



DATE: July 26, 2017

TO: Mayor Boudreau and City Council

FROM: Rebecca Lowell, Development Services

SUBJECT: PUBLIC HEARING REGARDING CODE AMENDMENTS TO THE CITY'S CRITICAL AREAS ORDINANCE

RECOMMENDED ACTION:

Staff requests that Council hold an open record public hearing and approve an Ordinance amending portions of Mount Vernon Municipal Code (MVMC) Chapter 15.40, Critical Areas.

INTRODUCTION/BACKGROUND:

A portion of the Growth Management Act (GMA) found in Revised Code of Washington (RCW) 36.70A.130(1)(a) requires that the City's comprehensive plan "be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section". Further, subsection (5)(b) of this same RCW requires that the City "take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter...on or before June 30, 2016, and every eight years thereafter".

In September of 2016 the City satisfied the portion of the above-referenced State law with the adoption of a revised and updated Comprehensive Plan. After completing the Comprehensive Plan portion of this work staff took the necessary steps to identify and propose amendments to a few development regulations within our Critical Areas Code (Mount Vernon Municipal Code Chapter 15.40) that need to be amended to be in compliance with this State mandate.

The full text of amendments to the City's CAO are shown in a tracking format (i.e. red font with new text underlined and deleted text with strikethrough) attached labeled as **Exhibit A**.

FINDINGS/CONCLUSIONS:

The following bulleted items summarize the procedural items that have been satisfied that allow staff to bring this Ordinance before the Council for a public hearing and decision on this item:

- The Department of Commerce was notified of the proposed amendments on June 28, 2017 and Commerce granted the City expedited review on July 13, 2017 (their identification number: 23860); and as such, the City is in compliance with RCW 36.70A.106 (1).

- A SEPA Threshold Determination of Non-significance (DNS), non-project action, was issued on June 28, 2017 and published and routed to all applicable Federal, State, and Local Agencies, Utilities, and Tribes on July 1, 2017. The comment period for the DNS ended on July 14, 2017; and the appeal period for the DNS will lapse on July 24, 2017 – prior to the public hearing scheduled before the City Council. There were no comments received and no appeals submitted as of July 20, 2017.
- The requisite Planning Commission and City Council hearings held on July 18, 2017 and July 26 (respectively) were preceded with appropriate notice published on July 1, 2017.
- The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.
- The Mount Vernon Planning Commission held an open record public hearing on the proposed code amendments on July 18, 2017. After listening to the staff presentation and holding a public hearing the Commission unanimously recommended to the City Council that the subject amendments be approved. The code amendments contained within the attached Exhibit A reflect the MVMC that the Commission recommended approval of.

RECOMMENDATION:

That Council hold a public hearing and adopt the accompanying proposed Ordinance amending portions of MVMC Chapter 15.40.

ATTACHED:

- **EXHIBIT A:** Proposed Ordinance
- **EXHIBIT B:** Department of Commerce Checklist
- **EXHIBIT C:** Procedural Items: SEPA DNS, Dept. of Commerce, & Notice of Public Hearing

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, AMENDING CERTAIN SECTIONS OF MOUNT VERNON MUNICIPAL CODE CHAPTER 15.40 CRITICAL AREAS; TO COMPLY WITH THE STATE REQUIREMENT RELATED TO UPDATING DEVELOPMENT REGULATIONS FOLLOWING GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN UPDATES PER RCW 36.70A.130(4), PROVIDING FOR SEVERABILITY, AND ESTABLISHING EFFECTIVE DATE

WHEREAS, all cities and counties in Washington are required to adopt critical areas regulations by the Growth Management Act (GMA) (RCW 36.70A.060). As defined by the GMA, "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. [RCW 36.70A.030(5)] Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas (RCW 36.70A.172). All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule provided in RCW 36.70A.130; and

WHEREAS, on March 14, 2007 the City adopted development regulations for critical areas based on best available science with Ordinance 3353. With the adoption of Ordinance 3353 the City Council found that the draft and final EIS and its best available science review adequately addressed the science and related environmental issues and provided a sound basis for the adoption of an alternative program; and **WHEREAS**, the amendments to Chapter 15.40 of the Mount Vernon Municipal Code ensure that the City's development regulations with regard to critical areas continue to be based on best available science; and

WHEREAS, the Department of Commerce was notified of the proposed amendments on June 28, 2017, an acknowledgement was received from Commerce on June 28, 2017, and Commerce granted the City expedited review on July 13, 2017 (their identification number: 23860); and as such, the City is in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on June 28, 2017 and published on July 1, 2017 and no comments were received or appeals filed; and,

WHEREAS, the requisite Planning Commission hearing held on July 18, 2017; and the City Council hearing held on July 26, 2017 were preceded with appropriate notice published on July 1, 2017; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum and discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION ONE. The City Council does hereby adopt the above listed recitals as set forth fully herein.

SECTION TWO. PLANNING COMMISSION RECOMMENDATION ADOPTED. The City Council adopts the Planning Commission's findings of fact and conclusions of law, outlined below, in their entirety.

A. Planning Commission's Findings of Fact:

1. The procedural requirements outlined in MVMC Chapter 14.05, Procedures, have been satisfied by City staff. This includes the Notice of Public Hearing, the environmental review pursuant to the SEPA statute, and receiving expedited review from the State Department of Commerce.

B. Planning Commission's Conclusions of Law:

1. The proposed amendments ensure that the City's development regulations are internally consistent.
2. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.
3. The proposed amendment is found to be in compliance with the State Growth Management Act.
4. The amendments to Chapter 15.40 ensure that the City remains in compliance with RCW 36.70A.130(4)

C. Planning Commission Recommendation to the City Council:

At their public hearing on July 18, 2017 after review of the materials presented by City staff and holding a public hearing the Planning Commission made an unanimous recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. That section 15.40.080, Fish and Wildlife Habitat Conservation Areas, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

15.40.080 Fish and wildlife habitat conservation areas.

A. Description and Purpose. The intent of these regulations is to protect functions and values for waters, riparian habitat, resident and anadromous fish, and wildlife conservation areas. The primary purpose of this section is to minimize development impacts to habitat conservation areas and to:

1. Protect federal and state listed habitats and species and give special attention to protection or enhancement of anadromous fish populations; and
2. Maintain a diversity of species and habitat within the city; and
3. Coordinate habitat protection to maintain and provide habitat connections; and
4. Help maintain air and water quality, and control erosion.

This section of the Mount Vernon Municipal Code contains standards, guidelines, criteria and requirements intended to identify, evaluate and mitigate potential impacts to habitat conservation areas within the city and to provide guidelines to enhance degraded habitat and streams in appropriate cases. In such circumstances, impacts resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with this chapter. The regulations are to manage land so as to maintain fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created and achieve no net loss in fish or wildlife habitat or stream functions. Interpretations of this section shall be made to conform to the requirements of WAC 365-190-080.

B. Classification and Designation of Fish and Wildlife Habitat Conservation Areas. Classification and designation of fish and wildlife habitat conservation areas is an ongoing process; while not all of the following critical habitat conservation areas are known to exist in the city, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards of this chapter.

1. Streams. All streams that meet the criteria for F, Np or Ns waters as set forth in WAC 222-16-030 of the Department of Natural Resources Water Typing System. The city classification system shall mirror the definitions as provided in WAC 222-16-030.
2. Lakes 20 Acres and Greater in Surface Area. Those lakes defined as shorelines of the state in the Shoreline Management Act of 1971.
3. Lakes Less Than 20 Acres in Surface Area. Those lakes which meet the criteria for Type F, Np, and Ns waters as set forth in WAC 222-16-030 as amended. This includes lakes and ponds less than 20 acres in surface area and their submerged aquatic beds, lakes, and ponds planted with game fish by a governmental or tribal authority.
4. Class I Fish and Wildlife Conservation Areas, Other Than Streams.
 - a. Habitats and species recognized by federal or state agencies for federal and/or state-listed endangered, threatened and sensitive species that have primary association documented in maps or databases available to the city and that, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
 - b. Areas targeted for preservation by the federal, state, and/or local government that provide fish and wildlife habitat benefits, such as the shared strategy process for Puget Sound; and areas of primary association for anadromous fish and important waterfowl areas identified by the U.S. Fish and Wildlife Service.

c. Areas that contain habitats and species of local importance. These areas are identified by the city, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of local importance can include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include cliffs, meadows, old-growth/mature forests, snag-rich areas, and urban natural open spaces.

5. Class II Fish and Wildlife Conservation Areas, Other Than Streams.

a. Habitats for state-listed candidate and monitored species documented in maps or databases available to the city, which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

b. Habitats that have been identified through maps, databases, reports, or studies that include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include caves, cliffs, meadows, old-growth/mature forests, snag-rich areas, talus slopes, and urban natural open space.

6. Habitats and Species of Local Importance. The city should accept and consider nominations for habitat areas and species to be designated as locally important.

a. Habitats and species to be designated shall exhibit the following characteristics:

- i. Local populations of native species are in danger of extirpation based on existing trends;
- ii. Local populations of native species that are likely to become endangered; or
- iii. Local populations of native species that are vulnerable or declining.

b. The species or habitat has recreational, commercial, game, tribal, or other special value.

c. Long-term persistence of a species locally is dependent on the protection, maintenance, and/or restoration of the nominated habitat.

d. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the city.

e. Without protection, there is likelihood that the species or habitat will be diminished locally over the long term.

f. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity that contributes to the integrity of the surrounding landscape.

g. Habitats and species may be nominated for designation by any person in accordance with the process in Appendix A attached to the ordinance codified in this chapter.

C. Performance Standards – General. For the purposes of this title, a designated fish and wildlife habitat conservation area with its buffer is a critical area. Regulated uses identified within designated fish and wildlife habitat conservation areas shall comply with the performance standards outlined in this chapter.

1. Habitat Management Plan Required. If the city determines that impacts to habitats may occur as a result of a development project, a habitat management plan (HMP) shall be required in conformance with MVMC 15.40.120(D). The applicant may choose to complete an HMP for a site-specific analysis to better determine the impact to habitat and to determine the appropriate buffer width and associated building setbacks for their project based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant. The report shall rely on best available science as defined in WAC 365-195-900 through 365-195-925 and shall be prepared by a certified professional who is a biologist with five years of experience preparing reports for the relevant type of habitat. The city may retain a qualified consultant at the applicant's expense to review and confirm the applicant's reports, studies and plans. The HMP shall clearly demonstrate that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved through providing the prescribed habitat buffers and building setbacks. An applicant may propose to implement an HMP as a means to protect habitat buffers associated with streams and/or fish and wildlife conservation areas. Approval for an HMP shall not occur prior to the consultation with the appropriate federal or state agencies.

a. Intent. HMPs are primarily intended as a means to restore or improve buffers that have been degraded by past activity, and should preserve, and not reduce, existing high-quality habitat buffers. While not primarily intended as a means to reduce buffers, the HMP may propose a reduction of the habitat buffer width where it is shown that the HMP will comply with the other requirements of this section.

b. Effect of Buffers. An HMP shall provide habitat functions and values that are greater than would be provided by the prescribed habitat buffers. When habitat buffers are a component of an HMP, they shall be at least the minimum size necessary to accomplish the objectives of the HMP. The HMP may propose, but the city shall not require, a habitat buffer containing a greater area than is required by the prescribed habitat buffer.

c. Impact Mitigation. The HMP shall encompass an area large enough to provide mitigation for buffer reduction below the standard required buffers, and shall identify how the development impacts resulting from the proposed project will be mitigated as defined in subsection E of this section. The developer of the plan shall use the best available science in all facets of the analyses. The Washington Department of Fish and Wildlife priority habitat and species management recommendations, and/or bald eagle protection rules outlined in WAC 232-12-292, as amended, may serve as guidance for this report.

2. Endangered, Threatened, and Sensitive Species.

a. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a habitat management plan (HMP) consistent with a habitat report identifying BMPs consistent with management guidelines recommended by state and federal agencies where present and otherwise consistent with best available science as established in the scientific literature for similar circumstances. Such plans shall identify the source of the recommendations and the key metrics by which success of the plan is to be measured and enforced.

b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with an HMP prepared by a certified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

~~c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest, territory, or communal roost and activities that are adjacent to bald eagle sites within 800 feet or within one half mile (2,640 feet) and in a shoreline foraging area shall require an approved HMP. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the HMP by the Washington Department of Fish and Wildlife.~~

3. Anadromous Fish.

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

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

ii. If alternative alignment or location for the activity is not feasible, then activities shall be designed so that it will replace any affected functions and values with equivalent systems to avoid overall degradation to the functions and values of the fish habitat or other critical areas;

iii. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques where such approaches are reasonably effective, according to an approved critical area report; and

iv. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved habitat management plan.

b. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream or downstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed, or otherwise adversely affect the overall lifecycle of such fish.

c. Fills, when authorized by the shoreline master program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

4. Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in this chapter. If nonwetlands habitat and wetlands are present at the same location, the provisions of this section or the wetlands section, whichever provides greater protection to the habitat, apply. Where a wetland is divided by a right-of-way or other improvement, but functions as a single system, the system shall be scored as a whole and not in pieces.

5. Buffers and Associated Building Setback Areas. The distance shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified.

a. Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the director. Buffers shall be maintained along the perimeter of fish and wildlife habitat conservation areas, as listed below in Tables 15.40.080(A) and (B). Refuse shall not be placed in buffers. Alteration of buffer areas and building setbacks may be allowed for water-dependent and water-related activities and for other property development authorized by the shoreline master program, an HMP, reasonable use exceptions, general exemptions, standards for existing (nonconforming) development, and variances in general exemptions; provided, however, in each instance mitigation shall be required to replace affected functions and values within the affected zone.

b. "Minimum building setback" is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the critical area edge a distance equal to or greater than the minimum setback. Uses not requiring a permit defined in the city building code may be permitted in the setback if the director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area, or prescribes a plan to replace affected functions and values within the affected area.

6. Habitat Conservation Area Buffers. Habitat conservation area buffers shall be shown on the development site plans or final plat maps along with the notation requirements identified in this chapter.

a. If an existing property has a previously delineated and approved fish and wildlife habitat conservation area and associated buffer by the city, the approved conservation area and buffer may remain in effect. Redevelopment and/or additions outside of the existing footprint shall be subject to the previously approved buffer; however, a buffer enhancement plan may be required in accordance if the habitat buffer area has become degraded or is currently not functioning or if the habitat area and/or buffer may be negatively affected by proposed new development. If, according to the buffer enhancement plan, additional buffer mitigation is not sufficient to protect the habitat, the city may require larger buffers where it is necessary to protect habitat functions based on site-specific characteristics.

7. Class I Fish and Wildlife Conservation Areas. All development as described within this chapter or within 200 feet of designated Class I wildlife conservation areas shall adhere to the following standards:

a. All sites with known locations of Class I fish and wildlife conservation areas or sites within 200 feet to known locations of Class I fish and wildlife conservation areas will require, for all development permits, the submittal and approval of a habitat management plan (HMP) as specified in subsection (C)(1) of this section. ~~In the case of bald eagles, an approved bald eagle management plan by the Washington State Department of Fish and Wildlife, meeting the requirements and guidelines of the bald eagle protection rules (WAC 232-12-292), as now or hereafter amended, shall satisfy the requirements for an HMP.~~ The requirement for an HMP shall be determined during the State Environmental Policy Act (SEPA)/critical areas review on the project. No project falling within a Class I fish and wildlife habitat conservation area shall be exempt from SEPA review.

b. All new development within 200 feet of habitat elements with which Class I fish and wildlife have a critical habitat may require the submittal of an HMP as specified in subsection (C)(1) of this section. The requirement for an HMP shall be determined during the SEPA/critical areas review on the project.

8. Class II Fish and Wildlife Conservation Area. All new development within Class II fish and wildlife conservation areas may require the submittal of an HMP as specified in subsection (C)(1) of this section if the director determines that the activity is within a critical distance of a protected species for an activity which the species has a primary association. An HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native vegetation. The requirement for an HMP shall be determined during the SEPA/critical areas review on the project. No project falling within a Class II fish and wildlife habitat conservation area shall be exempt from SEPA review.

Table 15.40.080(A), Wildlife Habitat Conservation Areas

Wildlife Habitat Conservation Areas	
Class I	All developments within 200 ft. of a designated Class I wildlife habitat conservation area shall have buffer widths determined by a mandatory wildlife habitat management plan.
Class II	All development within a Class II wildlife habitat conservation area shall have the buffer widths be determined by the SEPA/critical area review on the project and may require a habitat management plan.

9. Other Allowed Uses in Fish and Wildlife Habitat Conservation Areas. Other activities may be allowed using the standard for a Category II wetland buffer.

D. Performance Standards – Streams.

1. The purposes of the stream regulations are to:

- a. Protect riparian habitat to provide bank and channel stability; sustained water supply; flood storage; recruitment of woody debris; leaf litter; nutrients; sediment and pollutant filtering; shade; shelter; and other functions that are important to both fish and wildlife; and
- b. Prevent the loss of riparian acreage and functions and strive to achieve properly functioning conditions within a given stream segment where feasible; and
- c. Designate and protect aquatic habitat for salmonid species; and
- d. Give special attention to the protection or enhancement of anadromous fish.

2. Stream Studies.

- a. **When Standard Stream Study Is Required.** Subject to the provisions below, the applicant or project sponsors for activities requiring city approval shall be required to conduct a standard stream study per MVMC 15.40.120(E) if a site contains a regulated stream or the project area is within 200 feet of a stream even if the stream is not located on the subject property. Such a report shall be prepared by a certified professional at the applicant's expense.
- b. **When Supplemental Stream Study Is Required.** The applicant shall be required to conduct a supplemental stream study per MVMC 15.40.120(F) if a site contains a stream or riparian management zone and alterations of the stream or alterations to management zones are proposed, either administratively or via a variance request. Such a report shall be prepared by a certified professional at the applicant's expense.
- c. **When Stream Mitigation Plan Is Required.** The applicant shall be required to conduct a stream mitigation plan per MVMC 15.40.120(H) if impacts are identified within a supplemental stream study. Such a report shall be prepared by a certified professional at the applicant's expense. The approval of the mitigation plan by the director shall be based on the criteria located in MVMC 15.40.040, 15.40.080, 15.40.110, and 15.40.120(H).
- d. **Studies Waived.**
 - i. **Standard Stream Study.** May only be waived by the director when the applicant provides satisfactory evidence that:
 - (A) A public road, building or other long-term barrier exists between the stream and the proposed development activity; or
 - (B) The stream or riparian management zone does not intrude on the applicant's lot, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby streams regulated under this chapter; or
 - (C) Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary.
 - ii. **Supplemental Stream Study or Stream Mitigation Plan.** May only be waived by the director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary.
- e. **Period of Validity for Stream Studies.** Studies submitted and reviewed are valid for up to five years from date of study completion as approved by the city unless the director determines that conditions have changed significantly and a new or amended study is required.

3. Stream Buffer Measurement. Streams shall be classified according to the stream type system as provided in WAC 222-16-031, Interim water typing system. Stream buffer areas are defined by these classifications, as shown in Table 15.40.080(B). Buffers shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified. The buffer width shall be increased to include streamside wetlands which provide overflow storage for stormwater, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the OHWM or top of bank shall be defined so as to include the entire stream feature.

Table 15.40.080(B), Water Type Standard Buffer Widths

Water Type Standard Buffer Widths			
Water Types	Attributes	Minimum Building Setback	Buffer Width Standard
F	Fish Habitat Waters	15 feet beyond buffer	150 feet
Np	Year-Round, Nonfish Habitat	15 feet beyond buffer	50 feet
Ns	Seasonal, Nonfish Habitat	15 feet beyond buffer	35 feet

4. Buffer Conditions. Where existing buffer area plantings provide minimal vegetative cover and cannot provide the city’s water quality standards or habitat functions (per the requirements of the Departments of Ecology and Fish and Wildlife), buffer enhancement shall be required. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are in conformance with the recommendations in the CAO guidebook. Monitoring and maintenance of plants shall be required in accordance with MVMC 15.40.120(H), Mitigation and Monitoring Plans. Existing buffer vegetation is considered “inadequate” and will require enhancement through additional native plantings and removal of nonnative plants when:

- a. Nonnative or invasive plant species provide the dominant cover;
- b. Vegetation is lacking due to disturbance and marine, stream, or habitat resources could be adversely affected;
- c. Enhancement plantings in the buffer could significantly improve buffer functions; or
- d. An increase in buffer width on site or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development.

5. Buffer Averaging. Buffer widths may be modified by averaging buffer widths as long as the total area contained within the buffer after averaging is no less than the required buffer prior to averaging, and as set forth below. A buffer enhancement plan shall be required for any request for buffer averaging. The enhancement plan shall be similar to a mitigation plan, and include provisions for mitigation monitoring and contingency plans. Buffer width averaging shall be allowed only where the applicant demonstrates through a report prepared by a qualified biologist or habitat specialist with five years’ experience that:

- a. Buffer averaging is necessary to avoid a hardship caused by circumstances to the property;
- b. The habitat contains variations in sensitivity due to existing physical characteristics, or the buffer varies in characteristics and it would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- c. Lower intensity land uses would be located adjacent to areas where the buffer width is reduced;

- d. The widest portion of the buffer shall be the area where the habitat is most sensitive;
- e. Buffer width averaging will not adversely impact fish and wildlife habitat conservation areas; and
- f. The buffer width may be reduced by 35 percent of the standard buffer, but not less than 35 feet unless provided for by a habitat management plan.

6. Buffer Reduction. Buffers and associated building setbacks may be reduced where the applicant demonstrates through an approved HMP, relying on best available science and prepared by a qualified specialist with five years' experience, that through buffer enhancement the smaller buffer would provide equal or better protection than the larger buffer. Enhancement techniques can include, but are not limited to:

- a. Planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing fish areas adjacent to a marine shoreline or stream where one currently does not exist will result in improved function of the fish habitat;
- b. Fish barrier removal to restore accessibility to resident or anadromous fish;
- c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;
- d. Stream and/or retention/detention pond improvements:
 - i. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities; or
 - ii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels to provide a more naturalized habitat;
- e. Removal of existing bulkheads to improve fish spawning and habitat areas;
- f. Daylighting a stream that was previously culverted or piped, or daylighting box culverts or trestles.

E. Standard Mitigation Requirements and Criteria.

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved habitat management plan and SEPA documents, so as to result in no net loss of critical area functions and values.
2. Mitigation shall be in-kind and on site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
3. Mitigation shall not be implemented until after the city's approval of an HMP that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved HMP.
4. Mitigation Sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

- c. Rectifying the impact to habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
- d. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- e. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments;
- f. Monitoring the hazard or other required mitigation and taking remedial action when necessary; and
- g. Mitigation for individual actions may include a combination of the above measures.

5. Mitigation Plan. Mitigation plans required under this section shall be prepared in conformance to the guidelines in MVMC 15.40.120(H)(6).

- a. Innovative Mitigation. The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
 - i. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
 - ii. The group demonstrates the organizational and fiscal capability to act cooperatively;
 - iii. The group demonstrates that long-term management of the habitat area will be provided; and
 - iv. There is a clear potential for success of the proposed mitigation at the identified mitigation site. (Ord. 3509 § 3 (Exh. A), 2010).

SECTION FOUR. That section 15.40.090, Wetlands, of the Mount Vernon Municipal Code is hereby repealed and reenacted, to amend the description of Wetlands within subsection .090(A)(1), with the new section to read as follows:

15.40.090 Wetlands.

A. Description.

1. Wetlands are those areas, designated in accordance with the “Washington State Wetland Identification and Delineation Manual” ~~as required by RCW 36.70A.175~~ utilizing the federal wetland delineation manual and applicable regional supplements as directed by the WA Department of Ecology, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. All areas within the city meeting the wetland designation criteria in the identification and delineation manual, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this title.
2. Wetlands help to maintain water quality; store and convey stormwater and floodwater; recharge groundwater; provide important fish and wildlife habitat; and serve as areas for recreation, education, scientific study and aesthetic appreciation.

3. The city's overall goal shall be to achieve no net loss of wetlands. This goal shall be implemented through retention of the function and value of wetlands within the city. 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; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.

B. Purpose. The purposes of the wetland regulations are to:

1. Ensure that development activities in or affecting wetlands do not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values; and
2. Protect wetlands by regulating development activities within and around them; and
3. Protect the public from costs associated with repair of downstream properties resulting from erosion and flooding due to the loss of water storage capacity provided by wetlands; and
4. Prevent the net loss of wetland acreage and functions.

C. Classification and Designation.

1. Wetland Ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the "Washington State Wetland Rating System for Western Washington" (Department of Ecology Publication No. 14-06-029, effective January 2015) or as amended hereafter. These documents contain the definitions and methods for determining if the criteria below are met.

a. Wetland Rating Categories.

i. Category I. Category I wetlands are those that meet any of the following criteria:

- (A) Represent a unique or rare wetland type; or
- (B) Are more sensitive to disturbance than most wetlands; or
- (C) Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
- (D) Are providing a high level of functions, scoring 23 points or more out of 27 (DOE Wetlands Rating System, 2014); or
- (E) Are characterized as a national heritage wetland; or
- (F) Are characterized as a bog; or
- (G) Are over one acre and characterized as a mature and old-growth forested wetland.

ii. Category II. Category II wetlands are those wetlands that are not Category I wetlands and that meet any of the following criteria:

- (A) Provide high levels of some functions, being difficult, though not impossible, to replace; or
- (B) Perform most functions relatively well, scoring 20 to 22 points out of 27 (DOE Wetlands Rating System, 2014); or

iii. Category III. Category III wetlands are those wetlands that are not Category I or II wetlands, and that meet the following criterion:

- (A) Provide moderate levels of functions, scoring 16 to 19 points out of 27 (DOE Wetlands Rating System, 2014)

iv. Category IV. Category IV wetlands are those that meet the following criterion:

(A) Provide low levels of functions, scoring less than 15 or fewer points out of 27 (DOE Wetlands Rating System, 2014).

b. Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date a wetland delineation is submitted and accepted as a technically complete part of a permit application by the City consistent with MVMC 14.05; or as the wetland naturally changes thereafter; or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

D. Wetlands Reports.

1. When Report Is Required. Subject to the provisions of subsection (D)(3) of this section, a wetland report pursuant to the guidelines in MVMC 15.40.120(G) addressing a wetland's classification and delineation shall be prepared by an applicant as follows:

a. Wetland Report Identifying Classification. An applicant shall be required to conduct a study to determine the classification of the wetland if the subject property or project area is within 150 feet of a wetland even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. Wetland classification shall be performed as described in subsection C of this section, and the report shall include a completed wetland rating form. If there is a potential Category I or II wetland within 300 feet of a proposal, the city may require an applicant to conduct a study even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. A wetland report shall be prepared by a certified professional at the applicant's expense.

b. Wetland Report Identifying Delineation. A wetland delineation is required for any portion of a wetland on the subject property that will be impacted by the permitted activities. For the purpose of regulation, the exact location of the wetland edge shall be determined by the wetlands specialist hired at the expense of the applicant through the performance of a field investigation using the procedures provided in the HGM manual.

2. When a Wetland Mitigation Plan Is Required. The applicant shall be required to prepare a wetland mitigation plan per MVMC 15.40.120(H) if impacts are identified within a wetland classification or delineation report or if a wetland buffer alteration is proposed. The approval of the wetland mitigation plan by the director shall be based on the criteria located in MVMC 15.40.040, 15.40.080, 15.40.110 and 15.40.120(H).

3. Reports Waived.

a. Wetland Classification or Delineation Report. May only be waived by the director when the applicant provides satisfactory evidence that:

i. A public road, building or other physical barrier exists between the wetland and the proposed activity; or

ii. The wetland or buffer does not intrude on the applicant's lot, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby wetlands regulated under this section; or

iii. Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary, consistent with the current rating system and mitigation standards.

b. Wetland Mitigation Plan. May only be waived by the director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary, consistent with the current rating system and mitigation standards.

c. Period of Validity for Wetland Reports. Reports submitted and reviewed are valid for up to five years from date of study completion as approved by the city unless the director determines that conditions have changed significantly and a new or amended study is required.

d. Independent Secondary Review. Peer review of the applicant's report may be required by the city at the applicant's expense.

E. Development Standards – Wetlands.

1. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

2. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this title.

3. Category I Wetlands. Activities and uses shall be prohibited from Category I, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this title.

4. Category II and III Wetlands. With respect to activities proposed in Category II and III wetlands, the following standards shall apply:

a. Water-dependent activities may be allowed where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.

b. Where nonwater-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

i. The basic project purpose cannot reasonably be accomplished by successfully avoiding the wetland, or result in less adverse impact on a wetland on another site or sites in the general region;

ii. All alternative designs of the project as proposed that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible; and

iii. Full compensation for the acreage and loss functions will be provided under the terms established under subsections (G)(6) and (7) of this section.

5. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved wetland report and mitigation plan, if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the acreage and loss functions will be provided under the terms established under subsections (G)(6) and (7) of this section.

F. Standard Wetland Buffers.

1. Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category, are as follows:

Table 15.40.090(A), Wetland Categories and Standard Buffers

Wetland Category	Standard Buffer
I	200 ft.
II	100 ft.
III	75 ft.
IV	50 ft.

2. Measurement of Wetland Buffers. All buffers shall be measured horizontally from a perpendicular line established at the wetland edge as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers.

3. Increased Wetland Buffer Widths. The director shall require increased buffer widths in accordance with the recommendations of an experienced, certified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

- a. A larger buffer is needed to protect other critical areas;
- b. The buffer or adjacent uplands has a slope greater than 15 percent or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland;
- c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include plant densities that are in conformance with the recommendations of the CAO guidebook and require monitoring and maintenance to ensure success. Existing buffer vegetation is considered “inadequate” and will need to be enhanced through additional native plantings and (if appropriate) removal of nonnative plants when: (i) nonnative or invasive plant species provide the dominant cover, (ii) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (iii) enhancement plantings in the buffer could significantly improve buffer functions;
- d. An increase in buffer width on site or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development.

4. Wetland Buffer Width Averaging. The director may allow modification of the standard wetland buffer width in accordance with an approved wetland report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where the applicant and a certified professional wetland scientist demonstrates that:

- a. No feasible site design exists without buffer averaging;
- b. It will not reduce wetland functions or functional performance;
- c. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

- d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
- e. The buffer width is not reduced to less than 75 percent of the standard buffer width, applicable to the wetland category, or 35 feet for Category IV wetlands.

5. Buffer Consistency. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter.

6. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive nonnative weeds is required for the duration of the mitigation bond.

G. Standard Mitigation Requirements – Wetlands. Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the State Department of Ecology publication “Wetland Mitigation in Washington State,” 2006 (Publication Nos. 06-06-011a and 06-06-011b), or as revised.

1. Mitigation includes the following alternatives. The priority shall be as follows, but may be modified where functions and values are retained, restored, or enhanced by alternate systems:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action.
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- d. Reducing or eliminating the impact over time by preservation and maintenance operations.
- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

2. Mitigation for Lost or Affected Functions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:

- a. The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
- b. Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

3. Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

- a. Restoring wetlands on upland sites that were formerly wetlands.
- b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
- c. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area, meeting appropriate ratio requirements.

4. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on site, or in-kind and within the same stream reach, or sub-basin. Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when all of the following apply:

- a. There are no reasonable on-site or in-sub-drainage basin opportunities or on-site and in-sub-drainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, proposed water quality improvements, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations shall be in the same sub-drainage basin unless:
 - i. Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
 - ii. Credits from a state-certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank’s certification.

5. Mitigation Timing. Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

- a. The director may authorize a one-time temporary delay, up to 120 days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city and include a financial guarantee.

6. Mitigation Ratios.

- a. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, within the same drainage basin, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank’s certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Table 15.40.090(B), Wetland Categories and Mitigation Ratios

Category I	6-to-1
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

b. Increased Replacement Ratio. The director may increase the ratios under the following circumstances:

- i. Uncertainty exists as to the probable success of the proposed restoration or creation;
- ii. A significant period of time will elapse between impact and replication of wetland functions;
- iii. Proposed mitigation, without increase, will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- iv. The impact was an unauthorized impact.

7. Wetlands Enhancement as Mitigation.

- a. Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetlands, but must be used in conjunction with restoration and/or creation. Applicants proposing to enhance wetlands must produce a wetland report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site.
- b. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under subsection (G)(6) of this section. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.
- c. Mitigation ratios for enhancement in combination with other forms of mitigation shall range from 6:1 to 3:1 and be limited to Class III and Class IV wetlands.
- d. Any approval under subsections (G)(7)(b) and (c) of this section shall be consistent with Table 1a of Wetland Mitigation in Washington State, Part I (Ecology, et al., 2006).

8. Wetland Mitigation Banks.

- a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - i. The bank is certified under Chapter 173-700 WAC; and
 - ii. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
- b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
- c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions. (Ord. 3509 § 3 (Exh. A), 2010; Ord 3700, 2016).

SECTION FIVE. That section 15.40.170(B), Definitions, of the Mount Vernon Municipal Code is hereby repealed and reenacted, to add a new definition of "Fish and Wildlife Habitat Conservation Areas" and to amend the definition of "Wetlands" with the new section to read as follows:

15.40.170 Definitions.

A. Land Cover Definitions.

“Aquatic areas” means areas classified as regulated streams and regulated wetlands.

“Impervious surfaces” means:

1. For the purposes of the stream and wetland regulations: a hard surface area that either prevents or retards the infiltration of water into the soil and movement of water through soil media. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, lawns, and oiled, macadam or other surfaces which impede the natural infiltration and movement of water. When such surfaces supported a permitted use on or before January 1, 2007, they shall be considered impervious surfaces. Earthwork (e.g., grading, filling, clearing preparatory to new development) does not create impervious surface.
2. For the purposes of aquifer protection regulations:
 - a. Impervious surfaces include those that have a lesser permeability than the undisturbed native soil, as indicated in Table 14 of the Soil Survey of Skagit County Area, Washington (USDA Soil Conservation Service, 1989).
 - b. Effective impervious surfaces are those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces on residential development sites are considered ineffective if the runoff is dispersed in accordance with “Full Dispersion” measures as described in the applicable sections of the Washington State Department of Ecology’s Stormwater Manual adopted within this Chapter under 15.40.030(F)(2), or an equivalent manual as determined by the director.

“Pervious surfaces” means vegetated areas that do not meet the definition of tree cover.

“Tree cover” means the area of cover provided by conifer or hardwood tree(s) greater than four inches dbh (diameter at breast height). Tree cover excludes the portion of the canopy that overlies impervious surface areas.

B. General Definitions.

“Activities, development” means the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance; division of a parcel of land into two or more parcels; and any use or extension of the use of land.

“Alteration” means any human induced change in an existing condition of a critical area or its management zone or buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, drainage or dewatering, or any other activity that changes the character of the critical area.

“Alluvial fan hazard” means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

“Aquifer” means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

“Artificial channel” means a stream channel that is entirely constructed, but does not include relocated natural channels. Except where fish bearing, an artificial channel is not a critical area.

“Best management practices (BMPs)” means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
2. Minimize adverse impacts to surface water and groundwater flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

3. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and
4. Provide standards for proper use of chemical herbicides within critical areas.

“Buffer” means an area that is contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

“Certified professional” means any person with the education, experience, and/or professional certification or licenses in a specialized field of study appropriate to the studies and analysis required, such as a wildlife biologist, hydrologist, hydrogeologist, wetland biologist, geotechnical engineer, or specialists in other disciplines.

“Critical areas” means wetlands, aquifer protection areas, fish and wildlife habitat, and frequently flooded and geologically hazardous areas as defined by the Growth Management Act.

“Critical facility” means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials or hazardous waste.

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as 4.5 feet (1.37 m) above the ground on the uphill side of the tree.

“Development permit” means written permission, after appropriate review for type of application, from the appropriate decision-maker authorizing the division of a parcel of land, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure, utility, or any use or extension of the use of the land.

“Director” means the director of community and economic development for the city of Mount Vernon, or his/her designee.

“Drainage collection system” means a system for conveying, treating and detaining stormwater runoff swales, ponds, and outfalls.

“Emergency” means an action that must be undertaken immediately or within a time frame too short to allow full compliance with this chapter, to avoid an immediate threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.

“Fish and Wildlife Habitat Conservation Areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. “Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities. “Fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

“Forested area” means a treed area that functions, or which over time will be restored to function, as a mature forest characterized by an undisturbed understory.

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only be at risk, but may also increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

1. Erosion hazard;
2. Liquefaction;
3. Landslide hazard;
4. Seismic hazard;
5. Volcanic hazard; and
6. Alluvial fan hazard.

“Innovative site design” means development techniques using creative approaches to site design, habitat and tree retention, significant reduction of impervious surfaces, and changes in traditional site features such as roads and structures in favor of natural habitat features that result in zero or near-zero drainage discharge from the site after development.

“Intermittent” means water is not present in the channel year round during years of normal or above normal rainfall.

“Ordinary high water mark” means on lakes and streams, a mark found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists as of the effective date of regulations, as it may naturally change thereafter, or as it may change in accordance with permits issued by the city or state. Where the ordinary high water mark cannot be found, it shall be the stage of the 50 percent exceedance flow, according to the period of record of a measured or synthetic hydrograph. For braided streams, the ordinary high water mark is found on the banks forming the outer limits of the depression within which the braiding occurs.

“Normal rainfall” means rainfall that is at the mean or within one standard deviation of the mean of the accumulated annual rainfall record, based upon the water year for Skagit County as recorded at the Burlington/Mount Vernon, Skagit Regional Airport, Washington, United States.

“Perennial” means water that flows continuously.

“Primary association area” means the area used on a regular basis by, is in close association with, or is necessary for the proper functioning of the habitat of a critical species. “Regular basis” means that the habitat area normally contains or is usually known to contain a critical species or, based on known habitat requirements of the species, the area is likely to contain the critical species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

“Priority habitat” means habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.

“Reasonable use” means the minimum use to which a property owner is entitled under the applicable state and federal constitutional provisions, including takings and substantive due process. Reasonable use shall be liberally construed to protect the constitutional rights of the property owner.

“Regulated activity” means all activities located within a regulated critical area or critical area buffer/management zone.

“Riparian area” means the upland area immediately adjacent to and paralleling a body of water, usually composed of trees, shrubs and other plants. Riparian functions include bank and channel stability, sustained water supply, flood storage, recruitment of woody debris, leaf litter, nutrients, sediment and pollutant filtering, shade, shelter, and other functions that are important to both fish and wildlife.

“Salmonid migration barrier” means an in-stream blockage that consists of a natural drop (no human influence) with an uninterrupted slope greater than 100 percent (45-degree angle) and a height in excess of 11 vertical feet within

anadromous salmon-bearing waters or a height in excess of three vertical feet within resident trout-only bearing waters. Constructed barriers to salmonid migration (e.g., culverts, weirs, etc.) shall be considered barriers to salmonid migration by this definition only if they were lawfully installed, present a complete barrier to salmonid passage based on hydraulic drop, water velocity, water depth, or any other feature that would prevent all salmonid from passing upstream; and in the opinion of the city reviewing official cannot be modified to provide salmonid passage without resulting in any of the following conditions:

1. Significant impacts to other environmental resources;
2. Significant impacts to major transportation and utility systems, or to the public health and safety;
3. Significant expense. For the purposes of this definition significant expense means a cost equal to or greater than 50 percent of the combined value of the proposed site buildings, structures, and/or site improvements, and existing buildings, structures, and/or site improvements to be retained.

“Species, priority” means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate, and monitor species, and those of recreational, commercial, or tribal importance.

“Steep slopes” means slopes greater than 40 percent.

“Stream” means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition is not meant 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 that were naturally occurring prior to construction of such watercourses.

“Utilities” means utility lines and facilities related to the provision, distribution, collection, transmission or disposal of water, storm and sanitary sewage, oil, gas, power, telephone, and cable.

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands ~~do~~ may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

C. Report Content Requirements.

1. Geotechnical Study. A study prepared in accordance with generally accepted geotechnical practices and stamped by a professional engineer licensed in the state of Washington that includes soils and slope stability analysis, boring and test pit logs, and recommendations on slope setbacks, foundation design, retaining wall design, material selection, and all other pertinent elements. If the evaluation involves geologic evaluations or interpretations, the report shall be reviewed and approved by a geologist. Further recommendations, additions or exceptions to the original report based on the plans, site conditions, or other supporting data shall be signed and sealed by the geotechnical engineer. If the geotechnical engineer who reviews the plans and specifications is not the same engineer who prepared the geotechnical report, the new engineer shall, in a letter to the city accompanying the plans and specifications, express his or her agreement or disagreement with the recommendations in the geotechnical report and state that the plans and specifications conform to his or her recommendations. The preparation and content requirements in Table 15.40.120(A), Geotechnical Report – Detailed Requirements, shall also apply.

2. Habitat/Wildlife Assessment. A report prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and including at a minimum, the following requirements:

- a. Site plan prepared in accordance with the requirements of the community and economic development department indicating all habitat conservation areas falling within 200 feet of the subject property;
- b. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the director, surface and subsurface hydrologic analysis;
- c. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the habitat conservation areas;
- d. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations that have been developed for species and/or habitats located on the site;
- e. Mitigation report including a discussion of proposed measures for mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include, but are not limited to, establishment of buffer zones, preservation of critically important plants and trees, limitation of access to habitat areas, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;
- f. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule.

3. Hydrogeologic Study. A report shall be prepared as follows:

- a. The study shall be prepared by, or under the direction of, and signed by a licensed hydrogeologist pursuant to Chapter 308-15 WAC.
- b. Phase I Report Requirements. A Phase I reconnaissance level hydrogeologic report shall summarize existing information about the basic site hydrogeologic conditions such as soil types, land cover, likely groundwater flow directions and receiving waters, and which low impact development management practices will be implemented consistent with the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005, or an equivalent manual as determined by the director.
- c. Phase II Report Requirements. This report shall include:
 - i. A description of the geology and groundwater in the proposed permit area and adjacent areas down to and including the lowest aquifer that may be affected by the facility, including the following:
 - (A) The results of a sufficient number of test borings and core borings to accurately characterize geology, soils, groundwater flow, groundwater chemistry and flow systems of the proposed permit area and adjacent area, which shall be at least three test borings. The applicant shall include the actual surface elevations of the drill holes.
 - (B) The stratigraphy, lithologic, and physical characteristics and thickness of each stratum, including the location and depth of aquifers.
 - (C) The hydrologic characteristics of each aquifer described in subsection (C)(3)(c)(i)(B) of this section, including field test data for hydraulic conductivity, storage coefficient and transmissivity, groundwater hydraulic gradient and velocity. The description of these characteristics shall be based on multiple well aquifer tests if required by the city. The application shall include the procedures and calculations used to determine these characteristics.
 - (D) The geologic structure within the proposed permit area and adjacent area, and its relation to the regional geological structure.
 - (E) The aquifer characteristics necessary to accurately describe three-dimensional groundwater flow through the proposed permit area and adjacent area, including storage and discharge characteristics.

4. Stream Study, Standard. A report shall be prepared by a qualified professional, unless otherwise determined by the director, and include the following information:

- a. Site Map. Site map(s) indicating, at a scale no smaller than one inch equals 20 feet (unless otherwise approved by the director):
 - i. The entire parcel of land owned by the applicant, including 100 feet of the abutting parcels through which the water body(ies) flow(s);
 - ii. The ordinary high water mark (OHWM) determined in the field by a certified professional (the OHWM must also be flagged in the field);
 - iii. Stream classification, as recorded in city inventories (if unclassified, see subsection (C)(5)(a) of this section);
 - iv. Topography of the site and abutting lands in relation to the stream(s) and its/their management zone(s) at contour intervals of two feet where slopes are less than 10 percent, and of five feet where slopes are 10 percent or greater;
 - v. One-hundred-year floodplain and floodway boundaries, including 100 feet of the abutting parcels through which the water body(ies) flow(s);
 - vi. Site drainage patterns, using arrows to indicate the direction of major drainage flow;
 - vii. Top view and typical cross-section views of the stream, banks, and management zones to scale;
 - viii. The vegetative cover of the entire site, including the stream or lake, banks, riparian area, and/or abutting wetland areas, extending 100 feet upstream and downstream from the property line. Include position, species, and size of all trees at least four inches dbh that are within the inner and outer riparian management zone;
 - ix. The location, width, depth, and length of all existing and proposed structures, roads, stormwater management facilities, wastewater treatment and installations in relation to the stream/lake and its/their management zones; and
 - x. Location of site access, ingress, and egress.
- b. Grading Plan. A grading plan prepared in accordance with MVMC and Mount Vernon engineering standards and as required by staff through the preapplication review process, and showing contour intervals of two feet where slopes are less than 10 percent, and of five feet where slopes are 10 percent or greater.
- c. Stream Assessment Narrative. A narrative report shall be prepared to accompany the site plan that describes:
 - i. The stream classification as recorded in city inventories;
 - ii. The vegetative cover of the site, including the stream or lake, banks, riparian area, wetland areas, and flood hazard areas extending 100 feet upstream and downstream from the property line;
 - iii. The ecological functions currently provided by the stream/lake and existing riparian area;
 - iv. Observed or reported fish and wildlife that make use of the area including, but not limited to, salmonids, mammals, and bird nesting, breeding, and feeding/foraging areas; and
 - v. Measures to protect trees and vegetation.

5. Stream Study, Supplemental. The application shall include the following information:

a. **Unclassified Stream Assessment.** If the site contains an unclassified stream, a certified professional shall provide a proposed classification of the stream(s) based on the city's adopted rating system in MVMC 15.40.090(C)(1) and a rationale for the proposed rating.

b. **Alterations to Stream and/or Management Zones.** A supplemental report prepared by a certified professional shall evaluate alternative methods of developing the property using the following criteria for justification:

- i. Avoid any disturbances to the stream or management zone;
- ii. Minimize any stream or management zone impacts;
- iii. Compensate for any stream or management zone impacts;
- iv. Restore any stream or management zone area impacted or lost temporarily;
- v. Enhance degraded stream habitat to compensate for lost functions and values.

c. **Impact Evaluation.**

i. An impact evaluation for any unavoidable impacts prepared by a certified professional, to include:

(A) Identification, by characteristics and quantity, of the resources (stream, lake) and corresponding functional values found on the site;

(B) Evaluation of alternative locations, design modifications, or alternative methods of development to determine which option(s) reduce(s) the impacts on the identified resource(s) and functional values of the site;

(C) Determination of the alternative that best meets the applicable approval criteria and identify significant detrimental impacts that are unavoidable; and

(D) To the extent that the site resources and functional values are part of a larger natural system such as a watershed, the evaluation must also consider the cumulative impacts on that system.

ii. For a violation, the impact evaluation must also include:

(A) Description, by characteristics and quantity, of the resource(s) and functional values, on the site prior to the violations, including, but not limited to: shade/temperature regulation, input of organic material and nutrients, contribution of large woody debris (LWD), improvements to water quality, bank stabilization, wildlife habitat, microclimate, and groundwater; and

(B) Determination of the impact of the violation on the resource(s) and functional values.

6. **Stream Mitigation Plan.** The mitigation plan must ensure compensation for unavoidable significant adverse impacts that result from the chosen development alternative or from a violation as identified in the impact evaluation. A mitigation plan must include:

a. **Site Map.** Site map(s) indicating, at a scale no smaller than one inch equals 20 feet (unless otherwise approved by the director):

- i. The entire parcel of land owned by the applicant, including 100 feet of the abutting parcels through which the water body(ies) flow(s);
- ii. The ordinary high water mark (OHWM) determined in the field by a certified professional (the OHWM must also be flagged in the field);
- iii. Stream classification, as recorded in city inventories or as determined through a supplemental stream study approved by the director;

- iv. Topography of the site and abutting lands in relation to the stream(s) and its/their management zones at contour intervals of two feet where slopes are less than 10 percent, and of five feet where slopes are 10 percent or greater;
- v. One-hundred-year floodplain and floodway boundaries, including 100 feet of the abutting parcels through which the water body(ies) flow(s);
- vi. Site drainage patterns, using arrows to indicate the direction of major drainage flow;
- vii. Top view and typical cross-section views of the stream, banks, and management zones to scale;
- viii. The vegetative cover of the entire site, including the stream or lake, banks, riparian area, and/or abutting wetland areas, extending 100 feet upstream and downstream from the property line. Include position, species, and size of all trees at least four inches dbh that are within the inner and outer riparian management zones;
- ix. The location, width, depth, and length of all existing and proposed structures, roads, stormwater management facilities, wastewater treatment and installations in relation to the stream/lake and its/their management zones;
- x. Location of site access, ingress and egress;
- xi. Indication of where proposed mitigation or remediation measures will take place on the site;
- xii. Separate indication of areas where revegetation is to take place and areas where vegetation is anticipated to be removed; and
- xiii. Any other areas of impact with clear indication of type and extent of impact indicated on site plan.

b. Mitigation narrative that includes the following elements:

- i. Description of existing conditions on the site and associated water resource (baseline information);
- ii. Resource(s) and functional values to be restored, created, or enhanced on the mitigation site(s);
- iii. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;
- iv. Construction schedule;
- v. Operations and maintenance practices for protection and maintenance of the site;
- vi. Environmental goals, objectives, and performance standards to be achieved by mitigation;
- vii. Monitoring and evaluation procedures for a three-year period minimum, including minimum monitoring standards and timelines (i.e., annual, semi-annual, quarterly);
- viii. Contingency plan with remedial actions for unsuccessful mitigation;
- ix. Cost estimates for implementation of mitigation plan for purposes of calculating surety device;
- x. Discussion of compliance with approval criteria; and
- xi. A review of the best available science supporting the proposed request for a reduced standard and/or the method of impact mitigation; a description of the report author's experience to date in restoring or creating the type of critical area proposed; and an analysis of the likelihood of success of the compensation project.

7. Wetland Assessment. A wetland assessment includes the following:

- a. A description of the project and maps at a scale no smaller than one inch equals 200 feet showing the entire parcel of land owned by the applicant and the wetland boundary delineated by a qualified wetlands ecologist, and pursuant to MVMC 15.40.040;
- b. A description of the vegetative cover of the wetland and adjacent area including identification of the dominant plant and animal species, consistent with published delineation standards (Corps of Engineers delineation manual, 1987; Corps of Engineers Regional Supplement, 2010. Copies of the wetland delineation data sheets and rating forms should be included as an appendix to the wetland assessment;
- c. A site plan for the proposed activity at a scale no smaller than one inch equals 200 feet showing the location, width, depth and length of all existing and proposed structures, roads, stormwater management facilities, sewage treatment and installations within the wetland and its buffer;
- d. The exact locations and specifications for all activities associated with site development including the type, extent and method of operations;
- e. Elevations of the site and adjacent lands within the wetland and its buffer at contour intervals of no greater than five feet or at a contour interval appropriate to the site topography and acceptable to the city;
- f. Top view and typical cross-section views of the wetland and its buffer to scale;
- g. The purposes of the project and, if a variance is being requested, an explanation of why the proposed activity cannot be located at another site; and
- h. If wetland mitigation is proposed, a mitigation plan that includes baseline information, an identification of direct and indirect impacts of the project to the wetland area and wetland functions, environmental goals and objectives, performance standards, construction plans, a monitoring program, and a contingency plan.
 - i. Alternative Methods of Development. If wetland changes are proposed, the applicant shall evaluate alternative methods of developing the property using the following criteria in this order:
 - i. Avoid any disturbances to the wetland or buffer;
 - ii. Minimize any wetland or buffer impacts;
 - iii. Compensate for any wetland or buffer impacts;
 - iv. Restore any wetlands or buffer impacted or lost temporarily;
 - v. Create new wetlands and buffers for those lost; and
 - vi. In addition to restoring a wetland or creating a wetland, enhance an existing degraded wetland to compensate for lost functions and values.

This evaluation shall be submitted to the director. Any proposed alteration of wetlands shall be evaluated by the director using the above hierarchy.

- j. Such other information as may be needed by the city, including but not limited to an assessment of wetland functional characteristics, including a discussion of the methodology used; a study of hazards if present on site, the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this section.

8. Wetland Mitigation Plan – Preliminary. A preliminary wetland mitigation plan shall include the following:

- a. A conceptual site plan demonstrating sufficient area for replacement ratios;
- b. Proposed planting scheme for created, restored, and enhanced wetlands; and

c. Written report consistent with final wetland mitigation plan requirements regarding baseline information, environmental goals and objectives, and performance standards.

9. Wetland Mitigation Plan – Final. A final wetland mitigation plan shall include:

a. Baseline Information. A written assessment and accompanying maps of the impacted wetland including, at a minimum, a wetland delineation by a qualified wetland specialist; existing wetland acreage; vegetative, faunal, and hydrologic characteristics; an identification of direct and indirect impacts of the project to the wetland area and wetland functions; soil and substrata conditions; topographic elevations and compensation site. If the mitigation site is different from the impacted wetland site, the assessment should include at a minimum: existing acreage; vegetative, faunal, and hydrologic conditions; relationship within the watershed and to existing water bodies; soil and substrata conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.

b. Environmental Goals and Objectives. A written report by a qualified wetland specialist shall be provided identifying goals and objectives of the mitigation plan and describing:

i. The purposes of the compensation measures including a description of site selection criteria, identification of compensation goals, identification of target evaluation species and resource functions, dates for beginning and completion, and a complete description of the structure and functional relationships sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland or, if out-of-kind, the type of wetland to be emulated; and

ii. A review of the best available science and report author's experience to date in restoring or creating the type of wetland proposed shall be provided. An analysis of the likelihood of success of the compensation project at duplicating the original wetland shall be provided based on the experiences of comparable projects, preferably those in the same drainage basins, if any. An analysis of the likelihood of persistence of the created or restored wetland shall be provided based on such factors as surface and groundwater supply and flow patterns, dynamics of the wetland ecosystem, sediment or pollutant influx and/or erosion, periodic flooding and drought, etc., presence of invasive flora or fauna, potential human or animal disturbance, and previous comparable projects, if any.

c. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project are achieved and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria. These criteria will be evaluated and reported pursuant to subsection (C)(9)(e) of this section, Monitoring Program. An assessment of the project's success in achieving the goals and objectives of the mitigation plan should be included along with an evaluation of the need for remedial action or contingency measures.

d. Detailed Techniques and Plans. Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence; grading and excavation details; erosion and sediment control features needed for wetland construction and long-term survival; a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagates, or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrata stockpiling techniques and planting instructions; descriptions of water control structures and water level maintenance practices needed to achieve the necessary hydroperiod characteristics, etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, and topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations that are appropriate for the desired habitat type(s) and that provide sufficient hydrologic data. The city may request such other information as needed to determine the adequacy of a mitigation plan.

e. Monitoring Program. A program outlining the approach for monitoring construction and development of the compensation project and for assessing a completed project shall be provided in the mitigation plan. Monitoring may include, but is not limited to:

- i. Establishing vegetation plots to track changes in plant species composition and density over time;
 - ii. Using photo stations to evaluate vegetation community response;
 - iii. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
 - iv. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic and water quality predictions;
 - v. Measuring sedimentation rates;
 - vi. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and
 - vii. A description shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the compensation project. A monitoring report shall be submitted consistent with the periods identified in MVMC 15.40.120(H). The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.
- f. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.
- g. Permit Conditions. Any compensation project prepared for mitigation pursuant to MVMC 15.40.110, and approved by the city shall become part of the application for project approval.
- h. Demonstration of Competence. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training, and experience with comparable projects. (Ord. 3509 § 3 (Exh. A), 2010; Ord 3700, 2016).

SECTION SIX. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION SEVEN. City staff are hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

PASSED AND ADOPTED this 26th day of July, 2017.

SIGNED AND APPROVED this ____ day of August, 2017.

Doug Volesky, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published _____



CRITICAL AREAS CHECKLIST

A Technical Assistance Tool From Growth Management Services – updated April 2017

<p>Name of city or county: Mount Vernon</p>	
<p>Staff contact, phone, and e-mail address: Rebecca Lowell, (360) 336-6214, rebeccab@mountvernonwa.gov</p>	
<p>INSTRUCTIONS</p> <p>This checklist is intended to help local governments update their development regulations, as required by RCW 36.70A.130(4) (updated in 2012). We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. This checklist may be used by all jurisdictions, including those local governments planning for resource lands and critical areas only. For general information on update requirements, refer to Keeping your Comprehensive Plan and Development Regulations Current: A Guide to the Periodic Update Process under the Growth Management Act, August, 2016 and WAC 365-196-610 (updated in 2015)</p> <p>Bold items are a GMA requirement or may be related requirements of other state or federal laws.</p> <p>Commerce WAC provisions are advisory under Commerce’s statutory mandate to provide technical assistance, RCW 43.330.120 which states that the Department of Commerce “...shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.” <u>Bold and underlined</u> items are links to Internet sites and may include best practices or other ideas to consider. If you have questions, call GMS at (360) 725-3066.</p> <p>Updates to Commerce WAC – Revisions to the Commerce WAC relating to critical areas have been provided in a table with dates of changes on the Growth Management Act Periodic Update web site. The table can be used with this checklist to determine what changes have been made since the last update of your critical areas regulations.</p> <p>How to fill out the checklist</p> <p>Using the current version of your critical areas regulations, fill out each item in the checklist. Select the check box or type in text fields, answering the following question:</p> <p>Is this item addressed in your current Critical Areas Ordinance (CAO)? If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the Commerce Web page or contact one of the Commerce planners assigned to your region.</p>	<p>Contents</p> <p>Instructions.....1</p> <p>Overall Requirements.....2</p> <p>Wetlands.....3</p> <p>Critical Aquifer Recharge Areas.....4</p> <p>Frequently Flooded Areas.....5</p> <p>Geologically Hazardous Areas.....6</p> <p>Fish and Wildlife Habitat Conservation Areas.....7</p> <p>Anadromous Fisheries.....8</p> <p>Reason Use Exceptions.....8</p> <p>Forest Practices Regulations.....8</p> <p>Stormwater Drainage and Water Quality.....9</p> <p>Regulations for Protecting Waters of the State.....9</p> <p>Good Ideas.....10</p>

CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)** and [WAC 365-195-900](#) through 925 provide guidelines. Guidance can also be found in Commerce’s [Critical Areas Assistance Handbook](#) (Updated January, 2007); the Minimum Guidelines [WAC 365-190-080 – 130](#); Best Available Science, [Chapter 365-195 WAC](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management’s [Critical Areas and Best Available Science](#) webpage.

Regulations required to protect critical areas	Addressed in current plan or regulations? If yes, note where
<p>OVERALL REQUIREMENTS</p> <p>The CAO includes best available science to clearly designate and protect all critical areas that might be found within the jurisdiction.</p> <p>1. Designation of Critical Areas</p> <p>RCW 36.70A.170(1)(d) required all counties and cities to designate critical areas. RCW 36.70A.170(2) requires that counties and cities consider the Commerce Minimum Guidelines pursuant to RCW 36.70A.050.</p> <p>RCW 36.70A.050 directed Commerce to adopt the Minimum Guidelines to classify critical areas. WAC 365-190-080 through 130 (updated in 2010) provide guidance on defining or “designating” each of the five critical areas.</p> <p>WAC 365-190-040 (updated in 2010) outlines the process to classify and designate natural resource lands and critical areas.</p> <p>2. Definition of Critical Areas</p> <p>RCW 36.70A.030 provides definitions for each type of critical area. Sections (5) regarding fish and wildlife habitat conservation areas; (9) regarding geologically hazardous areas; and (21) regarding wetlands were updated in 2010.</p> <p>WAC 365-190-030 (updated 2010) provides definitions in the Minimum Guidelines.</p> <p>3. Protection of Critical Areas</p> <p>RCW 36.70A.060 (2) required counties and cities to adopt development regulations that protect the critical areas required to be designated under RCW 36.70A.170.</p> <p>RCW 36.70A.172(1) requires the inclusion of best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> <p>4. Inclusion of Best Available Science</p> <p>RCW 36.70A.172(1) requires inclusion of the best available science (BAS).</p> <p>Chapter 365-195 WAC outlines recommended criteria for determining which information is the BAS, for obtaining the BAS, for including BAS in policies and regulations, for addressing inadequate scientific information, and for demonstrating “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> <p>WAC 365-195-915 provides criteria for including BAS in the record.</p>	<p>1. Designation of CAs:</p> <p>MVMC 15.40.010(B)</p> <p>2. Definitions of CAs:</p> <p>MVMC 15.40.170(B) and 15.40.010(B)1-4 Please see the accompanying cover letter with regard to a minor amendment to the definition of wetland proposed.</p> <p>3. Protection of CAs:</p> <p>MVMC 15.40.030(A) and (B)</p> <p>4. BAS:</p> <p>MVMC 15.40.030(B) and (F)</p> <p>Was inclusion of BAS documented in the record for the review and any updates to the critical areas regulations?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Location in Text: MVMC 15.40.030(B) and (F)</p>

<p>WETLANDS DEFINITION</p> <p>The definition of wetlands is consistent with RCW 36.70A.030(21) (updated in 2012).</p>	<p>Is the wetland definition consistent with RCW 36.70A.030(21)?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text: MVMC 15.40.170(B)</p> <p>Please see the accompanying cover letter with regard to a minor amendment to the definition of wetland proposed.</p>
<p>WETLANDS DELINEATION</p> <p>Wetlands are delineated using the 1987 Federal Wetland Delineation Manual and Regional Supplements in accordance with WAC 173-22-035 (updated in 2011).</p> <p>See Ecology's Wetland Delineation page and WAC 365-190-090 (updated in 2010) for additional assistance.</p>	<p>Are wetlands delineated using the 1987 Federal Wetland Delineation Manual and Regional Supplements?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text: MVMC 15.40.090(A) and 15.40.120(G) MVMC 15.40.090 is proposed to be amended as described within the accompanying cover letter and draft Ordinance</p>
<p>WETLANDS PROTECTION</p> <p>Policies and regulations protect the functions and values of wetlands. RCW 36.70A.172(1) Counties and cities are encouraged to make their actions consistent with the intent and goals of "protection of wetlands", Executive Order 89-10 as it existed on September 1, 1990.</p> <p>WAC 365-190-090(3) recommends using a wetlands rating system that evaluates the existing wetland functions and values to determine what functions must be protected. Ecology updated its recommended wetlands rating systems effective January 2015. For information on the rating system, see:</p> <ul style="list-style-type: none"> • 2014 Updates to the Washington State Wetland Rating Systems • Washington State Wetland Rating System for Western Washington • Washington State Wetland Rating System for Eastern Washington 	<p>Do the regulations use a rating system to determine wetlands protection?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text: MVMC 15.40.090 (C).</p> <p>Note wetland buffer widths are established under either MVMC 15.40.090(F) or the</p>

<p>For other resources and guidance on protecting wetlands, go to Ecology's GMA and Local Wetland Regulations.</p>	<p>"Managed ecosystem alternative" outlined in MVMC 15.40.110.</p>
<p>CRITICAL AQUIFER RECHARGE AREAS</p> <p>Policies and regulations protect the functions and values of critical aquifer recharge areas. RCW 36.70A.172(1).</p> <p>Policies and regulations protect the quality and quantity of groundwater used for public water supplies. RCW 36.70A.070(1) and WAC 365-196-485(1)(d). (Required if groundwater is used for potable water.)</p> <p>The following references also relate to protection of groundwater resources:</p> <p>RCW 90.44 – Regulation of Public Groundwaters RCW 90.48 – Water Pollution Control (1971) RCW 90.54 – Water Resources Act of 1971 RCW 36.36.020 - Creation of aquifer protection area (1988) WAC 365-190-100 Critical Aquifer Recharge Areas (2010) WAC 173-100 Groundwater Management Areas and Programs (1988) WAC 173-200 Water Quality Standards for Groundwaters of the State of Washington (1990) WAC 365-196-735 Consideration of state and regional planning provisions (list) (2010)</p> <p>The Critical Aquifer Recharge Areas Guidance Document (2005) provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management.</p> <p>Also, consider the following:</p> <ul style="list-style-type: none"> • Prohibiting or strictly regulating hazardous uses in critical aquifer recharge areas (CARAs) and designating and protecting wellhead areas. See Ecology's guidance on Critical Aquifer Recharge Areas. • Limiting impervious surfaces to reduce stormwater runoff, as required under Phase I and II municipal stormwater permits. Ecology's Stormwater Manual for Western Washington (updated in 2012) includes low impact development (LID) related definitions, requirements, and an LID performance standard. See Stormwater Management and Design Manuals on Ecology's web page. • See Stormwater Drainage and Water Quality on page 7 of this checklist for additional LID resources. 	<p>If groundwater is used for potable water, do regulations protect the quality and quantity of ground water?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in text: MVMC 15.40.050(D) and (E)</p> <p>Are the critical aquifer recharge regulations consistent with current mapping of these critical areas?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in text: MVMC 15.40.050</p>

FREQUENTLY FLOODED AREAS

Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. RCW 36.70A.172(1) [WAC 365-196-830](#) provides: "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."

[WAC 365-190-110](#) (updated in 2010) directs counties and cities to consider the following when designating and classifying frequently flooded areas:

- (a) Effects of flooding on human health and safety, and to public facilities and services;
- (b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in **RCW 36.70A.110**;
- (c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;
- (d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;
- (e) Greater surface runoff caused by increasing impervious surfaces.

Classification of and regulations for frequently flooded areas should not conflict with the [Federal Emergency Management Agency \(FEMA\)](#) requirements for the National Flood Insurance Program. See [Ecology's floodplain management assistance, 86.16 RCW, 173-158 WAC](#), and **44 CFR 60**.

Communities that are located on Puget Sound or the Strait of San Juan de Fuca, or have lakes, rivers or streams that directly or indirectly drain to those water bodies, are subject to the National Flood Insurance Program Biological Opinion (BiOp) for Puget Sound (<https://www.fema.gov/media-library/assets/documents/30021>). The biological opinion required changes to the implementation of the National Flood Insurance Program in order to meet the requirements of the Endangered Species Act (ESA) in the Puget Sound watershed. FEMA Region X has developed an implementation plan that allows communities to apply the performance standards contained in the Biological Opinion by implementing: 1) a model ordinance (<https://www.fema.gov/media-library/assets/documents/85339>); 2) a programmatic Checklist (<https://www.fema.gov/media-library/assets/documents/85336>); or 3) on a permit by permit basis (<https://www.fema.gov/media-library/assets/documents/85343>) as long as it can be demonstrated that there is no adverse effect to listed species. Communities have the option of utilizing their CAOs as part of a programmatic response to address the requirements of the biological opinion. FEMA must approve a community's biological opinion compliance strategy.

Additional resources:

RCW 86.12 Flood Control by Counties

RCW 86.16 Floodplain Management

RCW 86.26 State Participation in Flood Control Maintenance

RCW 86.16.041 Floodplain Management Ordinance and Amendments

[WAC 173-158-070](#) Requirements for construction in Special Flood Hazard Areas

Are frequently flooded areas designated and regulated using FEMA and Ecology guidance?

- Yes
- No
- N/A

Location in Text:

MVMC 15.40.060 that cross-references MVMC 15.36

The City amended MVMC Chapter 15.36 following our Community Assistance Visit (CAV) with the Department of Ecology. The copy of MVMC 15.36 that accompanies this checklist is in compliance with FEMA's NFIP requirements.

Are you utilizing your CAO as part of a programmatic response to the BiOp?

- Yes
- No
- N/A

Location in Text:

NA, please see the accompanying information with regard to the City's "Door 2" approach approved through NMFS

<p>DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS</p> <p>The definition of geologically hazardous areas is consistent with RCW 36.70A.030(9) (updated 2012).</p> <p>“Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.</p>	<p>Is the geologically hazardous areas definition consistent with RCW 36.70A.030(9)?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text: MVMC 15.40.170(B) Please see the accompanying cover letter with regard to a minor amendment to the definition of wetland proposed.</p>
<p>PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS</p> <p>Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. RCW 36.70A.172(1) WAC 365-196-830 (2010) provides:” “Protection” in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.”</p> <p>Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. RCW 36.70A.030(9) provides a definition (updated in 2012) and WAC 365-190-120 describes the different types of hazardous areas (2010):</p> <ul style="list-style-type: none"> • Geologically hazardous areas include: <ul style="list-style-type: none"> • seismic hazards • tsunami hazards • landslide hazards, • areas prone to erosion hazards • volcanic hazards • channel migration zones • areas subject to differential settlement from coal mines or other subterranean voids. • Critical facilities, such as hospitals and emergency response centers, hazardous materials storage, etc. should be restricted in hazard zones. <p>The Department of Natural Resource’s Geologic Hazards and the Environment website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness and includes geologic hazard maps.</p>	<p>Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text: MVMC 15.40.070</p>

<p>DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</p> <p>The definition of fish and wildlife habitat conservation areas is consistent with RCW 36.70A.030(5) (updated 2012) and WAC 365-190-030 (updated in 2015). The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: <i>“such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company”</i>.</p>	<p>Is the FWHCA definition consistent with RCW 36.70A.030(5)?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>The definition of Fish and Wildlife Habitat and Conservation Areas is included in MVMC 15.40.010(B)3 and MVMC 15.40.80. The clause shown in italics is proposed to be added to the MVMC – please see the accompanying cover letter and draft Ordinance for additional details.</p>
<p>PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</p> <p>Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. RCW 36.70A.172(1) and RCW 36.70A.030(5) (updated 2012).</p> <p>WAC 365-190-130(4) encourages to local jurisdictions consult WDFW’s Priority Habitat and Species web site. Recent updates include:</p> <ul style="list-style-type: none"> • Priority Habitat and Species maps (updated daily) • Priority Habitats and Species List (updated June 2016) <ul style="list-style-type: none"> • Mazama Pocket Gopher (2011, 2016) • Great Blue Heron (2012) • Western Gray Squirrel (2010) • Water Crossing Design Guidelines (2013) • Stream Habitat Restoration Guidelines (2012) • Shrub-Steppe (2011) • Land Use Planning for Salmon, Steelhead and Trout (2011) • Landscape Planning for Washington’s Wildlife (2009) • Aquatic Habitat Guidelines (2010, 2010, 2014) • Riparian Management recommendations (expected September 2017) <p>Areas “with a primary association with listed species” should be considered per WAC 365-190-130(2)(a). Recent uplistings and delistings are:</p> <ul style="list-style-type: none"> • Uplisting of marbled murrelet to State Endangered – February 4, 2017 • Uplisting of Canada lynx to State Endangered – February 4, 2017 • Peregrine falcon delisted from State Sensitive – February 4, 2017 	<p>Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text</p> <p>Areas are determined under MVMC 15.40.080(B) which links to WAC 365-190-080.</p> <p>Have you reviewed your regulations regarding any changes in species listings?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>a. The peregrine will remain classified as “protected wildlife” under state law (WAC 232-12-011) and will continue to be protected under the federal Migratory Bird Treaty Act.</p> <ul style="list-style-type: none"> • Bald Eagle delisted from State Sensitive - February 4, 2017 <ul style="list-style-type: none"> a. 2011: Downlisted from State Threatened to Sensitive (this ended the requirement to develop Bald Eagle Protection Plans per WAC 232-12-292—a change which many CAOs still don’t reflect). b. 2007: Delisted from federal Threatened (but still covered by the federal Bald and Golden Eagle Protection Act) <p>Also refer to Ecology’s Watershed (WRIA) Plans.</p>	<p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>Guidance for determining Fish and Wildlife Habitat and Conservation Areas is found in MVMC 15.40.080(B)4. MVMC Code Section 15.40.080(C)2.c is proposed to be added/amended to the MVMC – please see the accompanying cover letter and Draft Ordinance for additional details.</p>
<p>ANADROMOUS FISHERIES</p> <p>Policies and regulations for protecting critical areas give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1) is the requirement and WAC 365-195-925 (updated in 2000) lists criteria involved. This requirement applies to all five types of critical areas.</p> <p>WAC 365-190-130(4)(i) recommends sources and methods for protecting fish and wildlife habitat conservation areas, including salmonid habitat. Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington State Department of Fish and Wildlife, the State Recreation and Conservation Office, and the Puget Sound Partnership to designate, protect and restore salmonid habitat. Counties and cities should consider recommendations found in the regional and watershed specific salmon recovery plans (see the Governor's Salmon Recovery Office webpage and the Puget Sound Partnership's Salmon Recovery webpage).</p> <p>Land Use Planning for Salmon, Steelhead and Trout: A land use planner’s guide to salmonid habitat protection and recovery (October 2009) is an excellent resource.</p> <p>The Washington State Recreation and Conservation Office (RCO) website includes information on salmon recovery efforts</p>	<p>Do your regulations give special consideration for anadromous fisheries?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>MVMC 15.40.080 and MVMC 15.40.080(C)3</p>
<p>REASONABLE USE EXCEPTIONS</p> <p>The Critical Areas Ordinance (CAO) allows for “reasonable use” if the CAO would otherwise deny all reasonable use of property. Reasonable use provisions should limit intrusions into critical areas to the greatest extent possible. RCW 36.70A.370 (1991). Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that has already been completed with critical areas review under a previous permit. See Critical Areas Assistance Handbook, p. 37-38.</p>	<p>Do you have reasonable use provisions?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Location in Text:</p> <p>MVMC 15.40.130</p>

<p>FOREST PRACTICES APPLICATION REGULATIONS</p> <p><i>If applicable, regulations for forest practices have been adopted: RCW 36.70A.570</i> (adopted in 2007).</p> <p>RCW 76.09.240, amended in 2011, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.</p>	<p>Have you adopted forest practices regulations?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Location in Text: MVMC 15.18 and see the accompanying letter from DNR transferring jurisdiction to the City</p>
<p>STORMWATER DRAINAGE AND WATER QUALITY</p> <p>Regulations protect water quality and implement actions to mitigate or cleanse drainage, flooding, and storm water run-off that pollute waters of the state, including Puget Sound or waters entering Puget Sound. RCW 36.70A.070(1)</p> <p>Regulations may include :</p> <ol style="list-style-type: none"> Adoption of a stormwater manual consistent with Ecology’s latest manual for Eastern or Western Washington. Adoption of a clearing and grading ordinance – See Municipal Research and Services Center’s Erosion and Sediment Control: Land Clearing and Grading webpage. Adoption of a low impact development (LID) ordinance. Available LID resources include: <ul style="list-style-type: none"> Ecology’s Stormwater Manual for Western Washington (updated in 2012) includes low impact development (LID) related definitions, requirements, and an LID performance standard. See Stormwater Management and Design Manuals on Ecology’s web page. Puget Sound Partnership resource for Information on integrating LID into local codes, July 2012. Ecology’s stormwater webpage has a number of suggestions for low impact development: http://www.ecy.wa.gov/programs/wq/stormwater/municipal/LID/Resources.html Washington Stormwater Center webpage: http://www.wastormwatercenter.org/low-impact/ includes additional suggestions and resources. Provisions for corrective action for failing septic systems that pollute waters of the state. RCW 36.70A.070(1) 	<p>Do you have regulations that protect water quality?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Location in Text: MVMC 13.33.020(41), 13.33.030 and MVMC 15.40.030(F)(2)</p> <p>If required, have you incorporated low impact development standards into your regulations?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in text: MVMC 13.33.070 and 15.40.030(F)(2)</p>

<p>REGULATIONS FOR PROTECTING WATERS OF THE STATE</p> <p>RCW 90.48.020 defines waters of the state. WAC 365-190-130(2) (updated in 2010) – recommends considering designation of all waters of the state, including naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat.</p> <p>Stream types are classified in WAC 222-16-030 (updated in 2006); with field verification, or an alternate system that considers factors listed in WAC 365-190-130(4)(f)(iii) (updated 2010). See http://www.dnr.wa.gov/forest-practices-water-typing to use Washington State Department of Natural Resources (DNR)’s stream typing system.</p> <p>Protect waters of the state by protecting riparian areas by establishing buffers to maintain no net loss of riparian ecosystem functions.</p> <p>Designating areas that risk contaminating or harming shoreline resources including tidelands and bedland suitable for shellfish harvest, kelp and eelgrass beds, forage fish spawning areas.</p>	<p>Do your regulations protect waters of the state?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>Stream types are designated in MVMC 15.40.080(B).</p> <p>Buffer widths are established in MVMC 15.40.080(C) and (D) and under the “managed ecosystem alternative” outlined in MVMC 15.40.110</p>
<p>GOOD IDEAS</p> <p>Non-regulatory measures to protect or enhance functions and values of critical areas may be used to complement regulatory methods. These may include:</p> <ul style="list-style-type: none"> • public education • stewardship programs • pursuing grant opportunities • water conservation • joint planning with other jurisdictions and non-profit organizations • stream and wetland restoration activities • transfer of development rights <p>No net loss of critical area functions and values is a recommended approach for development regulations in WAC 365-196-830(4). If development regulations allow harm to critical areas, they should require compensatory mitigation of the harm.</p> <p>Monitoring and adaptive management is encouraged in WAC 365-195-905(6) to improve implementation of your regulations. Commerce will have a Monitoring chapter in the update to the Critical Areas Assistance Handbook. A draft for public review will be available in May 2017.</p>	<p>Are you using non-regulatory measures to protect critical areas?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Location in Text:</p> <p>NA</p> <p>Do your regulations address no net loss and require compensatory mitigation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Location in Text:</p> <p>Intent of no-net loss is addressed in MVMC 15.40.010, 15.40.080(A), 15.40.090(A) and 15.40.110(A)</p> <p>Compensatory mitigation is required for wetlands in MVMC 15.40.090(G)</p> <p>Do you have a monitoring and</p>

adaptive management program for your CAO?

Yes

No

Location in Text:

Monitoring is required in MVMC

15.40.030(P) and 15.40.120(H).

Adaptive management is specifically required under MVMC 15.40.030(B)4.b and 15.40.030(F)4.



**DETERMINATION OF NON-SIGNIFICANCE
& NOTICE OF PUBLIC HEARINGS
FILE NOs: CA17-007**

DESCRIPTION OF PROPOSED ACTION: The City of Mount Vernon is considering code amendments to portions of Mount Vernon Municipal Code Chapter 15.40, Critical Areas. The proposed amendments include: the definition of wetlands has the words 'typically' added and one instance of 'do' replaced with 'may', the wetland delineation requirements have been clarified, requirements pertaining to bald eagles has been removed, and a definition for 'Fish and Wildlife Habitat Conservation Areas' has been added. These amendments are being made to ensure compliance with RCW 36.70A.130(4).

LOCATION: this is a non-project action that would apply city-wide.

APPLICANT & LEAD AGENCY: City of Mount Vernon, Development Services Department

The lead agency for this proposal has determined that the proposed amendments will not have a probable adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

PUBLIC HEARINGS: Public hearings to consider the above-described proposed changes to the referenced MVMC sections are scheduled before the Mount Vernon Planning Commission at 6 p.m. on **Tuesday, July 18, 2017**; and before the City Council at 7 p.m. on **Wednesday, July 26, 2017**. Both hearings will be held at the Police and Court Campus, 1805 Continental Place, Mount Vernon.

Environmental Determination Comment Process: Comments on the environmental determination must be received in writing on or before **July 14, 2017** (14 days from the date of issuance). Comments received within the 14 days will be reviewed and considered by the Community & Economic Development Department. Those persons wishing to submit comments will receive a response from the Responsible Official prior to the end of the SEPA appeal period.

Environmental Determination Appeal Process: Appeals of the environmental determination must be filed in writing on or before 5 PM **July 24, 2017** (10 days following the 14 day comment period).

Appeals must be filed in writing together with the required \$100.00 application fee with: Hearing Examiner, City of Mount Vernon, P.O. Box 809, Mount Vernon, WA 98273. Appeals to the Examiner are governed by City of Mount Vernon Municipal Code Section 15.06.215. Additional information regarding the appeal process may be obtained from the City of Mount Vernon Development Services Department, (306) 336-6214.

CONTACT PERSON: Rebecca Lowell, Senior Planner
City of Mount Vernon
Development Services Department
P.O. Box 809 / 910 Cleveland Avenue
Mount Vernon WA 98273
Telephone - 360-336-6214; Facsimile - 360-336-6299

The application and supporting documentation are available for review at the Development Services Department located at City Hall. Copies will be provided upon request at the cost of reproduction. If you wish to comment on the proposed amendments, you may provide verbal or written comment at the public hearings. You may also provide signed, written comments until 5 p.m. on the day before the hearing to the contact person listed above.

SEPA RESPONSIBLE OFFICIAL: Rebecca Lowell, Senior Planner

Issued: June 28, 2017

Published: July 1, 2017

SENT TO: SEPA REGISTER, DOE, COE, COMMERCE, CNG, WDFW, DNR, DIKE AND DRAINAGE DISTRICTS (as applicable), DOT, FRONTIER, FRONTIER NW, DAHP, NW CLEAN AIR AGENCY, PORT OF SKAGIT COUNTY, PSE, SAMISH TRIBE, SCOG, SKAGIT COUNTY PDS, PUD #1, SKAGIT RIVER SYSTEM COOPERATIVE, SKAGIT RIVER SYSTEMS, SVC, SKAT, SWINOMISH TRIBE, AND UPPER SKAGIT TRIBE

PLEASE INCLUDE THE PROJECT NUMBER WHEN CALLING FOR PROPER FILE IDENTIFICATION

From: [COM GMU Review Team](#)
To: [Lowell, Rebecca](#)
Cc: [Andersen, Dave \(COM\)](#)
Subject: 23860, City of Mount Vernon, Expedited Review Granted, DevRegs
Date: Thursday, July 13, 2017 7:47:22 AM

Dear Ms. Lowell:

The City of Mount Vernon has been granted expedited review for the: Proposed Critical Areas Code is being amended to comply with State requirements per RCW 36.70A.130(4). Specifically, the definition of wetlands has the words 'typically' added and one instance of 'do' replaced with 'may', removing requirements pertaining to bald eagles, and adding a definition for 'Fish and Wildlife Habitat Conservation Areas'. This proposal was submitted for the required state agency review under RCW 36.70A.106.

As of receipt of this email, the City of Mount Vernon has met the Growth Management Act notice to state agency requirements in RCW 36.70A.106 for this submittal. For the purpose of documentation, please keep this email as confirmation.

If you have any questions, please reviewteam@commerce.wa.gov



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

June 28, 2017

Rebecca Lowell
Senior Planner
City of Mount Vernon
Post Office Box 809
Mount Vernon, Washington 98273

Dear Ms. Lowell:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

City of Mount Vernon - Proposed Critical Areas Code is being amended to comply with State requirements per RCW 36.70A.130(4). Specifically, the definition of wetlands has the words 'typically' added and one instance of 'do' replaced with 'may', removing requirements pertaining to bald eagles, and adding a definition for 'Fish and Wildlife Habitat Conservation Areas'. These materials were received on June 28, 2017 and processed with the material ID # 23860. Expedited Review is requested under RCW 36.70A.106(3)(b).

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment requesting expedited review, then we have forwarded a copy of this notice to other state agencies for expedited review and comment. If one or more state agencies indicate that they will be commenting, then Commerce will deny expedited review and the standard 60-day review period (from date received) will apply. Commerce will notify you by e-mail regarding of approval or denial of your expedited review request. If approved for expedited review, then final adoption may occur no earlier than fifteen calendar days after the original date of receipt by Commerce. Please remember to submit the final adopted amendment to Commerce within ten days of adoption.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Dave Andersen (509) 434-4491 or Paul Johnson (360) 725-3048.

Sincerely,

Review Team
Growth Management Services

From: [COM GMU Review Team](#)
To: [Lowell, Rebecca](#)
Subject: Acknowledgement Letter City of Mount Vernon Material ID_23860
Date: Wednesday, June 28, 2017 2:47:21 PM
Attachments: [AckLetterExp 6-17.pdf](#)

Attached is the acknowledgement letter regarding: Proposed Critical Areas Code is being amended to comply with State requirements per RCW 36.70A.130(4). Specifically, the definition of wetlands has the words 'typically' added and one instance of 'do' replaced with 'may', removing requirements pertaining to bald eagles, and adding a definition for 'Fish and Wildlife Habitat Conservation Areas'.

For more convenient and faster service please contact the Review Team at reviewteam@commerce.wa.gov or call 360.725.4047 if you have any questions.

Please retain this letter for your records

SKAGIT PUBLISHING
C/O ISJ PAYMENT PROCESSING CENTER
PO BOX 1570
POCATELLO ID 83204-1570
(360)424-3251

EXHIBIT C

ORDER CONFIRMATION

Salesperson: Jeanette Kales

Printed at 06/28/17 11:55 by jka30

Acct #: 210458

Ad #: 1639014

Status: N

CITY OF MOUNT VERNON - LEGALS
PO BOX 809
MOUNT VERNON WA 98273

Start: 07/01/2017 Stop: 07/01/2017
Times Ord: 1 Times Run: ***
STDS 1.00 X 17.85 Words: 454
Total STDS 18.00
Class: 0001 LEGAL NOTICES
Rate: CIMVE Cost: 189.90
Affidavits: 1

Contact:

Phone: (360)336-6214

Fax#: (360)336-6283

Email: sandy@mountvernonwa.gov

Agency:

Ad Descrpt: SVH-1639014

Given by: *

Created: jka30 06/28/17 11:47

Last Changed: jka30 06/28/17 11:55

PUB ZONE EDT TP START INS STOP SMTWTFS
SVH A 97 W 07/01/17 1 07/01/17 SMTWTFS
SVWN A 97 W 07/01/17 1 07/01/17 SMTWTFS

AUTHORIZATION

Under this agreement rates are subject to change with 30 days notice. In the event of a cancellation before schedule completion, I understand that the rate charged will be based upon the rate for the number of insertions used.

Name (print or type)

Name (signature)

(CONTINUED ON NEXT PAGE)

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EXHIBIT C

ORDER CONFIRMATION (CONTINUED)

Salesperson: Jeanette Kales

Printed at 06/28/17 11:55 by jka30

Acct #: 210458

Ad #: 1639014

Status: N

**CITY OF
MOUNT VERNON
DETERMINATION OF
NON-SIGNIFICANCE
& NOTICE OF
PUBLIC HEARINGS
FILE NOS: CA17-007**

DESCRIPTION OF PROPOSED ACTION: The City of Mount Vernon is considering code amendments to portions of Mount Vernon Municipal Code Chapter 15.40, Critical Areas. The proposed amendments include: the definition of wetlands has the words 'typically' added and one instance of 'do' replaced with 'may'; the wetland delineation requirements have been clarified, requirements pertaining to bald eagles has been removed, and a definition for 'Fish and Wildlife Habitat Conservation Areas' has been added. These amendments are being made to ensure compliance with RCW 36.70A.130(4).

LOCATION: this is a non-project action that would apply city-wide.

APPLICANT & LEAD AGENCY: City of Mount Vernon, Development Services Department

The lead agency for this proposal has determined that the proposed amendments will not have a probable adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

PUBLIC HEARINGS: Public hearings to consider the above-described proposed changes to the referenced MVMC sections are scheduled before the Mount Vernon Planning Commission at 6 p.m. on Tuesday, July 18, 2017; and before the City Council at 7 p.m. on Wednesday, July 26, 2017. Both hearings will be held at the Police and Court Campus, 1805 Continental Place, Mount Vernon.

Environmental Determination Comment Process: Comments on the environmental determination must be received in writing on or before **July 14, 2017** (14 days from the date of issuance); **Environmental Determination Appeal Process:** Appeals of the environmental determination must be filed in writing on or before **5 PM July 24, 2017** (10 days following the 14 day comment period). Appeals must be filed in writing together with the required \$100.00 application fee with: Hearing Examiner, City of Mount Vernon, P.O. Box 809, Mount Vernon, WA 98273. Appeals to the Examiner are governed by City of Mount Vernon Municipal Code Section 15.06.215.

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The application and supporting documentation are available for review at the Development Services Department located at City Hall. Copies will be provided upon request at the cost of reproduction. If you wish to comment on the proposed amendments, you may provide verbal or written comment at the public hearings. You may also provide signed, written comments until 5 p.m. on the day before the hearing to the contact person listed above.

SEPA RESPONSIBLE OFFICIAL: Rebecca Lowell,
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