lands which are subject to the base flood flooding.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Floodway fringe* means that portion of a floodplain which is not floodway.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

*Manufactured home* means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New construction* means structures for which the "start of construction" commenced on or after the effective date of this chapter.

*Special flood hazard area* means those land and water areas identified by the Federal Insurance Administration in a report entitled "The Flood Insurance Study for King County Washington and Incorporated Areas" dated September 30, 1989, with accompanying pages on file with King County or the department of public works of the city.

*Start of construction* includes substantial improvement, and means the date a building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the

placement of a manufactured home on a foundation. Permanent construction does not include submission of an application for development, land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

*Substantial improvement* means any repair, remodeling, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the appraised fair market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
  - a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are necessary solely to assure safe living conditions; or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a recognized state or local inventory of historic places.

**Sec. 14.09.020. Findings.**

The city council finds that:

1. The flood hazard areas of the city are subject to periodic inundation which endangers life and property, presents health and safety hazards, disrupts commerce and governmental services, and necessitates extraordinary public expenditures for flood

protection and relief, all of which adversely affect the public health, safety and general welfare, and

2. These flood losses are caused by the natural accumulation and ponding of floodwaters and the cumulative effect of obstructions in flood hazard areas which increase flood heights and velocities. Uses inadequately floodproofed, elevated or protected from flood damage or that otherwise encroach on the natural holding capacity of the floodplain also contribute to the flood loss.

**Sec. 14.09.030. Purpose.**

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by enacting provisions designed to:

1. Protect life and property by preventing the hazardous use of flood-prone lands;
2. Protect downstream or surrounding property from higher velocities or higher flood levels which may be caused by loss of holding capacity in the floodplain;
3. Minimize turbidity and pollution from upstream or surrounding development during a flood;
4. Minimize the expenditure of public money for remedial flood control measures;
5. Minimize the need for rescue and relief efforts associated with flooding which are generally undertaken at the expense of the general public;
6. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood hazard areas;
7. Alert appraisers, assessors, owners, potential buyers, and lessees to the natural limitations of flood-prone land;
8. Ensure that those who occupy or seek to develop in flood hazard areas assume responsibility for their actions;
9. Qualify the city and existing homes and businesses for participation in the federal flood insurance program; and

10. Implement local, state and federal flood protection programs.

**Sec. 14.09.040. Policies and standards for reducing flood losses.**

In order to accomplish its purpose, this chapter includes policies and standards to:

1. Restrict, condition, or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial development and construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
4. Control filling, grading, dredging, and other development which may increase flood damage; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood- waters or which may increase flood hazards in other areas.

**Sec. 14.09.050. Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

**Sec. 14.09.060. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study for King County, Washington and Incorporated Areas," dated June 16, 1995, with accompanying flood insurance maps is hereby adopted by reference and declared to be a part of this chapter as if stated verbatim. The flood insurance study is on file and available for examination at the office of the department of public works.

**Sec. 14.09.070. Penalties for noncompliance.**

No structure or land shall hereafter be developed, constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than five hundred dollars (\$500) or imprisoned for not more than one hundred eighty (180) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 14.09.080. Abrogation and greater restrictions.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Sec. 14.09.090. Interpretation.**

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

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state

statutes.

**Sec. 14.09.100. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of

special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, its elected officials or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administration decision lawfully made hereunder.

**Sec. 14.09.110. Green River flood control zone number 2.**

All building and development within the boundaries of the Green River flood control zone number 2 shall comply with all provisions of chapter 86.16 RCW and chapter 508-60 WAC, the state flood control zone act and permit program regulations.

**Sec. 14.09.120. Permits and licenses.**

No permit or license for structures or the development or use of land shall be issued by the city within a special flood hazard area unless approved by the director or other designate. Such approval shall be based on a review of the provisions set forth in this chapter and the technical findings and recommendations of city departments including, but not limited to building, fire and planning departments. Compliance with the provisions of this chapter does not obviate the need to obtain other permits which may be required pursuant to state or federal law including but not limited to approvals required from the United States Army Corps of Engineers and the State Departments of Social and Health Services and Ecology relating to water and sewer systems which ensure that water and sewer systems will be designed to avoid infiltration, inflow or impairment.

**Sec. 14.09.130. Procedural requirements.**

City permits or licenses which relate to the development and use of land within a flood hazard area or special flood hazard areas shall be referred to the department of public works by the issuing department for approval. If it can be determined from information at hand that the property does not lie in a special flood hazard area, the issuing department may approve the permit or license directly. If it appears that the property may lie in a special flood hazard area, the department of public works shall

require its owner to submit information necessary to determine if in fact the property lies within the floodway or floodway fringe. If it is determined that the property lies within the floodway or floodway fringe, the applicant shall be required by the department of public works to submit such surveys, plans and supporting documents as are necessary to determine the applicability of city regulations to the proposed structure, development or use. The department of public works shall consider not only the individual structure, development or use, but shall also consider it in combination with existing and future similar structures, developments and uses. Whenever technical information is furnished to the city by an applicant, the city shall consider such report in acting upon the requested permit. In performing such review, the department of public works may request additional applicant information, including the preparation and submission of an environmental checklist under the State Environmental Policy Act or a supplement thereto if already submitted to an issuing department. The director or his designate shall, within a reasonable time, indicate approval or disapproval of the requested permit or license; and if approved, the conditions of approval, in a letter to the issuing department, with copies to the applicant, issuing department, commenting departments, other agencies and other known parties of interest.

**Sec. 14.09.140. Use of other base flood data.**

In order to administer the provisions of this chapter when base flood elevation data has not been provided in accordance with sections herein, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source determined by the director to provide accurate and detailed flood related information. Such information shall supplement special flood hazard area information and maps and shall be retained on file with the department of public works, including information under KCC 14.09.150.

**~~Sec. 14.09.150. Information to be obtained and maintained.~~**

~~The department of public works shall obtain and maintain the following information:~~



~~1. Where base flood elevation data is provided through the flood insurance study or required as in KCC 14.09.140, obtain and record the actual (as built) elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement.~~

~~2. For all new or substantially improved floodproofed structures:~~

~~a. Verify and record the actual elevation (in relation to mean sea level);~~

and

~~b. Maintain the floodproofing certifications required of this chapter.~~

~~3. Maintain for public inspection all records pertaining to the provisions of this chapter.~~

#### **Sec. 14.09.160. Alteration of watercourses.**

~~Whenever an alteration or relocation of any watercourse is proposed, the department of public works shall:~~

~~1. Notify adjacent owners, communities, and the State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the federal insurance administration.~~

~~2. Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.~~

#### **Sec. 14.09.150. Designation of Local Administrator.**

~~The public works director or his/her designee is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.~~

~~Duties of the administrator shall include, but not be limited to:~~

##### ~~A. Permit Review.~~

~~1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.~~

~~2. Review all permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.~~

3. Review all permits to determine if the proposed development is located within a floodway. If proposed development is located within a floodway ensure that that section 14.09.190 is enforced.

B. *Use of Other Base Flood Data in (A and V Zones).*

1. When base flood elevation data has not been provided (A and V Zones) in accordance with KCC 14.09.060, the public works director or his/her designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, state or other source to administer this title.

C. *Information to be obtained and maintained.*

1. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in section 14.09.220(1) (B), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

2. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in 14.09.220 (1) (B):

a. Obtain and record the elevation ( in relation to mean sea level) to which the structure was floodproofed: and

b. Maintain floodproofing certifications required pursuant to KCC 14.09.150 (2) (b)

c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

D. *Alteration of Watercourses.*

1. Notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, submit evidence of such notification to the Federal Insurance Administration.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Interpretations of FIRM boundaries.

Make interpretations where needed, as to exact location of boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the actual boundary shall be given reasonable opportunity to appeal the interpretation as provided for in KCC 14.09.230.

**Sec. 14.09.1670. General standards.**

In all areas of special flood hazards, the following standards are required:

1. *Anchoring.*

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" Guidebook for additional techniques).

2. *Construction materials and methods.*

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. *Utilities.*

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

c. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

d. Proposed water wells shall be located on high ground that is not located within a special flood hazard area.

4. *Subdivision proposals.*

a. All subdivision proposals shall be consistent with the need to minimize flood damage;

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage;

d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty (50) lots or five (5) acres (whichever is less); and

e. Subdivision approval should depict or state what portions of the development are within special flood hazard areas.

5. *Review of building permits.* Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed by both the issuing department and department of public works to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and engineering practices and includes use of historical data, high-water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

**Sec. 14.09.1780. Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in KCC 14.09.060 or KCC 14.09.140, the following provisions are required:

1. *Residential construction.*

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot or more above base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed areas subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one (1) foot above grade.

(3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

2. *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one (1) foot or more above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in KCC 14.09.150(2).

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (1)(b) of this section.

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g., a building floodproofed to one (1) foot above the base flood level will be rated as at the base flood level).

3. *Critical facility.* Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base floodplain. Construction of new critical facilities shall be permissible within the base floodplain if no feasible alternative site is available. Critical facilities constructed within the base floodplain shall have the lowest floor elevated to three (3) feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base floodplain shall be provided to all critical facilities to the extent possible.

4. *Manufactured homes.* All manufactured homes to be placed or substantially improved within zones A1-30, AH, and AE on the community's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one (1) foot or more above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of KCC 14.09.1670 (1)(b).

5. *Recreational Vehicles.* Recreational vehicles placed on sites are required to meet all applicable provisions of Kent City Code. If allowed by code, recreational vehicles are required to either:

a. Be on-site for fewer than 180 days;

b. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

c. Meet the requirements of 14.09.160(1) above and the elevation and anchoring requirements for manufactured homes.

6. *Drainage around structures* Adequate drainage paths are required around structures on slopes to guide waters around and away from proposed structures.

**Sec. 14.09.1890. Floodways.**

Within the floodway of the areas of special flood hazard, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for: repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty (50) percent of the market value of the structure either, before the repair, reconstruction, or repair is started, or if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty (50) percent determination.

3. If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of KCC 14.09.170.

**Sec. 14.09.190200. Wetlands management.**

To the extent possible adverse impacts to wetlands should be avoided as such:

1. Proposals for development within base floodplains shall be reviewed by both issuing departments and department of public works for their possible impacts on wetlands located within the floodplain.

2. Development activities in or around wetlands shall not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and storm drainage.

3. Assistance from the United States Army Corps of Engineers or State Department of Ecology shall be sought in identifying wetland areas.

**Sec. 14.09.20010. Standards for shallow flooding areas (AO zones).**

Shallow flooding areas appear on FIRM's as AO zones with depth designations. The base flood depths in these zones range from one (1) to three (3) feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

1. New construction and substantial improvements of residential structures within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, one (1) foot or more above the depth number specified on the FIRM (at least two (2) feet if no depth number is specified).

2. New construction and substantial improvements or nonresidential structures within AO zones shall either:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one (1) foot or more above the depth number specified on the FIRM (at least two (2) feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be completely flood- proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and



effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in KCC 14.09.180(2).

3. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

**Sec. 14.09.21020. Appeals.**

The decision of the department of public works to approve condition or disapprove a permit or license in a flood hazard area may be appealed to the land use hearing examiner. The requested permit or license shall not be issued by a city department during the appeal period. The following procedures apply to appeals for the decision of the department of public works to approve, condition or deny proposals within a flood hazard area:

1. Written notice of appeal shall be filed with the department of public works within ten (10) days from the date of the decision which aggrieves the appealing party. A fee of twenty-five dollars (\$25) shall be paid at the time of filing the written appeal. The appeal will not be accepted unless accompanied by full payment.

2. All notices of appeal shall state in full the decision appealed and the reasons why the appealed decision should be reversed or modified.

3. All appeals so filed shall be heard by the hearing examiner and a determination by the examiner made within thirty (30) days from the closing date of the hearing.

4. At least seven (7) days before the appeal hearing, the department of public works will provide the hearing examiner, the appellant, and any other person expressing written interest in the application or appeal a copy of the decision which is being appealed.

5. In passing upon such applications, the hearing examiner shall consider all technical evaluations, all relevant factors and standards and the criteria specified in this chapter and applicable state regulations.

6. The hearing examiner shall prepare a written report and decision containing findings and conclusions which show how its decision implements the

purposes of this chapter and is consistent with the criteria, standards, and limitations of this chapter.

7. The decision of the land use hearing examiner shall be final and conclusive unless, within fourteen (14) calendar days from the date of the hearing examiner's decision, an aggrieved party obtains a writ of certiorari from superior court for the purpose of review of the action taken.

**Sec. 14.09.220. Variances.**

Variances shall be completed in accordance with those provisions identified in the City of Kent Critical Area Regulations found in Kent City Code Title 11.

**SECTION 6. - Repeal.** Section 15.08.220 of the Kent City Code, entitled "Water quality and hazard area development – Purpose," is repealed as follows:

**~~Sec. 15.08.220. Water quality and hazard area development – Purpose.~~**

~~The purpose of KCC 15.08.220 through 15.08.224 pertaining to water quality is to regulate the location and density of development based on known physical constraints, and to preserve or enhance water quality in the city's watercourses. Preserving or enhancing the water quality in the city's watercourses is a goal established by the adoption of the water quality management program on August 2, 1982, by the city council.~~

**SECTION 7. - Repeal.** Section 15.08.222 of the Kent City Code, entitled "Same – Map – Conflicting provisions," is repealed as follows:

**~~Sec. 15.08.222. Same Map – Conflicting provisions.~~**

~~Development limitation areas are hereby delineated on the map entitled "Hazard Area Development Limitations" filed with the city clerk and in the city planning department. Development limitations within these areas shall be in addition to those limitations and standards set forth in this title. When there is a conflict, the provisions of KCC 15.08.220 through 15.08.224 shall prevail.~~

**SECTION 8.** - Repeal. Section 15.08.224 of the Kent City Code, entitled "Same – Classifications and restrictions," is repealed as follows:

**Sec. 15.08.224. Same – Classifications and restrictions.**

~~A. Classification categories and restrictions on lot coverage.~~ Classification categories and restrictions on lot coverage relative to hazard areas, from least to most restrictive, are as follows:

<i>Classification</i>	<i>Maximum Amount of Impervious Surfaces</i>
<del>1. Low hazard areas. In low hazard areas, the maximum amount of impervious surface allowed on each lot is thirty (30) percent. Low hazard areas are defined as lands where the following conditions exists:</del>	
<del>a. Slopes fifteen (15) percent to twenty five (25) percent together with class 3 seismic hazard and class 2 erosion hazard area; or</del>	30%
<del>b. Slopes fifteen (15) percent to twenty five (25) percent together with class 2 slide and slippage and class 3 erosion hazard area; or</del>	30%
<del>c. Slopes fifteen (15) percent to twenty five (25) percent together with class 2 seismic and class 3 erosion hazard area; or</del>	30%
<del>d. Seventy five (75) to one hundred fifty (150) feet from the top of a ravine in which a major or minor stream passes through; or</del>	30%

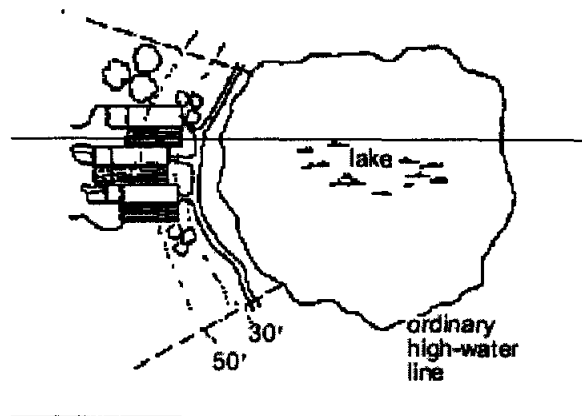
e. ~~Thirty (30) to fifty (50) feet from the ordinary high-water mark of a lake. (See the following illustration.)~~

30%

2. ~~Moderate hazard areas~~ In moderate hazard areas, the maximum amount of impervious surface allowed on each lot is ten (10) percent. Moderate hazard areas are defined as those lands where the following conditions exist: zero to thirty (30) feet from the ordinary high-water mark of a lake. (See illustration.)

10%

Example of development guidelines within 30' and 50' from a lake



*Classification*

*Maximum Amount of Impervious Surfaces*

3. ~~High hazard areas.~~ In high hazard areas, the maximum impervious surface allowed on each lot is two (2) percent. High hazard areas are defined as those lands where the following conditions exist:

a. ~~Slopes fifteen (15) percent to twenty five (25) percent together with class 2 slide and slippage and class 3 seismic hazard, and class 3 erosion hazard area;~~

2%

or

b. ~~Slopes fifteen (15) percent to twenty five (25) percent together with class 3 slide and slippage and class 3 erosion hazard area; or~~ 2%

e. ~~Slopes twenty five (25) percent to forty (40) percent together with class 3 seismic and class 3 erosion hazard area; or~~ 2%

d. ~~Slopes twenty five (25) percent to forty (40) percent together with class 3 erosion hazard area.~~ 2%

4. ~~Severe hazard areas. In severe hazard areas, the maximum amount of impervious surface allowed on each lot is zero percent. Severe hazard areas are defined as those lands where the following conditions exist:~~

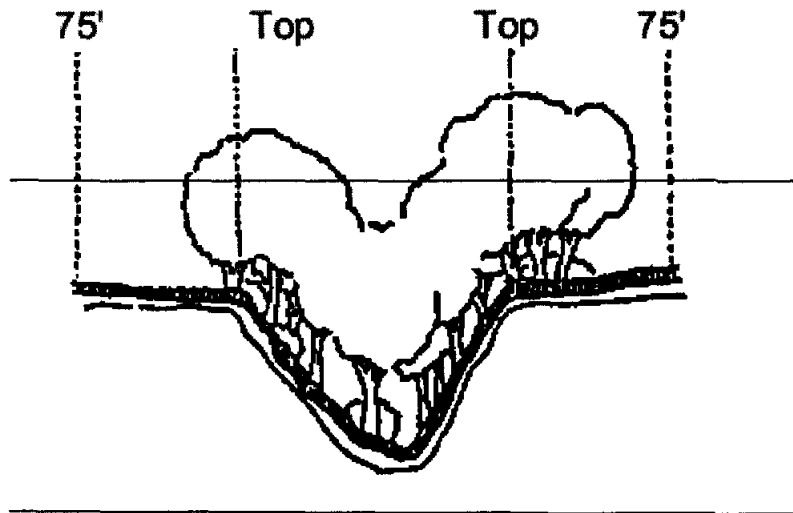
a. ~~Slopes forty (40) percent and over; or~~ 0%

b. ~~Slopes twenty five (25) percent to forty (40) percent together with class 3 slide and slippage, class 3 seismic hazard, and class 3 erosion hazard area; or~~ 0%

c. ~~All ravines; or~~ 0%

d. ~~Seventy five (75) foot setback from the top of any ravine. The top of a ravine is where the slope is generally less than fifteen (15) percent; or~~ 0%

75' setback from  
the top of a ravine



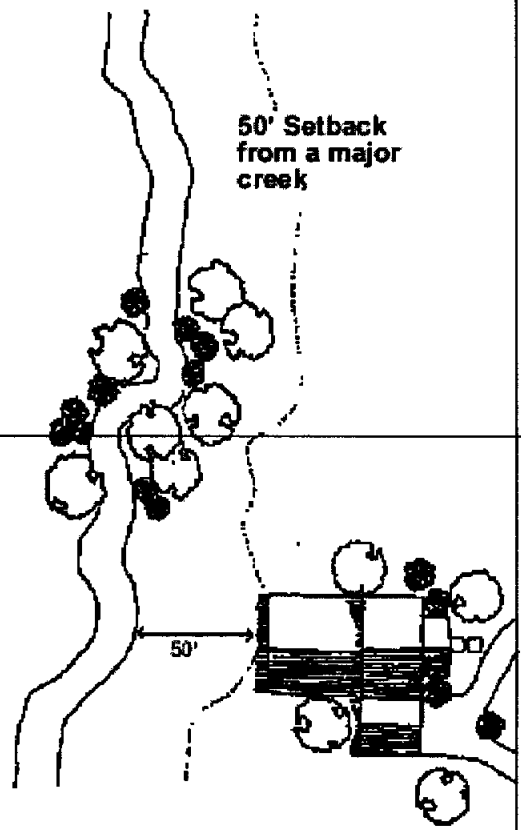
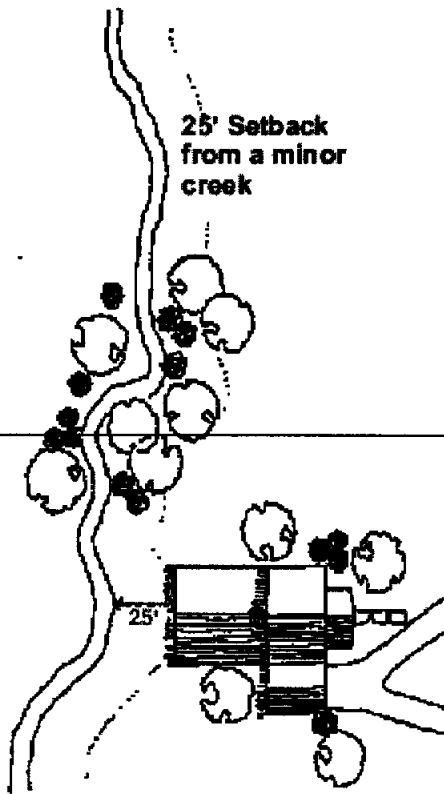
*Classification*

*Maximum Amount of  
Impervious Surfaces*

- e. ~~Fifty (50) foot setback from the ordinary high-water mark of any major creek; or~~
- f. ~~Twenty five (25) foot setback from the ordinary high watermark of any minor creek; or~~

0%

0%



<i>Classification</i>	<i>Maximum Amount of Impervious Surfaces</i>
g. <del>Ten (10) foot setback from the top of any drainage ditch; or</del>	0%
h. <del>All wetlands as defined in the document Classification of Wetlands and Deepwater Habitats of the United States, by the U.S. Fish and Wildlife Service of the Department of Interior, a copy of which is filed with the city clerk. This classification shall exclude all wetlands considered in the Valley Floor Studies; or</del>	0%
i. <del>All unique and fragile areas defined in the revised</del>	0%

~~Valley Floor Studies, approved by city council on February 23, 1981, a copy of which is filed with the city clerk.~~

~~B. — *Determination of precise location of hazard areas.*~~

~~1. — The hazard area development limitations map adopted by KCC 15.08.222 is based upon the most accurate data available at the time of preparation.~~

~~2. — To more accurately determine the location of hazard areas, the city may require additional information with development proposals, including but not limited to a survey of the area. The hazard area map shall be corrected by planning and public works departments based upon more recent and accurate information accepted by such departments.~~

~~C. — *Relocation of major or minor creek.*~~

~~1. — All major and minor creeks in the city, where they flow on or across undeveloped land, shall be retained in their natural state and location.~~

~~2. — Where retaining the major or minor creek in its natural state may interfere with a proposed development, a site specific plan, referred to in this section as a stream plan, drawn to scale, shall be prepared, which indicates how the development will be constructed in relation to the stream and in relation to required storm drainage regulations.~~

~~3. — A stream plan shall be submitted to the city planning department for its review prior to the issuance of any permit, including zoning, building, grading, storm drainage or hydraulics.~~

~~4. — The planning department shall review the stream plan in relation to the proposed development plan and make a determination that the plan does protect the integrity of the major or minor creek.~~



~~5. The planning department may cause a modification of the development plan to ensure that the integrity of the major or minor creek is in fact retained.~~

~~6. Any authorization for changing the course of a major or minor creek or for working in a major or minor creek shall follow the guidelines and recommendations of the State Department of Fisheries and Game (RCW 75.20.100).~~

~~7. Setbacks from a relocated major creek shall be fifty (50) feet or as recommended by the State Department of Fisheries and Game, whichever is the greater.~~

~~8. Setbacks from a relocated minor creek shall be twenty five (25) feet or as recommended by the State Department of Fisheries and Game, whichever is the greater.~~

~~D. Soos Creek Basin Stream Buffers overlay zone.~~

~~1. Purpose Streams constitute environmentally sensitive areas that are of special concern to the city of Kent. The following stream buffer regulations are intended to protect those environmentally sensitive features within the city of Kent. By regulating development and alterations to these sensitive areas, the city seeks to:~~

~~a. Protect unique, fragile and valuable elements of the environment including wildlife and its habitat;~~

~~b. Mitigate unavoidable impacts to environmentally sensitive areas by regulating alterations in and adjacent to sensitive areas;~~

~~c. Prevent cumulative adverse environmental impacts to water availability, water quality, wetlands, and streams;~~

~~d. Protect the public trust as to navigable waters and aquatic resources;~~

~~e. Alert members of the public including, but not limited to appraisers, owners, potential buyers or lessees to the development limitations of sensitive areas;~~

~~f. Provide city officials with sufficient information to protect sensitive areas; and~~

~~g. Implement the policies of the State Environmental Policy Act, Chapter 43.12C RCW, Ch. 11.05 KCC, KCC Title 15, and the City of Kent Comprehensive Plan.~~

~~2. *Definitions.* In the interpretation of the Soes Creek Basin Stream Buffers overlay zone regulations, KCC 15.08.224(D), the following words, terms, or pronouns in place of them, shall take precedence over other conflicting definitions existing elsewhere in this code, and shall have the following meanings:~~

~~*Biologist* means a person who has earned a four (4) year degree in biological sciences from an accredited college or university, or a person who has equivalent educational training and who has experience as a practicing biologist.~~

~~*Buffer* means the zone contiguous to a sensitive area that is required for the continued maintenance, function, and/or structural stability of the sensitive area. Buffer widths vary depending on the relative quality and sensitivity of the area being protected. The critical functions of the riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of a wild habitat, and room for variation of aquatic system boundaries over time due to hydrological or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from stormwater runoff and precipitation, and erosion control.~~

~~*Building set area* means a defined width of land between a sensitive area buffer and development which establishes a definite point beyond which clearing, trimming or removal of vegetation, fill, overhangs, obstructions, impervious surfaces, and building foundations shall not extend.~~

~~*Critical drainage area* means an area which has been determined by the department of public works to require more restrictive regulation than city wide standards afford, in order to mitigate water quality, severe flooding, drainage, erosion or sedimentation problems, which have resulted or will result from the cumulative impacts of development and urbanization.~~

~~*Director* means the director of the city of Kent planning department or his/her authorized designee.~~

~~*Ditches* means irrigation ditches, canals, storm or surface water conveyance channels, or other entirely artificial watercourses not utilized by salmonids. Ditches do not include reaches of streams that have been relocated, or otherwise created to reroute flows around developments or public works facilities, but which carry flows from established creeks.~~

~~*Enhancement* means an action which increases the functions and values of a stream, wetland, or other sensitive area.~~

~~*Large livestock* means larger livestock such as meat and dairy cattle, other bovines, llamas, and horses.~~

~~*Line of mean high water* means the margin of the area occupied by the water for the greater portion of each average year; at this level, a definite escarpment in the soil will generally be traceable; where the edge of vegetation exists along the bank in the same location from year to year, the line of mean high water is the same as the line of ordinary high water mark.~~

~~*Livestock* means animals of any kind kept or raised for use or pleasure.~~

~~*Livestock fencing* means fencing constructed in such a way that it is at least four (4) feet in height, and that livestock cannot push it over, step over it, or walk around it. Livestock fencing includes electric fences with at least two (2) parallel electrically charged wires, four (4) strand barbed wire fences, and other standard stock fences in common use by the livestock industry.~~

~~*Mitigation* means the use of any or all of the following actions that are listed in descending order of preference: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing the impact by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative actions to avoid or reduce impacts; (3) rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area; (4) reducing or eliminating the impact over time by preservation or maintenance operations during the life of the project proposal; (5) compensating for the impact by replacing, enhancing or providing substitute sensitive areas and environments; (6) monitoring the impact and taking appropriate corrective measures.~~

~~*Monitoring* means evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of sensitive areas and systems and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.~~

~~*Native growth protection area* means an area whose native growth is protected from unauthorized removal, trimming, and planting for the purpose of protecting the public health, safety and welfare.~~

~~*Native vegetation* means vegetation comprised of plant species which are indigenous to the Puget Sound region and which could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds, reed canary grass, cattails, purple loosestrife and other highly invasive and undesirable plants.~~

~~*Noxious weed* means any plant which when established is highly destructive, competitive, or difficult to control by natural or chemical practices (see Chapter 17.10 RCW). The state noxious weed list in Chapter 16-750 WAC is the officially adopted list of noxious weeds by the state noxious weed control board.~~

~~*Ordinary high water mark* means the mark that will usually be found by examining the bed and banks of a stream or river, and ascertaining where the presence and action of~~

~~waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, with respect to vegetation. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute. In any area where neither can be found, the top of the channel bank shall be substituted. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured as to include the entire stream feature.~~

~~*Public agency* means any agency, political subdivision, or unit of local government of this state including but not limited to municipal corporations, special purpose districts, and local service districts; any agency of the state, the United States or state thereof; or any Indian tribe as recognized as such by the federal government.~~

~~*Salmonid* means a member of the fish family Salmoidae. In King County, salmonid species include the Chinook, Coho, chum, sockeye and pink salmon; cutthroat, rainbow, brown trout and steelhead; Dolly Varden, brook trout, char, kokanee and white fish.~~

~~*Sensitive area tract* means a separate tract that is created to protect a sensitive area and its buffer and whose ownership is transferred to the city of Kent, or other approved entity.~~

~~*Sensitive areas* means any of those areas in the city which are subject to natural hazards, or those land features which support unique, fragile, or valuable natural resources including fishes, wildlife and other organisms and their habitat and such resources which, in their natural state carry, hold or purify water. Sensitive areas include the following landform features: erosion hazard areas, coal mine hazard areas, landslide hazard areas, seismic hazard areas, steep slope hazard areas, wetlands, flood hazard areas, and the adjoining protective buffers necessary to protect the public health, safety and welfare.~~

~~Small livestock means smaller livestock such as pigs, goats, sheep, miniature horses, and feeder calves. For the purposes of maximum livestock densities in this section, six (6) small livestock shall be equivalent to one (1) large livestock.~~

~~Streams means those areas in Kent where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which 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. This definition is not intended to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmonids or used to convey streams occurring prior to construction of such watercourses, but is intended to include creeks, sloughs, and rivers. The channel or bed of a stream does not have to contain water all year long for the reach to be considered a stream. Streams are further categorized as follows:~~

~~a. — Class 1 streams means those streams inventoried as “shorelines of the state” under the City of Kent Shoreline Master Program, Ch. 11.04 KCC, pursuant to Chapter 90.58 RCW.~~

~~b. — Class 2 streams means those streams smaller than class 1 streams that flow year round during periods of normal rainfall, or those streams that are used by salmonids.~~

~~c. — Class 3 streams means those streams that are intermittent or ephemeral during years of normal rainfall and are not used by salmonids.~~

~~Top of bank means that point along a slope, channel, or stream, where the change in slope along the highest elevations at top of the slope, channel, or stream changes to a slope of less than fifteen (15) percent; this is usually a line easily seen while observing the bank or slope.~~

~~Variance to stream buffer standards means an adjustment in the application of these stream buffer regulations to a particular piece of property in a situation where the property is otherwise deprived of all reasonable use of the property. A variance to stream buffer regulations shall not be used to convey special privileges not enjoyed by~~

~~other properties in the same vicinity and zone which are subject to the same standards and code restrictions. A variance to stream buffer regulations must be authorized in writing by the director, and shall be the minimum remedy necessary to permit reasonable use of the property.~~

~~Vegetation means any and all organic plant life growing at, below, or above the soil surface.~~

~~3. Stream buffer standards.~~

~~a. Stream buffer widths.~~

~~(1) All buffers shall be measured from the ordinary high water mark as identified in the field or, if that cannot be determined, from the top of the bank. In braided channels, the ordinary high water mark or top of bank shall be determined so as to include the entire stream feature.~~

~~(2) The following buffers on each side of the ordinary high water mark are minimum requirements:~~

~~(i) Class 1 streams — one hundred (100) foot buffer.~~

~~(ii) Class 2 streams used by salmonids — one hundred (100) foot buffer.~~

~~(iii) Class 2 streams — fifty (50) foot buffer.~~

~~(iv) Class 3 streams — twenty five (25) foot buffer.~~

~~(v) Ditches — ten (10) foot buffer.~~

~~(vi) When the ordinary high water mark of any stream is within twenty five (25) feet of the toe of slopes greater to [than] or equal than [to] fifteen (15) percent, the following minimum buffers shall be provided:~~

~~(a) Where the horizontal length of the slope including small benches and terraces is within the buffer for that stream class, the buffer shall be the larger of:~~

~~(1) The minimum buffer for that stream class; or~~

~~(2) Twenty five (25) feet beyond the top of the slope.~~

~~(b) Where the horizontal length of the slope extends beyond the minimum buffer for that stream class, the buffer shall extend to a point twenty five (25) feet beyond the minimum buffer for that stream class.~~

~~(vii) Any stream adjoined by riparian wetland or other adjacent sensitive area shall have the buffer which applies to the wetland or other adjacent sensitive area unless the stream buffer requirements are more expansive.~~

~~(viii) Any stream restored, relocated, replaced or enhanced because of alterations should have at least the minimum buffer required for the class of stream involved.~~

~~(3) The director may authorize buffer averaging, especially in instances where it will provide additional resource protection; provided, that the total area on site contained in the buffer remains the same or larger after averaging.~~

~~(4) The determination of salmonid use shall be made by the director based on the best available, past and present information gathered by the city, its agents, and other entities with jurisdiction or expertise relating to salmonid presence or absence during any life stages.~~

~~(5) Stream buffers shall be managed as native growth protection areas and shall generally remain undisturbed except for enhancement planting projects.~~

~~b. Additional buffer requirements for streams. The planning department may require increased stream buffer widths as necessary to protect streams. The additional buffer widths and other issues shall be determined by criteria set forth in~~



administrative rules and include, but are not limited to, critical drainage areas, location or management of hazardous wastes, critical fish and wildlife habitat, and the location of trail or utility corridors.

~~c. *Sensitive area tracts.* Sensitive area tracts shall be used to protect all streams and buffers in or adjacent to proposals for developments, such as subdivisions, commercial development, or binding site plans of all kinds, and shall be recorded on all documents of title of record for all affected lots. Any required sensitive area tract shall either be deeded or dedicated to the benefit of the city. The width of the sensitive area tract shall depend on the stream classification and buffer requirement.~~

~~d. *Building setback areas.* Sensitive area setback areas shall delineate streams, steep slopes adjacent to streams, wetlands adjacent to streams, and required buffers in development proposals for building permits, short subdivisions, subdivisions, binding site plans and grading permits. The setback area shall be identified on a recorded site plan or in recorded documents filed as a requirement of this section. Unless otherwise specified in this section, a minimum building setback line of fifteen (15) feet shall be required from the edge of the stream buffer. Prohibitions on the use of hazardous or toxic substances and pesticides or certain fertilizers in this area may be imposed.~~

~~e. *Allowed alterations to streams and buffers.*~~

~~(1) The following stream crossings may be permitted only with approved mitigation plans, and may be allowed only if they meet the following requirements:~~

~~(i) All crossings shall be constructed during summer low flow and shall be timed to avoid stream disturbance during periods when use is critical to salmonids;~~

~~(ii) Crossings shall not occur over salmonid spawning areas unless no other possible crossing site exists;~~

~~(iii) Crossings shall not diminish the flood carrying capacity of the stream;~~

~~(iv) Underground utility crossing shall be located at a minimum depth of four (4) feet below the maximum projected depth of scour for the base flood as determined by a professional civil engineer licensed by the state; and~~

~~(v) The applicant shall obtain approval from the Department of Natural Resources and from the Department of Fish and Game for all crossings of a class 1 stream.~~

~~(vi) The applicant shall obtain a hydraulics project approval, or a written waiver therefrom, from the State Department of Fish and Wildlife for all crossings.~~

~~(2) Construction of public and private trails may be allowed in stream buffers only upon adoption of administrative rules and pursuant to the following guidelines:~~

~~(i) Trail surfaces shall not be impervious materials, except that impervious public multipurpose trails like the Soos Creek Trail may be allowed if they meet all other requirements including water quality; and~~

~~(ii) Where trails are provided, buffers shall be expanded, where possible.~~

~~(3) Construction of utilities shall be permitted in stream buffers only when no reasonable alternative location is available.~~

~~(4) Class 1 streams may not be relocated, but class 2 and class 3 stream relocations may be allowed, providing mitigation is provided for all impacts, they meet all requirements, and are approved by all agencies with jurisdiction. For any stream relocation, the applicant must demonstrate, based on information provided by a civil engineer and a qualified biologist, that:~~

~~(i) The equivalent base flood storage volume and function will be maintained.~~

~~(ii) There will be detrimental increase or decrease in stream velocity.~~

~~(iii) There will be interbasin transfer of water.~~

~~(iv) Performance standards as set out in the mitigation plan are met.~~

~~(v) The relocation conforms to other applicable laws.~~

~~(vi) All work will be carried out under the direct supervision of a qualified biologist.~~

~~4. — *Livestock restrictions adjacent to streams and wetlands* — The following standards apply to all parcels with streams flowing through or adjacent to them and are intended to allow the raising of livestock in the city while minimizing the adverse impacts on water quality and salmonid fisheries habitat in city watersheds.~~

~~a. *Maximum livestock densities.*~~

~~(1) A maximum of six (6) large livestock per gross acre, or the equivalent of six (6) large livestock per gross acre, as defined in subsection (D)(2).~~

~~(2) No large livestock shall be permitted on any lot smaller than twenty thousand (20,000) square feet in area, except that the portion of the lot used for confinement or grazing may be less than twenty thousand (20,000) square feet, providing that the portion of the lot used for confinement or grazing meets the requirements of farm management standards section of these regulations.~~

~~b. *Farm management standards.* Property owners with livestock on farms adjacent to, or containing streams, shall meet the following minimum standards:~~

~~(1) Livestock water, wetland and stream corridor management options.~~

~~(i) Livestock fencing shall be used as necessary to prevent livestock access to all streams, wetlands, and their buffers.~~

~~(ii) The preferred watering option shall be a domestic water supply, stock watering pond, roof runoff collection system, or an approved pump supply from the stream so that livestock are not required to enter streams for their water supply.~~

~~(iii) Livestock access to all streams and their buffers shall be limited to stream crossing and watering points which prevent free access along the length of the streams.~~

~~(iv) Livestock crossings of streams shall be limited to a single point no wider than twenty five (25) feet.~~

~~(v) Livestock watering points shall be designed in such a manner as to minimize adverse impacts to the stream.~~

~~(vi) Bridges designed to allow free flow of flood waters may be used in lieu of stream crossings; provided, that piers and abutments shall not be placed within the ordinary high water mark or top of bank, whichever is greater.~~

~~(vii) Crossings of wetlands and their buffers is not permitted.~~

~~(2) *Grazing and pasture, confinement and manure management.*~~

~~(i) Livestock fencing shall be used to establish and maintain all buffers.~~

~~(ii) Existing grazing and confinement areas shall maintain a fenced vegetative buffer of at least fifty (50) feet from any naturally occurring pond, wetland edge, or the ordinary high water mark of all streams.~~

~~(iii) Existing grazing and confinement areas which do not meet the minimum width of fenced vegetative buffers required by this chapter shall be modified as necessary to provide the buffers specified within five (5) years of the effective date of this section.~~

~~(iv) Forested lands being cleared for grazing areas, and new grazing areas shall comply with the sensitive area setbacks for class 1, class 2, and class 3 streams, and wetlands.~~

~~(v) The grazing area buffer for class 1 and class 2 streams with salmonids may be reduced to fifty (50) feet where a fifty (50) foot width of diverse, mature vegetation already exists in the buffer area. This buffer reduction may not be used when forested lands are being cleared for grazing areas.~~

~~(vi) Fencing installed pursuant to King County's Sensitive Areas Ordinance, prior to the effective date of this section, at setbacks other than those specified above, shall be deemed to be in compliance to the requirements of this section.~~

~~(vii) Grazing areas may extend to the property line; provided, that all streams or wetlands adjacent to the property line meet the minimum buffers established in these regulations.~~

~~(viii) Manure storage areas shall be managed as follows:~~

~~(a) Surface water flows shall be diverted away from manure storage areas.~~

~~(b) During the winter months of October 15 to April 15, all manure stockpiled within two hundred (200) feet uphill from any class 1 or class 2 stream, or wetland, shall be covered in a manner that excludes precipitation and allows free flow of air to minimize fire danger; or alternatively shall be placed in an uncovered concrete bunker, or manure lagoon, or held for pickup in a covered dumpster, vehicle or other facility designed to prevent leachate from reaching any streams or wetlands.~~

~~(c) Manure shall be stored in a location that avoids having runoff from manure enter streams or wetlands.~~

~~(d) Manure piles shall not be any closer than fifty (50) feet uphill from any wetland buffer, the ordinary high water mark of any stream, or any ditch to which the topography would generally direct runoff from the manure, nor within any stream buffer.~~

~~(e) Manure shall not be spread on frozen or saturated fields.~~

~~(f) Manure shall not be piled within any stream buffer.~~

~~e. Existing livestock operations—All existing livestock operations shall meet the farm management standards of this section within five (5) years of the effective date of this section, except that existing buildings are exempt from this provision. State standards for fecal coliform, turbidity, and nutrients must be met within five (5) years from the effective date of this section adopting these regulations.~~

~~5. Exemptions—The planning director may grant exemptions from these stream buffer regulations provided that the exemption is consistent with the general purposes of these regulations and the public interest. An application for a sensitive areas reasonable use exemption shall be filed with the planning department and the planning director shall issue a final decision pursuant to the provisions of this chapter.~~

~~a. Criteria.—The planning director, in granting an exemption for reasonable use, must determine that:~~

~~(1) Application of these stream buffer regulations would deny all reasonable use of the property; and~~

~~(2) There is not other reasonable use with less impact on the sensitive area; and~~

~~(3) The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the proposed development site; and~~

~~(4) Any alterations permitted to these sensitive areas shall be the minimum necessary to allow for reasonable use of the property.~~

~~(5) Any authorized alteration of a sensitive area under this section shall be subject to conditions established by the director, and shall require mitigation and/or enhancement under approved mitigation plans.~~

~~6. — *Public works.* The application of these stream buffer regulations shall not prohibit public works within or adjacent to sensitive areas if the planning director determines that their application would prohibit a development by a public agency or public utility that is necessary to the public health, safety, or welfare. The planning director may grant an exemption based on the following criteria:~~

~~a. There is no reasonable alternative to the proposed development with less impact on the sensitive areas; and~~

~~b. The proposal minimizes the impact on sensitive areas and the applicant provides restoration/enhancement of any and all disturbed areas.~~

~~7. — *Conflicting standards.* Where inconsistencies occur in the application of this Soos Creek Basin Stream Buffer overlay zone together with other buffer or setback regulations in the Kent City Code, the more restrictive regulation shall apply.~~

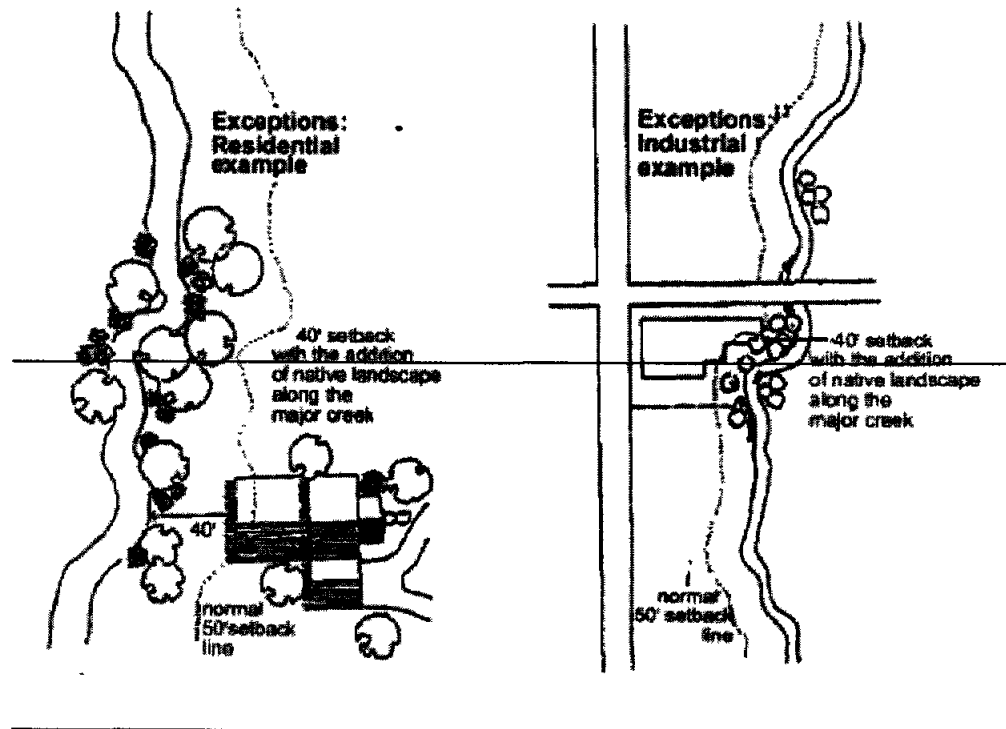
~~8. — *Enforcement/interpretation.* The city's planning director is authorized and directed to enforce all of the provisions of these stream buffer regulations. The planning director shall also have the power to render interpretations and to adopt rules and regulations for these standards in order to clarify the application of these provisions. The planning director's interpretations, rules and regulations, however, shall be in conformance with the intent and purpose of these stream buffer standards and shall be in writing.~~

9. ~~Amendment of appendices.~~ The city's planning director is authorized to amend the appendices to the stream buffers from time to time as he or she shall deem necessary. However, any amendments to the appendices shall conform with the intent and the purpose of these stream buffer regulations.

E. ~~Exceptions.~~

1. ~~Low hazard areas.~~ Development within seventy five (75) to one hundred fifty (150) feet of the top of a ravine through which a major or minor creek passes may be permitted under the existing zoning requirements if it can be demonstrated to the planning director that water quality and quantity will not be impacted.

2. ~~Severe hazard areas.~~ A fifty (50) foot setback from the ordinary high-water mark of any major creek is required. Impervious surfaces may be allowed a maximum of twenty (20) percent closer to the ordinary high water mark of a major creek, if shading vegetation is presently located.



3. ~~All hazard areas.~~ The planning director shall have the authority to waive specific requirements or impose additional requirements in unique or special



~~circumstances to ensure the fulfillment of the stated purpose of this chapter and to allow for flexibility and innovation of design. Special circumstances or unique conditions shall be reviewed with the planning director prior to submittal of the development plan. Examples of special conditions might include:~~

- ~~a. Preservation of unique wildlife habitat.~~
- ~~b. Preservation of natural or native areas.~~
- ~~c. Compliance with special easements.~~
- ~~d. Unique site uses.~~

~~4. *Vehicular and pedestrian access.* In situations where vehicular or pedestrian access cannot reasonably be provided by avoiding identified watercourses, then such access shall be allowed in the form of a vehicular or pedestrian bridge. Construction of any bridge shall be subject to the approval of the public works department regarding storm drainage and hydraulics, and guidelines and recommendations of the State Department of Fisheries and Game.~~

**SECTION 9. - Amendment.** Section 15.08.260 of the Kent City Code, entitled "Green River Corridor special interest district regulations," is amended to read as follows:

**Sec. 15.08.260. Green River Corridor special interest district regulations.**

A. *Purpose.* The Green River Corridor special interest district is hereby created to protect, conserve, and manage areas generally located on both sides of the Green River, and to ensure that urban development within the district is compatible with the open natural configuration of the Green River and its adjacent lands.

B. *Location.*

1. The Green River Corridor special interest district is that area of the city one thousand (1,000) feet from the ordinary high-water line of the Green River; provided that the shoreline master program shall govern development within the first two hundred (200) feet of the ordinary high-water line of the river. The district is more particularly described as follows:

Two (2) strips of land each eight hundred (800) feet in width which begin at the north city limit line, on March 4, 1985, and end at the south city limit line, which south line ends in Section 30, Township 22 North, Range 5 East, W.M. Each strip shall be measured from each side of the Green River and the measurement shall be two hundred (200) feet from the ordinary high-water line of the river, all in King County, Washington; except any portions thereof lying outside of the city limits.

~~This district shall also include unique and fragile areas beyond the one thousand (1,000) foot corridor. The strips of land described in this subsection and the unique and fragile areas are illustrated on the hazard area development limitations map, attached to the ordinance from which this section is derived as Exhibit A and by this reference incorporated in this section.~~

2. *Property exemption.* Property platted in accordance with the city subdivision code, Ordinance No. 1840, before March 2, 1981 (adoption of the Valley Studies), shall be exempt from the provisions of this section.

~~C. — *Unique and fragile overlay zone.*~~

~~1. — *Created.* There is hereby created a unique and fragile overlay zone. The location and boundaries of the zone, to be known as unique and fragile areas, class I, and unique and fragile areas, class II, are more particularly described on the hazard area development limitations map, referred to in subsection (B) of this section as Exhibit A.~~

~~2. — *Purpose.* The purpose of the overlay zone is to implement the adopted policies of the Valley Studies Program.~~

~~3. — *Development limitations.*~~

~~a. — *Unique and fragile areas, class I.* Uses within the unique and fragile areas, class I, shall be limited to agricultural uses permitted in the A-10 (agricultural) zone, as set out in KCC 15.03.010.~~

~~b. — *Unique and fragile areas, class II.* Unique and fragile areas, class II, lie within a flood control district and are specifically designated floodways or floodway fringe areas. There shall be no disruption or destruction of areas identified as unique and fragile areas, class II, except new dikes and levees constructed for public safety~~

~~reasons. Such improvements shall be designed so as not to intrude within unique and fragile areas, class II. Where class II areas are not surrounded by class I areas, a one hundred (100) foot buffer shall be provided between the class II area and the allowed use.~~

CD. *Development standards.*

1. *Green River access.* No building or lot within the district shall be constructed or created without providing access to the Green River via public sidewalks or a private trail system. Such sidewalks or private trail systems shall connect to riverside public trails or scenic drives at intervals of one thousand (1,000) feet or less in industrial developments, and intervals of five hundred (500) feet or less in residential developments.

2. *Pedestrian access in residential development.* In residential developments, pedestrian access to the Green River shall be accomplished without crossing streets or roads, except scenic and recreational roads, unless clearly shown to be infeasible.

3. *Parking facilities.* Parking facilities for access to the Green River shall be located as near as practicable to riverfront parks or historic sites and shall be clustered in lots not exceeding thirty (30) cars. Every public parking area shall be visible from a street accessible to the public and be situated so that the public can clearly see riverfront open space and gain access to the public portion of that open space.

4. *Payment in lieu of parking facilities.* The city may accept or require payment in lieu of providing parking facilities which are required as a condition of the issuance of development permits.

5. *Loading dock location.* Loading docks shall not be constructed on river-facing sides of buildings unless a minimum fifty (50) foot buffer of native vegetation is provided to screen the loading docks from the shoreline, unless otherwise required by the Kent shoreline master program. Other design and landscaping requirements may be

imposed by the planning manager to meet the purpose of the Green River corridor special interest district.

6. *Building height.* Buildings located outside the two hundred (200) foot shoreline management zone but within the district shall not exceed thirty-five (35) feet in height.

7. *Exterior walls of buildings.* No building on any riverfront lot shall have an exterior wall parallel to, or within forty-five (45) degrees of parallel to, the river which exceeds two hundred (200) feet in length, except as follows: buildings on riverfront lots in the MA, M1, M1-C, M2, and M3 zoning districts may have exterior walls parallel to, or within forty-five (45) degrees of parallel to, the river which exceed two hundred (200) feet in length, provided they are screened by a vegetative buffer per KCC 15.08.260(~~C~~)(9)(c).

8. *Lots.*

a. Each riverfront lot within a subdivision shall contain area sufficient to comply with minimum lot size requirements of Ch. 15.04 KCC and provide a public access easement and building setback line as required by this section.

b. No subdivision of professional and office (O), general commercial (GC), industrial agricultural (MA), industrial park (M1), and limited industrial (M2) zoned land shall be approved unless each lot within the subdivision has an upland boundary at least five hundred (500) feet from the ordinary high-water line of the river.

9. *Vegetation buffer.*

a. A permanent vegetation buffer, in accordance with KCC 15.07.050(C) pertaining to landscaping type III, shall be maintained or established for each building or use within the district. Any materials storage yard, truck maneuvering area, equipment parking area, junkyard, refuse storage, or similar use within the district shall install such a permanent vegetative buffer between the use and the Green River

within two (2) years of the effective date of the ordinance from which this section is derived.

b. Landscape screening and buffer strips shall be planted in order to be harmonious with those already planted on adjacent properties and consistent with the city landscaping requirements as set out in Ch. 15.07 KCC.

c. Buildings on riverfront lots in industrial zoning districts which have exterior walls exceeding two hundred (200) feet in length parallel to, or within forty-five (45) degrees of parallel to, the river, must be screened by a vegetation buffer. This vegetative buffer shall be located along the length of the property line located parallel to, or within forty-five (45) degrees of parallel to, the river, for a minimum depth of twenty (20) feet in accordance with type III, visual buffer landscape standards pursuant to KCC 15.07.050(C). In addition, an earth berm of a minimum of forty-eight (48) inches in height must be provided for.

10. *Rail lines.* No rail lines shall be permitted within five hundred (500) feet of the Green River; provided, however, rail lines shall be permitted to within three hundred (300) feet of the Green River in those locations specified on Exhibit B attached to the ordinance from which this section is derived and by this reference incorporated in this section, such locations having been found to be best suited to rail.

11. *Road access.* All new lots and buildings shall be designed with primary street access to streets other than scenic and recreational roads, unless no other access is available.

12. *Street connections.* Development shall include no street connections to scenic and recreational roads, unless no other access is available.

13. *Utilities.* Utilities shall be installed in accordance with Ch. 7.10 KCC.

14. *Surface drainage facilities.* Surface drainage facilities such as drainage channels and retention areas shall be designed to applicable city standards and shall be

integral parts, if possible, of any common trail and open space system connections to the riverfront.

DE. *Performance standards.*

1. *Fish and game requirements.* The applicant shall comply with applicable requirements of the State Department of Fisheries and State Department of Game for preventing and mitigating adverse impacts on fish and wildlife resources and enhancing wildlife habitat.

2. *Flood control works.* If city funds are used in the construction of flood control works such as dikes, levees, or floodwalls, public rights of access to such works shall be dedicated prior to construction, where practicable.

**SECTION 10. - Amendment.** Section 15.08.400 of the Kent City Code, entitled “Planned unit development, PUD,” is amended to read as follows:

**Sec. 15.08.400. Planned unit development, PUD.**

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

A. *Zoning districts where permitted.* PUDs are permitted in all zoning districts with the exception of the A-10, agricultural zone; provided, however, that PUDs in SR zones are only allowed if the site is at least one hundred (100) acres in size, except as provided in subsection (C) of this section.

B. *Permitted uses.*

1. *Principally permitted uses.* The principally permitted uses in PUDs shall be the same as those permitted in the underlying zoning classifications except as provided in subsection (B)(4) of this section.

2. *Conditional uses.* The conditional uses in PUDs shall be the same as those permitted in the underlying zoning classification. The conditional use permit review process may be consolidated with that of the PUD pursuant to procedures specified in subsection (F) of this section.

3. *Accessory uses.* Accessory uses and buildings which are customarily incidental and subordinate to a principally permitted use are also permitted.

4. *Exceptions.* In residential PUDs of one hundred (100) acres or more located in SR zones, and in residential PUDs of ten (10) acres or more located in other zoning districts, commercial uses may be permitted. Commercial uses shall be limited to those uses permitted in the neighborhood convenience commercial district. In PUDs of one hundred (100) acres or more in size located in SR zones, attached dwelling units are permitted only if they are condominiums created in accordance with the Washington Condominium Act, Chapter 64.34 RCW; provided, that if a proposed PUD in a single-family zoning district includes such attached condominiums, the density bonus provisions outlined in subsection (D) of this section shall not apply, and further provided that no condominium building may exceed two (2) stories.

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

1. *Minimum lot size exclusion.* The minimum lot size requirements of the districts outlined in this title shall not apply to PUDs.

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

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

3. *Minimum perimeter building setback.* The minimum perimeter building setback of the underlying zone shall apply. Multifamily transition area requirements shall apply to any multifamily developments (as provided in KCC 15.08.215), except where specifically exempted by administrative design review (as provided in KCC 15.09.045). The hearing examiner may reduce building separation requirements to the minimum required by the building and fire departments according to the criteria set forth in subsection (F)(1) of this section. If an adjacent property is undevelopable under this title, the hearing examiner may also reduce the perimeter building setback requirement to the minimum standards in the city building and fire codes.

4. *Maximum height of structures.* The maximum height of structures of the underlying zone shall apply. Multifamily transition area requirements shall apply to any multifamily developments (as provided in KCC 15.08.215) except where



specifically exempted by administrative design review (as provided in KCC 15.09.045). The hearing examiner may authorize additional height in CC, GC, DC, CM, M1, M2 and M3 zones where proposed development in the PUD is compatible with the scale and character of adjacent existing developments.

5. *Open space.*

a. The standard set forth in this subsection shall apply to PUD residential developments only. Each PUD shall provide a minimum of thirty-five (35) percent of the total site area for common open space. In mixed use PUDs containing residential uses, thirty-five (35) percent of the area used for residential use shall be reserved as open space.

b. For the purpose of this section, open space shall be defined as land which is not used for buildings, dedicated public rights-of-way, traffic circulation and roads, parking areas, or any kind of storage. Open space includes but is not limited to privately owned woodlands, open fields, streams, wetlands, severe hazard areas, landscaped areas, trails through parks and sensitive areas (not including required sidewalks), gardens, courtyards or lawns. Common open space may provide for either active or passive recreation.

c. Open space within a PUD shall be available for common use by the residents, tenants or the general public, depending on the type of project.

6. *Streets.* If streets within the development are required to be dedicated to the city for public use, such streets shall be designed in accordance with the standards outlined in the city subdivision code and other appropriate city standards. If streets within the development are to remain in private ownership and remain as private streets, the following standards shall apply:

a. *Minimum private street pavement widths for parallel parking in residential planned unit developments.* Minimum private street pavement widths with and without parallel parking in residential planned unit developments are as follows:

	<b>No Parking (feet)</b>	<b>Parking One Side (feet)</b>	<b>Parking Both Sides (feet)</b>
<b>One-way streets</b>	20	29	38
<b>Two-way streets</b>	22	31	40

The minimum widths set out in this subsection may be modified upon review and approval by the city fire chief and the city traffic engineer providing they are sufficient to maintain emergency access and traffic safety. A maintenance agreement for private streets within a PUD shall be required by the hearing examiner as a condition of PUD approval.

b. *Vehicle parking areas.* Adequate vehicular parking areas shall be provided. Vehicular parking areas may be provided by on-street parking or off-street parking lots. The design of such parking areas shall be in accordance with the standards outlined in Ch. 15.05 KCC. In single-family PUDs, parking shall be provided at a ratio of 1.8 parking stalls per dwelling unit; garages are excluded from the parking circulation. The planning manager may recommend for hearing examiner approval additional parking based upon site design and project land uses; the recommendation may include a requirement for on-street parking.

c. *One-way streets.* One-way loop streets shall be no more than two thousand (2,000) feet long.

d. *On-street parking.* On-street parking shall be permitted. Privately owned and maintained “no parking” and “fire lane” signs may be required as determined by the city traffic engineer and city fire department chief.

7. *Pedestrian walkways.* Pedestrian walkways shall be provided to connect residences to public walkways and streets and shall be constructed of material deemed to be an all-weather surface by the public works director and planning manager.

8. *Landscaping.*

a. Minimum perimeter landscaping of the underlying zone shall apply. Additional landscaping shall be required as provided in Ch. 15.07 KCC and KCC 15.08.215.

b. All PUD developments shall ensure that parking areas are integrated with the landscaping system and provide screening of vehicles from view from public streets. Parking areas shall be conveniently located to buildings and streets while providing for landscaping adjacent to buildings and pedestrian access.

c. Solid waste collection areas and waste reduction or recycling collection areas shall be conveniently and safely located for onsite use and collection, and attractively site screened.

9. *Signs.* The sign regulations of Ch. 15.06 KCC shall apply.

10. *Platting.* If portions of the PUD are to be subdivided for sale or lease, the procedures of the city subdivision code, as amended, shall apply. Specific development standards such as lot size, street design, etc., shall be provided as outlined in subsection (E) of this section.

11. *Green River Corridor* Any development located within the Green River corridor special interest district shall adhere to the Green River corridor special interest district regulations.

12. *View regulations.* View regulations as specified in KCC 15.08.060 shall apply to all PUDs.

13. *Shoreline master program.* Any development located within two hundred (200) feet of the Green River shall adhere to the city shoreline master program regulations.

14. *Design review.* PUDs shall be subject to administrative design review in KCC 15.09.045. PUDs of only single-family detached residences shall be evaluated using the review criteria of KCC 15.09.045(C), multifamily design review.

D. *Density bonus standards.* The density of residential development for PUDs will be based on the gross density of the underlying zoning district with density bonuses allowed as described below. PUDs under twenty (20) acres in size located in SR zones shall not be allowed density bonuses except as provided by (D)(8), below. For all other PUDs, the hearing examiner may recommend a dwelling unit density not more than twenty (20) percent greater than that permitted by the underlying zone upon findings and conclusions that the amenities or design features which promote the purposes of this subsection, as follows, are provided:

1. *Open space.* A four (4) percent density bonus may be authorized if at least ten (10) percent of the open space is in concentrated areas for passive use. Open space shall include significant natural features of the site, including but not limited to fields, woodlands, watercourses, and permanent and seasonal wetlands. Excluded from the open space definition are the areas within the building footprints, land used for parking, vehicular circulation or rights-of-way, and areas used for any kind of storage.

2. *Active recreation areas.* A four (4) percent density bonus may be authorized if at least ten (10) percent of the site is utilized for active recreational purposes, including but not limited to jogging or walking trails, pools, children's play areas, etc. Only that percentage of space contained within accessory structures that is directly used for active recreation purposes can be included in the ten (10) percent active recreation requirement.

3. *Stormwater drainage.* A two (2) percent density bonus may be authorized if stormwater drainage control is accomplished using natural onsite drainage features. Natural drainage features may include streams, creeks, ponds, etc.

4. *Native vegetation.* A four (4) percent density bonus may be authorized if at least fifteen (15) percent of the native vegetation on the site is left undisturbed in large open areas.

5. *Parking lot size.* A two (2) percent density bonus may be authorized if off-street parking is grouped in areas of sixteen (16) stalls or less. Parking areas must be separated from other parking areas or buildings by significant landscaping in excess of type V standards as provided in KCC 15.07.050. At least fifty (50) percent of these parking areas must be designed as outlined in this subsection to receive the density bonus.

6. *Mixed housing types.* A two (2) percent density bonus may be authorized if a development features a mix of residential housing types. Single-family residences, attached single units, condominiums, apartments and townhomes are examples of housing types. The mix need not include some of every type.

7. *Project planning and management.* A two (2) percent density bonus may be granted if a design/development team is used. Such a team would include a mixture of architects, engineers, landscape architects and designers. A design/development team is likely to produce a professional development concept that would be consistent with the purpose of the zoning regulations.

8. *Increased wetland buffer widths.* A ten (10) percent density bonus may be granted for a wetland buffer that is increased by twenty-five (25) feet. A twenty (20) percent density bonus may be granted for a wetland buffer that is increased by fifty (50) feet. All other requirements of the PUD standards shall apply.

These standards are thresholds, and partial credit is not given for partial attainment. The site plan must at least meet the threshold level of each bonus standard in order for density bonuses to be given for that standard. In no case shall any of the density bonus provisions be combined to create a total bonus greater than twenty (20) percent.

E. *Master plan approvals.* The master plan process is intended to allow approval of a generalized, conceptual development plan on a site which would then be constructed in phases over a longer period of time than a typical planned unit development. The master plan approval process is typically appropriate for development which might occur on a site over a period of several years, and in phases which are not entirely predictable.

1. *Submittal requirements.* The distinguishing characteristic between a master plan development application and a planned unit development application is that a master plan development proposal is conceptual in nature. However, the master plan application shall provide sufficient detail of the scope of the development, the uses, the amount of land to be developed and preserved, and how services will be provided. The specific submittal requirements are noted below:

a. A written description of the scope of the project, including total anticipated build-out (number of units of residential, gross floor area for commercial), and the types of uses proposed;

b. A clear vicinity map, showing adjacent roads;

c. A fully dimensional site plan, which would show the areas upon which development would occur, the proposed number of units or buildings in each phase of the development, the areas would be preserved for open space or protection of environmentally sensitive features, and a generalized circulation plan, which would include proposed pedestrian and bicycle circulation;

d. A generalized drainage and stormwater runoff plan;

e. A site map showing contours at not greater than five (5) foot intervals and showing any wetlands, streams, or other natural features;

f. A description of the proposed phasing plan;

g. Documentation of coordination with the Kent school district;

h. Certificates of water and sewer availability;

i. Generalized building elevations showing the types of uses being proposed.

2. *Density.* The gross density of a residential master plan project shall be the same as the density allowable in the underlying zoning district.

3. *Open space.* The criteria in subsection (C)(5) of this section shall apply.

4. *Application process.* The application process for a master plan application shall be as outlined in subsection (F) of this section.

5. *Review criteria.* The review criteria for a master plan application shall be the same as those outlined in subsection (G) of this section.

6. *Administrative approval of individual phases.* Once a master site plan PUD has been approved pursuant to subsection (F) of this section, any individual phase

of the development shall be reviewed and approved administratively, as outlined in Ch. 15.09 KCC; provided, that for each phase of development that includes a residential condominium, the applicant shall submit a copy of the condominium declaration recorded against the property, and as outlined in RCW 64.34.200.

7. *Time limits.* The master plan approved by the hearing examiner or city council, as provided in subsection (F) of this section, shall be valid for a period of up to seven (7) years. At the end of this seven (7) year period, development permits must be issued for all phases of the master plan development. An extension of time may be requested by the applicant. A single extension may be granted by the planning manager for a period of not more than two (2) more additional years.

8. *Modifications.* Once approved, requests for modifications to the master plan project shall be made in writing to the planning manager. The planning manager shall make a determination as to whether the requested modification is major or minor as outlined in subsection (I) of this section.

F. *Application process.* The application process includes the following steps: informal review process, compliance with the State Environmental Policy Act, community information meeting, development plan review, and public hearing before the hearing examiner.

1. *Informal review process.* An applicant shall meet informally with the planning department at the earliest possible date to discuss the proposed PUD. The purpose of this meeting is to develop a project that will meet the needs of the applicant and the objectives of the city as defined in this title.

2. *SEPA compliance.* Compliance with the State Environmental Policy Act and regulations and city SEPA requirements shall be completed prior to development plan review.

3. *Development plan review.* After informal review and completion of the SEPA process, a proposal shall next be reviewed by city staff through the development plan review process. Comments received by the project developer under the development review process shall be used to formalize the proposed development prior to the development being presented at a public hearing before the hearing examiner.

4. *Community information meeting.*

a. A community information meeting shall be required for any proposed PUD located in a residential zone or within two hundred (200) feet of a residential zone. At this meeting, the applicant shall present the development proposed to interested residents. Issues raised at the meeting may be used to refine the PUD plan. Notice shall be given in at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing. Written notice shall be mailed first class to all property owners within a radius of not less than two hundred (200) feet of the exterior boundaries of the property subject to the application. Any alleged failure of any property owner to actually receive the notice of hearing shall not invalidate the proceedings.

b. Nonresidential PUDs not located within two hundred (200) feet of a residential zone shall not require a community information meeting.

5. *Public notice and hearing examiner public hearing.* The hearing examiner shall hold at least one (1) public hearing on the proposed PUD and shall give notice thereof in at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing. Written notice shall be mailed first class to all property owners within a radius of not less than two hundred (200) feet of the exterior boundaries of the property subject to the application. Any alleged failure of any property owner to actually receive the notice of hearing shall not invalidate the proceedings.

6. *Consolidation of land use permit processes.* The PUD approval process may be used to consolidate other land use permit processes, which are required by other sections of this title. The public hearing required for the PUD may serve as the public hearing for the conditional use permit, subdivision, shoreline substantial development, and rezoning if such land use permits are a part of the overall PUD application. When another land use permit is involved which requires city council approval, the PUD shall not be deemed to be approved until the city council has approved the related land use permit. If a public hearing is required for any of the categories of actions listed in this subsection, the hearing examiner shall employ the public hearing notice requirements for all actions considered which ensure the maximum notice to the public.



7. *Hearing examiner decision.* The hearing examiner shall issue a written decision within ten (10) working days from the date of the hearing. Parties of record will be notified in writing of the decision. The decision is final unless notice of appeal is filed with the city clerk within fourteen (14) days of receipt by the developer of the decision. For PUDs which propose a use which is not typically permitted in the underlying zoning district as provided in subsection (B)(4) of this section, the hearing examiner shall forward a recommendation to the city council, which shall have the final authority to approve or deny the proposed PUD. For a proposed residential PUD that includes condominiums as outlined in subsection (B)(4) of this section, a condition of approval by the city council shall be that for each development phase the applicant shall submit a recorded copy of the covenants, conditions, and restrictions recorded against the property. Within thirty (30) days of receipt of the hearing examiner's recommendation, the city council shall, at a regular meeting, consider the application.

8. *Effective date.* In approving a PUD, the hearing examiner shall specify that the approved PUD shall not take effect unless or until the developer files a completed development permit application within the time periods required by this title as set forth in subsection (G) of this section. No official map or zoning text designations shall be amended to reflect the approved PUD designation until such time as the PUD becomes effective.

G. *Review criteria for planned unit developments.* Upon receipt of a complete application for a residential PUD, the planning department shall review the application and make its recommendation to the hearing examiner. The hearing examiner shall determine whether to grant, deny, or condition an application based upon the following review criteria:

1. *Residential planned unit development criteria.*

a. The proposed PUD project shall have a beneficial effect upon the community and users of the development which would not normally be achieved by traditional lot-by-lot development and shall not be detrimental to existing or potential surrounding land uses as defined by the comprehensive plan.

b. The proposed PUD project shall be compatible with the existing land use or property that abuts or is directly across the street from the subject property. The

term compatibility includes but is not limited to apparent size, scale, mass, and architectural design.

c. Unusual and sensitive environmental features of the site shall be preserved, maintained, and incorporated into the design to benefit the development and the community.

d. The proposed PUD project shall provide areas of openness by using techniques such as clustering, separation of building groups, and use of well-designed open space and landscaping. Open space shall be integrated within the PUD rather than be an isolated element of the project.

e. The proposed PUD project shall promote variety and innovation in site and building design, and shall include architectural and site features that promote community interaction, such as porches, de-emphasized garages, sidewalks/walkways and adjacent common areas. Buildings in groups shall be related by common materials and roof styles, but contrast shall be provided throughout the site by the use of varied materials, architectural detailing, building scale, and orientation.

f. Building design shall be based on a unified design concept, particularly when construction will be in phases.

2. *Nonresidential planned unit development criteria.*

a. The proposed project shall have a beneficial effect which would not normally be achieved by traditional lot-by-lot development and not be detrimental to present or potential surrounding land uses as defined by the comprehensive plan.

b. Unusual and sensitive environmental features of the site shall be preserved, maintained, and incorporated into the design to benefit the development and the community.

c. The proposed project shall provide areas of openness by the clustering of buildings, and by the use of well-designed landscaping and open spaces. Landscaping shall promote a coordinated appearance and break up continuous expanses of building and pavement.

d. The proposed project shall promote variety and innovation in site and building design. It shall encourage the incorporation of special design features such as visitor entrances, plazas, outdoor employee lunch and recreation areas, architectural focal points, and accent lighting.

e. Building design shall be based on a unified design concept, particularly when construction will be in phases.

H. *Time limits.*

1. *Application for development permit.* The applicant shall apply for a development permit no later than one (1) year following final approval of the PUD. The application for development permit shall contain all conditions of the PUD approval.

2. *Extensions.* An extension of time for development permit application may be requested in writing by the applicant. Such an extension may be granted by the planning manager for a period not to exceed one (1) year. If a development permit is not issued within two (2) years, the PUD approval shall become null and void and the PUD shall not take effect.

I. *Modifications of plan.* Requests for modifications of final approved plans shall be made in writing and shall be submitted to the planning services office in the manner and form prescribed by the planning manager. In commercial, office, industrial, and manufacturing zoning districts, where a master plan is consistent with a planned action ordinance and a development agreement, the determination of whether a proposed modification is minor or major shall be made at the sole discretion of the planning manager; provided, however, that the planning manager's determination must be consistent with criteria established in either the planned action ordinance or the development agreement. If the planned action ordinance or the development agreement does not establish such criteria, the planning manager's determination shall be consistent with the criteria stated in subsections (I)(1) and (I)(2) of this section. The criteria for determining minor and major modifications in all other cases shall be as stated in subsections (I)(1) and (I)(2) of this section. The criteria for approval of a request for a major modification shall be those criteria covering original approval of the permit which is the subject of the proposed modification.

1. *Minor modifications.* Modifications are deemed minor if all the following criteria are satisfied:

- a. No new land use is proposed;
- b. No increase in density, number of dwelling units, or lots is proposed;
- c. No change in the general location or number of access points is proposed;
- d. No reduction in the amount of open space is proposed;
- e. No reduction in the amount of parking is proposed;
- f. No increase in the total square footage of structures to be developed is proposed; and
- g. No increase in general height of structures is proposed.

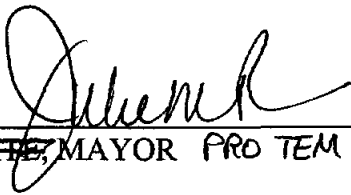
Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of buildings or landscaped areas, minor changes in phasing and timing, and minor changes in elevations of buildings.

2. *Major modifications.* Major adjustments are those which, as determined by the planning manager, substantially change the basic design, density, open space, or other similar requirements or provisions. Major adjustments to the development plans shall be reviewed by the hearing examiner. The hearing examiner may review such adjustments at a regular public hearing. If a public hearing is held, the process outlined in subsection (F) of this section shall apply. The hearing examiner shall issue a written decision to approve, deny, or modify the request. Such a decision shall be final. Any appeals of this decision shall be in accordance with KCC 12.01.040.

**SECTION 11.** – *Savings.* The existing chapters and sections of the Kent City Code, which are repealed and amended by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

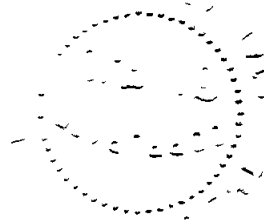
**SECTION 12. – Severability.** If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 13. – Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

  
\_\_\_\_\_  
JIM WHITE, MAYOR PRO TEM

ATTEST:

  
\_\_\_\_\_  
BRENDA JACOBER, CITY CLERK



APPROVED AS TO FORM:

  
\_\_\_\_\_  
TOM BRUBAKER, CITY ATTORNEY

PASSED: 19 day of April, 2005.

APPROVED: 19 day of April, 2005.

PUBLISHED: 23 day of April, 2005.

I hereby certify that this is a true copy of Ordinance No. 3746 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)  
BREND A JACOB ER, CITY CLERK

P:\Civi\ORDINANCE\CriticalAreas041905Council.doc

