



City of Kenmore - 18120 68th Avenue NE - Kenmore, WA 98028
Phone: 425-398-8900 - E-mail: cityhall@kenmorewa.gov

City of Kenmore
City Council Meeting Regular Agenda
7:00 p.m., Monday, June 10, 2019
Kenmore City Hall, Council Chambers
18120 68th Ave. NE, Kenmore, WA 98028

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call the City Clerk at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Council agendas are also available on our website at www.kenmorewa.gov.

I. CALL MEETING TO ORDER

II. ROLL CALL

III. FLAG SALUTE

IV. AGENDA APPROVAL

V. PRESENTATION

- A. Report on the 2019 Legislative Session - Shelly Helder and Briahna Murray of Gordon Thomas Honeywell Governmental Affairs
[Agenda Item Presentation](#)
- B. 2018 Officer of the Year Jeff Durrant, MPO - Chief Horvath

VI. PROCLAMATION

- A. Ted Christensen Day - June 14, 2019
[Proclamation](#)

VII. CITIZEN COMMENTS

- A. This is an opportunity to express your views on issues that are important to you and to the community. Please limit your comments to three (3) minutes.

VIII. CONSENT AGENDA

- A. Authorize the City Manager to Sign an Interlocal Agreement with the City of Marysville for the Rental of Outdoor Video Services for Movies at the Square

Events

[Agenda Item](#)

- B. Authorize the City Manager to Execute Contract 19-C2061 between the Washington State Parks and Recreation Commission and City of Kenmore
[Agenda Item](#)
- C. Ordinance 19-0487 Amending Section 3.65.040 of the Kenmore Municipal Code for the Multifamily Tax Exemption
[Agenda Item](#)
- D. Receive and File the 2018 Kenmore Waterfront Activities Annual Report
[Agenda Item](#)

IX. PUBLIC HEARING

- A. Ordinances 19-0488, 19-0489 and 19-0490 Amending the City's Critical Area Regulations and Shoreline Master Plan - Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner
[Agenda Item](#)
[Attachment 1](#)
[Attachment 2](#)
[Attachment 3](#)
[Attachment 4](#)

X. BUSINESS AGENDA

- A. Ordinance 19-0488 Amending Chapter 18.55, Critical Areas, of the Kenmore Municipal Code; Repealing Division II of Title 16, Flood Damage Prevention, of the Kenmore Municipal Code; Amending Chapter 18.20, Definitions, of the Kenmore Municipal Code; Amending Sections 18.30.190 and 18.40.030 of the Kenmore Municipal Code; and Providing an Effective Date - Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner
[Agenda Item](#)
[Attachment 1](#)
[Attachment 2](#)
[Attachment 3](#)
[Attachment 4](#)
- B. Ordinance 19-0489 Amending the Shoreline Sub-Element of the Comprehensive Plan; Revising Figure LU-12, the Shoreline Environment Designations Map; and Providing an Effective Date - Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner
- C. Ordinance 19-0490 Revising Division 1 of Title 16 of the Kenmore Municipal Code Entitled Shoreline Management; Revising the Shoreline Environment Designations Map; and Providing an Effective Date - Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner

- D. Ordinance 19-0486 Approving a Non-Exclusive Dual Franchise Agreement with Puget Sound Energy, Inc. - Nancy Ousley, Assistant City Manager
[Agenda Item](#)
[PSE Attachment 1](#)
[PSE Attachment 2](#)
[PSE Attachment 3](#)
[PSE Attachment 4](#)
[PSE Attachment 5](#)
[PSE Attachment 6](#)
[PSE Attachment 7](#)
[PSE Attachment 8](#)
[PSE Presentation](#)
[City Presentation](#)
- E. Contract 19-C2043 Memorandum of Understanding with Puget Sound Energy, Inc. on Performance and Reliability Reporting - Nancy Ousley, Assistant City Manager
- F. Hangar Building Facility Use Policy - Rob Karlinsey, City Manager
[Agenda Item](#)

XI. STAFF REPORT

- A. City Communications - Flags - Dawn Reitan, City Attorney
- B. Affordable Housing Panel
[Memorandum](#)

XII. COUNCILMEMBER REPORTS & COMMENTS & INITIATIVES

XIII. ADJOURNMENT

Upcoming Meetings:

- A. Monday, June 17, 2019 - Regular Council Meeting
Tuesday, June 18, 2019 - 6:00 p.m. to 7:30 p.m. Post Session Event w/ 46th LD
Monday, June 24, 2019 - Plan to Cancel Meeting
Monday, July 8, 2019 - 6:00 p.m. Presentation for Senator Frockt at Rhododendron Park and 7:00 p.m. Council Meeting
Monday, July 15, 2019 - Regular Council Meeting
Monday, July 22, 2019 - Regular Council Meeting
Monday, July 29, 2019 - Possible Council Meeting
August, 2019 - Recess - No Council Meetings

Subject/Topic: Report on the 2019 Legislative Session: Gordon Thomas Honeywell Governmental Affairs Proposed Council Action/Motion: Presentation and Discussion	For Council Meeting Agenda of: 10 June 2019 Department: Executive Prepared by: Nancy Ousley, Assistant City Manager <u>Initial & Date</u> Approved by Department Head: <u>NKO 30 May 2019</u> Approved by City Attorney: _____ Approved by Finance Director: _____ Approved by City Manager: <u>[Signature]</u> Exhibits/Attachments: 1. Gordon Thomas Honeywell 2019 Legislative Session Report 2. City of Kenmore 2019 Legislative Priorities
<u>INFORMATION/BACKGROUND:</u> The City of Kenmore contracts with Gordon Thomas Honeywell Governmental Affairs for state government affairs representation and advocacy. Shelly Helder and Briahna Murray will brief the Council on the 2019 Legislative Session and the results related to City Legislative Priorities. Kenmore is in the 46th Legislative District, which is represented in the State Legislature by Senator David Frockt, Representative Gerry Pollet and Representative Javier Valdez. The Cities of Kenmore and Lake Forest Park will host a Post Session 46th District Delegation event on June 18 at Kenmore City Hall.	
<u>FISCAL CONSIDERATION:</u> The adopted State budget includes funding for three City of Kenmore Parks: Twin Springs (\$155,000); Squires Landing (\$500,000) and Log Boom (\$450,000). \$4 Million was transferred to the Sammamish Bridge project from funding previously secured for the SR 522 West B project.	
<u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> 1. Focus and emphasize multimodal transportation safety 2. Implement Walkways and Waterways projects 3. Increase and preserve options for affordable housing 6. Seek opportunities to complete a successful Lakepointe project	



**City of Kenmore
Government Relations Report
2019 Legislative Session**

Dear City of Kenmore,

It was a pleasure to advocate for Kenmore in Olympia for the 2019 legislative session; the 10th session of our partnership. The 2019 session was a long, 105-day session. We are pleased to share that after many months of hard work and late nights, the city was successful in advancing its legislative priorities, securing \$155,000 for Twin Springs Park, \$500,000 for Squire's Landing and \$405,000 for Log Boom Park! These successes would not have been possible without an active and supportive legislative delegation: Senator David Frockt, Representative Gerry Pollet and Representative Javier Valdez. We encourage the city to express great thanks to the delegation.

Now that session is officially over, attention has turned to implementing the actions of the 2019 Legislature and preparing for the second-year of the two-year legislative biennium – i.e. the 2020 legislative session. Democrats will retain the majority, and the Legislature will consider adjusting their biennial budgets. The 2020 session will be followed by the November 2020 elections, a Presidential election year where Democrats will attempt to retain their strong majority.

The ever-changing political climate requires adaptive and consistent advocacy. We look forward to working with the city throughout the interim months to continue advancing the City of Kenmore priorities and preparing for the 2020 legislative session.

Thank you,

Shelly Helder & Briahna Murray

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Overview of the 2019 Legislative Session

The 2019 legislative session was the first year of the two-year legislative biennium and scheduled to be a “long” session; lasting 105 days. The Legislature completed its work on-schedule, adjourning at midnight on the 105th day. The second year of the legislative biennium, 2020, will be a “short” session and will be scheduled to last 60 days.

Both the House and the Senate had stronger Democrat majorities than in recent history. The House was comprised of 57 Democrats and 41 Republicans and the Senate had 28 Democrats and 21 Republicans. With these strong majorities and control of the Governor’s Mansion, Democrats set an ambitious agenda focused on reforming the state’s mental health system, establishing new environmental policies, addressing housing affordability, correcting the state’s regressive tax structure, and more.

There were 2,208 bills introduced during the first year of the biennium and 481 passed the Legislature, or roughly 22%, which is slightly higher than the historical rate. In addition to all the bills the Legislature considered, they passed 3 biennial budgets: operating, capital and transportation. Below is a summary of each budget:

Operating Budget

The final operating budget is for \$52.4 billion from near general fund accounts, an increase of roughly 20% from the 2017-19 budget of \$43.7 billion. The budget is based on five new revenue sources: 1) modification of Real Estate Excise Tax rates based on the sale price of the property ([SB 5998](#)); 2) removing a preferential business and occupation tax rate for international investment companies ([SB 6016](#)); 3) replacing the out-of-state sales tax exemption with a refund mechanism ([SB 5997](#)); 4) increasing the B&O tax rate for travel agents ([SB 6004](#)) and 5) raising the B&O tax rate for large financial institutions ([HB 2167](#)). In addition, the Legislature increased the B&O tax rate for certain business categories and dedicated the revenues to higher education ([HB 2158](#)).

Much of the increased revenue is dedicated to public employee salary and benefit increases, including a new insurance benefit for part-time school workers who will receive full medical coverage if they work at least 630 hours per year. The Legislature also made significant investments in the state’s mental health care system from both the operating and capital budgets. Increased appropriation from the operating budget funds contracts with private hospitals, nursing homes, and other facilities to provide inpatient care and discharge placements.

Capital Budget

The capital budget invests \$4.9 billion in state agency construction projects, grant and loan programs for local governments, and in K-12 school and higher education facility construction. In addition, \$3.8 billion is re-appropriated for projects previously authorized but not yet completed. \$96.5 million for local and community projects awarded through competitive programs and direct legislative grants. Significant investments within the capital budget include: \$175 million for the Housing Trust Fund, \$120 million for community based behavioral health beds, \$154 million for state mental health facilities, and \$974 million for higher education facilities.

The capital budget also includes \$750,000 for the State Parks and Recreation Commission to reconfigure the Saint Edward State Park Gymnasium Annex as an Environmental Education and Research Center. State Parks will manage the solicitation of design and construction services for renovation of the annex interior spaces and immediate surrounding outdoor areas.

The city supported the Northshore Senior Center's request for \$500,000 from the capital budget and that funding was included in the final version. A total of \$70 million in bond capacity is reserved for a supplemental capital budget.

Transportation Budget

The final transportation budget includes a very small list of new projects. This is because actual gas tax revenue ended up being less than projected and the Legislature was only able to fund new projects through a one-time \$50 million transfer of Hazardous Substance Tax revenue out of the Model Toxics Control Act Account.

Discussions of a new transportation revenue package began but were stymied, in part, by [Initiative 976](#) which would limit car tab fees to a flat \$30 and undermine the state's transportation revenue structure. The Legislature chose not to pass the Initiative and not to consider an alternative option, which means I-976 will be on the November ballot for voters to reject or accept.

2019-21 Legislative Priorities

Propel Lakepointe Development

The City of Kenmore supported the Association of WA Cities in their effort to pass legislation that would help spur development of the Lakepointe property. [Senate Bill 5564](#), sponsored by [Senator Sharon Brown](#) (R-Kennewick), establishes a competitive program through the Department of Commerce for local jurisdictions to receive annual awards for the purposes of public improvement projects that will spur private investment and increase the local property tax values and sales tax revenues within a specific area. This proposal is similar to the Local Infrastructure Financing Tool (LIFT) and Local Revitalization Financing (LRF) programs that are no longer eligible for new awards. The growth in local sales and property tax and state sales tax within the pre-designated area is then credited against the state sales tax to be used toward the local government award. Similar value capture financing tools are used in states across the nation to spur private development in an otherwise languished area.

The bill had a public hearing in the Senate Committee on Financial Institutions, Economic Development & Trade and City Manager Rob Karlinsey traveled to Olympia to testify at the hearing. The Association of Washington Cities, the Washington Economic Development Association and several entities from the Tri-Cities region also testified in support. The bill advanced out of the policy committee but only after being severely amended. The amended version limits the annual state contribution to \$4,965,000 until fiscal year 2022 at which time the state's contribution may be increased by the percentage increase in the assessed value of all taxable property in the state from calendar year 2019 through calendar year 2020. Projects would still be awarded on a competitive basis; however, the awards are limited to 3 projects, one in each of the following categories: \$1 million for 20 years, \$880,000 for 25 years, \$665,000 for 30 years. Not subject to the 3 projects listed above, \$2.5 million is set aside for awards to rural jurisdictions or designated opportunity zones. The bill was referred to the Ways & Means committee where it received a

public hearing on April 3rd. GTHGA testified at the public hearing and focused on the fiscal impact to the state, listing the types of tax increases the state would see from a development like Lakepointe.

The bill did not advance out of the committee, though the Chair did indicate a willingness to work with interested communities to find a workable path forward. The concern remains, from Senator Frock and others, that a tool of this nature would dedicate state resources to assist development that would otherwise occur. Crafting the legislation to capture only developments that would not occur, but for the state's partnership, will be the task ahead. The Association of Washington Cities has indicated an interest in changing strategies and requesting a new round of investment in the existing LIFT/LRF proposals that have capped their state contribution levels.

68th Avenue NE Pedestrian & Bicycle Safety / Sammamish Bridge Funding Transfer

The city requested \$450,000 from the state transportation budget toward safety improvements along 68th Avenue NE from NE 182nd to 61st Place NE. Heading into the 2019 session we knew there would be limited opportunity for transportation funding given the declining gas tax and the fiscal pinch in the 19-21 biennium.

Despite the limited availability of funding, for the first time, the House and Senate transportation budget writers used forms to solicit project requests from legislators. We worked with the 46th legislative delegations to submit the House and Senate forms and formally made the request for the \$450,000. When the House transportation budget proposal was released, the city's project was allocated \$450,000! Unfortunately, the Senate transportation budget proposal did not include funding for any new projects, including the Kenmore request.

Throughout the remaining weeks of session, we connected with each member of the city's delegation to inform them of how the city's project fared in each budget and encourage them to talk to the transportation budget writers in their caucus. We learned that Senate budget writers were hesitant to include funding for any new projects in a biennial budget because of the uncertain outcome of I-976 and the potential for it to devastate the state's transportation revenue structure. In light of this concern, budget writers found a compromise by allocating a significantly reduced dollar amount to new projects and cutting funding to several projects that would have received funding through the House proposal. Unfortunately, the 68th Avenue project was on the list that was cut, but only because the delegation had to prioritize requests, and the city had previously indicated a transfer of funds from the 522 West B Improvements to the Sammamish Bridge project had a higher priority.

The previously enacted transportation budget had \$4 million allocated to State Route 522 West B Improvements in the 2019-21 biennium. By working with the city's delegation, and in particular Rep. Valdez, the \$4 million previously dedicated to 522 was transferred to Sammamish Bridge for use in the 2019-21 biennium. Combined with a carryover of \$3 million in un-used funding from the existing biennium, the 2019-21 biennium now has \$11 million dedicated to the Sammamish Bridge project. There is still \$8 million for the State Route 522 Improvements in the 2021-23 biennium.

Twin Springs Park

The City requested \$150,000 from the state's capital budget to perform minimal improvements at Twin Springs Park to make it available to the public. Over the previous legislative interim, GTHGA coordinated

for Senator David Frockt to tour the park so he would have a visual of the project site and the city's planned improvements. GTHGA also worked with city staff to complete the House and Senate capital budget funding request forms, the formal mechanism used to submit a funding request from the state capital budget. These forms were finalized and submitted to the city's legislative delegation who then submitted the forms to capital budget writers and staff.

Throughout the session GTHGA touched base with the city's delegation and capital budget staff to ensure there were no lingering questions and that the city's project remained top of mind. When the House capital budget proposal was released, there was no funding included for the city's project. When the Senate capital budget proposal was released, the list included \$155,000. The additional \$5,000 was included to cover the Department of Commerce 3% administrative fee that would otherwise come out of the city's project award. GTHGA included the 3% fee in the funding request amount so the city would receive the full \$150,000.

When the final capital budget was released, **\$155,000 for Twin Springs Park** was included! This would not have been possible with the leadership from the city's legislative delegation; in particular, Senator David Frockt.

Lake Washington Loop Trail

In addition to the funding request for Twin Springs Park, the city submitted a request for \$2 million from the capital budget toward pedestrian and bicycle improvements along the Kenmore portion of the Lake Washington Loop Trail. Due to the size of the request and Senator Frockt's role as the lead capital budget writer for the Senate, this request was only submitted in the Senate. Unfortunately, there was no funding allocated to this project in the capital budget. There were over \$770 million worth of local community projects (like this one) submitted and only \$163 million was allocated statewide. Despite not receiving funding this year, the groundwork was laid for the second year of the biennium and we will pursue the funding in the 2020 session.

Washington Wildlife & Recreation Program (WWRP) and Aquatic Land Enhancement Account (ALEA)

The City of Kenmore supported funding for the WWRP and ALEA grant programs. The city competed for grants from both programs for improvements to Squire's Landing Waterfront and Log Boom Park. In order for Squire's Landing to receive some funding, \$115 million would have needed to be dedicated to WWRP. While the Governor's budget proposal included this funding level, neither the House (\$80 million) nor the Senate (\$90 million) capital budget included sufficient funding for Kenmore to receive a grant through WWRP. However, the ALEA grant program contained a shorter list and a smaller dollar figure. The ALEA program ranked 15 projects and requested a total of \$6.6 million. The city's projects were ranked 12th (Squires) and 15th (Log Boom) on the ALEA list. The House capital budget proposal included \$4.3 million toward ALEA which would not have been sufficient for the city to receive any funding. The Senate capital budget proposal funded the entire \$6.6 million request which allowed for funding of the city's projects. When the capital budget had a public hearing in the Senate Ways & Means committee, GTHGA testified on the city's behalf and thanked the capital budget writers for fully funding the ALEA program and urged them to hold to that funding level throughout negotiations. The final capital budget includes the full \$6.6 million for ALEA which means **\$500,000 for Squires Landing** and **\$405,112 for Log Boom Park!**

Policy Manual Issues

In addition to advancing the city's top legislative priorities, GTHGA devoted time to working on issues that uniquely impact the city. Below is a brief summary of a few issues that arose this session, some of which are likely to return in the 2020 session.

Local Control on Asphalt Plant Regulations

Continuing efforts from previous legislative sessions, [Representative Gerry Pollet](#) introduced [House Bill 1637](#). The bill was jointly sponsored by Representative Javier Valdez and made several revisions to the law to address airborne nuisances experienced by transitory populations near public space. The bill was intended to address the noxious odors from the nearby asphalt plant which negatively impact some Kenmore residents and users of the Burke Gilman Trail. The bill had a public hearing in the House committee on Civil Rights & Judiciary and Assistant City Manager, Nancy Ousley, traveled to Olympia to testify in support of the legislation. Ultimately, the bill was not voted out of committee due to concerns raised by the Department of Ecology (DOE) and Puget Sound Clean Air Authority (PSCAA) about the potential unintended consequences. Representative Pollet expressed a desire to continue working with DOE, PSCAA and the City to find a solution that works for everyone.

Minimum Density Mandates

A small but vocal group of legislators proposed preempting local control over land use to mandate actions to increase density. They argued that local zoning is one of the causes of the lack of affordable housing throughout the state. Cities, including the City of Kenmore, pushed back on this assertion, arguing that many cities have up zoned ideal areas for growth that are near transit and other services; however, the private market has not built out those areas for other reasons. Furthermore, one of the primary reasons that private development does not occur in ideal locations is because local infrastructure (necessary transportation improvements, water, sewer, etc.) are not adequately funded. And yet, the Legislature has continually swept the Public Works Assistance Account – a key revenue source for local infrastructure projects.

This debate occurred throughout the length of the legislative session, and finally culminated in the passage of a version of [House Bill 1923](#) that incentivizes, rather than mandates, cities to accept density. Under the bill, cities with a population over 20,000 that are planning to take at least two actions to increase density are eligible to apply for a grant of up to \$100,000. The actions listed in the bill include cluster zoning, loosening regulations around ADUs, adopting planned actions, increasing density near light rails, adopting increases in categorical exemptions, adopting a form-based code, and more. Whether a city has already taken some of these actions, it is encouraged that cities review the list of actions in the bill carefully to see whether any further actions would best meet the needs of the community.

Additionally, cities are encouraged to develop a Housing Action Plan and are eligible to receive up to \$100,000 to develop that plan. The Washington Center for Real Estate Research at the University of Washington is tasked with producing a report every two years that compiles housing supply and affordability metrics for each city with a population greater than 10,000. The first report will be completed by October 22, 2024 and will also outline how much cities utilize the incentives/grant funding provided for in the bill. Finally, the bill does include one minor mandate to minimum residential parking requirements by municipal zoning ordinances for housing units constructed within one quarter of a mile

of frequent transit service after July 1, 2019. If cities do not take advantage of the incentives in House Bill 1923, it is likely that in future years the Legislature will be more motivated to impose mandates on cities.

Additionally, the Legislature had a robust discussion around the local regulation of accessory dwelling units (ADUs). The state last updated its ADU statute in the early 1990s. A thinktank organization, Sightline Institute, brought forward legislation that would revise the 1990s statute to mandate that City's loosened regulations around the development of accessory dwelling units. They argued that increasing ADUs would allow neighborhoods to increase density, provide more housing supply and meet the region's affordable housing needs. Specifically, [House Bill 1797](#) and [Senate Bill 5812](#) as originally drafted, would have removed cities' authority to require on-site parking, that an owner occupy either the main home or the ADU, height limitations, square footage limitations, utility hook-up fees, impact fees, and more. Throughout the legislative session, the Association of Washington Cities was joined by many other cities, including the City of Kenmore, to oppose this preemption of local control. However, there were a handful of local elected officials that testified in support of the bill indicating that a state law preempting city authority would provide councils with the political cover to respond to NIMBYs ("not in my back yard") in local neighborhoods. Throughout the legislative process, both the House and Senate versions of the bill were amended multiple times. Specifically, there were multiple amendments offered to grandfather jurisdictions that have more recently updated their local ADU ordinance. However, even with the grandfather clause, GTHGA and AWC continued to raise concern that the bill preempted local control. The Legislature chose not to pass the bill into law prior to the end of the 2019 legislative session. It is anticipated that this debate will continue into 2020 legislative session.

Affordable Housing

After two legislative sessions of advocacy, the Legislature approved [House Bill 1406](#) which allows local jurisdictions to impose a credit against the state sales tax to fund affordable housing. The bill requires the City of Kenmore to take action within the next 6-12 months in order to take advantage of this new revenue source. The final version of the bill authorizes cities and counties to each impose a .0073 credit against the state sales tax (for a combined total of .0146). A credit against the state sales tax is not an increase in the state sales tax but rather is state sales tax revenue that is redirected from the state to the city or county. If a city chooses not to impose its .0073 credit against the state sales tax within 12 months of the effective date of the bill, then the county may impose that credit amount instead – i.e. this credit functions as a "use it or lose it." Similarly, if the county chooses not to impose the county's portion of the .0073 credit within 12 months, then the city may impose that credit amount instead. However, if a city has imposed a local tax to fund affordable housing (property or sales tax levy), then the city may impose the county's portion of the .0073 credit regardless of whether the county would like to utilize it or not. The Legislature included this provision to incentivize more cities to pursue local housing levies. If a city does not have a local tax in place but would like to impose one to access the additional sales tax credit, the city must pass a resolution within 6 months of the effective date of the bill indicating its intent to pass a local tax and must impose a local tax within 12 months of the effective date of the bill. The credit against the state sales tax lasts for 20 years after the jurisdiction first imposes the tax. The revenue generated by the credit may be bonded against to be used for acquiring, rehabilitating, or constructing affordable housing, include new units of affordable housing within an existing structure or facilities providing supportive housing services to individuals with mental or behavioral disorders; or operations and maintenance costs of new units of affordable or supportive housing. Housing and services may only be provided to persons whose income is at or below 60 percent of the county median income. A county or

city may enter into an interlocal agreement with one more other counties, cities, or housing authorities to provide affordable or supportive housing.

The Legislature considered, but did not adopt, [House Bill 1590](#), which would have authorized counties and cities to councilmanically increase the sales tax by .01 percent to fund affordable housing; current law requires jurisdictions to seek voter approval prior to imposing this tax. This is the third legislative session where a bill along these lines has been brought forward for consideration. Consistent with previous legislative sessions, a handful of jurisdictions within King County expressed concerns with the proposal. The bill would have allowed King County to increase the sales tax in unincorporated and incorporated portions of the County and collect and spend the funds without being statutorily required to consult or include cities in how or where the funds were expended. East King County cities raised concerns with increasing the sales tax, the collection of the revenue by King County, the lack of requirement that the County equitably spend the revenue collected, and more. While there were not the necessary votes to advance the bill out of the House of Representatives, this legislation will likely return next session. There is a great deal of pressure from cities and counties in other areas of the state to remove the voter approval requirement to meet affordable housing needs throughout the state.

Passenger Only Ferry Study

The budget includes \$350,000 for the Puget Sound Regional Council to conduct a study of new passenger ferry service to better connect communities throughout the 12 county Puget Sound region. The study must assess potential new routes, identify future terminal locations, and provide recommendations to accelerate the electrification of the ferry fleet. The study must identify future passenger only demand throughout Western Washington, analyze potential routes and terminal locations on Puget Sound, Lake Washington, and Lake Union with an emphasis on preserving waterfront opportunities in public ownership and opportunities for partnership. The study must determine whether and when the passenger ferry service achieves a net reduction in carbon emissions including an analysis of the emissions of modes that passengers would otherwise have used. The study must estimate capital and operating costs for routes and terminals. The study must include early and continuous outreach with all interested stakeholders and a report to the Legislature and all interested parties by January 31, 2021.

Bill Summaries

Below is a comprehensive list of the bills GTHGA monitored on behalf of the City of Kenmore. If a bill has a position listed, GTHGA expressed the city's position through sign in at the public hearing. Positions on bills were taken when they directly aligned with the city's legislative priorities as outlined on the Legislative Agenda or Policy Manual or positions were provided by the city staff. Bills below are organized by those that passed the Legislature and those that did not. Any bill that did not pass this session will be automatically re-introduced next session and could be considered by the Legislature since it will be the second year of the legislative biennium.

Bills that Passed the Legislature

<u>Bill Details</u>	<u>Status</u>	<u>Sponsor</u>	<u>Position</u>
2SHB 1059 B&O return filing due date	C 63 L 19	Van Werven	

House Bill 1059, sponsored by Rep. Luanne Van Werven (R-Lynden), would change the local and state business and occupation tax filing deadline for annual filers to April 15th. Throughout the legislative process, the bill was amended to clarify that cities have until January 1, 2021 to comply with the new filing deadline for the collection of local business and occupation tax. The amended version of the bill passed the House and Senate unanimously.

SHB 1064
(SB 5029)

Law enforcement

C 4 L 19

Goodman

House Bill 1064, sponsored by Rep. Roger Goodman (D- Kirkland), amends to Initiative Measure No. 940, concerning use of police force. The bill passed early in the legislative session. Initiative 940 was approved by voters in November 2018 and contained several provisions pertaining to law enforcement training, the criminal liability standard for use of deadly force, independent investigations of deadly force incidents, and rendering of first aid. The bill made amendments to the Initiative that were consistent with an agreement reached amongst stakeholders during the 2018 legislative session. The final version of the bill was supported by a large group of stakeholders, including the Washington Association of Sheriffs and Police Chiefs, De-Escalate Washington, and tribal governments.

EHB 1219
(SB 5195)

Real estate taxes/housing

C 73 L 19

Walen

Support

House Bill 1219, sponsored by Rep. Amy Walen (D-Kirkland), allows cities and counties to utilize 2nd quarter real estate excise tax revenues for affordable housing. Cities and counties have the authority to use up to \$1 million of real estate excise tax revenues for affordable housing under current law, but the authority is scheduled to sunset in June 2019. As originally drafted, the bill would have allowed cities and counties to use unlimited 2nd quarter REET revenues for affordable housing permanently. However, before passing the House, the bill was significantly amended. The amended and final version of the bill extends the sunset on the authority to January 1, 2026, so long as the city or county documents that it has funds for certain capital projects in its capital facilities plan. Jurisdictions that are not using 2nd quarter REET revenues as of the effective date of the bill are limited to using either \$100,000 or 25% of available funds not exceeding \$1,000,000 of 2nd quarter REET revenues on affordable housing. This cap does not apply jurisdictions utilizing 2nd quarter REET revenues as of the effective date of the bill. The bill passed the House 74-24, the Senate 34-13. The effective date of the bill is July 28, 2019. A companion bill, Senate Bill 5195, sponsored by Sen. Patty Kuderer (D-Bellevue), was also introduced.

SHB 1403

Municipal B&O tax apportionment.

C 101 L 19

Frame

Support

House Bill 1403, sponsored by Rep. Noel Frame (D- Seattle), simplifies the administration of municipal business and occupation tax apportionment. The bill makes a series of changes that clarify who is eligible for the tax, what types of activities are taxable, and the appropriate administrative procedures; the bill also provides direction on how to determine an individual's taxability within a municipality depending on the location of their business activities. The bill is the

result of a multi-year B&O Apportionment Task Force and reflects an agreement between cities and businesses. A guideline would be established for taxpayers and tax administrators to request an alternative allocation and apportionment method. The bill passed the House and Senate unanimously and takes effect January 1, 2020.

SHB 1406
(SB 5646)

Affordable housing/sales tax C 338 L 19 Robinson Support

House Bill 1406, sponsored by Rep. June Robinson (D-Everett), which allows local jurisdictions to impose a credit against the state sales tax to fund affordable housing. The final version of the bill authorizes cities and counties to each impose a .0073 percent credit against the state sales tax. A city is authorized to impose the county's .0073 percent credit if the city has imposed a local tax to fund affordable housing (property or sales) or the county does not utilize its authority. The revenue may be used to acquire, rehabilitate, or construct affordable housing or fund the operations and maintenance of new units of affordable or supportive housing for persons whose income is at or below 60% of the adjusted median income for the jurisdiction imposing the tax. A credit against the state sales tax is not an increase in the state sales tax; rather, it is sales tax revenue that would otherwise be deposited into the state general fund that is instead redirected to the local level. The original version of the bill would have offered a .02 percent credit against the state sales tax; however, budget negotiators reduced the credit amount in the final days of the legislative session.

ESHB 1582

Manuf./mobile home tenants C 342 L 19 Gregerson Support

House Bill 1582, sponsored by Rep. Mia Gregerson (D-SeaTac), addresses manufactured/mobile home tenant protections, and makes a number of changes to current law to protect mobile home park tenants. This legislation states that a landlord must provide a tenant 30 days written notice for any new or amended tenant rules not contained in a rental agreement. The tenant must be given at least 3 months to comply with the new or amended rules after the 30 day period. The bill requires that any rental agreement, regardless of the term length, must include a written statement containing accurate historical information regarding the past 5 years' rental amount charged for the lot or space. The rental agreement must also contain a statement that, in the event any utilities are to be charged independent of the rent during the term of the rental agreement, the landlord agrees to decrease the amount of the rent charged proportionately. The bill limits rent increase on 2 year or more agreements to no more than 1 percentage point above the US CPI for all urban consumers. In the event a mobile home owner notifies the landlord of intent to transfer ownership of the property, the landlord must notify the selling tenant of any refusal to permit transfer of the rental agreement at least 7 days in advance of the transfer. Also, within 7 days of the intended transfer, the landlord must provide the buyer with copies of the written rental agreement, the rules, regulations and all other documents related to the tenancy. Except for a tenant evicted under specific circumstances in statute, an evicted tenant is allowed 120 days to sell the mobile home, provided that the tenant remains current in payment of rent after eviction.

Specific instructions are given to mobile home park owners for information to post at all park entrances to provide notice of a park closure. Lastly, the Department of Commerce is directed to convene a work group to make recommendations about mobile home park rental agreements, closures, conversions, etc. The final report is due to the Legislature by June 30, 2020.

Paint stewardship C 344 L 19 Peterson Support

[SHB 1652](#) House Bill 1652, sponsored by Rep. Strom Peterson (D-Edmonds), establishes a stewardship program for proper end-of-life disposal of leftover architectural paint. The bill requires producers of architectural paint to participate in these programs to sell their products in Washington. Funding for the stewardship programs would be generated through a container size-based fee added to the sales price of paint. The Department of Ecology would be responsible for oversight of the program but would not be responsible for the associated collection, reuse, recycling, and transportation costs; these costs would be entirely covered by the container-size fees. The bill was refined throughout the legislative process. The bill passed the House 62-35, and the Senate 26-22.

Public records request admin C 372 L 19 Springer

[ESHB 1667](#)
[\(SB 5667\)](#) House Bill 1667, sponsored by Rep. Larry Springer (D-Kirkland), streamlines the metrics that public agencies must use to report to the Joint Legislative Audit and Review Committee (JLARC) on public records request responses. Additionally, the bill makes the local government competitive grant program for public records response improvements, records retention consultation, and Attorney General records consultation permanent, and makes the existing temporary \$1 county auditor document recording fee permanent to fund the grant program. The Association of Washington Cities requested this legislation. At one point in the legislative session, the bill was amended to direct JLARC to align the reporting metrics with metrics found under the Federal Freedom of Information Act. This alignment would have been burdensome for local jurisdictions. The language was later removed from the bill prior to passage. The bill passed the House and Senate. The companion bill, Senate Bill 5667, sponsored by Randi Becker (R-Eatonville), did not advance.

Prevailing rate of wages C 29 L 19 Ormsby

[HB 1743](#)
[\(SSB 5766\)](#) House Bill 1734, sponsored by Rep. Timm Ormsby (D-Spokane), outlines the process of establishing prevailing wages for workers involved with the construction of affordable housing, homeless and domestic violence shelters, low-income weatherization and home rehabilitation public works. The legislation applies exclusively to workers constructing these types of projects. In areas with preexisting collective bargaining agreements, the bill adopts these standards as prevailing wages; for trades and occupations without collective bargaining agreements, the bill requires the Department of Labor to formulate prevailing wages based on regional surveys. The assessment would be based on prevailing wages in effect August 30th, 2018. After passing the House unanimously, the bill was amended in the Senate Committee on

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Labor and Commerce to change the formula for calculating interim prevailing wage rates.

Arrest & jail alternatives

C 378 L 19

Lovick

[2SHB 1767](#)

House Bill 1767, sponsored by Rep. John Lovick (D- Mill Creek), establishes a law enforcement grant program to support local initiatives that identify people within the criminal justice system with substance use disorders and other behavioral health needs and engage them with therapeutic interventions and other services.

Throughout the legislative session, the grant criteria and selection process were modified; the final version of the bill is very detailed. The bill passed into law with strong bipartisan support and is effective on July 28, 2019. The 2019-21 Operating Budget allocates \$2 million to this grant program, with an additional \$400,000 allocated for administrative costs.

Occup. disease presumption

C 133 L 19

Doglio

[HB 1913](#)
[\(SB 5849\)](#)

House Bill 1913, sponsored by Rep. Beth Doglio (D- Olympia), would alter the current statute governing presumed occupational diseases for certain publicly employed emergency response professions. This legislation would extend existing protections for firefighters to fire investigators and law enforcement personnel and extends the conditions by which the disease is considered presumptive, making firefighters and fire investigators who did not receive a qualifying examination before June 1st, 2020 eligible for presumptive status. The bill would also expand the list of presumptive occupational diseases. Additions to this list include mesothelioma, stomach cancer, nonmelanoma skin cancer, breast cancer in women, and cervical cancer. Finally, the bill establishes an advisory committee on occupational disease presumptions for assessment going forward. The committee must include two epidemiologists, two preventive medicine physicians, and one industrial hygienist. The committee's decisions must be supported by scientific, field-accepted evidence. While this is increased liability for local government, it was heavily negotiated and reflects a compromise amongst the stakeholders. The effective date of the bill is July 28, 2019. The companion bill was Senate Bill 5849, sponsored by Sen. Patty Kuderer (D- Bellevue).

Urban residential building

C 348 L 19

Fitzgibbon

[E2SHB](#)
[1923](#)

House Bill 1923, sponsored by Rep. Joe Fitzgibbon (D- Burien), was amended multiple times throughout the legislative process, wavering between mandating that cities take action to increase density, and incentivizing cities to take action to increase density. A final compromise was reached that encourages cities to undertake actions to increase housing density. The bill exempts certain city actions to increase residential building capacity from SEPA appeals or legal challenges for actions taken prior to April 1, 2021. The bill also establishes a grant program to be administered by Commerce for city programs with "extraordinary potential" to increase housing supply or streamline regulations. Cities may also receive grant funds for developing a housing action plan. The bill does include language mandating reduced parking requirements for low-

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income, senior, and disabled households near transit; however, the language retains city authority to deviate from the requirement. The effective date of the bill is July 28, 2019.

HB 2038

Pavement condition reporting

C 36 L 19

Ramos

House Bill 2038, sponsored by Rep. Bill Ramos, eliminates the pavement condition reporting requirements for cities and towns listed in RCW 46.68.113. The bill passed into law and should provide administrative ease for cities and towns.

**E2SHB
2042**

Green transportation

C 287 L 19

Fey

House Bill 2042, sponsored by Rep. Jake Fey (D- Tacoma), modifies current legislation governing the state transportation system to integrate green transportation infrastructure. The bill was amended in the House Transportation Committee to include a variety of changes. This version of the bill:

- Makes the pilot program for electric vehicle infrastructure expansion permanent.
 - Allows the creation of tax incentive programs for electric vehicles and alternative fuel vehicle infrastructure. The alternative fuel commercial vehicle business and occupation and public utility tax credit is allowed to be up to 75 percent of the incremental cost of the vehicle purchased about the purchase price of a comparable conventionally fueled vehicle. The bill instates a \$2 million annual cap for each of the three vehicle weight classes and for infrastructure. Paratransit providers are eligible for the credit.
 - Replaces the Multimodal Transportation Account with the Electric Vehicle Account to reimburse the General Fund for alternative fuel vehicle retail sales and use tax incentives.
 - Requires the Washington State University Extension Energy Program to develop and administer a technical assistance education program on alternative fuel vehicles.
 - Allocates a one-hundred-dollar electric vehicle licensing fee to the Electric Vehicle Account.
 - Allows electric utilities and public utility districts to establish an electrification of transportation plan, which the UTC must review.
 - Provides a performance statement for these tax preferences.
 - Provides tax exemptions for the purchase of zero-emissions buses and electric bus batteries.
 - Establishes a Green Transportation Grant Capital Grant Program, which includes the opportunity for bidders to propose hydrogen fueling station infrastructure that can address gaps in the state's low-carbon transportation infrastructure.
 - Establishes a retail sales and use tax exemption through August 1, 2029, for new electric-powered powertrains.
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<u>ESSB 5160</u>	Sr's, disab. vets/prop tx ex C 453 L 19 Dhingra Support Senate Bill 5160, sponsored by Sen. Manka Dhingra (D- Redmond), modifies the qualifying income thresholds for the existing property tax exemption and deferral programs for low-income senior citizens, individuals with disabilities, and veterans. Under current law, qualifying individuals must have a combined disposable income of less than \$40,000 per year. The bill would replace those set amounts with thresholds that are either a combined disposable income or a certain percentage of the county median income (CMI). Exemptions for eligible individuals are provided as follows: 1) if disposable income is \$30,000 or less or 45 percent of CMI, all excess levies, the additional state levy, and regular levies on the greater of \$60,000 or 60 percent of assessed valuation of a person's residence are exempted; 2) if disposable income is \$30,001 to \$35,000, or 55 percent of CMI, all excess levies, the additional state levy, and regular levies on the greater of \$50,000 or 35 percent of assessed valuation, at a \$70,000 maximum, are exempted; and 3) if disposable income is \$35,001 to \$40,000, or 65 percent of CMI, all excess levies and the additional state levy are exempted. The new law also changes the disability ranking for an eligible veteran from total disability rating to 80 percent disability.
<u>SSB 5163</u> (SHB 1135)	Wrongful injury or death C 159 L 19 Hasegawa Oppose Senate Bill 5163, sponsored by Sen. Bob Hasegawa (D-Seattle), expands the beneficiaries of a wrongful death action by removing dependence and residency requirements for parents and siblings. A parent or sibling may be a beneficiary of a wrongful death action if there is no spouse, domestic partner, or child, without having to show dependent on the deceased and regardless of whether the parent or sibling resided in the United States at the time of death. Additional changes are made that expand liability under the wrongful death statutes. Throughout the legislative session, the Association of Washington Cities and Washington State Association of Counties testified in opposition. The reasoning for the stakeholder's strong opposition for this legislation derives from the joint liability portion of the bill and the increase in litigation costs due to the additional members that may bring action on behalf of the decedent. The bill was amended to limit noneconomic damages in a survival action to the decedent's pain and suffering, anxiety, emotional distress, or humiliation. While there was an amendment offered to remove the joint liability provision, the amendment failed. The effective date of the bill is July 28, 2019. The companion bill was House Bill 1135, sponsored by Rep. Sharon Tomiko Santos (D-Seattle).
<u>ESSB 5183</u> (E2SHB 1033)	Manufactured/mobile homes C 390 L 19 Kuderer Support Senate Bill 5183, sponsored by Sen. Patty Kuderer (D- Bellevue), which makes several changes to the mobile home park relocation fund, to include assistance to manufactured/ mobile home tenants who wish to relocate their home to an alternative site or demolish the home and secure housing.
	Common interest ownership C 238 L 19 Pedersen Support

**[ESB 5334](#)
(HB 1306)**

Senate Bill 5334, sponsored by Sen. Jamie Pedersen (D- Seattle), reforms the Condominium Liability Act. Prior to the beginning of the legislative session, many stakeholders called on legislators to reform the Condominium Liability Act in order to increase the construction of condominiums. While the bill was amended several times, there was strong support from all stakeholders at each step of the legislative process. The final version of the bill requires that condominiums be constructed in accordance with applicable building codes, and that to establish a breach of warranty, the breach must be 1) more than technical; 2) significant to a reasonable person; and 3) has caused or will cause physical damage to the unit or common elements; has materials impaired the performance of mechanical, electrical, plumbing, elevator, or similar building equipment; or presents an actual unreasonable safety risk to the occupants of the condominium. Officers and board members of a condominium are entitled to the same immunities from liability available to officers and directors of a nonprofit or mutual corporation. The effective date of the bill is July 28, 2019. The companion bill, House Bill 1306, sponsored by Rep. Tana Senn (D-Mercer Island) was also introduced.

**[E2SSB 5397](#)
(HB 1204)**

Plastic packaging C 460 L 19 Rolfes Support

Senate Bill 5397, sponsored by Sen. Christine Rolfes (D- Bainbridge Island), requires the Department of Ecology (DOE) to evaluate and assess the amount and types of plastic packaging sold into the state as well as its management and disposal. Ecology is required to report back to the Legislature with recommendations on how to meet the goals of: 1) achieving 100% recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025; 2) achieving at least 20% postconsumer recycled content in packaging by January 1, 2025; and 3) reduce plastic packaging when possible optimizing the use to meet the need. The bill goes into effect on July 28, 2019.

**[ESSB 5418](#)
(SHB 1359)**

Local government procurement C 434 L 19 Takko

Senate Bill 5418, sponsored by Sen. Dean Takko (D- Longview), enacts a series of changes to public works bidding and purchasing processes. The bill allows counties and water-sewer districts to procure public works with a unit-priced contract. The bill increases the small works roster process and limited public works project cost thresholds. A municipality soliciting competitive bids for public works is required to disclose all bids received if requested by a bidder. A bidder must protest within two business days of when a municipality discloses all bids received or, if no request is made, bid opening. The bill increases public works contract thresholds for water-sewer districts, counties, cities, public utility districts, fire protection districts, and irrigation districts. A second-class city or town can award certain competitive public works contracts to a bid within 5 percent of the lowest bid. The final version of the bill passed the House, 76-22 and the Senate, 40-7.

**[SSB 5581](#)
(HB 1890)**

State tax laws C 8 L 19 Rolfes

Senate Bill 5581, sponsored by Sen. Christine Rolfes (D- Bainbridge Island), makes a series of statutory changes to respond to the Supreme Court decision made in South

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Dakota v. Wayfair, Inc. earlier this year, which authorizes state sales tax on items sold online by businesses without physical presence in the state. Prior to the decision, Washington State was one of many states that authorizes at least a partial internet sales tax on internet goods. This bill follows the Supreme Court decision and clarifies the conditions of the internet sales tax, implementing a gradual transition into a full-internet sales tax by January 1st, 2020. The bill also repeals a variety of old statutes governing online sales and incorporates minor changes to definitions for food sales and rental car transactions. The bill passed early in the legislative session and is anticipated to result in an increase in sales tax revenues for the state and local governments. The companion bill was House Bill 1890, sponsored by Rep. Amy Walen (D-Kirkland).

[SSB 5723](#)
(ESHB
1966)

Pedestrian, etc. safety

C 403 L 19

Randall

Senate Bill 5723, sponsored by Sen. Emily Randall (D-Bremerton), modifies the rules of the road to clarify how motor vehicles, pedestrians, bicyclists and other users are to share the road. The bill provides an additional penalty for certain traffic infractions involving a motor vehicle and a vulnerable user of the road and deposits the penalty monies into a new account dedicated to educating law enforcement officers, prosecutors and judges about opportunities for enforcement of traffic infractions and offenses committed against vulnerable roadway users. After passing the Senate, the bill was amended in the House Committee on Transportation to increase certain fines and expand the definition of a bicycle. The bill was signed into law and takes effect on January 1, 2020.

[ESSB 5993](#)

Model toxics control program

C 422 L 19

Frockt

Senate Bill 5993, sponsored by Sen. David Frockt (D- Seattle), increases the hazardous substance tax to fund the Model Toxics Control Account. The current hazardous substance tax is a .7 percent tax on the wholesale of hazardous substances (i.e. petroleum). Under the amended version of the bill, the hazardous substance tax would shift from the current value-based percentage, to a volumetric tax. The rate is \$1.09 per 42-gallon barrel. The current structure of the Model Toxics Control Account is replaced with three different accounts: the Model Toxics Control Operating Account, the Model Toxics Control Capital Account, and the Model Toxics Control Stormwater Account. Revenue from the tax is allocated to these accounts as follows: 60% to the operating account, 25% to the capital account and 15% to the stormwater account. Additionally, \$50 million per biennium is deposited in the Motor Vehicle Fund to be used exclusively for transportation stormwater programs. The operating account may only be spent in the operating budget to carry out administrative and service activities related to hazardous waste planning; solid waste planning; hazardous waste clean-up; state matching funds required under federal law; financial assistance for local governments; reduction and recycling of household hazardous wastes; oil spill prevention and response; water and environmental health protection programs; air quality programs; or plastic or polystyrene foam clean-up. The capital account may be used for the improvement, rehabilitation, remediation, and cleanup of toxic sites. The

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stormwater account must be allocated to carry out operating and capital directly related to stormwater projects. The bill passed into law and is effective on July 28, 2019.

Dead Bills

<u>Bill Details</u>	<u>Status</u>	<u>Sponsor</u>	<u>Position</u>
<u>HI 976</u> (Dead)	Vehicle taxes and fees	H Trans	
Initiative 976 limits annual state and local motor vehicle license fees to \$30 and repeals certain motor vehicle taxes and charges, including taxes funding regional transit authorities and ferry service. The initiative limits the fee for cars, commercial trailers, recreational sports vehicles, motor homes, mobile homes, and trucks weighing 10,000 pounds or less, and more. The initiative also requires all valuations of motor vehicles to be based on the vehicle's base model Kelley Blue Book value and would require retirement or refinancing of certain regional transit authority bonds repaid with motor vehicle taxes or fees. This would apply to the motor vehicle excise tax imposed by Sound Transit, and to vehicle license fees that have been imposed by Transportation Benefit Districts with councilmanic action (voter approved vehicle license fees under \$30 would still be allowed). If passed, the initiative would cost state and local governments over \$700 million in the 19-21 biennium and almost \$800 million in the 21-23 biennium. Fee-generating TBDs would lose over \$116 million per biennium. Here is a link to the Initiative.			
<u>HB 1086</u> (Dead) (SB 5098)	Public defense funding	H Approps	Chapman
House Bill 1086, sponsored by Rep. Mike Chapman (D-Port Angeles), and Senate Bill 5098, sponsored by Sen. John Braun (R-Centralia) increases appropriations to cities and counties for public defense. Beginning in fiscal year 2020, the state must appropriate funds to cities and counties for no less than 10% of the cost of public defense services. The percentage increases by 10% each year until 2029 when the appropriation reaches 100% of the cost of public defense services. The bill eliminates current distribution formulas for public defense funds and directs the Office of Public Defense to establish policies for distribution of funds to eligible cities and counties. The bill was designed to build momentum for an allocation of public defense funding in the state operating budget. Unfortunately, either the House or Senate budget proposed increasing funding to public defense.			
<u>SHB 1371</u> (Dead) (SSB 5680)	Parks benefit districts	H Finance	Eslick
House Bill 1371, sponsored by Rep. Carolyn Eslick (R-Sultan), and Senate Bill 5680, sponsored by Sen. Marko Liias (D-Lynnwood), would have allowed jurisdictions to establish a local taxing district called a Park Benefit District (PBD) to fund the maintenance, operation, and expansion of parks. The PBD would have the authority to			

impose one-tenth of one percent sales tax increase with voter approval, establish a park improvement district that mirrors local improvement districts, and impose impact fees. At the public hearings on the bill, BIAW expressed opposition to the impact fee provisions of the bill. Both versions of the bill were amended in the same manner. The amendments reduced the maximum term that general obligation bonds may be issued from 40 to 30 years; eliminated impact fees on commercial and industrial buildings (applies only to residential); prohibited a PBD from directly imposing an impact fee, but rather requires the PBD to formally request that a city or county impose an impact fee on its behalf and to conduct an analysis of capital facilities needs and recommend a rate schedule to the city or county it serves; limiting proceeds from impact fees to only be used for park "system improvements" (capital improvements) instead of park maintenance and improvements; and prohibit property that is assessed a parks impact fee from also being charged an assessment for system improvements under a park improvement district. Even with these amendments, the bill did not have the support to advance out of the fiscal committees. This issue will likely be reconsidered in the 2020 legislative session.

HB 1390 (Dead) (SB 5400)	PERS/TRS 1 benefit increase H Rules R Leavitt House Bill 1390, sponsored by Rep. Mari Leavitt (D- University Place), provides a one-time 3 percent increase to the retirement benefits of retirees in the Public Employees' Retirement System and the Teachers' Retirement System Plans 1, up to a maximum of \$62.50. The bill would apply the one-time increase to eligible retirees on July 1, 2019. This would be extremely costly for both cities and counties. The bill passed the House Appropriations Committee but did not advance further in the legislative process.
HB 1441 (Dead) (SB 5304)	Local infrastr. financing H Rules 3C Tharinger House Bill 1441, sponsored by Rep. Steve Tharinger (D- Sequim), and Senate Bill 5304, sponsored by Sen. Mark Mullet (D-Issaquah), would have created a program within the Housing Finance Commission to issue bonds and loans to local governments to finance infrastructure projects. These bills were introduced at the request of the Housing Finance Commission. The House version of the bill passed the House 64-31, and advanced unanimously out of the Senate Housing Stability & Affordability Committee. The bill was not brought up for a vote in the Senate and did not advance beyond the opposite chamber cutoff deadline. The Senate version of the bill passed the Senate 47-2 but did not advance in the House. It is likely that this legislation will be considered during the 2020 legislative session.
HB 1451 (Dead)	Local project review H Local Govt Ryu House Bill 1451, sponsored by Rep. Cindy Ryu (D-Shoreline), would have limited the amount of time that local governments can review project permit applications under RCW 36.70B to 5 days, rather than 14 days. The bill was heard in the House Local Government Committee. Local governments expressed strong concerns with the proposal, and it did not advance beyond the committee cutoff deadline. A similar bill, Senate Bill 5372, sponsored by Sen. Guy Palumbo (D-Maltby) was also introduced in

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the Senate. The Senate version of the bill advanced out of the policy committee with an amendment that required a project permit application be deemed complete within five business days of submittal, as opposed to upon submittal. However, the Senate version of the bill did not advance out of the Senate prior to the chamber of origin cutoff deadline.

HB 1458 (Dead)	Municipal police districts H Local Govt Blake House Bill 1458, sponsored by Rep. Brian Blake (D- Aberdeen), would have established municipal police districts. The bill details the creation, management, and dissolution of municipal police districts. The bill would require voters to approve a municipal police district. It does not provide a new revenue source. The House Local Government Committee held a public hearing on the bill, but it did not otherwise advance.
HB 1493 (Dead) (SSB 5357)	Affordable housing taxes H Finance Morgan Support House Bill 1493, sponsored by Rep. Melanie Morgan (D-Parkland), and Senate Bill 5357, sponsored by Sen. Jeannie Darneille (D-Tacoma), would have allowed cities and counties to impose additional real estate excise taxes (REET) for affordable housing. As originally drafted, the bill allows cities and counties to impose a .50 % increase in REET revenues. Any amount less than .50% could be approved with councilmanic authority, but the full .50% would require voter approval. The bill was amended through the legislative process to instead authorize cities and counties to impose an additional .25 percent REET with councilmanic approval. The respective policy committees advanced both versions of the bill; however, both versions stalled in fiscal committees.
HB 1501 (Dead)	Proactive policing grant prg H Approps Klippert House Bill 1501, sponsored by Rep. Brad Klippert (R- Kennewick), establishes a proactive policing grant program through the Washington Association of Sheriffs and Police Chiefs. Grants would be awarded on a two-year cycle and would be used to meet the individual public safety needs of awarded communities. The bill provides a broad definition of "individual public safety needs." The bill advanced out of the policy committee, but stalled in the fiscal committee.
HB 1508 (Dead) (SB 5521)	Connecting Washington funds H Trans Mead Support House Bill 1508, sponsored by Rep. Jared Mead (D-Mill Creek), and Senate Bill 5521, sponsored by Sen. Dean Takko (D-Longview), makes the contributions to the Transportation Improvement Board, the County Road Administration Board, the Freight Mobility Investment Account, the Complete Streets Grant Program, and the Freight Mobility Multimodal Account permanent through the duration of the Connecting Washington program. This bill did not pass into law because budget writers indicated they wanted to retain flexibility with Connecting Washington funds.

Without this legislation, the appropriations to these accounts need to be included in the budget each biennium.

<u>SHB 1576</u> (Dead)	Construction defect actions	H Rules 3C	Senn	Support	House Bill 1576, sponsored by Rep. Tana Senn (D- Mercer Island), contained provisions relating to how the board of directors of the homeowners manages defects under the Condominium Liability Act. While this bill did not advance, the content of the bill was included in Senate Bill 5334.
<u>HB 1590</u> (Dead)	Housing tax/councilmanic	H Rules C	Doglio		House Bill 1590, sponsored by Rep. Beth Doglio (D- Olympia), would allow counties and cities to councilmanically impose a .01 percent local sales and use tax increase to fund affordable housing, rather than having to seek voter approval as is required under current law. The revenue generated could be spent on constructing affordable housing, constructing mental and behavioral health-related facilities, the operations and maintenance of affordable housing facilities to serve a population at or below 60% of the county's adjusted median income. The bill did not advance out of the House and died with the chamber of origin cutoff deadline. This bill is likely to be considered during the 2020 legislative session.
<u>SHB 1591</u> (Dead)	Homelessness rights	H Approps	Gregerson		House Bill 1591, sponsored by Rep. Mia Gregerson (D-SeaTac), would have created a civil cause of action codifying rights of people experiencing homelessness, including the right to survive in a nonobstructive manner; the right to shelter oneself from the elements; the right to eat, share, accept, or give food in a public space; the right to operate a motor vehicle or RV, and the reasonable expectation of privacy in one's personal property. Public space is a broad definition, include plazas, courtyards, parking lots, parks, shopping centers, and more. The bill was very concerning to cities and law enforcement because it would limit interactions with homeless individuals, limit the ability for the city to maintain order in public spaces, and expands liability. A significantly amended version of the bill passed out of the House Civil Rights and Judiciary Committee. The amended version of the bill addresses some, but not all, concerns identified by local governments. Under the amended version, homeless persons have a right to engage in a variety of activities in public space; however, these activities may not impede on the ability of state and local governments to manage public health threats or public safety concerns, provide workplaces free of unreasonable workplace hazards, or operate, manage, and maintain public facilities. Additionally, the bill requires that the state, cities, and counties determine whether their policies and laws infringe upon the rights of homeless persons recognized in Martin v. Boise or this bill, make appropriate revisions, and recommend appropriate revisions to the Legislature. The bill was referred to the House Appropriations Committee and did not advance any further. The House Civil Rights and Judiciary Committee held a work session toward the end of the legislative session where they

indicated a desire to work on the issue prior to the beginning of the 2020 legislative session.

<u>HB 1637</u> (Dead)	Airborne nuisances	H Civil R & Judi	Pollet	Support	House Bill 1637, sponsored by Rep. Gerry Pollet and Rep. Javier Valdez, addresses airborne nuisances experienced by transitory populations. The bill expands the definition of air pollution to include “odor or air emission that unreasonable interferes with a person’s use or enjoyment of a public park, public recreational facility or trail, or publicly owned commons.” The bill allows a clean air act enforcement agency (Puget Sound Clean Air Agency) to receive a complaint from a patron of a public facility listed above, irrespective of whether the person has left the facility. The bill gives a city the authority to use repeated findings by the PSCAA to initiate an action against the source of the odor for damages and further relief.
<u>SHB 1680</u> (Dead) (SB 5952)	Local infrastructure funding	H Approps	Doglio	Support	House Bill 1680, sponsored by Rep. Beth Doglio (D- Olympia), and Senate Bill 5952, sponsored by Sen. Liz Lovelett (D-Arlington), was a priority for the Association of Washington Cities. The bill proposed to restore 4.1 percent of state REET funding that is currently diverted into the Education Legacy Trust Account, back into the Public Works Assistance Account. The bill also specifies that public works projects may include natural or green infrastructure and allow for up to 1 percent of biennial capital budget appropriation for the Public Works Board to be used toward value planning grants. These grants may be up to \$60,000 per project. Unfortunately, this bill did not advance, and the final budget adopted by the Legislature swept the Public Works Assistance Account.
<u>SHB 1691</u> (Dead)	Local infra/public works brd	H Approps	Peterson	Support	House Bill 1691, sponsored by Rep. Strom Peterson (D- Edmonds), would restore utility tax revenue to the Public Works Assistance Account that was previously diverted to the Education Legacy Trust Account. Unfortunately, this bill did not advance, and the final budget adopted by the Legislature swept the Public Works Assistance Account.
<u>HB 1718</u> (Dead)	Existing resources/local gov	H Rules C	Volz	Support	House Bill 1718, sponsored by Rep. Mike Volz (R- Spokane), makes a number of changes to county and city financing tools with the intent of providing more flexibility in their use. The bill: 1) removes prohibitions on supplanting existing local government expenditures with proceeds from a locally imposed 0.1 percent sales and use tax dedicated to mental health and substance abuse; 2) allows all county authorities to seek voter approval for the criminal justice regular levy; 3) allows jurisdictions to use revenue generated with a levy lid lift to supplant existing funds; 4) Establishes the Developmental Disability and Mental Health Levy as a separate

property tax levy outside the county general levy; 5) establishes the Veterans' Assistance Levy as a separate property tax levy outside the county general levy; and 6) requires the county legislative authority to budget the direct costs of administering the Veterans' Assistance Fund and prohibits the charging of indirect costs or fees. The bill passed both the House Committee on Local Government and the House Committee on Finance before dying in the House Rules Committee.

SHB 1745
(Dead)

Affordable housing options

H Finance

Ryu

House Bill 1745, sponsored by Rep. Cindy Ryu (D-Shoreline), authorizes cities or counties to adopt an ordinance creating a property tax exemption program for affordable housing preservation. The exemption would last six years and may be renewed once. The House Housing, Community Development & Veterans Committee amended the bill providing that eligible rental units must meet affordability standards for 25 years, regardless of any transfers of ownership, and clarifying that single-family dwellings meeting the affordability standards may qualify for the program. The bill then died in the fiscal committee.

SHB 1754
(Dead)
(SB 5644)

Homeless hosting/religious

H Rules C

Santos

House Bill 1754, sponsored by Rep. Sharon Tomiko Santos (D-Seattle), would have placed new limitations on the ability of counties, cities or towns, and code cities to regulate outdoor encampments, safe parking efforts, indoor overnight shelters, and temporary small houses on property owned or controlled by a religious organization. The House Housing, Community Development, and Veterans Committee amended the bill to grandfather those municipalities that have existing policies, ordinances, memorandums of understanding, or consent decrees if they do not categorically prohibit the hosting of homeless by religious organizations and do not violate the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). For those jurisdictions that would not be grandfathered, cities and counties may only adopt regulations to limit outdoor encampments on property owned by religious organizations to no fewer than three months during a calendar year, with a separation of time of no more than six months between encampments, and no fewer than three consecutive months. Simultaneous and adjacent encampments may only be limited if they are within one-half mile of one another. For safe parking, cities and counties may only limit safe parking to no less than one space per ten parking spaces, restroom access must be provided, and must continue to meet existing on-site parking minimum requirements. For indoor overnight shelters, cities and counties may only require certain fire safety requirements. These amendments address many of the concerns raised by cities and counties. This version of the bill was never voted on by the House and did not advance beyond the chamber of origin cutoff deadline. A Senate companion was also introduced, Senate Bill 5644, sponsored by Sen. Jeannie Darneille (D-Tacoma). The bill was heard in the Senate Housing Stability and Affordability Committee, but otherwise did not advance

Auto. traffic safety cameras

H Rules 3C

Fitzgibbon

Support

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ESHB 1793
(Dead)
(SB 5789)

House Bill 1793, sponsored by Rep. Joe Fitzgibbon (D-Burien), allows automated traffic safety cameras to be used for stopping at intersection or crosswalk violations; public transportation only lane violations; stopping, standing, or parking violations at locations restricted for emergency response vehicle entry or exit or the boarding or disembarking of public transportation vehicles, including public ferries. The bill is currently drafted to apply only to the City of Seattle but if it gains momentum, they hope to expand the provisions to other jurisdictions. Neither this bill nor the companion, Senate Bill 5789, advanced this session.

Public vehicle fleet

H Trans

Macri

SHB 1832
(Dead)

House Bill 1832, sponsored by Rep. Nicole Macri (D- Seattle), would direct the Department of Enterprise Services to develop a scoping plan, including a costs and savings assessment, for the state and local governments to achieve a fully electric vehicle fleet. The bill would provide that all vehicles operated by the state must be electric beginning with passenger and light duty vehicles of model year 2023, and medium and heavy duty vehicles of model year 2026. The bill would also provide that all vehicles operated by local governments must be electric beginning with passenger and light duty vehicles of model year 2025, and medium and heavy-duty vehicles of model year 2027. The House State Government and Tribal Relations Committee amended the bill to remove all of the requirements that public fleets be converted to electric by a certain date. The Joint Transportation Committee is charged with completed a study on the electrification of public fleets, which includes: an inventory of existing fleets; a review of currently available electric vehicles; projected costs and economic benefits of converting to an electric fleet; potential financing mechanisms; and an analysis of infrastructure upgrades that would be necessary. Even with this amendment, the bill did not advance this beyond the fiscal committee cutoff deadline. It is likely this bill will be reintroduced for the 2020 legislative session.

Local infra. investment prg

H Rules R

Steele

2SHB 1938
(Dead)

House Bill 1938, sponsored by Rep. Mike Steele (R- Chelan), creates a local sales tax credit program to support the development of affordable housing and revitalization efforts. The bill would allow a participating jurisdiction to receive a credit against the state sales tax equivalent to a 4.37 percent sales or use tax on the construction of affordable housing. The bill advanced out of the policy and fiscal committees but did not pass the House prior to the chamber of origin cutoff deadline.

Transp. network companies

H Trans

Springer

HB 2039
(Dead)
(SB 5926)

House Bill 2039, sponsored by Rep. Larry Springer (D-Kirkland), and Senate Bill 5926, sponsored by Sen. Steve Hobbs (D-Lake Stevens), establishes a regulatory framework for transportation network companies, including rideshare companies such as Uber and Lyft. The regulation of transportation network companies currently occurs at the local level. This bill would establish a statewide framework that preempts the current local policies. As an industry-promoted bill, the proposal presented a great deal of concern to those jurisdictions that are locally regulating transportation network

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companies. The House Transportation Committee and the Senate Transportation Committee each held a public hearing on the proposal. At the public hearings, industry representatives expressed strong support for the bill, while cities, labor, and law enforcement interests expressed opposition. Neither committee chose to advance the bill prior to the first committee cutoff deadline.

	Utility service charges	H Rules C	Dufault	
<u>SHB 2069</u> (Dead)	House Bill 2069, sponsored by Rep. Jeremie Dufault (R-Selah), prohibits a city or town from collecting delinquent utility charges from the owner of the property when the utility service is provided to someone other than the owner (i.e. a tenant). In no case may a city or town require the owner of the property to pay a delinquent utility bill in a tenant's name or have a lien against the property for a tenant's delinquent and unpaid utility charges. Local governments expressed strong opposition to this bill. Despite several attempts to work with the prime sponsor to identify common ground, a compromise could not be reached. The bill did not advance out of the House prior to the chamber of origin cutoff deadline. Rep. Dufault also introduced a similar version of the bill, House Bill 1705, early in the legislative session, and then redrafted the bill and introduced House Bill 2069.			
	MVET collection	H Trans	Pellicciotti	Oppose
<u>HB 2123</u> (Dead)	House Bill 2123, sponsored by Rep. Mike Pellicciotti (D-Federal Way), would require Sound Transit to establish a market value adjustment program for the collection of motor vehicle excise taxes (MVET), and issue a credit for the difference between the current MVET amount and the amount that would be calculated in a more recently adopted valuation schedule. The bill includes language that directs Sound Transit to implement this program with the least amount of impact on the ST3, and to identify cost savings to absorb negative fiscal impacts. The bill was heard in the House Transportation Committee but did not advance prior to the fiscal committee cutoff deadline.			
	Property tax revenue growth	H Finance	Pollet	Support
<u>HB 2145</u> (Dead)	House Bill 2145, sponsored by Rep. Gerry Pollet, removes the 1 percent cap on property tax and limits the increase in property tax to population change and inflation, not to exceed 3 percent growth. This bill was introduced late in session and never received a public hearing.			
	Trafficking victims assist.	S Rules 3	Saldaña	Support
<u>SSB 5164</u> (Dead) (HB 1971)	Senate Bill 5164, sponsored by Sen. Rebecca Saldana (D- Seattle), provides public assistance to the families of victims of human trafficking. The bill defines victims of human trafficking to include certain noncitizens and their family members. Medical Care Services would be provided to victims of human trafficking who are not eligible to receive services under Medicaid. The bill was amended in Senate Ways and Means before passing the Senate with changes: clarifying that a qualifying family member			

must not include the victim's alleged trafficker; and clarifying that a victim of human trafficking is eligible for Medical Care Services if they are not eligible for Apple Health for Kids, in addition to Medicaid. The provisions of the bill relating to state family assistance and state food assistance would take effect August 1, 2020.

<u>ESSB 5323</u> (Dead) (2SHB 1205)	Plastic bags S Rules 3 Das Support Senate Bill 5323, sponsored by Sen. Mona Das (D- Covington), and House Bill 1205, sponsored by Rep. Strom Peterson (D-Edmonds), would have banned plastic bags throughout the entire state. The bill failed to pass the last step of the legislative process and, therefore died. At the beginning of the 2020 legislative session, Senate Bill 5323 will revert back to the Senate Rules Committee, and House Bill 1205 will revert back to the House Rules Committee for further consideration. The most recent version of the bill would have imposed the statewide ban effective January 1, 2020, requiring retail establishments to collect a pass-through charge of 10 cents per bag and allowing local jurisdictions to require a higher rate. Throughout the legislative session, there was ongoing dialogue about the best manner in which to preempt or honor local ordinances that have imposed a ban.
<u>SSB 5357</u> (Dead) (HB 1493)	Affordable housing taxes S Ways & Means Darneille Support Senate Bill 5357, sponsored by Sen. Jeannie Darneille (D- Tacoma), allows cities and counties to impose additional real estate excise taxes for the development of affordable housing. The bill was amended early in the legislative process to authorize cities and counties to impose a .25% increase, rather than .50% increase, in REET revenues with councilmanic approval. The bill passed out of the Senate Committee on Housing Stability and Affordability and received a hearing in the Senate Ways and Means Committee before dying at the first fiscal committee cutoff.
<u>SSB 5363</u> (Dead)	Urban center dwellings/taxes S Rules 3 Palumbo Senate Bill 5363, sponsored by Sen. Guy Palumbo (D-Maltby), allows a city or county to extend the period of time it may provide a multi-family housing property tax exemption to qualifying properties an additional twelve years. The local government must adopt requirements that continue to ensure that the unit remains affordable. The bill was amended in the Senate Ways and Means Committee to expand the eligible residential targeted areas under the multifamily tax exemption program to include certain unincorporated areas of a county planning for transit-supportive densities and efficient land use, effective until July 1, 2021. The bill passed out of the Senate but did not advance in the House.
<u>SB 5440</u> (Dead)	Housing element/GMA S Ways & Means Palumbo Senate Bill 5440, sponsored by Sen. Guy Palumbo (D- Maltby), would require cities to update their housing elements of their comprehensive plan. The bill requires local

governments to consider all levels of low income in housing need surveys, with special attention to extremely low income needs, and requires them to incorporate these findings into appropriate policies and programs. Cities with over 80,000 residents are required to implement policies, regulations, and programs that minimize displacement. The bill also requires local governments to develop a multifamily housing program if insufficient housing sites are available for low-income populations. Local governments must submit a review with these findings and proposed plans to implement future housing programs. The bill, as drafted, does not identify a funding source for these surveys. Local governments expressed opposition to this bill, flagging it as an unfunded mandate. The bill passed out of the policy committee but stalled in the fiscal committee.

<u>SSB 5564</u> (Dead)	Business ecosystems	S Ways & Means	Brown	Support
	Senate Bill 5564, sponsored by Sen. Sharon Brown (R- Kennewick), is an Association of Washington Cities priority bill. The bill establishes a competitive program through the Department of Commerce for local jurisdictions to receive annual awards to make public improvement projects that will spur private investment and increase the local property tax values and sales tax revenues within a specific area. This proposal is similar to the Local Infrastructure Financing Tool (LIFT) and Local Revitalization Financing (LRF) programs that are no longer eligible for new awards. Similar legislation was introduced late in the session last year and faced challenges due to the fiscal impact on the state's operating budget since the program is funded through a credit against the state sales tax. An amended version of the bill passed out of the Senate Committee on Financial Institutions, Economic Development & Trade to limit the annual state contribution to \$4,965,000 until fiscal year 2022. Projects would still be awarded on a competitive basis; however, the awards are limited to 3 projects, one in each of the following categories: \$1 million for 20 years, \$880,000 for 25 years, \$665,000 for 30 years. Not subject to the 3 projects listed above, \$2.5 million is set aside for awards to rural jurisdictions or designated opportunity zones. However, this bill did not advance this legislative session.			
<u>SB 5761</u> (Dead)	Mobile home rent increases	S Housing Stabil	Rolfes	
	Senate Bill 5761, sponsored by Sen. Christine Rolfes (D- Bainbridge Island), would require that a landlord seeking to increase the rent within a mobile home lot, at any time or upon expiration of the term of a rental agreement of any duration, must notify the tenant and the office of the attorney general, in writing, three months prior to the effective date of any increase in rent. The bill was scheduled for a public hearing but the hearing never occurred.			
<u>SB 5769</u> (Dead)	Minimum urban density	S Local Governme	Palumbo	

Senate Bill 5769, sponsored by Sen. Guy Palumbo (D- Maltby), adds the requirement that urban growth areas must permit densities of at least 6 units per acre in residential areas, develops a state grant program to assist with planning costs, outlines what types of housing can be built without a conditional use permit, requires comprehensive plans to be consistent with the proposed amendments, and more. The bill was heard in the Senate Local Government Committee, but otherwise did not advance.

ESSB 5812
(Dead)
(SHB 1797)

Accessory dwelling units

S Rules 3

Palumbo

Senate Bill 5812, sponsored by Sen. Guy Palumbo (D-Maltby), as originally drafted would have preempted city authority to regulate accessory dwelling units (ADUs). The bill passed out of the Senate with an amendment that exempts any city with an ordinance as of the effective date of the bill (July 2019) from the requirements of the bill. For cities that are not grandfathered, they would be required to: (1) Allow either an attached or detached accessory dwelling unit on all single-family lots; (2) Not have an owner-occupancy requirement; and, (3) Not require off-street parking within one-half mile of a light right stop or transit stop that is scheduled for service every 15 minutes for at least 10 hours per day. The House Local Government Committee further amended the bill to grandfather cities if: (1) The city's current ordinance has resulted in an increase in permitted ADUs, or (2) The city has updated its ordinance after 2012. If not grandfathered, cities with a population over 10,000 would be required to update their ADU ordinance and include 4 of 10 options. Cities may not impose a transportation impact fee on an ADU that is within one-half mile of a transit stop for fixed rail or for bus service that is scheduled at least every fifteen minutes for no less than ten hours per day. This version of the bill would have grandfathered nearly every city in the state. The proponents for the bill chose not to push for the bill given its limited impact. The companion bill, House Bill 1797, sponsored by Rep. Mia Gregerson, was heard in the House Local Government Committee. The Committee amended the bill to make the ADU regulations optional, rather than mandatory. The House chose not to advance the bill. In short, for both the House and Senate versions of the bill, the Legislature was not willing to impose mandatory requirements on cities regarding the siting and regulation of accessory dwelling units. It is likely that this issue will be reconsidered in the 2020 legislative session.

SB 5943
(Dead)

Motion picture task force

S Financial
Inst

Hasegawa

Senate Bill 5943, sponsored by Senator Bob Hasegawa (D-Beacon Hill), creates a motion picture competitive taskforce to: 1) evaluate data on recipients of program funding to identify trends that may affect equity of access to funding assistance; 2) develop practices promoting equity of access to funding assistance; and 3) make recommendations to the Legislature regarding policies to improve the program. The bill had a public hearing but did not advance out of the policy committee.

Transportation fundingS Ways &
Means

Hobbs

[SSB 5971](#)
(Dead)

Senate Bill 5971, sponsored by Sen. Steve Hobbs (D-Lake Stevens), proposes the next round of transportation investments. The bill: establishes a carbon pollution fee of \$15 on the sale of fossil fuels to a consumer; diverts some sales and use tax revenues collected on car rentals, automobile parts, and bicycles from the state general fund to transportation; levies an additional tax .01 tax on the sale of automobile parts and bicycles; establishes an annual transportation benefit assessment on developed parcels of land; establishes a six cent gas tax increase; increases vehicle weight fees; adds additional penalties for high occupancy vehicle lane infractions; creates the Forward Flexible Account and Forward Washington Account; and adds a series of technical changes. This revenue would have then been expended on a list of projects. It is likely that this proposal will serve as the framework for discussions regarding the next transportation revenue package.

LEOFF 2 pension systemS Ways &
MeansVan De
Wege[SB 5983](#)
(Dead)

Senate Bill 5983, sponsored by Sen. Kevin Van De Wege (D-Sequim), transfers \$300 million from the law enforcement officers' and fire fighters' plan 2 retirement fund into the local law enforcement officers' and firefighters' retirement system benefits improvement account. AWC opposed this bill which ultimately died. However, House Bill 2144 passed the Legislature and although it was not a true companion, the House Bill included the \$300 million transfer from LEOFF 2 to the Benefit Enhancement Account.



City of Kenmore, Washington

City of Kenmore 2019-2021 State Legislative Agenda

Propel Lakepointe Development

Lakepointe is the last remaining undeveloped property of its size on Lake Washington - a 47-acre site poised to become a dynamic mixed-used transit-oriented development with housing, office and retail space, hotel, and nearly a mile of public shoreline public access. A longstanding barrier to redeveloping the Lakepointe property stems from site conditions that are the result of a State transportation project. When Interstate-5 was built in Seattle, WSDOT used the Lakepointe site as a landfill for construction and demolition debris. Deep foundation systems consisting of thousands of pilings will be required for the property to be developed, adding substantial costs of potentially over \$100 million to any redevelopment project.

To alleviate these extraordinary costs, the City of Kenmore requests that the State provide a construction sales tax credit for public improvements on the site, or other economic development incentives necessary to allow this property to overcome this hurdle and be developed. Without the State's partnership, the steep infrastructure and other project costs will continue to cause this vital waterfront site to languish and not redevelop. Even with the proposed incentives, the redevelopment of this site has the potential to offer a significant financial return on investment at both the state and local levels.

68th Avenue NE Pedestrian & Bicycle Safety

68th Avenue NE is an existing collector arterial roadway with mostly one travel lane in each direction and asphalt shoulders. The posted speed is 35 mph. This safety project extends from NE 182nd Street to 61st Place NE and consists of new sidewalk on one side of the roadway with retaining walls as needed, buffered bicycle lanes in each direction, new stormwater infrastructure, and utility relocation as needed. The citizens of Kenmore approved a bond measure to provide \$5.1 million toward this project. The City is seeking \$450,000 from the 2019-21 State Transportation Budget to complete the project.

Twin Springs Park

Twin Springs Park, a 25-acre tract of land in northeast Kenmore, was recently transferred to the City of Kenmore from King County as part of mitigation for the Brightwater regional wastewater project. The land consists mostly of wetland and steep forested land as well as about two acres of flat useable land for recreation. The City of Kenmore requests \$150,000 to perform minimal improvements in order to get the park open to the public. Work will include parking improvements and also drainage improvements to make the field area suitable for the public. These improvements will allow the public to picnic and throw a frisbee while at the same time enjoying the park's beautiful natural features and open space.

Washington Wildlife & Recreation Program (WWRP)

The City of Kenmore supports ongoing funding for the WWRP grant program. If WWRP is funded at the \$120 million level, the City could receive \$849,832 for Squire's Landing Waterfront and Natural Area Access.

Reconnecting Kenmore's Downtown to Lake Washington

Regional decisions regarding the State's transportation system, including imposing tolls on SR 520, and the failure of the state system to handle daily commuter traffic, has resulted in more drivers opting to travel on State Route 522 through Kenmore. Despite recent improvements to State Route 522 to increase transit and vehicle capacity and improve pedestrian safety, congestion on State Route 522 continues to worsen. State Route 522 divides Kenmore's downtown from its waterfront and the City is seeking a partnership with the State to reconnect the city's downtown with the Lake Washington waterfront. The City is grateful for \$500,000 from the State to complete a study that will determine the best location, design concept and cost for such a crossing. The City hopes to have results from the study by early 2020.

18120 68th Ave NE · PO Box 82607 · Kenmore, WA 98028

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**City of Kenmore
2019 Policy Statements**

This document is an internal document designed to provide guidance to city staff and the city's lobbyist. The policy statements in this document allow the city to quickly take positions on legislation. It is not all inclusive of all policy positions that the city may take throughout a session, and the following items are not listed in order of priority.

Local Control on Asphalt Plant Regulations

The City of Kenmore supports efforts to ensure that the asphalt plant operates in a manner that is mindful of the surrounding urban neighborhoods and reduces the impact of asphalt production odor on Kenmore residents and business owners.

Affordable Housing

Kenmore residents are experiencing the squeeze of increased housing prices and fewer affordable housing options. The City of Kenmore supports legislation that provides tools and funding options that promote affordable housing, including investment in the Housing Trust Fund. The City also requests that the Legislature reform the condominium liability act to spur development of middle income, starter, senior and high-density housing units.

Support for WWRP & ALEA Grant Programs

The city of Kenmore supports fully funding the Washington Wildlife Recreation Program (WWRP) and the Aquatic Lands Enhancement Account (ALEA). Many city parks have benefitted from funding through these programs.

Product Stewardship

The city of Kenmore supports statewide product stewardship programs for products that are harmful to the environment such as electronic waste, mercury-containing florescent lights, and prescription drugs. The City will closely monitor the implementation of recently passed legislation to establish a statewide prescription drug takeback program to ensure there is no lapse in coverage as the King County program is phased out. The City supports legislation to establish a stewardship program for paint.

Prevent Human Trafficking

The city of Kenmore recognizes that human trafficking is a problem in all communities, and supports legislation that provides tools and solutions to prevent and intervene in human trafficking.

Local Infrastructure Funding

The city of Kenmore joins AWC in supporting the State's ongoing and increased investment in infrastructure funding programs such as the Public Works Assistance Account.

Small Cell Infrastructure

Small cell technology requires more devices that each have a smaller distance of radio coverage, the equipment is typically smaller, and they are frequently installed on existing street furniture in the public right of way. There is a push to standardize the permitting process of small cell technology across WA and would require local governments to provide access to public facilities for use as small cell technology sites. The City opposes legislation that removes local control in the siting and regulation of small cell network facilities and supports legislation that provides for grandfathering of existing wireless communication facilities ordinances.

Funding for Indigent Defense

Indigent defense is a constitutional right that should be funded by the State. However, WA State only contributes 4% of the total amount spent for trial court indigent defense. The City supports state funding for indigent defense that is standardized and equally accessible for all jurisdictions to ensure more equitable funding.

Mobile Homes

The City supports legislation that recognizes that mobile homes represent an important affordable housing option throughout the state. Topics such as: ensuring individuals considering purchasing a mobile home are informed about laws and regulations limiting the transport of mobile homes; lease increase notice and other guidelines; and requiring that

sellers notify purchasers if a home cannot be moved, are examples of potential legislation that could help protect mobile home owners' investments and provide greater predictability.

Passenger Only Ferry

The City supports efforts to explore a passenger only ferry service from Kenmore to Seattle.

Saint Edward State Park Ballfields

The City continues to work with the WA State Parks Commission to ensure the current ballfields at Saint Edward State Park are renovated for public use and enjoyment.



2019 LEGISLATIVE SESSION END OF SESSION REPORT

CITY OF KENMORE

GORDON THOMAS HONEYWELL GOVERNMENTAL AFFAIRS
BRIAHNA MURRAY & SHELLY HELDER

2019 SESSION OVERVIEW

- Democrats in control of House & Senate with stronger majorities
- 105-day long legislative session: **FINISHED ON TIME**
- Primary objective was to adopt operating, capital, & transportation budgets: **ALL THREE BUDGETS ADOPTED**
- 2,208 bills introduced - 22% passed into law
- Several large policy initiatives passed into law

BUDGET SUMMARY

2019-21 State Budgets

- Operating Budget: \$52.4 billion with \$850 million in new revenue
- Capital Budget: \$4.9 billion with new investments
- Transportation Budget: limited funding, discussions on next package began

2019-20 LEGISLATIVE PRIORITIES

- Lakepointe Development
- 68th Avenue NE Pedestrian & Bicycle Safety
- Transfer of funds from SR 522 to West Sammamish Bridge
- Twin Springs Park and Lake Washington Loop Trail
- WWRP/ ALEA grants

Total State Funding Received: **\$1,060,112**

LAKEPOINTE DEVELOPMENT

- Supported Senate Bill 5564
- Credit against the state sales tax given to local jurisdictions to finance public improvements
- Passed out of the policy committee, died in Ways & Means
- Resistance to anything that impacted state revenues even if there is substantial return on investment
- Concern that the tool would be used for projects that would be developed even without this financing mechanism

68TH AVENUE NE PEDESTRIAN & BICYCLE SAFETY

- Extremely limited funding in 2019-21 transportation budget
- Requested \$450,000 towards improvements along 68th Avenue NE to improve pedestrian and bicycle safety
- Full funding included in House proposed budget
- No funding included in Senate proposed budget
- No funding included in final budget

TRANSFER OF FUNDS FROM SR 522 TO WEST SAMMAMISH BRIDGE

- Connecting Washington package allocated \$12 million for SR 522 Improvements and \$8 million to West Sammamish Bridge over several years
- Transportation budget leadership has been resistant to transferring funds for CW projects
- City requested transfer of \$4 million from SR 522 Improvements to West Sammamish Bridge
- Final budget includes the transfer which provides \$12 million for West Sammamish Bridge in the 2019-21 biennium



CAPITAL BUDGET:TWIN SPRINGS PARK AND LAKE WA LOOP TRAIL

- Requested \$150,000 for improvements at Twin Springs Park in order to get the park open to the public
- Requested \$2 million for pedestrian and bicycle improvements along the Kenmore portion of the Lake WA Loop Trail
- \$155,000 in final capital budget for Twin Springs Park

WA WILDLIFE AND RECREATION PROGRAM & AQUATIC LAND ENHANCEMENT ACCOUNT

- The city competed for grants from both programs for Squire's Landing and Log Boom Park
- WWRP has more competition and required \$115m in order for Squire's Landing to receive partial funding
- ALEA ranked 15 projects and requested \$6.6m to fund the entire list
- House budget proposal included \$4.3m, Senate budget included \$6.6m
- Final budget included \$6.6 million which means \$500,000 for Squire's Landing and \$405,112 for Log Boom Park!

OTHER LEGISLATIVE PRIORITIES/ IN PARTNERSHIP WITH AWC

- Airborne nuisances – House Bill 1637
- Minimum density – House Bill 1923
- Affordable housing – House Bill 1406/ House Bill 1219
- Mobile homes – Senate Bill 5183 and House Bill 1582

THANK YOU!

Questions?

Briahna Murray

(253) 310-5477

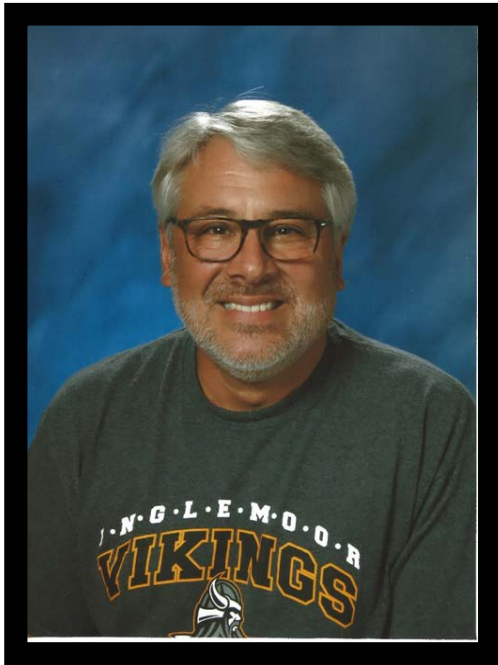
bmurray@gth-gov.com

Shelly Helder

(360) 209-3338

shelder@gth-gov.com

City of Kenmore, Washington Proclamation



WHEREAS, Ted Christensen, affectionately called Mr. C by his students, has dedicated countless hours to thousands of Inglesmoor High School music students; recruiting, teaching, and inspiring them while refining their musical talents and skills with vigor, compassion, sustained patience and an infectious positive attitude. He has served as the Director and leader of the Inglesmoor High School Viking Marching Band, Pep Band, Wind Symphony, Symphonic Band, Orchestra and Jazz Bands, performing at football and basketball games, epic half-time and laser shows, Fourth of July Parades, school assemblies, pep rallies, concerts, faculty functions, Northshore solo and ensemble competitions, community events and benefits, regional and nationwide competitions, and Inglesmoor graduations; and

WHEREAS, As a Music Director, Mr. C oversaw the district band and orchestra programs, managed the district music budget, supplied support to secondary schools concerning resources, budget, buses and assisted in hiring music teachers; and

WHEREAS, He managed 60 para-professionals assisting various music programs, helped advocate for music as necessary when decisions were being made to cut or hurt programs, tripled the orchestra numbers and worked hard to keep the existing programs well supported and funded, and accessible to students to name a few; and

WHEREAS, Mr. C graduated from Seattle Pacific University in 1981 and student taught at Bothell High School in the Music Department with Bernie Ackerman, Dennis Behrens and Judd Aetzel. He began teaching instrumental music at Inglesmoor in 1983, earned his MA in 1992 and became Northshore's Music Coordinator in 2000. He has taken music groups all over the US, as well as to Canada and China. His groups have performed at Carnegie Hall and Avery Fisher Hall in Lincoln Center (NYC); and

WHEREAS, His marching band marched in Kenmore's Founders Day parade and appeared on Good Morning America from the Inglesmoor Community Club in 1988; and

WHEREAS, Mr. C not only carried out a multitude of duties with a resounding crescendo of success but went above and beyond in dedicating his time to students for individual and group performances, college-competition music prep, and many other student projects; all on top of being a devoted husband and Dad; and

WHEREAS, The results of his dedication can only begin to be measured by the many thousands of his former students who remain blessed with the love of music which is a pleasure and sustaining force to be enjoyed throughout their lives,

WHEREAS, Mr. C is scheduled to retire and move on to the well-earned next chapter of his life. Mr. C's last day at Inglemoor High School is Friday, June 14, 2019 making it the ideal day to honor him;

NOW THEREFORE, I, David Baker, Mayor of the City of Kenmore, Washington, on behalf of the Council, am pleased to proclaim Friday, June 14, 2019 - Ted Christensen (Mr. C) Day in the City of Kenmore and wish Mr. C the very best in his future endeavors.

***“Ted Christensen (Mr. C) Day
June 14, 2019”***

IN WITNESS WHEREOF, signed this 10th day of June, 2019.



Signed: _____
David Baker, Mayor

Attested: _____
Kelly M. Chelin, City Clerk



Subject/Topic: Interlocal Agreement with the City of Marysville for the rental of outdoor video services for Movies at the Square event series Proposed Council Action/Motion: Authorize the City Manager to sign an Interlocal Agreement with City of Marysville for the rental of outdoor video services for Movies at the Square events to be held in the Town Square	For Council Meeting Agenda of: 10 June 2019 Department: Executive Prepared by: Nicole Suarez, Seasonal Event Assistant <table border="0"> <tr> <td></td> <td style="text-align: right;"><u>Initial & Date</u></td> </tr> <tr> <td>Approved by Department Head:</td> <td style="text-align: right;">NKO 5/29/2019</td> </tr> <tr> <td>Approved by City Attorney:</td> <td style="text-align: right;"></td> </tr> <tr> <td>Approved by Finance Director:</td> <td style="text-align: right;">CNS 5/29/19</td> </tr> <tr> <td>Approved by City Manager:</td> <td style="text-align: right;">RDK</td> </tr> </table> Exhibits/Attachments: Interlocal Agreement		<u>Initial & Date</u>	Approved by Department Head:	NKO 5/29/2019	Approved by City Attorney:		Approved by Finance Director:	CNS 5/29/19	Approved by City Manager:	RDK
	<u>Initial & Date</u>										
Approved by Department Head:	NKO 5/29/2019										
Approved by City Attorney:											
Approved by Finance Director:	CNS 5/29/19										
Approved by City Manager:	RDK										
Expenditure Required \$2,800 Amount Budgeted \$10,000 in 2019 Appropriation Required \$0											
<u>INFORMATION/BACKGROUND:</u> The City of Kenmore would like to enter into an Interlocal Agreement with City of Marysville for rental of outdoor video services for the Movies at the Square event series in summer of 2019. Movies at the Square will consist of four family-friendly movies shown in the Town Square on July 10, July 24, August 7, and August 21. As part of the agreement, City of Marysville would provide video and audio equipment, including a movie screen, personnel, and vehicles to transport the equipment to Kenmore. The mission of the Town Square and Hangar is to mold and activate signature downtown public spaces where Kenmore area residents, visitors, and business people can gather, interact, meet some of their daily needs, and have an authentic local sense of place. Movies at the Square will activate the space several times during the summer, bringing Kenmore area residents and visitors together for a free, family-friendly movie. This event brought in over 1,800 attendees in 2018 and is highly anticipated amongst families and teens in the community. Guests will be encouraged to begin arriving up to two hours before the event begins to utilize the space for interacting and enjoying food from featured food vendors, Diva Espresso, or surrounding Kenmore restaurants. Entertaining and educational activities directly related to the movie will be available to guests before the movie begins to encourage interaction with others in the community and the space. City staff is seeking City Council to authorize the City Manager to sign an Interlocal Agreement with City of Marysville for the services listed above. <u>FISCAL CONSIDERATION:</u>											

As part of the Interlocal Agreement, City of Kenmore will pay City of Marysville \$700.00 per event for the use of employees, equipment, and vehicles for a total of \$2,800 for four events.

COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:

- Create a vibrant, walkable downtown
- To build community and create fun

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF KENMORE
AND THE CITY OF MARYSVILLE
FOR OUTDOOR VIDEO SERVICES**

This Interlocal Agreement effective July 10, 2019 between the City of Kenmore, a Washington municipal corporation, herein after referred to as “KENMORE” and the City of Marysville, a Washington municipal corporation, herein after referred to as “MARYSVILLE”, pursuant to the authority granted by Chapter 39.34 RCW.

WHEREAS, the City of KENMORE is the organizer/host jurisdiction of outdoor movie presentations which shall be selected, provided and licensed by City of KENMORE and presented on July 10, July 24, August 7, August 21; and

WHEREAS, the City of KENMORE is the owner of the property where the movie will be shown to the community for free; and

WHEREAS, the City of MARYSVILLE has sufficient OUTDOOR VIDEO equipment, staff and vehicles to provide OUTDOOR VIDEO SERVICES for public events within the City of Marysville and for other Cities as well; and

WHEREAS, the City of KENMORE desires to utilize the City of MARYSVILLE’S OUTDOOR VIDEO SERVICES; and

WHEREAS, this Agreement between Parties is made pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, for the City of MARYSVILLE to provide OUTDOOR VIDEO SERVICES to the City of KENMORE to exercise their powers jointly and thereby maximize their abilities to provide services and facilities that will best fulfill common needs and achieve common goals.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, KENMORE and MARYSVILLE agree as follows:

1. SCOPE OF SERVICES

- A. MARYSVILLE agrees to provide OUTDOOR VIDEO SERVICES to KENMORE as defined in this Agreement. MARYSVILLE’S performance of said services under this Agreement may be limited by the availability of MARYSVILLE’S personnel and equipment. MARYSVILLE will notify the City of KENMORE at least 48 hours before the event if it is not able to provide personnel and/or equipment.
 - 1. MARYSVILLE will provide OUTDOORVIDEO SERVICES to KENMORE.
 - 2. MARYSVILLE will provide the video and audio equipment including movie screen, personnel and vehicles to transport the equipment and personnel to

KENMORE. MARYSVILLE personnel will operate the video equipment and vehicles.

- B. KENMORE will provide the following:
 - 1. An authorized location.
 - 2. Two (2) 20 amp circuits for event power.
 - 3. Other services/personnel.
- C. The date for video services (FILM) will be:
 - 1. Wednesday, July 10, 2019
 - 2. Wednesday, July 24, 2019
 - 3. Wednesday, August 7, 2019
 - 4. Wednesday, August 21, 2019
- E. It is understood and agreed by all parties that MARYSVILLE staff providing services pursuant to this Agreement are acting in their official capacity as employees of MARYSVILLE and shall be under the exclusive direction and control of MARYSVILLE.

It is understood and agreed by all parties that KENMORE staff providing services pursuant to this Agreement are acting in their official capacity as employees of KENMORE and shall be under the exclusive direction and control of KENMORE.
- F. KENMORE and MARYSVILLE agree to cooperate with all terms and conditions of this Agreement, and shall furnish any information, or other material available to it as may be required in the course of the performance of this Agreement.
- G. KENMORE, by this Agreement, and to the extent contained herein, delegates on an as needed, as requested basis to MARYSVILLE the authority to perform on KENMORE'S behalf those services as provided in this Agreement.

2. COMPENSATION/FEES

- A. KENMORE will pay MARYSVILLE per performance for the use of the employees, equipment and vehicles in the amount of \$700.00 per date.
- B. KENMORE will pay MARYSVILLE 25% of the event fee in the event KENMORE cancels an event with less than 12 hours phone notice to MARYSVILLE as provided in Section 8 (C) (2) of this Agreement.
- C. MARYSVILLE shall bill KENMORE and KENMORE shall pay MARYSVILLE within thirty (30) days receipt of the bill.

3. AMENDMENTS/MODIFICATION

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed in the same manner as this Agreement.

4. INDEMNIFICATION AND LIABILITY

A. Indemnification:

1. KENMORE will at all times indemnify and hold harmless and defend MARYSVILLE, their elected officials, officers, employees, agents and representatives, from and against any and all lawsuits, damages, costs, charges, expenses, judgments and liabilities, including attorney's fees (including attorney's fees in establishing indemnification), collectively referred to herein as "losses" resulting from, arising out of, or related to one or more claims arising out of negligent acts, errors, or omissions of KENMORE in performance under this agreement.
2. MARYSVILLE will at all times indemnify and hold harmless and defend KENMORE, their elected officials, officers, employees, agents and representatives, from and against any and all lawsuits, damages, costs, charges, expenses, judgments and liabilities, including attorney's fees (including attorney's fees in establishing indemnification), collectively referred to herein as "losses" resulting from, arising out of, or related to one or more claims arising out of negligent acts, errors, or omissions of MARYSVILLE in performance under this agreement.
3. The term "claims" as used herein shall mean all claims, lawsuits, causes of action, and other legal actions and proceedings of whatsoever nature, involving bodily or personal injury or death of any person or damage to any property including, but not limited to, persons employed by MARYSVILLE, KENMORE, or other person and all property owned or claimed by MARYSVILLE, KENMORE, or affiliate of thereof, or any other person; except for those losses or claims for damages solely caused by the negligence or willful misconduct of MARYSVILLE or KENMORE, their elected and appointed officials, officers, employees or agents.

B. NOTHING HEREIN SHALL REQUIRE OR BE INTERPRETED TO:

1. Waive any defense arising out of RCW Title 51
2. Limit or restrict the ability of any City or employee or legal counsel for any City or employee to exercise any right, defense or remedy which a party to a lawsuit may have with respect to claims or third parties, including, but not limited to, any good faith attempts to seek dismissal or legal claims against a party by any proper means allowed under the civil rules in either state or federal court.

3. Cover or require indemnification or payment of any judgment against any individual or Party for intentional or wrongful conduct outside the scope of employment of any individual or for any judgment for punitive damages against any individual or city. Payment of punitive damage awards, fines or sanctions shall be the sole responsibility of the individual against whom said judgment is rendered and/or his or her municipal employer, should that employer elect to make said payment voluntarily. This agreement does not require indemnification of any punitive damage awards or for any order imposing fines or sanctions.

C. The provisions of this section shall survive the expiration or termination of the Agreement.

5. INSURANCE

- A. Both parties to this Agreement shall maintain public liability insurance either through the Washington Cities Insurance Authority (WCIA) or through an equivalent combination of self-insurance and appropriate insurance coverage and shall maintain their membership in WCIA or their insurance policies throughout the term of this Agreement.
- B. Such insurance shall not be reduced or canceled without forty-five (45) days written notice from the other party. Reduction or cancellation of the insurance shall render this Agreement void.
- C. Upon request by one party to the other, the party receiving such request shall provide to the party making such request proof of insurance coverage or membership in WCIA verifying that party is a covered member in good standing.

6. INDEPENDENT CONTRACTOR

- A. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between KENMORE and MARYSVILLE or any of KENMORE'S or MARYSVILLE's agents or employees.

KENMORE shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by KENMORE pursuant to this Agreement.

MARYSVILLE shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by MARYSVILLE pursuant to this Agreement.
- B. Nothing in this Agreement shall make any employee of KENMORE a MARYSVILLE employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded KENMORE or employees by virtue of their employment.

Nothing in this Agreement shall make any employee of MARYSVILLE a KENMORE employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded MARYSVILLE employees by virtue of their employment.

7. LEGAL RELATIONS

- A. The prevailing Party in any action to enforce any provision of this Agreement or to redress any breach hereof shall be entitled to recover from the other party its costs and reasonable attorney' fees incurred in such action.
- B. The Parties shall comply with all federal, state and local laws and ordinances applicable to work to be done under this agreement. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any action commenced relating to the interpretation, breach or enforcement of this agreement shall be in Snohomish County Superior Court.
- C. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this contract may be resolved by a mutually agreed upon alternative dispute resolution of arbitration or mediation.

8. DURATION/TERMINATION/NOTICE/EMERGENCY NOTICE

- A. This Agreement will become effective on the date of affixing the last signature hereto and shall remain in effect for a period of six months, subject to renewal.
- B. Either party may terminate this Agreement, for any reason, upon providing thirty (30) days written notice to the other party, in which case each City shall pay the other City for all services provided up to and including the date of termination.
- C. Notices

- 1. Required notices, with the exception of legal process, shall be given in writing to the following respective addresses:

City of MARYSVILLE:
6915 Armar Road
Marysville, WA 98270

City of KENMORE:
18120 68th Ave NE
Kenmore, WA 98028

- 2. Event Cancellation Notice via Phone/Emergency Contact:

The below named individuals are designated as the representatives of the respective parties. The representatives shall be responsible for administration of this

Agreement. In the event a representative is changed, the party making the change shall notify the other party.

MARYSVILLE:

Name: Lauren Woodmansee, Cultural Arts Supervisor
Phone Number: 360-363-8408

KENMORE:

Name: Nicole Suarez, Seasonal Event Assistant
Phone Number: 425-984-6166

- D. Termination shall not affect the rights and obligations of the parties under Sections 4, 5, 6 and 11 of this Agreement.

9. WAIVER

No term or provision herein shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

10. ENTIRE AGREEMENT

This Agreement, including any exhibits and documents referenced herein, constitutes the entire agreement between the parties, and supersedes all proposals, oral or written, between the parties regarding plan review and inspection services.

11. PRIVILEGES AND IMMUNITIES

All privileges and immunities from liability, exemption from ordinances, rules, laws, all pension, disability, workers' compensation and other benefits which apply to the activities of MARYSVILLE employees while performing their functions within the territorial limits of MARYSVILLE shall apply to them to the same degree and extent while they are engaged in the performance of any of their authorized functions and duties within KENMORE under the provisions of this Agreement.

12. THIRD PARTY BENEFICIARY STATUS

The parties agree that this Agreement shall not confer third-party beneficiary status on any non-party to this Agreement.

13. SEVERABILITY

If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provision and/or the application of the provisions to other persons or circumstances shall not be affected.

14. APPROVAL AND FILING

APPROVAL AND FILING. Each party shall approve this Agreement pursuant to the laws of the governing body of said party. The attested signature of the officials identified below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Snohomish County Auditor's office pursuant to RCW 39.34.040.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date indicated below.

CITY OF MARYSVILLE

CITY OF KENMORE

JON NEHRING Mayor

DAVID BAKER Mayor

Date:

Date:

Attest:

Attest:

TINA BROCK Deputy City Clerk
Approved as to form:

KELLY CHELIN City Clerk
Approved as to form:

JON WALKER City Attorney
Attorney for the City of MARYSVILLE

Dawn Reitan City Attorney
Attorney for City of KENMORE
(Contracted through Inslee Best)



City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic:

Interagency Agreement between the City of Kenmore and the Washington State Parks and Recreation Commission, regarding reimbursement for costs for an Environmental Impact Statement (EIS) for the St. Edward Ballfield Improvement Project

Proposed Council Action/Motion:

Motion authorizing the City Manager to execute contract 19-C2061 between the Washington State Parks and Recreation Commission and City of Kenmore.

For Council Meeting Agenda of: 6/10/19

Department: Community Development and Development Services

Prepared by: Debbie Bent, Community Development Director, Bryan Hampson Development Services Director

Initial & Date

Approved by Department Head: DA Spauling 5/6/19

Approved by City Attorney: emails 5/6/19, 5/10/19

Approved by Finance Director: [Signature] 5/6/19

Approved by City Manager: [Signature]

Exhibits/Attachments:

1. Interagency Agreement between Washington State Parks and Recreation Commission and City of Kenmore Agreement No. IA 719-424 (City Contract 19-C2061)
2. SEPA Lead Agency Agreement between the City of Kenmore and Washington State Parks (City Contract 19-C2062)

INFORMATION/BACKGROUND: Council direction to staff at the May 2018 Council retreat was to pursue a SEPA Environmental Impact Statement (EIS) to support the City's review of a critical area wetland buffer variance permit application and a long-term lease application with State Parks for the City to be able to upgrade and maintain the ballfields at St. Edward State Park. To implement Council direction for the EIS, two agreements are required with State Parks (see Attachments #1 and #2).

Council authorization is required for the Interagency Agreement (Attachment #1) and staff recommends that Council pass a motion at the June 10th Council meeting giving authority to the City Manager to sign the agreement with one minor edit. The date of expiration for the agreement (See Period of Performance Page 1 of Attachment #1) needs to be extended from September 30, 2019 until December 31, 2019 to allow sufficient time to complete Phase 1. State Parks staff agreed to make the edit to the agreement. The Council approved Park Capital Improvement Program (CIP) also includes \$300,000 of funding to complete the EIS in 2019.

The Interagency Agreement (Attachment #1) outlines the terms of the City's reimbursement to State Parks for consultant costs (up to \$64,105) for Phase 1. State Parks selected the Watershed Company in December 2018 as the consultant to support the EIS process. Phase 1 of the EIS process is estimated to be completed between June and December 2019 and includes scope development, public meeting, refinement of alternatives, and scoping report. State Parks will issue a Determination of Significance (DS) after execution of both agreements (June 2019) as the first step in the EIS process. Costs and timing to complete Phase 2, including issuance of a Draft Environmental Impact Statement (DEIS) and Final EIS will also be determined as part of the Phase 1 scope. To proceed with Phase 2 will require an extension of the Interagency Agreement and agreement on consultant scope/fee. Bryan Hampson, Development Services Director is the City's SEPA official and City's contact person for all communications and billings regarding performance of the agreement.

I:/City Clerk/Agenda Items/Templates

A SEPA Lead Agency Agreement (See Attachment #2) is expected to be signed by the City and State Parks prior to the June 10th Council meeting. This is an administrative agreement and does not require Council authorization for the City Manager's signature. This agreement establishes State Parks as the SEPA lead agency. Bryan Hampson, Development Services Director is the City's SEPA official and City contact person for all communications regarding the SEPA agreement.

Background: In late 2015 the City Council gave direction to staff to propose renovating the existing ballfield at St. Edward State Park. The proposed field improvements support two little league fields, two youth soccer fields, one full size soccer field or one full size cricket field. On January 22, 2016 a Memorandum of Understanding (Contract 16-C1507) was executed between State Parks and the City to prepare a long-term lease whereby the City improves the ballfields and manages and maintains them. In June 2016 a SEPA Lead Agency Agreement (Contract 16-1561) was executed between the City and State Parks assigning the City as SEPA lead agency. The new SEPA Lead Agency Agreement (Attachment #2) establishes State Parks as the SEPA lead agency.

In April 2017 the City submitted a draft Application for Real Property Agreement to State Parks for a 20-year long-term lease. State Parks requested an updated application, which the City submitted February 2019. The lease would outline the terms and conditions regarding the City's ability to upgrade and maintain the ballfields. The SEPA EIS process will support the City decision on the critical area variance buffer permit application and State Park's Commission decision on the lease.

In July 2017 a Critical Area Wetland Buffer Variance Permit application (VAR17-0120) and SEPA application (SEPA 17-0120) were submitted to the City's Development Services Department for a wetland buffer reduction to the existing mowed wetland buffer. The critical area buffer variance permit application is still under review and a permit decision will not be issued until completion of the SEPA EIS process.

FISCAL CONSIDERATION: The adopted Park Capital Improvement Program (Ordinance 18-0469) includes \$300,000 allocated in 2019 for completion of a SEPA EIS for the St. Edward Ballfield Project. Up to 50% of EIS costs may be eligible for reimbursement through the 2016 State RCO grant for the ballfield project.

COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:
Goal 8 Continue to implement a parks improvement plan.



INTERAGENCY AGREEMENT
Between
WASHINGTON STATE PARKS AND RECREATION COMMISSION
And
CITY OF KENMORE



AGREEMENT NO. IA 719-424

THIS AGREEMENT is made and entered into by and between the Washington State Parks and Recreation Commission, hereinafter referred to as "State Parks," and City of Kenmore, hereinafter referred to as the "City".

IT IS THE PURPOSE OF THIS AGREEMENT to have the City reimburse State Parks for an Environmental Impact Statement for the Saint Edward State Park – City of Kenmore Ballfields development proposal (EIS) in connection with the New SEPA Lead Agency Agreement between the City and State Parks Regarding the Proposed Ballfield Development at Saint Edward State Park.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The City shall reimburse State Parks for the EIS work performed by The Watershed Company, State Parks contract # SC 719-302. The scope of work for the contract, also known as "first phase of the EIS process," is attached and made part of this Agreement as Exhibit A.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on the date signed by State Parks and shall be completed on December 31, 2019, unless terminated sooner as provided herein. This Agreement shall automatically expire on December 31, 2019, unless otherwise extended by amendment.

PAYMENT

Reimbursement for the work provided in accordance with this Agreement is authorized by RCW 39.34.030 and 39.34.080. The parties have estimated that the cost of accomplishing the work will not exceed **Sixty-Five Thousand, One Hundred Five and No/100ths Dollars (\$65,105.00)**. Reimbursement for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded.

BILLING PROCEDURE

State Parks shall submit invoices no more often than monthly. The reimbursement to State Parks for approved and completed work will be made by check by the City within 30 days of receipt of the invoice. Upon expiration of the contract, any claim for reimbursement not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier. The invoices from State Parks shall include copies of The Watershed Company's invoices to State Parks that are the basis for the invoices to the City.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect The Watershed Company charges, the invoices from State Parks and the reimbursement from the City for such. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

INDEMNIFICATION

Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a dispute board

in the following manner: Each party to this Agreement shall appoint one member to the dispute board. The members so appointed shall jointly appoint an additional member to the dispute board. The dispute board shall review the facts and Agreement terms and applicable statutes and rules, and shall make a determination of the dispute. The determination of the dispute board shall be final and binding on the parties hereto.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency between the terms of this Agreement, the scope of work, and/or any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable statute or rule;
- b. scope of work; and
- c. any other provisions of the Agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

PROJECT MANAGEMENT

The project representative for each of the parties shall be responsible for and shall be the contact

person for all communications and billings regarding the performance of this Agreement.

The Project Representative for City is: Bryan Hampson, Development Services Director, (425) 398-8900

The Project Representative for State Parks is: Jessica Logan, Environmental Planner 5, (360) 902-8679

IN WITNESS WHEREOF, the parties have executed this Agreement.

City of Kenmore

**Washington State Parks and
Recreation Commission**

By: _____

By: _____

Title: _____

Title: Chief Financial Officer

Date: _____

Date: _____

Approved As To Form:
William Van Hook
Asst. Attorney General
02/20/07

EXHIBIT A**THE WATERSHED COMPANY
SCOPE OF WORK****SC 719-302**

This Scope of Work is limited to the first phase of the EIS process, Scoping and Refinement of Alternatives. Once this work is complete, costs will be applied to the tasks of completing the PDEIS, DEIS, and FEIS.

Scope of Services:

Phase 1. EIS Scoping and Refinement of Alternatives	\$45,175
1.1 Data gap analysis, base map, research	
1.2 Site visit with Washington State Parks (Client) and City of Kenmore (Applicant)	
1.3 EIS Scope Development	
1.4 Public Participation Approach	
1.5 Scoping Notice, Public Meeting/Open House/Workshop, and Scoping Report	
1.6 Refine Alternatives	
1.7 Develop/Coordinate Definitions of up to Five Levels of Impact	
Phase 5. EIS Consultant Team Coordination & Project Administration	\$17,920
5.1 Project development, management, coordination	
5.2 Invoicing and progress reports	
Phase 6. Expenses (mileage, copies, GPS, other)	\$2,010

Note: Phases 2, 3 and 4 to be authorized by future contract amendments.
Phases 5 and 6 to be expanded in future contract amendments, to support work performed in Phases 2, 3 and 4.

The total cost for Phases 1, 5, and 6 will not exceed **\$65,105**.

PHASE 1. EIS SCOPING AND REFINEMENT OF ALTERNATIVES

- 1.1 Data gap analysis, base map, and research.** The EIS consultant team will collect and review background information, assemble available mapping data, and identify additional data needs. Propose additional data collection and/or additional analysis to Parks if warranted.
- 1.2 Site Visit with Washington State Parks (Client) and City of Kenmore (Applicant).** The EIS consultant team will attend one site visit with State Parks and City representative(s) to review existing conditions and potential effects of the alternatives.
- 1.3 EIS Scope Development.** The EIS consultant team will develop a preliminary scope for the EIS based on project understanding and available information. The EIS consultant team will attend one EIS scope development meeting with State Parks and City of Kenmore representatives (in-person or via conference call) to confirm the EIS preparation process. The public participation process to be led by State Parks will also be defined during this task. Preliminary alternatives will be defined for inclusion in the EIS scoping

notice. It is our understanding at this time that these will include those listed below (or similar). The EIS consultant team will discuss with State Parks during this task whether a preferred alternative will be described at this time, or later in the EIS process.

- Field lighting with artificial turf
- No field lighting with artificial turf
- Field lighting with an improved natural turf field
- No field lighting with an improved natural turf field
- No action – how the field is used now (no lighting, existing grass)

1.4 Public Participation Approach. The EIS consultant team will assist State Parks with developing a robust public participation approach that will include opportunities for review and comment on the alternatives, as well as review and comment on the elements of the environment to be addressed in the EIS. The approach may include development of a formal public participation plan to specify outreach methods (e.g. postcards, meetings, website) and a preliminary schedule for the EIS process.

1.5 Scoping Notice, Public Meeting/Open House/Workshop, and Scoping Report.

- Prepare a draft Scoping Notice for review and use by State Parks. Include a list of preliminary alternatives to be considered and the list of elements of the environment to be addressed in the EIS.
- *Review and comment on presentation materials developed by State Parks and attend one public meeting during the EIS scoping process. The EIS consultant team will prepare notes for use by State Parks and City of Kenmore following the public meeting.*
- Optional: Prepare a Scoping Report summarizing the EIS scoping process and comments received, as well as how these comments will be used in the SEPA process.

1.6 Refine Alternatives. Participate in one meeting with State Parks and City of Kenmore to refine project alternatives (if appropriate) based on input received during the EIS scoping process. Confirm whether additional discipline reports are needed based on scoping comments received and final definition of the alternatives to be evaluated in the EIS.

1.7 Develop Definitions for up to Five Levels of Impact. Draft language will be developed to aid the consultant team in analyzing the issues consistently. Includes team coordination and communication with the goal of agreement on what constitutes a significant impact and what constitutes reasonable mitigation before proceeding to Phase 2. Includes one round of review and revision if necessary.

Work Products:

- One Draft Scoping Notice *for use by State Parks and City of Kenmore.*
- Public meeting summary notes (one meeting, one version).
- Scoping Report (one version) that captures both public comments and refinements to project alternatives/refinements to the EIS analysis (if any) developed at the follow-up meeting with State Parks and City of Kenmore.
- Definitions for up to five levels of impact (one revision).

5. EIS Consultant Team Coordination and Project Administration

5.1 Project management and coordination. *This task assumes 1.5 hours per week for up to 4 months from Notice-to-Proceed for the Phase 1 work.*

5.2 Invoicing and progress reports. *This task assumes monthly invoices and brief 1-2 page progress reports for up to 4 months from Notice-to-Proceed for the Phase 1 work.*

Assumptions for overall EIS process:

- The overarching assumption is that site-specific technical studies have been completed and provide adequate information to summarize in the EIS with only additional qualitative analysis. If additional studies are determined to be necessary, State Parks will decide whom shall prepare these. If the EIS consultant team is tasked with preparing additional technical studies, this would fall outside of this scope, budget, and preliminary schedule.
- It is assumed that State Parks will lead the public participation process and maintain the website for the Saint Edward Park/City of Kenmore Athletic Fields EIS. The EIS consultant team will support the public participation process through reviewing and commenting on presentation materials developed by State Parks; participating in one public scoping meeting/open house/workshop; one public meeting/open house/workshop during the Draft EIS comment period; and providing one summary for each of these meetings of the discussion and comments received.
- *Comments from State Parks and City of Kenmore on each deliverable will be compiled by State Parks into a single document for delivery to the consultant team.*
- Cost estimate assumes receipt of approximately 100 written public comments on the DEIS (letters or email communication), identifying an average of five issues each.
- Preparation of more than one PDEIS and/or PFEIS for internal review by State Parks/City of Kenmore can be accommodated, provided that the EIS consultant team receives authorization for additional budget and extension of the preliminary schedule.
- If formal public hearings become necessary, participation by members of the EIS consultant team would be contracted separately.
- This scope of work and cost estimate may be affected by factors unknown at this time that may arise in response to public or agency comments or requests at any stage of EIS preparation.
- Time may be transferred from one task to another due to greater or lesser level of effort, provided that each task shall be completed and the total budget shall not be exceeded.
- This proposal includes general coordination with State Parks via email and phone. In-person meetings beyond those specified above are not included. Additional coordination can be added if necessary, under a separate agreement.

ATTACHMENT

2

NEW SEPA LEAD AGENCY AGREEMENT
BETWEEN
THE CITY OF KENMORE
And
WASHINGTON STATE PARKS
Regarding the
PROPOSED BALL FIELD DEVELOPMENT IN SAINT EDWARD STATE PARK

I. PARTIES

This New SEPA Lead Agency Agreement ("SEPA Agreement") is entered into by the City of Kenmore ("City") and Washington State Parks and Recreation Commission ("State Parks"), collectively, the "Parties", pursuant to WAC 197-11-944.

II. PURPOSE, BACKGROUND AND PRIOR AGREEMENT

The purpose of this SEPA Agreement is to assign lead agency responsibilities under the State Environmental Policy Act ("SEPA"), chapter 43.21C RCW, and its implementing regulations, chapter 197-11 WAC, for the proposal described below which will be located on State Parks' property. Implementation of the proposal will require (1) a lease from the State Parks Commission ("Parks Commission," which, as used herein, refers specifically to the commission created by RCW 79A.05.015), and (2) a critical area buffer width variance and development permits from the City (collectively, the "SEPA Actions").

Saint Edward State Park is a 316-acre day use park that was formerly a Catholic Seminary. The Seminary and associated grounds are listed on the National Register of Historic Places. In addition to the Seminary buildings, Saint Edward State Park has 3,000 feet of freshwater shoreline on Lake Washington, numerous trails for hiking and biking, open space areas for recreating, ballfields, and various other active and passive recreational amenities.

The City proposes to lease and modify the existing ballfields that are located just east of the Seminary buildings at approximately 14445 Juanita Drive NE. A copy of the City's draft design for the ballfield proposal dated February 27, 2019, is attached to this SEPA Agreement as **Exhibit A** and incorporated by reference ("Proposal"). The Proposal may include elements such as resurfacing the two existing ballfields with artificial turf and an overlay of two soccer fields and a cricket field. The Proposal may also include the addition of LED field lighting, modification to existing parking, addition of new parking, wetland and buffer mitigation, upgrades to the existing restroom, and addition of covered bleachers, covered dugouts, backstops, fencing, pathway around the ballfields and landscaping. The Proposal does not include any modifications to any area other than the ballfields and nearby parking areas, and specifically does not include the historic Seminary buildings, shoreline, trails, picnic areas, "big toy" playground, horse shoe pits, volleyball area, or roads. Implementation of the Proposal is contingent upon Parks Commission's approval of the City's request for a lease and the outcome of the SEPA review. The City intends to request a lease from State Parks that will authorize the City to maintain, use, and schedule use of the ballfields for a minimum of 20 years.

1

City of Kenmore and State Parks
Revised SEPA Lead Agency Agreement for
Saint Edward State Park Ball Field Proposal

The Parties entered into a SEPA Lead Agency Agreement regarding the Proposal in June 2016. This New SEPA Lead Agency Agreement replaces the 2016 Agreement on the date described in Section V.E below.

III. AGREEMENT

A. Full Cooperation and Coordination

1. The Parties shall work together to ensure consistency and coordination in the development and preparation of SEPA documents necessary for adequate review of the Proposal, including but not limited to the environmental checklist, the determination of significance ("DS"), the draft environmental impact statement ("DEIS") and final environmental impact statement ("EIS") as required below ("SEPA Documents").

2. The Parties shall work together to involve any other local, state, federal, or tribal agencies and interested parties in the preparation and review of the SEPA Documents to ensure a transparent and public process.

3. The Parties shall work together to identify, as far in advance as possible, actions or problems that might affect SEPA review and the SEPA Documents.

B. General Duties

1. State Parks shall act as nominal lead agency for the Proposal and the SEPA Actions pursuant to WAC 197-11-926 and -944. The Parties agree that State Parks will apply Chapter 352-11 WAC, titled "SEPA Procedures," to State Parks' review of the Proposal and the SEPA Actions, pursuant to the following terms and conditions:

- i. WAC 352-11-020: There is no administrative appeal within State Parks of any SEPA determinations made by State Parks or the SEPA responsible official.
- ii. WAC 352-11-040: The "decision maker" is Jessica Logan, Environmental Program Manager, as delegated by the State Parks Director.
- iii. WAC 352-11-055: The SEPA responsible official has determined that the Proposal and SEPA Actions are not categorically exempt from SEPA.
- iv. WAC 352-11-055 and 352-11-330: The City has submitted an environmental checklist, which the City does not need to revise or supplement. State Parks and the SEPA Responsible Official have determined that the Proposal and SEPA Actions may have a probable significant adverse environmental impact, requiring the SEPA Responsible Official to issue a DS, carry out scoping, and prepare an EIS.
- v. WAC 352-11-350: Does not apply.
- vi. WAC 352-11-420: State Parks will use an outside consultant to assist in the preparation of the EIS pursuant to the terms of Section III.B.3 below.
- vii. WAC 352-11-420: If State Parks requests the City to provide information related to the EIS, and the City does not possess such information, or it does not exist, State Parks and the City must discuss the purpose, relevancy and necessity of such information. If the Parties agree that such information is relevant and necessary for the EIS, the City must obtain or create such information at its own cost and expense;

2

City of Kenmore and State Parks
Revised SEPA Lead Agency Agreement for
Saint Edward State Park Ball Field Proposal

provided, that if the estimated cost to the City is beyond the City's budget, the City may decide not to obtain or create such information. In the absence of such information, State Parks may decide that it cannot complete an adequate review of the Proposal and therefore must terminate the SEPA review process for the Proposal and the SEPA Actions. State Parks must advise the City in writing of its preliminary decision to terminate the SEPA review process at least 30 days before making its final decision.

viii. WAC 352-11-510: State Parks must notify the City of the methods and contents of public notices at least 21 days prior to issuance of the notices.

ix. WAC 352-11-665: Upon request of the City during the EIS preparation process, but at least 30 days before issuance of the DEIS, State Parks must provide to the City all policies, plans, rules or regulations of State Parks that State Parks may or will consider as substantive authority to mitigate environmental impacts of the Proposal or SEPA Actions, or to condition or deny the Proposal or SEPA Actions.

x. WAC 352-11-910: The SEPA responsible official is Jessica Logan, Environmental Program Manager, as delegated by the Director of State Parks.

2. If the City receives written comments regarding the scope, reasonable alternatives or contents of the DEIS, the City shall promptly forward copies of the comments to State Parks.

3. The City acknowledges that State Parks will use The Watershed Company, an outside consultant, to assist in preparation of the EIS ("EIS Consultant"). State Parks has supplied the City with the EIS Consultant's qualifications. As of the date described in Section V.E below, the EIS Consultant's services are divided into 6 phases (Phase 1: EIS scoping and refinement of alternatives (\$45,175 cost estimate); Phase 2: preparation of preliminary DEIS; Phase 3: preparation of DEIS ; Phase 4: preparation of EIS; Phase 5: coordination and administration by EIS Consultant team (\$17,920 cost estimate for Phase 1); and Phase 6: charge for expenses (\$2,010 cost estimate for Phase 1)). After the EIS Consultant completes Phase 1 services, State Parks shall notify the City of such completion and the EIS Consultant's charges for such services, together with the EIS Consultant's estimate of charges for Phase 2 services (the cost estimate for Phase 2 services are undetermined as of the date described in Section V.E below). After receiving this notice, the City may, in its sole discretion, direct State Parks to terminate preparation of the EIS and SEPA environmental review for the Proposal and SEPA Actions.

4. State Parks shall provide the City with all drafts of the preliminary DEIS, DEIS, preliminary EIS and EIS at least 45 days prior to issuance, and will provide the City with an opportunity to comment on the documents before issuing them.

5. As nominal lead agency, State Parks shall be responsible for ensuring compliance with SEPA's public notice, comment, and hearing requirements. WAC 197-11-502, 197-11-510, and 197-11-535; WAC 352-11-510.

6. The City shall be solely responsible for ensuring compliance with its comprehensive plan and development regulations.

7. In all other respects, the Parties shall act as partners in meeting State Parks' responsibilities as SEPA nominal lead agency.

C. EIS Schedule

1. State Parks shall use its best efforts to issue the DEIS by December 31, 2019 and the EIS by March 31, 2020.

IV. DECISION MAKING AND DISPUTE RESOLUTION

A. The Parties agree to attempt to make decisions by consensus throughout the SEPA process in regard to issuance of the DS and the scope, content, and timing of the DEIS and EIS. The Parties recognize that the EIS must contain sufficient environmental analysis for informed decision-making of all agencies with jurisdiction. Therefore, information regarding areas of environmental concern and potential mitigation suggested by either Party shall be included in the document(s).

B. If the Parties cannot agree on any aspect of the SEPA process or the SEPA Documents, they should use their best efforts to agree upon a dispute resolution process and carry out the process in a timely manner. If any dispute resolution is unsuccessful, the Parties may agree to terminate this SEPA Agreement pursuant to the process in Section V.F. below. State Parks will not be required to compensate the City for any funds it received from the City for the services of the EIS Consultant.

C. If this SEPA Agreement is terminated, each Party will assume lead agency responsibility for the SEPA Actions under that Party's jurisdiction pursuant to WAC 197-11-922 through 938.

D. If there is an appeal to the courts of any decision or action pursuant to this SEPA Agreement, each Party shall be responsible for its own attorneys' fees and costs to defend or prosecute the appeal, and each Party retains the right to participate in the appeal at its own cost and expense.

V. OTHER PROVISIONS

A. Except as provided in this SEPA Agreement, nothing in this SEPA Agreement shall be construed as limiting or affecting in any way the authority or legal responsibilities of either Party. This SEPA Agreement is not intended to affect environmental review previously conducted by State Parks, or any separate proposal regarding development of Saint Edward State Park or the Seminary buildings.

B. Nothing in this SEPA Agreement binds the Parties to perform beyond their respective authorities.

C. Nothing in this SEPA Agreement requires the Parties to assume or expend funds in excess of available appropriations, authorized by law. Specific activities that are not addressed by this SEPA Agreement but involve the transfer of money, services, or property between the Parties, shall require execution of separate agreements or contracts.

D. Amendments to this SEPA Agreement are effective upon written approval of the Parties.

E. This SEPA Agreement shall become effective upon signature by both Parties. This SEPA Agreement may be executed in counterparts, each of which will be considered an original document.

F. Either Party may terminate this SEPA Agreement after compliance with the dispute resolution procedure in Section IV.B. above. Written notification of termination will be effective 30 days after receipt of the written notice. Termination of this SEPA Agreement will occur immediately after completion of the EIS or withdrawal of the Proposal by the City.

G. The following persons shall be the designated contact for all communications regarding this SEPA Agreement. The contact person may be updated by written notice.

CITY OF KENMORE

Bryan Hampson
Development Services Director
18120 68th Avenue NE
Kenmore, WA 98028
(425) 398-8900
BHampson@kenmorewa.gov

STATE PARKS

Jessica Logan
Parks Development
1111 Israel Road SW
Tumwater, WA 98504
(360) 902-8679
Jessica.Logan@parks.wa.gov

H. This SEPA Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought to enforce this SEPA Agreement shall be in the Superior Court for Thurston County, or the Superior Court for King County if agreed to by the Parties.

This SEPA Agreement is executed by the persons signing below, who warrant they have the authority to execute this SEPA Agreement.

CITY OF KENMORE

WASHINGTON STATE PARKS

Rob Karlinsey
City Manager

Peter Herzog
Assistant Director, Parks Development

Date: _____

Date: _____

Approved as to form:

Robert W. Ferguson
Attorney General of Washington

By: _____
Dawn Reitan, WSBA No. 23148
City of Kenmore Attorney

By: _____
Andy Woo, WSBA No. 46741
Assistant Attorney General

Subject/Topic: Multifamily Tax Exemption Amendment Proposed Council Action/Motion: Motion to adopt Ordinance No. 19-0487 amending Section 3.65.040 of the Kenmore Municipal Code.	For Council Meeting Agenda of: <u>June 10, 2019</u> Department: <u>Development Services</u> Prepared by: <u>Bryan Hampson</u> <u>Initial & Date</u> Approved by Department Head: <u>[Signature] 5/30/19</u> Approved by City Attorney: <u>[Signature] R.C. email</u> Approved by Finance Director: <u>[Signature]</u> Approved by City Manager: <u>[Signature]</u> Exhibits/Attachments: Attachment I: Ordinance No. 19-0487
<u>INFORMATION/BACKGROUND:</u> On April 15, 2019, Council approved Ordinance No. 19-0479, which designated the transit-oriented development district (TOD) overlay as a residential targeted area to be eligible for multifamily tax exemption. Council's purpose of extending the multifamily tax exemption to the TOD is to help further encourage TOD projects, promote economic development, and to increase the affordable housing stock. Ordinance No. 19-0487 clarifies this further by providing additional language that if the property is in the TOD then the project shall comply with Chapter 18.29 KMC, which is a TOD project. While this amendment may not be necessary it will provide clarity.	
<u>FISCAL CONSIDERATION:</u> Not Applicable.	
<u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Promote economic development and implement the Economic Development Plan and to increase the affordable housing stock.	

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0487**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; RELATING TO THE MULTIFAMILY
HOUSING PROPERTY TAX EXEMPTION; AMENDING
SECTION 3.65.040 OF THE KENMORE MUNICIPAL
CODE; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, Chapter 84.14 RCW provides for exemption from ad valorem property taxation for the value of eligible improvements associated with qualifying multifamily housing located in residential targeted areas within urban centers; and

WHEREAS, the Kenmore City Council approved Ordinance No. 07-0271 authorizing a multifamily housing property tax exemption program, Chapter 3.65 KMC; and

WHEREAS, the Kenmore City Council approved Ordinance No. 19-0479 designating the Transit Oriented Development District Overlay as a residential targeted area; and

WHEREAS, the City Council recognizes the Transit Oriented Development District Overlay lacks sufficient available, desirable and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center if affordable, desirable, attractive and livable residences were available; and

WHEREAS, the City Council recognizes providing additional housing opportunity, including affordable housing, in the residential targeted area will assist in achieving one or more of the following purposes:

- a. Encourage increased residential opportunities, including affordable housing opportunities, within the City; or
- b. Stimulate the construction of new multifamily housing; or
- c. Encourage the rehabilitation of existing vacant and underutilized buildings for multifamily housing; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amended Subsection. Paragraph G of Section 3.65.040 of the Kenmore Municipal Code is amended to read as follows:

G. The project shall comply with all applicable zoning, land use, building and housing requirements contained in this code, including but not limited to, if the project is on property located in the Transit Oriented Development District Overlay, the project shall comply with Chapter 18.29 KMC and all other applicable zoning regulations.

Section 2. Summary Publication and Effective Date. This Ordinance, or a summary thereof consisting of the title, shall be published in the official newspaper of the City. It shall take effect and be in full force five (5) days after the date of the publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
____ DAY OF JUNE, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
ORDINANCE NO.: 19-0487
DATE OF PUBLICATION:
EFFECTIVE DATE:

Subject/Topic: Kenmore Waterfront
Activities Center (KWAC) Annual Report
2018

me 5/31/19
RK

Exhibits/Attachments: Kenmore Waterfront Activities Center Annual Report 2018

In the agreement with KWAC, it states that they will provide the City with an annual report which includes their participation numbers, volunteer hours, number and types of classes they are offering, and scholarships awarded. Please find the 2018 KWAC report attached.

#9 Build community, celebrate diversity, and create fun.

Kenmore Waterfront Activities Center (KWAC) Annual Report to the City 2018

Website: kenmorewac.org

Email: info@kenmorewac.org

Facebook: Kenmore Paddlers &
Kenmore Waterfront Activities Center-KWAC

The KWAC Vision: Kenmore Waterfront Activities Center is a unique provider of community-oriented hand-powered water sports in a natural north Lake Washington environment.

The KWAC Mission: KWAC provides opportunities for lifetime competitive and recreational participation in hand-powered water sports including canoeing, kayaking, dragon boating, standup paddle boarding, rowing and outrigger canoeing.

KWAC is a non-profit 501 © (3) organization acting as the umbrella for the five different hand-powered paddling and rowing clubs operating out of Squires Landing Park. Each club with the exception of one is it's own non-profit organization with the sole purpose of getting youth and adults on the water.

Each club has multiple classes and practices which take place on the Sammamish River (Slough) as well as Lake Washington. Squires Landing Park is the ideal location to allow such a diverse option for connecting with our local waterways.

The introduction of hand-powered watersports can open a whole new world with regards to gaining confidence and being able to establish new friendships. Teamwork is also a great benefit to getting on the water within a club environment.

Kenmore Canoe & Kayak Club-KCKC

This last spring, 2018, Diana Hughes and Monika Armitano took over the management and direction of KCKC. Through our efforts we developed the current Junior Program as well as starting a Beginners Class. Our beginner students participated in the Mini Race Series, created by Fong Ng - SFD, as an introduction to racing; Our Junior members raced in long distance and sprint flatwater racing events. The presence of the safety launch was a significant benefit to the Junior Program. We received a significant donation of sprint kayaking equipment. Furthermore, we utilized scholarships given by KWAC in order to assist in beginner tuition for class. With regards to our new class we introduced students to the program and the avenues of racing as a sprint kayaker, water safety, as well as sprint kayaking technique. Additionally, we maintained the daytime Master Paddlers Program and introduced new members to sprint/fitness kayaking. We closed 2018 with 27 members in total.



Plans for 2019/2020

For the future of the program (2019-2020) we wish to further develop all of our above mentioned programs. We will be continuing to grow our member's body through advertising on social media and local newspapers and expect retention in our next seasons from prior members. We also plan on increasing our equipment for accommodations of new students.

Kenmore Rowing Club-KRC

Kenmore Rowing Club is growing! 2018 was very successful for us. We had classes three weeknights a week, for both experienced and novice rowers. We held several open houses to give community members a chance to try rowing. We increased our junior camps program to three weeks in the summer. We also contracted with the Environmental and Adventure School (LWSD) for a once a week, seven session camp. Each of the junior camps served an average of 11 kids.



The 2019 season has begun. We have formally applied for a 501C3 status and procured three new sculling boats. We have streamlined our registration process to now include an ability to register online.

Seattle Flying Dragon Boat Club-SFDBC-Kenmore

SFDBC-Kenmore is one of the longest continuous members of KWAC having been in existence since the park was opened in 2014. In 2018 our growth continued not only in numbers but in enthusiasm and events we organized. The dragon boat community is all about the fun and incorporates it at every opportunity. The main focus is building the paddling community through recreational and well as competitive practices. SFDBC-Kenmore offers the first three practices for free giving individuals a no-cost look at this ancient sport. This club participates in area competitions around the PNW and in Canada as well. Members of SFDBC-Kenmore are willing volunteers for many local projects.

We welcome anyone who wishes to join us.



WhatsUp Paddle Board

In 2018 we made some great new friendships.
We had a few that joined us multiple times.



In 2019 we intend to make the following
changes as we try to increase membership:

We intend to have two levels of paddle meet up
so that we can appeal to a larger group: casual
paddle & cardio paddle

- We intend to paddle out of Logboom for
our cardio paddle in the summer to
encourage falling in more
- We hope to reach out to students more in
2019

Hui Wa'a O Puget Sound Outrigger Club-HWOPS-Kenmore



Hui Wa'a 'O Puget Sound (translated: Outrigger Canoe Club of Puget Sound) has settled into our new home at Squires Landing Park. This past year we had a steady turn out filling 1 or 2 6-man outriggers 3 times a week and added a recreational paddling day for beginners and those looking for a less rigorous paddle out.

In 2019 we look to continue to grow in membership as well as developing coaches that can expand their scheduling options.

KWAC - Members by Club --- On the Water Paddle Hours & Volunteer Hours by Club

KCKC-27 Members

Paddle hours: 224

Volunteer hours; 154

SFDBC-46 Members

Paddle hours:

Members: 1083

Guests:102

Volunteer hours:773

HWOPS-11 Members

Paddle hours: 216

Volunteer hours: 141.42

KRC-26 Members

Rowing Hours: 800

Volunteer hours: 460

WhatsSup-6 Members

Paddle Hours: 42

Volunteer Hours: 45

Each club varies how it tracks on the water hours as well as volunteer time.

Squires Public Boat Storage

Currently there are three boat racks housing 14 hand-powered watercraft owned by the public. Revenue collected goes primarily to fund scholarships for financially challenged youth. In 2018 seven (7) students were able to take advantage of this offering. To increase the number involved in the scholarship program will be a key focus for 2019,

The KWAC Board of Directors have also voted to establish an Equipment Replacement Fund as well as an Equipment Maintenance Fund from a small percentage of this revenue.



KWAC 2018 Events

April--

- First Aid/CPR
- Awakening Ceremony and All Clubs Potluck
- Spring Park Clean Up

May--

- Redmond Kenmore Long Distance Race
- Waterfront Fair

June--

- Summer Race Series #1 (Ceremonial Roast Pig Potluck w/Mayor David Baker and Vincent Yao, Director General of the Taipie Economic and Cultural Office in Seattle)

July--

- Fourth of July All Paddle/Rowing and Potluck Barbeque

August--

- Summer Race Series #2

September--

- Summer Race Series #3 (The event attended by almost 200 including competitors from Tacoma, Kent, Seattle and Gig Harbor.)

October--

- Fall Park Clean Up

Thank You City Of Kenmore!

KWAC and it's Affiliate Clubs thank you for giving us the opportunity to showcase our sports allowing members of the community to take in and be a part of our beautiful surroundings.



NORTHSHORE CANOE KAYAK CLUB
Kenmore Boathouse - Kenmore Canoe and Kayak Club - Kenmore Waterfront Activities Center
YTD OPERATING STATEMENT January 1st to December 31st PROPOSED BUDGET

Leger	2018	2018
Code: Description:	Ratified	Actual
	Budget	YTD
7,000.0 ASSESSMENTS		
7,001.0 Cash Balance Carryover		
7,002.0 Scheduled Assessment - Facilities Fees ()		
7,002.1 SFDBC (44members x \$20; 1members@\$10; 1@0)	1,200.00	890.00
7,002.2 SFDBC-WAM (members x 20)		
7,002.3 KRC (26members x \$20; members @ \$0)	500.00	520.00
7,002.4 SUP (6members x \$20)	200.00	120.00
7,002.5 Outrigger (11members x \$20)	-	220.00
7,002.6 YSUP (members x \$20)	200.00	-
7,002.7 KCKC (20members x \$20; 6members@sc)	200.00	540.00
7,002.8 Public (members x \$20)	100.00	-
7,003.0 Scheduled Assessment - Public Boat Storage	6,500.00	5,180.00
7,004.0 Shirt Sales	250.00	60.00
7,005.0 Alternate Contributions		
7,006.0 Interest/Bank Fees/PayPal Fees/Other		
7,006.1 PayPal Fee	(145.00)	(211.94)
7,006.2 Bank Interest	0.10	0.64
7,007.0 Donations	500.00	1,600.00
7,008.0 Misc Deposits		111.00
TOTAL INCOME	9,505.10	9,029.70
1,000.0 OPERATING EXPENSES		
1,005.0 Overhead (General and Administration)-KWAC		
1,010.0 Misc Reimbursables		
1,015.0 KCKC		17.50
1,020.0 KRC		
1,025.0 KWAC Shirts		
1,025.1 Comp-Turquoise	500.00	497.89
1,025.2 Winter Grey	200.00	

5/22/2019
Prepared by Alisa Bui
Treasurer

NORTHSHORE CANOE KAYAK CLUB

Kenmore Boathouse - Kenmore Canoe and Kayak Club - Kenmore Waterfront Activities Center

YTD OPERATING STATEMENT January 1st to December 31st PROPOSED BUDGET

1,030.0	Development - Marketing	500.00	554.83
1,030.1	APM	100.00	
1,030.2	PlayDay	180.00	21.99
1,030.3	RKLDL	200.00	
1,030.4	Waterfront Fair	100.00	
1,035.0	Office Supplies	100.00	134.72
1,040.0	Office Equipment	227.85	249.96
1,045.0	Public Boat Storage	275.00	793.19
1,050.0	Training (CPR class)		325.00
2,000.0	REPAIRS & MAINTENANCE		
2,010.0	General Maintenance	200.00	238.62
2,015.0	Coach Boat Repair - Coach Recruit		
2,015.1	KCKC		
2,020.0	Park Clean Up - Construction	125.00	
2,025.0	Stolen Boats - KWAC		
2,030.0	Public Storage Boat - Refunds	300.00	80.00
3,000.0	FIXED EXPENSES		
3,005.0	Insurance		
3,005.1	ACA - Annual	200.00	280.00
3,005.2	D & O	305.00	305.00
3,005.3	ACA - Waterfront Fair	250.00	
3,010.0	Legal/Licensing		
3,010.1	WA State Non-profit Annual Report	10.00	
3,010.2	Business License & Boat License	32.25	
3,010.3	Secretary of State Filling		20.00
3,015.0	Tax ID #Purchase / Taxes		
4,000.0	GRANTS AWARDED		
4,005.0	Scholarships	3,200.00	660.00
4,010.0	Camps		
	KRC Camps (2@\$150 & 1@100)	700.00	

5/22/2019

Prepared by Alisa Bui
Treasurer

NORTHSHORE CANOE KAYAK CLUB
Kenmore Boathouse - Kenmore Canoe and Kayak Club - Kenmore Waterfront Activities Center
YTD OPERATING STATEMENT January 1st to December 31st PROPOSED BUDGET

Total Expenses to Date (Jan 1 - Dec 31st, 2018)	7,705.10	4,178.70
<i>NET Income</i>		
KRC Projected (Jan 1 - Dec 31st)		
* Expenditures: US Rowing Membership for KRC	1,375.00	(1,375.00)
KRC Balance transfer to seperated account 1/31/18	316.04	
2018 KRC Fund as of November 30th, 2018		6,370.74
2018 KCKC Fund as of November 30th, 2018	-	1,708.11
2018 Redmond Race Fund as of November 30th, 2018	-	284.78
2018 Equipments Fund as of November 30th, 2018	-	216.00
5,000.0 REPLACEMENT RESERVES FUND		
5,010.0 Annual Reserve Transfer	1,800.00	1,800.64
TOTAL EXPENSES	9,505.10	13,183.97

RESERVE FUND:	
Reserve Fund as of 12/2017	3,200.00
Initial Northshore Canoe & Kayak Club (11/2014)	50.00
Total Reserve as of 12/2017	3,250.00
TOTAL RESERVE BALANCE (12/31/2017)	3,250.00
Proposed Addition to Reserve	1,800.00
NET RESERVE BALANCE	5,050.00

	Current Yearly	Ratified Yearly
Proposed 2018 Assessment per Team Members	20.00	20.00

5/22/2019
Prepared by Alisa Bui
Treasurer



City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic: Public Hearing and Consideration of Ordinances 19-0488, 19-0489 and 19-0490 amending the City's Critical Area Regulations and Shoreline Master Program Proposed Council Action/Motion: Hold a public hearing and consider adoption of Ordinances 19-0488, 19-0489 and 19-0490.	For Council Meeting Agenda of: 6/10/19 Department: <u>Community Development</u> Prepared by: <u>Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner</u> Initial & Date Approved by Department Head: <u>OS 5/24/19</u> Approved by City Attorney: <u>5/22, 5/24/19 DR, email</u> Approved by Finance Director: <u>me 5/21/19</u> Approved by City Manager: <u>for</u> Exhibits/Attachments: 1. Ordinance 19-0488 2. Ordinance 19-0489 3. Ordinance 19-0490 4. Docket Criteria Analysis
<u>INFORMATION/BACKGROUND:</u> On May 13 and May 20, the City Council considered amendments to the Municipal Code related to the City's critical area regulations and Shoreline Master Program as recommended by the Planning Commission. Changes requested by Council at those meetings have been incorporated into the attached ordinances (see Attachment 1-3). Because Ordinance 19-0488 (Attachment 1) includes a significant amendment not considered during the Planning Commission's public hearing, a public hearing in front of the City Council is needed. The relevant sections are found in changes to the definitions (18.20.665, definition of degraded wetland buffer or degraded wetland) and in 18.55.300, Increased Wetland Buffer Widths. Although these changes resulted in the need for the public hearing, all of the proposed amendments could be addressed during the hearing. After the public hearing, staff recommends that the Council consider adoption of Ordinances 19-0488, 19-0489 and 19-0490. Adoption of the critical areas ordinance (19-0488) should occur prior to adoption of the two Shoreline Master Program ordinances. Staff also has provided a "docket criteria analysis" (see Attachment 4), addressing the criteria for approval of the amendments. <u>FISCAL CONSIDERATION:</u> \$150,000 in 2018 and \$50,000 in 2019 have been budgeted to support consultant help with this project. A \$20,000 grant from the Department of Ecology also has been received and is being used for the project. <u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Council Goal 10: Protect and enhance the climate, water, air and forest environment.	

ATTACHMENT 1

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0488**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; AMENDING CHAPTER 18.55, CRITICAL
AREAS, OF THE KENMORE MUNICIPAL CODE;
REPEALING DIVISION II OF TITLE 16, FLOOD DAMAGE
PREVENTION, OF THE KENMORE MUNICIPAL CODE;
AMENDING CHAPTER 18.20, DEFINITIONS, OF THE
KENMORE MUNICIPAL CODE; AMENDING SECTIONS
18.30.190 AND 18.40.030 OF THE KENMORE MUNICIPAL
CODE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Growth Management Act, Chapter 36.70A RCW (GMA), requires that the City periodically review and revise its development regulations, including its critical areas regulations, to incorporate best available science and conform to State guidelines; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend Shoreline Master Programs (SMPs) for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, an update to the City's SMP is underway and must be completed by June 30, 2019, and the City desires to achieve general consistency between its critical area regulations within and outside of the jurisdiction of the SMP; and

WHEREAS, in the summer of 2018, the City began its SMP update to its Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) and review of its critical area regulations, adopted under Chapter 18.55 of the Kenmore Municipal Code (CAR Amendments) with the assistance of grant funding from Ecology; and

WHEREAS, the City retained Shannon & Wilson, Inc., qualified scientific experts, to 1) identify scientific information, 2) determine the best available science and assess its applicability to relevant critical areas, and 3) assist the City in the SMP Update and CAR Amendments; and

WHEREAS, Shannon & Wilson has assisted the City in developing the SMP Update and CAR Amendments by preparing updated GIS maps of streams and wetlands, geologically hazardous areas and areas of groundwater susceptibility; preparing a gap analysis to identify portions of the critical area regulations and Shoreline Master Program needing amendment; and drafting the CAR Amendments; and

WHEREAS, the results of the gap analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

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WHEREAS, consistent with RCW 36.70A.172(1), the City has included the best available science in developing the CAR Amendments to protect the functions and values of critical areas, and the City has given special consideration in the CAR Amendments to conservation or protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, the City has considered the definitions and guidelines adopted in Chapter 365-190 of the Washington Administrative Code (WAC), including WAC 365-195-900 through WAC 365-195-925, "Growth Management Act – Best Available Science", when preparing the CAR Amendments; and

WHEREAS, the City Council has considered the "Best Available Science Evaluation of the proposed Public Agency and Utility Exception (PAUE)," prepared by Shannon & Wilson, Inc., and BERK (Evaluation), and consistent with WAC 365-195-915, the City Council relies upon the analysis and rationales within the Evaluation for any departure from best available science relating to PAUEs; and

WHEREAS, the City desires to consolidate the regulations in Title 16, Division II, Flood Damage Prevention and Chapter 18.55, Article XIX, Flood Hazard Areas into a single section of the Kenmore Municipal Code; and

WHEREAS, the City Council desires to amend Chapter 18.20, Definitions, of the Kenmore Municipal Code to amend and add certain definitions relating to critical areas within the City to more fully protect the values and functions of critical areas; and

WHEREAS, to aid in implementation of the proposed critical area regulations, the City Council desires to amend Sections 18.30.190 and 18.40.030 of the Kenmore Municipal Code; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised the proposed critical area regulations amendments; and

WHEREAS, throughout the update process for the CAR Amendments, the City has complied with the requirements of RCW 36.70A.140, and provided early and continuous public participation in the development of the CAR Amendments, including holding a public open house and two public forums; holding public hearings, creating a comprehensive and regularly-updated web page devoted to the update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed CAR Amendments and submitted comments to the City, and the City has considered and acted upon said comments; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has reviewed the consolidated flood hazard area regulations to ensure consistency with the National Flood Insurance Program; and

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WHEREAS, the Planning Commission held a public hearing on the regulations on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update and CAR Amendments to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019 and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed CAR Amendments and SMP Update; and

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed CAR Amendments and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed CAR Amendments and SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, Ecology's comments, and staff and consultant input; and

WHEREAS, the City Council has considered and relied upon the scientific expertise of Shannon & Wilson, Inc., and certain documents and information, including: 1) the Gap Analysis; 2) the City of Kenmore Shoreline Master Program draft shoreline regulations; 3) the City of Kenmore draft critical area regulations; 4) Ecology's Critical Areas Checklist; 5) SEPA Determination of Nonsignificance; 6) Best Available Science Evaluation for the PAUE; and 6) Docket Criteria Analysis; and

WHEREAS, pursuant to RCW 36.70A.020, the City Council has been guided by the GMA planning goals in its adoption of this ordinance; and

WHEREAS, the City Council desires to amend the City's critical area regulations and associated definitions and development regulations; now therefore

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Amendment of Chapter 18.55 – Critical Areas. The City Council amends Chapter 18.55 of the Kenmore Municipal Code, "Critical Areas", as set forth in Exhibit 1, attached hereto and incorporated by reference.

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Section 3. Repealer. The City Council repeals Division II of Title 16, Chapter 16.90 of the Kenmore Municipal Code, "Flood Damage Prevention".

Section 4. Amendments to Chapter 18.20, Definitions. The City Council amends Chapter 18.20 of the Kenmore Municipal Code, "Definitions", as set forth in Exhibit 2, attached hereto and incorporated by reference.

Section 5. Amendments to Sections 18.30.190 and 18.40.030. The City Council amends Sections 18.30.190 and 18.40.030 of the Kenmore Municipal Code, as set forth in Exhibit 3, attached hereto and incorporated by reference.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
____TH DAY OF _____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:

EXHIBIT 1

**Chapter 18.55
CRITICAL AREAS**

Sections:

Article I. Purpose and General Provisions

- 18.55.010 Purpose and goals.**
- 18.55.020 Authority.**
- 18.55.030 Relationship to other regulations.**
- 18.55.040 Administrative procedures.**
- 18.55.050 Fees.**
- 18.55.070 Administrative rules.**
- 18.55.080 Interpretation.**
- 18.55.090 Jurisdiction – Critical areas.**
- 18.55.100 Protection of critical areas.**

Article II. Best Available Science

- 18.55.110 Best available science.**

Article III. Applicability, Exemptions, and Exceptions

- 18.55.120 Applicability.**
- 18.55.130 Mapping.**
- 18.55.140 Signs and fencing of critical areas.**
- 18.55.150 Exemptions.**
- 18.55.160 Exception – Public agency and/or utility.**
- 18.55.170 Variances – Buffer widths and building setbacks.**
- 18.55.180 Exception – Reasonable use.**

Article IV. Critical Areas Report

- 18.55.190 Critical areas reports – Requirements.**
- 18.55.200 Mitigation requirements.**
- 18.55.210 Mitigation sequencing.**
- 18.55.220 Mitigation plan requirements.**

Article V. Unauthorized Alterations and Enforcement

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18.55.230 Unauthorized critical area alterations and enforcement.

Article VI. General Critical Area Protective Measures

18.55.250 Notice on title.

18.55.260 Critical area tracts.

18.55.270 Building setbacks.

18.55.280 Bonds to ensure mitigation, maintenance, and monitoring.

18.55.290 Critical area inspections.

Article VII. Wetlands – Designation and Rating

18.55.300 Designation and rating of wetlands.

Article VIII. Wetlands – Additional Report Requirements

18.55.310 Critical areas report.

Article IX. Wetlands – ~~Performance Standards~~ Allowed Uses and Alterations

18.55.320 ~~Performance standards – General requirements~~ Allowed Uses.

18.55.325 Buffer Width Alterations.

18.55.330 Performance standards – Mitigation requirements.

Article X. Streams and Lakes – Designation and Rating

18.55.400 Designation and rating of streams and lakes.

Article XI. Streams and Lakes – Additional Report Requirements

18.55.410 Critical areas report.

Article XII. Streams and Lakes – ~~Performance Standards~~ Allowed Uses and Alterations

18.55.415 Allowed Uses.

18.55.420 ~~Performance standards – General~~ Alterations.

18.55.430 Performance standards – Mitigation requirements.

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

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Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

18.55.510 Critical areas report – Habitat Management Plan.

Article XV. Fish and Wildlife Habitats of Importance – Performance Standards

18.55.520 Performance standards – General requirements.

18.55.530 Performance standards – Specific habitats.

Article XVI. Geologically Hazardous Areas – Designation

18.55.600 Purpose.

18.55.610 Designation of geologically hazardous areas.

18.55.620 Designation of specific hazard areas.

Article XVII. Geologically Hazardous Areas – Report Requirements

18.55.630 Critical areas report.

Article XVIII. Geologically Hazardous Areas – Performance Standards

18.55.640 Performance standards – General requirements.

18.55.650 Performance standards – Specific hazards.

Article XIX. Flood Hazard Areas

Note that this is a complete rewrite of the previous Article XIX

18.55.700 Purpose.

18.55.705 Definitions

18.55.707 Lands to which this article applies.

18.55.710 Basis for establishing flood hazard areas.

18.55.715 Permits.

18.55.720 Final certification by surveyor.

18.55.723 Designation and responsibilities of the local administrator.

18.55.725 Information to be obtained and maintained by the City.

18.55.730 Development standards applicable to all flood hazard areas.

18.55.740 Development standards for specific uses in flood hazard areas.

18.55.750 Development in the floodway.

18.55.760 Habitat assessment.

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18.55.770 Warnings and disclaimer of liability.

18.55.780 Variances in flood hazard areas.

18.55.790 Penalties for noncompliance.

18.55.795 Abrogation and greater restrictions.

Article XX. Groundwater Susceptibility and Critical Aquifer Recharge Areas

18.55.800 Designation of groundwater susceptibility and critical aquifer recharge areas.

18.55.810 Critical Areas Report.

Article I. Purpose and General Provisions

18.55.010 Purpose and goals.

A. The purpose of this chapter is to designate and classify ecologically critical and geologic **and flood hazard areas** in order to protect ecologically *critical areas* and protect lives and property from hazards, while also allowing for *reasonable use of* **public or private** property.

B. The *City* finds that *critical areas* provide a variety of valuable and beneficial biological and physical functions that benefit the *City* and its residents, and/or may pose a threat to human safety or to public and *private* property. The beneficial *functions and values* provided by *critical areas* include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, *flood* storage, ground water recharge and discharge, *erosion* control, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

C. By limiting *alteration of critical areas*, this chapter seeks to:

1. Strive to protect lives and public and *private* property from *flooding*;
2. Strive to protect slopes from *erosion* and sliding;
3. Minimize the potential for damage due to liquefaction and seismic hazards;
4. Protect *wetlands* from encroachment and degradation and encourage *wetland restoration*;
5. Protect *streams* from encroachment and degradation and encourage *stream restoration*; **and**
6. Maintain and promote a diversity of *species* and habitat within the *City*; **and**

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7. Address critical aquifer recharge areas and protect groundwater.

D. The regulations of this chapter are intended to protect *critical areas* in accordance with the GMA and through the application of *best available science*.

E. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property.

F. The *City's* enactment and enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

18.55.020 Authority.

A. As provided herein, the *city manager* is given the authority to interpret, apply, and enforce this chapter to accomplish the stated purpose.

B. The *City* may withhold, condition, or deny *development permits* or activity approvals to ensure that the proposed action is consistent with this chapter.

C. In the event that multiple *critical areas* occur on a *site*, it is the authority of the *city manager* to balance the protection of the multiple *critical areas* and provide appropriate *mitigation*.

18.55.030 Relationship to other regulations.

A. These *critical areas* regulations shall be in addition to zoning and other regulations adopted by the *City*. Compliance with other regulations does not exempt the *applicant* from *critical areas* regulations.

B. The *critical area* regulations set forth in KMC ~~16.05.060(B)~~ shall apply to all *critical areas* located within the jurisdiction of the Kenmore shoreline master program (Title 16 KMC).

C. These *critical areas* regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (Chapter 19.35 KMC).

D. Any individual *critical area* adjoined by another type of *critical area* shall have the *buffer* and meet the requirements that provide the most protection to the *critical areas* involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the *critical areas* shall apply.

E. Compliance with the provisions of this chapter does not constitute compliance with other federal, State, and local regulations and permit requirements that may be required (for example, shoreline substantial

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development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife *hydraulic project approval* (HPA), **U.S.** Army Corps of Engineers *Section 404 permits*, and National Pollution **Discharge Elimination System** (NPDES) permits). The *applicant* is responsible for complying with these requirements, apart from the process established in this chapter.

18.55.040 Administrative procedures.

The administrative procedures followed during the *critical area* review process shall conform to the standards and requirements of the *City* development regulations, except that, where *critical areas* are located within the jurisdiction of the Kenmore shoreline master program, administrative procedures shall conform to the standards and requirements of Chapter 16.75 KMC. This shall include, but not be limited to, timing, permits, variances, exemptions, exceptions, appeals, and fees associated with applications covered by this chapter.

18.55.050 Fees.

The *City* by resolution shall establish fees for *critical area* review processing and other services provided by the *City* as required by this chapter.

18.55.070 Administrative rules.

Applicable *departments* within the *City* are authorized to adopt such administrative rules and regulations as necessary and appropriate to implement this chapter and to prepare and require the use of such forms as necessary for its administration.

18.55.080 Interpretation.

In the interpretation and application of this chapter, the provisions of this chapter shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this chapter, and shall be deemed to neither limit nor repeal any other provisions under State statute.

18.55.090 Jurisdiction – Critical areas.

A. The *City* shall regulate all *uses*, activities, and *developments* within, adjacent to, or likely to affect one or more *critical areas*, consistent with *best available science* and the provisions herein.

B. *Critical areas* regulated by this chapter include:

1. *Wetlands* as designated in KMC 18.55.300, Designation and rating of *wetlands*;
2. *Streams* **and lakes** as designated in KMC 18.55.400, Designation and rating of *streams* **and lakes**;
3. Fish and wildlife habitats of importance as designated in KMC 18.55.500, Designation of fish and wildlife habitats of importance;

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4. *Geologically hazardous areas* as designated in KMC [18.55.610](#), Designation of *geologically hazardous areas*; **and**
5. Frequently flooded areas as designated in KMC [18.55.7007](#), **Frequently flooded areas and Flood damage prevention hazard areas;** and
6. **Critical aquifer recharge areas and groundwater as designated in KMC 18.55.800, Designation of groundwater susceptibility and critical aquifer recharge areas.**

C. All areas within the *City* meeting the definition of one or more *critical areas*, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter.

D. Areas Adjacent to *Critical Areas* Subject to Regulation. Areas adjacent to *critical areas* shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the *functions and values* of *critical areas*. "Adjacent" shall mean any activity located:

1. On a *site* immediately adjoining a *critical area*;
2. A distance equal to or less than the required *critical area buffer* width and building *setback*;
3. A distance equal to or less than **one-half mile (2,640 feet) 660 feet** from a bald eagle nest;
4. A distance equal to or less than **900 656** feet from the closest nest of a **great blue** heron rookery; or
5. Within the *floodway*, *floodplain* or channel migration zone.

18.55.100 Protection of critical areas.

Any action taken pursuant to this chapter shall result in equivalent or greater *functions and values* of the *critical areas* associated with the proposed action, as determined by the *best available science*. All actions and *developments* shall be designed and constructed in accordance with *mitigation* sequencing (KMC [18.55.210](#)) to avoid, minimize, restore, and compensate for adverse impacts. *Applicants* must first demonstrate an inability to avoid or reduce impacts before *restoration* and compensation of impacts will be allowed. No activity or *use* shall be allowed that results in a net loss of the *functions and values* of *critical areas*.

Article II. Best Available Science

18.55.110 Best available science.

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A. Protection for *Functions and Values and Anadromous Fish*. *Critical areas* reports and decisions to alter *critical areas* shall rely on the *best available science* to protect the *functions and values* of *critical areas*. The *best available science* is scientific information applicable to the *critical area* prepared by local, State or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through 365-195-925. Special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, as required by WAC 365-195-900 through 365-195-925.

Article III. Applicability, Exemptions, and Exceptions

18.55.120 Applicability.

A. The provisions of this chapter shall apply to all lands, all land *uses* and development activity, and all *structures* and facilities in the *City* whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the *City*. No person, company, agency, or *applicant* shall alter a *critical area* or *buffer* except as consistent with the purposes and requirements of this chapter.

B. The *City* shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or *vegetation*, or to construct or alter any *structure* or improvement in, over, or on a *critical area* or associated *buffer*, without first assuring compliance with the requirements of this chapter. For development on lands regulated under the Kenmore shoreline master program, compliance with this chapter includes compliance with the requirements of the shoreline master program as well as with the requirements of this chapter.

C. Approval of a permit or *development proposal* pursuant to the provisions of this chapter does not discharge the obligation of the *applicant* to comply with the provisions of this chapter.

18.55.130 Mapping.

A. The approximate location and extent of *critical areas* are shown on the *City's critical area* maps. These maps are to be used as a guide and may be updated as new *critical areas* are identified. They are a reference and do not provide a final *critical area* designation. The exact location of a *critical area* and its boundary shall be determined on-site through a field investigation by a *qualified professional*.

B. The following is a list of some maps sources that identify known/potential *critical areas* located in the *City*:

1. *Wetlands and Streams*.

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- a. City stream and wetland inventory;
- b. King County critical areas map folio, Washington State Department of Fish and Wildlife Priority Habitats and Species online mapping system;
- c. Washington State Department of Fish and Wildlife SalmonScape online mapping system; and
- d. Washington State Department of Natural Resources water type maps.

2. Fish and Wildlife Habitats of Importance.

- a. Washington State Department of Fish and Wildlife ~~p~~Priority ~~h~~Habitats and ~~s~~Species map online mapping system;
- b. Washington State Department of Natural Resources ~~official~~ water type ~~reference~~ maps, as amended;
- c. Washington State Department of Fish and Wildlife SalmonScape online mapping system;
- d. Anadromous and resident *salmonid* distribution maps contained in the Habitat Limiting Factors Reports published by the Washington State Conservation Commission; and
- e. Washington State Department of Natural Resources State natural area preserves and natural resource conservation area maps.

3. Geologically Hazardous Areas.

- a. City geologically hazardous areas inventory;
- ba. King County's Landslide Hazards Along King County River Corridors interactive, web-based map folio critical areas map folio, as modified by the City;
- cb. U.S. Geological Survey landslide hazard and seismic hazard maps Washington State Department of Natural Resources Geologic Information Portal;
- d. Washington State Department of Natural Resources seismic hazard maps for Western Washington liquefaction susceptibility map for King County; and
- e. Washington State Department of Natural Resources slope stability maps.

4. Flood Hazard Areas.

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a. City stream and wetland inventory; and

b. Federal Emergency Management Administration flood insurance rate maps and studies.

5. Critical Aquifer Recharge Areas and Groundwater.

a. City map of aquifer susceptibility.

18.55.140 Signs and fencing of critical areas.

A. Signs.

1. Temporary Markers. The outer perimeter of the *critical area* or *buffer* and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the *city manager* prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent *signs*, if required, are in place.

2. Permanent *Signs*. As a condition of any permit or authorization issued pursuant to this chapter, the *city manager* may require that the *applicant* install permanent *signs* along the boundary of a *critical area* or *buffer*.

Permanent *signs* shall be made of a metal face and attached to a metal post, or another material of equal durability. *Signs* must be posted at an interval of every 50 feet. If the length of the *lot* is 50 feet or less, one *sign* per *lot* is required. The *sign* must be maintained by the property owner in perpetuity. *Signs* must be placed in a visible location and remain visible throughout any future *site development*. The *signs* shall include the City's logo and shall be worded as follows or with alternative language approved by the *city manager* based on specifications available from the City:

Environmentally Critical Area
Do Not Disturb
Contact the City of Kenmore
425-398-8900
Regarding Uses and Restriction

B. Fencing.

1. The *city manager* shall condition any permit or authorization issued pursuant to this chapter to require the *applicant* to install a permanent *fence* at the edge of the *critical area* and *buffer* associated with a *stream*, lake, *wetland*, or fish and wildlife habitat of importance, when fencing will prevent future impacts to the habitat conservation area ecological function. When the *buffer* is in a legally altered state and is permitted to remain in that condition, the fencing may be placed at the

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upland edge of any properly functioning portion of the *buffer*. The *city manager* may also waive the requirement for a *fence* if the *applicant* can demonstrate that a *fence* would interfere with current, legal public access or use.

2. A required permanent *fence* may be:

a. The *applicant* shall be required to install a permanent naturalUntreated wood, split-rail, or *fence* around the *critical area* and *buffer*.

b. Dense *vegetation* using native material appropriate for the ecoregion. *Vegetation* shall be maintained at a minimum height of 3 feet, with thorny species incorporated to deter intrusion.

3. Fencing installed shall be designed so as to not interfere with *species* migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

4. Fencing is not required for single-family residential *lots* where subdivision is not proposed.

C. Maintenance. To ensure long-term maintenance of signs and fencing, the owner of the property shall file a maintenance agreement as directed by the *City*. This agreement shall be recorded and run with the land.

18.55.150 Exemptions.

Exempt activities shall avoid impacts to *critical areas*. All exempted activities shall use reasonable methods to avoid potential impacts to *critical areas*. To be exempt from this chapter does not give permission to degrade a *critical area* or ignore risk from natural hazards. Any incidental damage to, or alteration of, a *critical area* shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better.

A. Exempt Activities. The following *developments*, activities, and associated *uses* shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, State, and federal laws and requirements:

1. Activities, including routine maintenance, involving artificial drainage features intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features;
2. Normal and routine maintenance, operation and reconstruction of existing roads, *streets*, utilities and associated rights-of-way and *structures*; provided, that reconstruction of any *structures* may not increase the *impervious surface* area or remove *flood* storage capacity;

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3. Normal maintenance and repair, and reconstruction or remodeling of residential or commercial *structures*, or legal preexisting and ongoing *uses* of the *site*; provided, that reconstruction of any *structures* may not increase the previously approved *building* footprint;
 4. *Site* investigative work and studies necessary for preparing *site development or modification plans* *land-use applications*, including soils tests, water quality studies, wildlife studies and similar tests and investigations, where such activities do not require construction of new roads or significant amounts of excavation; and provided, that any disturbance of the *critical area* shall be the minimum necessary to carry out the work or studies and disturbed areas shall be immediately restored;
 5. Educational activities, scientific research, and passive outdoor recreational activities, including but not limited to interpretive field trips, *and* birdwatching, *and previous trails for hiking*, that will not have a significant adverse effect on the *critical area*;
 6. *Emergency* activities necessary to prevent an immediate threat to public health, safety, property or welfare; *provided that the critical areas shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better within one year of the activity. The restoration, rehabilitation, and/or replacement of the critical area is limited to that area impacted by the prevention effort; this section does not require the responsible party to restore, rehabilitate or replace critical areas damaged by natural disaster;*
 7. Minor activities not mentioned above and determined by the *city manager* to have minimal impacts to a *critical area*; *and*
 8. *Existing and ongoing agricultural activities, including farm pond maintenance, provided that they implement applicable best management practices (BMPs) and minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.*
 8. *Installation, construction, replacement, repair or alteration of utilities and their associated facilities, lines, pipes, mains, equipment or appurtenances in improved City street rights-of-way.*
- B. Operation, Maintenance or Repair. Operation, maintenance or repair of existing *structures*, infrastructure improvements, utilities, public or *private* roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the *critical area* or *buffer* and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.
- C. Modification to Existing *Structures*.

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1. Structural modification of, addition to, or replacement of single detached residences in existence before November 27, 1990, which do not meet the building *setback* or *buffer* requirements for *wetlands*, *streams* or *landslide hazard areas* if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described *buffer* or building *setback* area by more than 500 square feet over that existing before November 27, 1990. No portion of the modification, addition or replacement may be located closer than the closest point of the residence to the *critical area* or, if the existing residence is in the *critical area*, no portion may extend farther into the *critical area*.
2. Structural modification of, addition to, or replacement of *structures*, except single detached residences, in existence before November 27, 1990, which do not meet the building *setback* or *buffer* requirements for *wetlands*, *streams* or *landslide hazard areas* if modification, addition, replacement or related activity does not increase the existing footprint of the *structure* lying within the above-described building *setback* area, *critical area* or *buffer*.

D. Activities within the Improved Right-of-Way. Repair, replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

E. Select *Vegetation Removal Activities*. The following *vegetation* removal activities; provided, that no *vegetation* shall be removed from a *critical area* or its *buffer* without approval from the *city manager*:

1. The removal of *vegetation* listed in King County's *noxious weed* list.
2. The removal of *trees* that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to *private* property, from *critical areas* and *buffers*; provided, that the *city manager* determines that the disturbance to the *critical area* is minimal. Topping or limbing the tree to eliminate the hazard should be considered before removal. When removal is necessary, place the hazard tree in the critical area or buffer to provide habitat as downed wood unless doing so would pose a safety risk or increase a geologic hazard. Replacement trees at a 3:1 ratio are required.
3. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed *vegetation* shall be

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replaced *in-kind* or with similar native species within one year in accordance with an approved *restoration* plan.

18.55.160 Exception – Public agency and/or utility.

A. If the strict application of this chapter would prohibit a development proposal by a public agency or public utility the following:

1. expansion of an existing facility operated by a public agency that is site-specific and non-linear, including, but not limited to, a school facility, a fire or police facility, a governmental office, a recreational facility, a park, or a stormwater retention/detention facility, or
2. expansion or extension of a linear public transportation facility, such as a street, highway or sidewalk, or
3. expansion or extension of a utility

then the public agency or utility may apply for relief from strict application of this chapter through an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC.

B. Adjustment of critical area standards for new site-specific and non-linear facilities to be operated by a public agency, such as schools, fire or police facilities, governmental offices, recreational facilities, parks or stormwater retention/detention facilities, shall be considered through the variance process (KMC 18.55.170) if adjustments to buffers or building setbacks are required, or as a reasonable use exception if direct impacts to the critical area are proposed (KMC 18.55.180).

BC. Exception Request and Review Process. An application for a public agency and/or utility exception shall be made to the city and shall include a critical areas report, including mitigation plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (SEPA).

CD. City Manager Review. The city manager shall review the application as a Type 2 land use decision under KMC 19.25.020. The city manager shall approve, approve with conditions, or deny the request based on the proposal's demonstrated ability to comply with all of the public agency and utility exception criteria in subsection DE of this section.

DE. Public Agency and Utility Exception Review Criteria. The criteria for review and approval of a public agency and/or utility exceptions are as follows:

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1. There is no other feasible location for the proposed *development* with less adverse impact on the *critical area or buffer*;
 2. There is no other *practical alternative* to the proposed *development* with less impact on the *critical areas or buffer*. "*Practical alternatives*" include but are not limited to:
 - a. Location outside of the *critical area* and its buffer;
 - b. Pursuit and exhaustion of other administrative code modifications or exceptions including but not limited to: front yard *setback* modifications at KMC 18.30.190; modifications of minimum parking standards in KMC 18.40; and allowances for nonconforming uses in KMC 18.100;
 23. The application of this chapter would unreasonably restrict the ability to provide *public agency or utility* services to the public;
 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;
 5. The *development proposal* protects and mitigates impacts to the *critical area functions and values* consistent with *best available science*;
 6. The *development proposal* achieves no net loss of *critical area functions and values*;
 7. Mitigation sequencing through KMC 18.55.210 has been demonstrated in the *critical areas* report, along with a demonstration of the how the *public agency or utility* will provide *mitigation* using a watershed approach;
 8. Development activities involve the least intrusion into and disruption of the *critical area* necessary while fulfilling a public purpose and need;
 9. The proposal is consistent with a *public agency or utility* system plan, capital facilities plan, *master plan*, program, or policy that has been the subject of a public review process; and
 10. The proposal is consistent with the general purpose and intent of the *City's* comprehensive plan and adopted development regulations.
- F. Approval conditions. Conditions for approval of a *public agency or utility* exception shall include, at a minimum:
1. Conformance with the development standards and *mitigation* plans identified in the approved *critical areas* report; and
 2. Appropriate best management practices, as described in this chapter and in other science-based documents, including but not limited to the Washington State Department of Commerce Critical Areas

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Guidebook, as amended, sources of science by State agencies with expertise, and standard conditions of approval published by federal agencies.

18.55.170 Variances – Buffer widths and building setbacks.

A. *Variances* from the *buffer* width and building *setback* standards of this chapter may be authorized by the *City* in accordance with the procedures set forth in the *City's* zoning code, unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC.

B. No *variance* is allowed in order to create additional *lots*.

C. The *City* may grant a *variance*; provided, that the *applicant* demonstrates that all of the following criteria are met:

1. Special circumstances

a. Private development proposals: There are special circumstances applicable to the subject property or to the intended *use* such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a *variance* from the buffer width or building setback requirements;

b. New public agency development proposals: There is no other *practical alternative* that allows the *public agency* to meet its public service obligations pursuant to applicable laws, rules, or adopted plans. "*Practical alternatives*" include but are not limited to:

i. Location out of the critical area buffer;

ii. Pursuit and exhaustion of other code modifications or exceptions; and

2. Necessary for rights or use:

a. Private development proposals: Such *variance* is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question;

b. New public agency development proposals: Such *variance* is necessary for a *public agency* proposal to fulfil a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital

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facilities plan, system plan, or other *master plan* that has been subject to a public review process which commonly includes an evaluation of alternative sites; and

3. The granting of such buffer width *or building setback* variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and
4. The granting of the buffer width *or building setback* variance will not significantly impact the subject *critical area*; and
5. The decision to grant the *variance* includes the *best available science* and gives special consideration to conservation or protection measures necessary to preserve or enhance *anadromous fish habitat*; and
6. The granting of the *variance* is consistent with the general purpose and intent of the *City's* comprehensive plan and adopted development regulations.

D. Conditions May Be Required. In granting any *variance*, the *City* may prescribe such conditions and safeguards as are necessary to secure adequate protection of *critical areas* from adverse impacts, and to ensure conformity with this chapter.

E. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the *variance* criteria in this section.

F. Time Limit.

1. Establishment of any development activity authorized pursuant to a *variance* shall occur within four years of the effective date of the decision for such *variance*. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.
2. For the purpose of this subsection, "establishment" shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

G. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and upon which any decision has to be made on the application.

18.55.180 Exception – Reasonable use.

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A. If the application of this chapter pertaining to *critical areas* will prevent the *applicant* from making any *reasonable use* of the subject property, the *applicant* may apply for an exception pursuant to this section unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC. An application for a reasonable use exception must accompany a *development permit* application through the City's review and decision process.

1. Criteria for Granting. The *city manager* shall grant a *reasonable use* allowance only when all of the following criteria are met:

a. Reasonable Use

i. Private proposals: The *applicant* demonstrates that the application of this chapter will deny all *reasonable use* of the subject property otherwise allowed by applicable law;

ii. New public agency development proposals: The *applicant* demonstrates that the application of this chapter would interfere with a *public agency* proposal to fulfill a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities plan, system plan, or other *master plan* that has been subject to an alternative *site evaluation and public review process*;

b. The development activities involve the least intrusion into and disruption of the *critical area* necessary to allow a *reasonable use* of the subject property by a private applicant or to achieve a public agency responsibility consistent with adopted laws, rules, and plans per criterion "a";

c. The development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety or welfare;

d. The *applicant's* inability to make *reasonable use* of the subject property has not resulted from any of the following:

(1) Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise; or

(2) Prior actions taken in violation of this chapter or any local, State, or federal law or regulation;

e. No other *reasonable use* of the property has less impact on the *critical area*;

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f. The inability of the *applicant* to derive *reasonable use* of the property is not the result of actions by the *applicant* after the effective date of the ordinance codified in this chapter, or its predecessor; and

g. *Mitigation* proposed by the *applicant* is sufficient to protect the *functions and values* of the *critical area* and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

2. Appeals. The *applicant* may appeal a decision of the *city manager* on a *reasonable use* allowance application to the *hearing examiner* pursuant to the provisions of the Kenmore Municipal Code.

B. Exception Request and Review Process. An application for a *reasonable use* exception shall be made to the *City* and shall include a *critical areas* report, including *mitigation* plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 19.35 KMC).

C. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the criteria in subsection A of this section.

D. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

E. Time Limit.

1. Establishment of any development activity authorized pursuant to a *reasonable use* exception shall occur within four years of the effective date of the decision for such *reasonable use* exception. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.

2. For the purpose of this subsection, "establishment" shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

Article IV. Critical Areas Report

18.55.190 Critical areas reports – Requirements.

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A. Prepared by *Qualified Professional*. The *applicant* shall submit a *critical areas* report prepared by a *qualified professional* as defined herein.

B. Incorporating *Best Available Science*. The *critical areas* report shall use scientifically valid methods and studies in the analysis of *critical area* data and field reconnaissance and reference the source of science used. The *critical areas* report shall evaluate the proposal and all probable impacts to *critical areas* in accordance with the provisions of this chapter.

C. *Critical Areas* Report Contents. Requirements for *critical areas* reports are available from the *city manager*. In addition, the *applicant* shall provide any additional known information pertaining to the *critical area(s)* on the subject property and adjacent properties.

18.55.200 Mitigation requirements.

A. The *applicant* shall avoid all impacts that degrade the *functions and values* of *critical areas* **unless there is no practicable alternative**. Unless otherwise provided in this chapter, 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 in accordance with an approved *critical areas* report and SEPA documents.

B. *Mitigation* shall be *in-kind* and on-site, when possible, and sufficient to maintain the *functions and values* of the *critical area*, or to prevent risk from a hazard posed by a *critical area*.

18.55.210 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been **examinedmade to identify and evaluate practicable alternatives** with the intent to avoid and minimize impacts to *critical areas* **while still achieving the overall project purposes**. When an *alteration* to a *critical area* is proposed, such *alteration* shall be avoided, minimized, or compensated for as outlined by WAC [197-11-768](#), in the following order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- 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 during the life of the action;

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E. Compensating for the impact by replacing or providing substitute resources or environments; and/or

F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

18.55.220 Mitigation plan requirements.

When *mitigation* is required, the *applicant* shall submit for approval by the *City* a *mitigation* plan as part of the *critical areas* report. *Mitigation* plan requirements are available from the *city manager*.

Within 30 days of installation of the approved *mitigation*, the *applicant* shall submit an affidavit **or as-built drawing** signed by the *qualified professional* described in KMC [18.55.190](#) certifying that the *mitigation* has been installed consistent with the approved plan, unless the installed *mitigation* has been inspected and accepted by the *department*.

Article V. Unauthorized Alterations and Enforcement

18.55.230 Unauthorized critical area alterations and enforcement.

A. When a *critical area* or its *buffer* has been altered in violation of this chapter, all ongoing *development* work shall stop and the *critical area* shall be restored. The *City* shall have the authority to issue a stop work order to cease all ongoing *development* work, and order *restoration*, rehabilitation or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.

B. *Restoration Plan Required*. All *development* work shall remain stopped and the *site* stabilized until a *restoration* plan is prepared and approved by the *City*. Such a plan shall be prepared by a *qualified professional* and shall describe how the actions proposed meet the minimum requirements described in subsection C of this section. The *city manager* shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the *applicant* or violator for revision and resubmittal.

C. *Minimum Performance Standards for Restoration*. For *alterations* to *wetlands*, *streams* **and lakes**, **geologically hazardous areas**, **and** fish and wildlife habitats **areas** of importance, **and flood hazard areas**, the following minimum performance standards shall be met for the *restoration* of a *critical area*; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

1. The historic structural and functional values shall be restored, including water quality and habitat functions;

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2. The historic soil types and configuration shall be replicated;
3. The *critical area* and *buffers* shall be replanted with *native vegetation* that replicates the *vegetation* historically found on the *site* in species types, sizes, and densities; and
4. The historic *functions and values* should be replicated at the location of the *alteration*.

D. *Site Investigations*. The *city manager* is authorized to make *site* inspections and take such actions as are necessary to enforce this chapter. The inspector shall present proper credentials and make a reasonable effort to contact any property owner before entering onto *private* property.

E. *Monitoring*. *Monitoring* shall be required for five years unless otherwise determined by the *city manager*. A performance and/or maintenance bond of 125 percent of the estimated cost of restoring the *functions and values* of the *critical area* shall be posted to assure that all work or actions are satisfactorily completed **or and** maintained in accordance with the approved plans, specifications, permit or approval requirements, and applicable regulations, and to **as en**sure that all work or actions will be completed.

Article VI. General Critical Area Protective Measures

18.55.250 Notice on title.

A. In order to inform subsequent purchasers of real property of the existence of *critical areas*, the owner of any property containing a *critical area* or *buffer* on which a *development proposal* is submitted shall file a notice with the county records and elections division according to the direction of the *City*. The notice shall state the presence of the *critical area* or *buffer* on the property, of the application of this chapter to the property, and the fact that limitations on actions in or affecting the *critical area* or *buffer* may exist. The notice shall run with the land.

B. This notice on title shall not be required for a *development proposal* by a *public agency* or **public or private utility**:

1. Within a recorded easement or right-of-way;
2. Where the agency or *utility* has been adjudicated the right to an easement or right-of-way; or
3. On the *site* of a permanent public facility.

C. The *applicant* shall submit proof that the notice has been filed for public record before the *City* approves any *development proposal* for the property or, in the case of subdivisions, short subdivisions, and binding site plans, at or before recording.

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18.55.260 Critical area tracts.

A. *Critical area tracts* shall be used in *development proposals* for subdivisions, short subdivisions, site plan reviews, commercial and multifamily building permits, and binding site plans to delineate and protect those contiguous *critical areas* and *buffers* listed below:

1. All *wetlands* and *their buffers*;
2. All *streams, lakes* and *their buffers*;
3. All fish and wildlife habitats *areas* of importance;
4. *Geologically hazardous areas* and *buffers*, if applicable; and
5. All other lands to be protected from *alterations* as conditioned by project approval.

B. *Critical area tracts* shall be recorded on all documents of title of record for all affected *lots*.

C. *Critical area tracts* shall be designated on the face of the plat, short plat or recorded drawing in a format approved by the *City*. The designation shall include the following restriction:

1. An assurance that *native vegetation* will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and *erosion*, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
2. The right of the *City* to enforce the terms of the restriction.

D. The *City* shall determine at the *City's* discretion that any required *critical area tract* be dedicated to the *City*, held in an undivided interest by each owner of a building *lot* within the *development* with the ownership interest passing with the ownership of the *lot*, or held by an incorporated homeowners' association or other legal entity (such as a land trust), which assures the ownership, maintenance, and protection of the tract).

18.55.270 Building setbacks.

Unless otherwise provided *in this Chapter or in Title 16 KMC (Shoreline Management)*, *buildings* and other *structures* shall be set back a distance of 15 feet from the edges of all *critical area buffers* or from the edges of all *critical areas*, if no *buffers* are required. *Structures* that may extend into or be located in the required *setback* are listed in KMC [18.30.230](#).

18.55.280 Bonds to ensure mitigation, maintenance, and monitoring.

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A. When *mitigation* required pursuant to a *development proposal* is not completed prior to the *City* final permit approval, such as final plat approval or final building inspection, the *City* shall require the *applicant* to post a performance bond or other security in a form and amount deemed acceptable by the *City*. If the *development proposal* is subject to *mitigation*, the *applicant* shall post a *mitigation* bond or other security in a form and amount deemed acceptable by the *City* to ensure *mitigation* is fully functional.

B. The performance bond shall be in the amount of 125 percent of the estimated cost of the installed *mitigation* project (including *monitoring*) or the estimated cost of restoring the *functions and values* of the *critical area* that are at risk, whichever is greater.

C. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the *city* attorney.

D. Bonds or other security authorized by this section shall remain in effect until the *City* determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the *City* for a minimum of five years to ensure that the required *mitigation* has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an *applicant* or violator to complete required *mitigation*, maintenance, *monitoring*, or *restoration*.

F. Public *development proposals* shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for *mitigation*, maintenance, *monitoring*, or *restoration*.

G. Any failure to satisfy *critical area* requirements established by law or condition including, but not limited to, the failure to provide a *monitoring* report within 30 days after it is due or comply with other provisions of an approved *mitigation* plan shall constitute a default, and the *City* may demand payment of any *financial guarantees* or require other action authorized by the *City* code or any other law.

H. Any funds recovered pursuant to this section shall be used to complete the required *mitigation*.

18.55.290 Critical area inspections.

Reasonable access to the *site* shall be provided to the *City*, State, and federal agency review staff for the purpose of inspections of the *critical area* during any proposal review, *restoration*, *emergency* action, or *monitoring* period.

Article VII. Wetlands – Designation and Rating

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18.55.300 Designation and rating of wetlands.

A. Designating *Wetlands*. All areas within the *City* meeting the *wetland* designation criteria in the *Washington State Identification and Delineation Manual (1997)*, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter. *Identification of wetlands* and delineation of their boundaries shall be done in accordance with the *Corps of Engineers wetlands delineation manual (Corps, 1987)* and applicable regional supplement (*Corps, 2010*), as revised or as may be revised in WAC 173-22-035 and 173-22-080.

B. *Wetland Ratings*. *Wetlands*, as defined by this chapter, shall be rated using criteria outlined below: classified and scored using the 2014 Department of Ecology *Washington State Wetland Rating System for Western Washington*, Publication #14-06-029 (Hruby, 2014 or latest edition), which contains the definitions and methods for determining whether the criteria below are met.

1. *Wetlands Classification*. *Wetlands*, as defined by this chapter, shall be designated Class 1, Class 2, and Class 3 according to the criteria below.

a. Class 1 *wetlands* are those *wetlands* that meet any of the following criteria:

- (1) Documented habitat for federal or State listed *endangered or threatened* fish, animal, or plant species; or
- (2) *Wetlands* listed as high quality habitats in the Natural Heritage Information System; or
- (3) *Wetlands* with irreplaceable ecological functions, including sphagnum bogs and fens or natural forested swamps; or
- (4) *Wetlands* of exceptional local significance, specifically those *wetlands* proximal to and influenced by the main stem of Swamp Creek, the Sammamish River, or Lake Washington.

b. Class 2 *wetlands* are those *wetlands* which are not Class 1 *wetlands* and meet any of the following criteria:

- (1) *Wetlands* that have significant functions that may not be adequately replicated through creation or restoration; or
- (2) *Wetlands* associated with Type 2 or 3 *streams*; or
- (3) *Wetlands* greater than one acre in size; or

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(4) *Wetlands equal to or less than one acre having three or more classes of wetland vegetation (as defined in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al., 1979)); or*

(5) *Wetlands containing a forested wetland class.*

e. *Class 3 wetlands are those wetlands not rated as Class 1 or 2 wetlands, but greater than 1,000 square feet in size.*

1. *Category I. Category I wetlands are:*

a. *Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;*

b. *Bogs;*

c. *Mature and old-growth forested wetlands larger than 1 acre; or*

d. *Wetlands that perform many functions well (scoring 23 points or more).*

These wetlands: (1) represent unique or rare wetland types, (2) are more sensitive to disturbance than most wetlands, (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or (4) provide a high level of functions.

2. *Category II. Category II wetlands are wetlands larger than 1 acre or those found in a mosaic of wetlands, or wetlands with a moderately high level of functions (scoring between 20 and 22 points).*

3. *Category III. Category III wetlands have a moderate level of functions (scoring between 16 and 19 points) and can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.*

4. *Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that can often be adequately replaced with a well-planned mitigation project, or in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.*

C. *Buffer Areas.*

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1. The establishment of *buffer* areas shall be required for all development proposals and activities in or adjacent to *wetland* areas. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *critical area*, and/or to protect life, property and resources from risks associated with development on unstable or critical lands.
2. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *critical area*, and implementation of appropriate erosion and sedimentation controls.
3. Native vegetation removal or disturbance is not allowed in established *buffers*, unless the removal or disturbance is part of a *restoration* activity or is allowed by other provisions of this chapter. In all cases, the removal or disturbance should be appropriately mitigated consistent with KMC 18.55.200 and 18.55.210.
2. Required buffer widths (KMC 18.55.320(F)) shall reflect the sensitivity of the particular critical area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the critical area.

F. *Wetland Buffers*:

14. *Wetland buffers* shall be established as follows:

Wetland Type	Buffer Width (Feet) Based on Habitat Score (points)		
	3-5	6-7	8-9
Class 1 Category I	75	150 110	225
Class 2 Category II	75	100 110	225
Class 3 Category III	60	60 110	225
Category IV	40	40	40

5. To minimize the impacts of adjacent land uses, *development proposals* and activities proposed in or adjacent to *wetland* areas must implement the following measures if applicable:

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Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from <i>wetland</i>
Noise	• Locate activity that generates noise away from <i>wetland</i> • If warranted, enhance existing <i>buffer</i> with <i>native vegetation</i> plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated <i>buffer</i> strip immediately adjacent to the outer <i>wetland buffer</i>
Toxic runoff	• Route all new, untreated runoff away from <i>wetland</i> while ensuring <i>wetland</i> is not dewatered • Establish covenants limiting use of pesticides within 150 ft of <i>wetland</i> • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the <i>buffer</i> • Use <i>low impact development</i> techniques
Change in water regime	• Infiltrate or treat, detain, and disperse into <i>buffer</i> new runoff from <i>impervious surfaces</i> and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense <i>vegetation</i> to delineate <i>buffer</i> edge and to discourage disturbance using <i>vegetation</i> appropriate for the ecoregion • Place <i>wetland</i> and its <i>buffer</i> in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

6. For *wetlands* that score 6 points or more for habitat function, a relatively undisturbed, vegetated corridor at least 100 feet wide shall be protected when feasible between the *wetland* and any other *priority habitats* as defined by the Washington State Department of Fish and Wildlife. Presence or absence of a nearby *priority habitat* must be confirmed by a *qualified professional* and documented in a *critical areas* report. The corridor must be protected for the entire distance between the *wetland* and the *priority habitat* by some type of legal protection such as a conservation easement or *critical area tract*.

27. Measurement of *Wetland Buffers*. *Wetland buffers* shall be measured from the *wetland edge* as delineated and marked in the field using the methodology specified in KMC 18.55.300.A, 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and current regional supplements or as may be revised in WAC 173-22-035 and 173-22-080 or the most recent approved federal manual and regional supplements.

38. Increased *Wetland Buffer Widths*. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional biologist* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *wetland functions* and

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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* or their functions;
- b. The *buffer* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion*-control measures will not prevent adverse impacts to the *wetland*. In such cases, the *buffer* shall be increased to include the slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection; or

c. A *degraded wetland buffer* is present. In this case, the standard *buffer* on the entire *site* shall be increased by 33 percent unless new net *impervious surface* between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer* equals or is less than 500 square feet or a *buffer* revegetation plan is provided meeting all of the following criteria:

(1) The *buffer* revegetation plan shall be prepared by a *qualified professional* and the *applicant* shall fund a review of the plan by the *City's* wetland consultant. Enhancements shall include revegetation with native species appropriate for the *site*, and may also include installation of special habitat features, such as snags, downed wood, bat boxes, or other wildlife habitats. The *buffer* revegetation plan shall meet the requirements for a mitigation plan as described in KMC Section 18.55.220, including five years of maintenance and monitoring consistent with KMC Section 18.55.280.

(2) The *degraded wetland buffer* shall be enhanced at a 1:1 ratio relative to the total net new *impervious surface* located between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer*, up to the total on-site square footage of *degraded wetland buffer* outside of any legal *nonconformances*. When the available *degraded wetland buffer* area is exceeded by the new net *impervious surface* area, the remaining required area of revegetation shall be implemented in *degraded wetland*, if present on the *site*.

(3) If the total new net *impervious surface* area between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer* exceeds the area of *degraded wetland buffer* outside of any legal *nonconformances* and *degraded wetland*, the *applicant* should consider opportunities to convert areas of legal *nonconformances* to enhanced *buffer*.

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ED. Limited Exemptions. Class 3 wetlands less than 1,000 square feet may be exempted from the provisions of KMC 18.55.300 to 18.55.330 and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.

1. All isolated Category IV wetlands meeting certain criteria that are less than 4,000 square feet may be exempt from the requirement to avoid wetland and buffer impacts (KMC 18.55.210.A), and they may be altered or filled if the impacts are fully mitigated based on the remaining actions in Chapter 18.55.210.B through F. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. A critical area report for wetlands meeting the requirements in KMC 18.55.310 must be submitted that demonstrates that the wetland is eligible for this exemption by confirming that the following criteria are met:

- a. The wetland is not associated with riparian areas or their buffers;
- b. The wetland is not associated with shorelines of the state or their associated buffers;
- c. The wetland is not part of a wetland mosaic;
- d. The wetland does not score 6 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology); and
- e. The wetland does not contain a fish and wildlife habitat of importance as identified in 18.55.500.

2. All isolated Category IV wetlands meeting certain criteria that are less than 1,000 square feet may be exempt from the buffer provisions contained in this Chapter. A critical area report for wetlands meeting the requirements in KMC 18.55.310 must be submitted that demonstrates that the wetland is eligible for this exemption by confirming that the following criteria are met:

- a. Criteria 1.a through 1.e of this subsection, and
- b. The wetland does not contain federally listed species or their critical habitat.

7. **Building Setback.** A building setback from the buffer edge is required per KMC 18.55.270.

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Article VIII. Wetlands – Additional Report Requirements

18.55.310 Critical areas report.

Requirements for *critical areas* reports for *wetlands* are available from the *city manager*.

Article IX. Wetlands – ~~Performance Standards~~ Allowed Uses and Alterations18.55.320 ~~Performance standards – General requirements~~ Allowed Uses.

~~BA.~~ Activities and *uses* shall be prohibited from *wetlands* and *wetland buffers*, except as provided for in this chapter.

~~AB.~~ Unless otherwise allowed by this chapter, ~~a~~Activities may only be permitted in a *wetland* or *wetland buffer* after demonstration of *mitigation sequencing*, and if the *applicant* can show that the proposed activity will not degrade the *functions and values* of the *wetland* and other *critical areas* and no other feasible site design exists that results in less encroachment or impact to the *wetland* or *wetland buffer*.

C. ~~Class 1~~Category I and II *Wetlands*. Activities and *uses* shall be prohibited from ~~Class 1~~Category I and II *wetlands*, except as provided for in the *exemptions*, *public agency* and *utility* exception, or *reasonable use* exception sections of this chapter, or in subsection E of this section.

D. ~~Class 2 and 3~~Category III and IV *Wetlands*. Activities may be permitted, if the *city manager* determines, based upon review of special studies completed by *qualified professionals*, that the activity meets avoidance and minimization requirements outlined in KMC 18.55.210 and will not:

1. Adversely affect water quality;
2. Adversely affect fish, wildlife, or their habitat;
3. Have an adverse effect on drainage and/or stormwater detention capabilities;
4. Lead to unstable earth conditions or create an *erosion* hazard or contribute to scouring actions;
5. Be materially detrimental to any other property or the *City* as a whole; or
6. Have adverse effects on any other *critical areas*.

~~6E.~~ *Wetland and Buffer Uses*. The following *uses* may be permitted within a *wetland and wetland buffer* in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the *buffer* and adjacent *wetland*:

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a1. Conservation and *Restoration* Activities. Conservation or *restoration* activities aimed at protecting *or restoring* the soil, water, *vegetation*, or wildlife;

b2. Passive Recreation. Passive recreation facilities designed in accordance with an approved *critical areas* report, including:

(1)a. Private ~~w~~alkways and *trails*; provided, that those pathways that are generally parallel to the perimeter of the *wetland* shall be located in the outer 25 percent of the *buffer* area. *Walkway and trail surfaces in buffers shall be made of pervious materials and shall be a maximum of 5 feet wide. Where private walkways and trails must cross a wetland to reach a permitted water access structure, such as a dock, or a pedestrian bridge over an associated waterbody, the walkway or trail must be a raised boardwalk supported by piles that allow free movement of water beneath the structure;*

b. Public walkways and *trails*; provided, that those pathways are located and designed based on existing site-specific conditions to minimize *native vegetation* removal, and are part of an approved public *park* or *trail* plan. The *trail* proposal shall be accompanied by a plan demonstrating that the existing ecological functions of the *wetland* or required *buffer* area on a project *site* would be improved. *Trails* may extend in or across a *wetland* if necessary to access viewing platforms or other viewpoints, access pedestrian bridges over an associated waterbody, or provide some other public purpose. Walkway and *trail* surfaces in *buffers* shall be made of pervious materials except that public multipurpose *trails* may be of impervious materials if they meet all other requirements, including water quality. *Trail* segments in *wetlands* must be a raised boardwalk supported by piles that allow free movement of water beneath the structure, but should be limited to protect ecological functions of the *buffer* and *wetland*.

Walkway and trail surfaces shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;

c. Walkways and *trails* proposed in *wetlands* and *buffers* by private parties as part of subdivisions, multifamily development, or commercial or institutional uses may be allowed subject to subsection E.2.b, if they will be accessible to the general public, identified with visible signage, and are recorded on title. Providing connectivity to existing *City* or regional *trail* systems or completing or contributing to a *trail* linkage identified in the *City's* Parks, Recreation and Open Space Plan or Walkways & Waterways Plan is encouraged.

d. Wildlife viewing *structures*; and

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e. Fishing access areas; and

f. Interpretive and other signs, benches, railings, and similar accessories to passive recreation that do not require significant ground disturbance, *vegetation* clearing, or concrete foundations.

C3. Stormwater Management Facilities. *Stormwater dispersion outfalls and bioswales* ~~Grass-lined swales and dispersal trenches~~ may be located in the outer 25 percent of the *buffer* area of ~~Category III and IV~~ *Class 2 and 3* wetlands only. All other surface water management facilities are not allowed within the *buffer* area.

18.55.325 Buffer Width Alterations.

5A. *Buffer* Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter, *wetland buffers* shall be retained in an undisturbed condition.

4B. Averaged ~~or Reduced~~ *Buffer* Widths. *Buffer* widths may be averaged or reduced if an *applicant* receives approval as provided in this section. ~~An applicant may request either (1) buffer averaging, or (2) buffer reduction with enhancement. A combination of these two buffer modification approaches shall not be used.~~

A. *Wetland Buffer Width Averaging*. The *city manager* may allow averaging of the *wetland buffer* width in accordance with an approved *critical areas* report and the *best available science* on a case-by-case basis. Averaging of *buffer* widths may only be allowed where a *qualified professional biologist* demonstrates that:

- (1) Additional protection to the *wetland* will be provided through implementation of a *buffer enhancement* plan;
- (2) It will not reduce *wetland functions* or values;
- (3) 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;
- (4) The total area contained in the *buffer* after averaging is no less than that which would be contained within the standard *buffer*; and

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(5). For Class 1 and 2 wetlands, the buffer width shall not be reduced by more than 2025 percent in any one place. For Class 3 wetlands, the buffer width shall not be reduced to less than 50 feet in any one place.

B. *Buffer Reduction with Enhancement.* Standard buffer widths for degraded wetland buffers may be reduced through a combination of buffer enhancement and low impact development strategies. The applicant shall demonstrate that through enhancing the buffer and use of low impact development strategies the reduced buffer will function at a higher level than the standard buffer. Buffers may be reduced in the following manner according to wetland type:

Wetland Category	Maximum Buffer Reduction	Minimum Buffer Width (Feet)
1	25 percent	112.5 feet
2	25 percent	75 feet
3	25 percent	45 feet

C. *Decisional Criteria.* Prior to approval of a reduced buffer, a critical areas application shall meet all of the decisional criteria listed below. A reduced buffer will be approved in a degraded wetland buffer only if:

- (1) It will provide an overall improvement in water quality;
- (2) It will provide an overall enhancement to fish, wildlife, or their habitat;
- (3) It will provide a net improvement in drainage and/or stormwater detention capabilities;
- (4) It will not lead to unstable earth conditions or create an erosion hazard;
- (5) It will not be materially detrimental to any other property or the City as a whole; and
- (6) All exposed areas are stabilized with native vegetation, as appropriate.

D. *Buffer Enhancement Plan.* As part of the buffer reduction request, the applicant shall submit a buffer enhancement plan prepared by a qualified professional and fund a review of the plan by

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the City's wetland consultant. The plan shall assess the habitat, water quality, stormwater detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the six criteria listed in subsection (F)(4)(c) of this section.

C. The City may approve a modification of the minimum required buffer in cases where an improved right-of-way, associated with a legally established roadway, transects the buffer. The buffer may be reduced to match the edge of the right-of-way closest to the wetland if the portion of the buffer on the other side of the roadway meets the following criteria:

1. Does not provide additional protection to the proposed development from flooding or other hazard, or to the wetland; and
2. Provides insignificant biological, geological or hydrological buffer functions relating to the other portion of the buffer adjacent to the wetland.

Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

D. The City may approve a modification of the minimum required buffer width where the proposed development or use is isolated from the critical area and its contiguous buffer by an existing legally established building, detached garage, accessory dwelling unit, commercial parking area, or retaining wall over six (6) feet in height. The modification may not be requested for such improvements as fences, sheds, patios, decks, driveways, or other similar structures and impervious surfaces.

For the buffer modification to be approved, the applicant must demonstrate conclusively in a critical area report that all of the following criteria are met.

1. The existing legal improvement between the proposed development or use and the wetland creates a substantial barrier to buffer function;
2. The isolated section of buffer does not provide additional protection of the critical area from the proposed development; and
3. The isolated section of buffer does not provide significant hydrological, water quality, and wildlife buffer functions relating to the portion of the buffer adjacent to the critical area.

~~7. Building Setback. A building setback from the buffer edge is required per KMC 18.55.270.~~

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18.55.330 Performance standards – Mitigation requirements.

A. *Mitigation Shall Achieve Equivalent or Greater Ecological Functions.* *Mitigation for alterations to wetlands and buffers shall achieve equivalent or greater ecologic functions than exist in the impacted wetland and buffer. Mitigation plans shall be generally consistent with the Department of Ecology Guidelines found in Wetland Mitigation in Washington State – Part 2, Version 1, March 2006, Publication No. 06-060-011b.*

B. *Mitigation for Lost Functions and Values.* *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:*

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

C. *Buffers for Mitigation Shall Be Consistent.* *All mitigation sites shall have* ~~*When mitigation for a wetland impact includes creation of new wetland area, that new area shall be provided with a functioning buffers*~~ *consistent with the buffer requirements of this chapter, unless determined by the city manager through a variance or a reasonable use exemption that a different buffer would provide adequate protection to the critical area.*

D. *Preference of Mitigation Actions.* *Mitigation sequencing outlined in KMC [18.55.210](#) shall be demonstrated in each development proposal. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:*

1. Restoring *wetlands* on upland sites that were formerly *wetlands*.
2. Creating *wetlands* in upland areas, considering degraded areas first.
3. Enhancing significantly *degraded wetlands*.
4. Preserving high quality *wetlands* that are under imminent threat.

E. *Type and Location of Mitigation.* *Mitigation actions shall be conducted within the same sub-drainage basin or on the same site as the alteration except when all of the following apply:*

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1. There are no reasonable on-site or in-*subdrainage-basin* opportunities, or on-site and in-*subdrainage-basin* opportunities do not have a high likelihood of success due to development pressures or adjacent land *uses*, or on-site *buffers* or connectivity is inadequate;
2. Off-site *mitigation* has a greater likelihood of providing equal or improved *wetland functions* than the impacted *wetland*; and
3. Off-site locations shall be in the same *subdrainage basin* unless established regional or 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*.

F. *Mitigation Timing*. Where feasible, *mitigation* or *restoration* projects shall be completed 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 wildlife and flora.

G. *Mitigation Ratios*.

1. *Acreage Replacement Ratios*. The following ratios shall apply to creation or *restoration* that is *in-kind*, on-site, the same *classcategory*, 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 on a case-by-case basis. These ratios do not apply to the use of credits from a State-certified *wetland mitigation bank*. The first number specifies the acreage of replacement *wetlands* and the second specifies the acreage of *wetlands* altered.

Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

The required acreage replacement ratios for *wetlands* within the jurisdiction of the Kenmore shoreline master program are different from these standards. See KMC 16.65.010(C) for required wetland mitigation ratios in the shoreline jurisdiction.

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Standard Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation ¹	Enhancement ²
Category I (Mature Forested)	6:1	12:1	24:1
Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1
Buffer	1:1	1:1	1:1

¹Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a *site* with the goal of repairing natural or historic functions and processes of a *degraded wetland*. Rehabilitation results in a gain in *wetland* function but does not result in a gain in *wetland* acres. An example would be breaching a dike to reconnect *wetlands* to a *floodplain*.

²Enhancement means the manipulation of the physical, chemical, or biological characteristics of a *wetland* to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the *vegetation* present. Enhancement is undertaken for specified purposes such as water quality improvement, *flood* water retention, or wildlife habitat. Enhancement results in a change in *wetland* function(s) and can lead to a decline in other *wetland* functions, but does not result in a gain in *wetland* acres. Examples are planting *vegetation*, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

2. Increased Replacement Ratio. The *city manager* may increase the ratios under the following circumstances:

- a. Uncertainty exists as to the probable success of the proposed *restoration* or creation; or
- b. A significant period of time will elapse between impact and replication of *wetland* functions; or
- c. *Mitigation* will occur off-site versus on-site; or
- d. Proposed *mitigation* will result in a lower category *wetland* or reduced functions relative to the *wetland* being impacted; or
- e. The impact was an unauthorized impact.

3. Decreased Replacement Ratio.

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a. The *city manager* may decrease the ~~replacement~~creation/reestablishment ratios required for ~~Class 1 and 2~~Category II and III wetlands to 2:1 and 1.5:1, respectively, under the following circumstances:

- (1) The *applicant's* qualified *biologist* provides documentation that increases the certainty of success of the proposed *wetland restoration* or creation. At a minimum, this documentation shall include ground water *monitoring* in the area of proposed *restoration* or creation in the early growing season over a sufficient period of time to determine that there is a high probability of creating or restoring *wetlands* in that location; or
- (2) Proposed *mitigation* will result in a higher functioning *wetland* (higher class) relative to the functions of the *wetland* being impacted; or
- (3) The *mitigation* is successfully installed for a period of one year prior to the *wetland* being impacted. Successful installation shall be determined by a qualified *biologist*.

b. When a decreased replacement ratio is allowed, the *mitigation* shall be monitored for a period of no less than 10 years.

4. Credit/Debit Method. As an alternative to the standard mitigation ratios, the *City* may allow *mitigation* based on the "credit/debit" method developed by the Department of Ecology and documented in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington, Final Report, March 2012* (Hruby, 2012 or as revised).

H. *Wetlands Enhancement as Mitigation*. 1. Impacts to *wetlands* may be mitigated by *enhancement* of existing significantly *degraded wetlands*. *Applicants* proposing to enhance *wetlands* must produce a *critical areas* 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*. An *enhancement* proposal must also show whether existing *wetland functions* will be reduced by the *enhancement* actions.

2. At a minimum, *enhancement* acreage shall be double the acreage required for creation or *restoration*.

I. *Mitigation Banking*. The *City* may consider and approve *mitigation banking* as a form of compensatory *mitigation* for *wetland* impacts when the provisions of this chapter require *mitigation* and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of *critical area*

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functions and values when compared to on-site *mitigation*; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of *critical areas*, important *species*, habitats, and when they are consistent with the City comprehensive plan and create a viable alternative to the piecemeal *mitigation* for individual project impacts to achieve ecosystem-based conservation goals. Credits from a *wetland mitigation bank* may be approved for use as compensation for *unavoidable impacts* to wetlands when:
 - a. The bank is certified under state rules;
 - b. The *city manager* determines that the *wetland mitigation bank* provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule (Chapter ~~173-700~~ WAC) or as revised, and (Chapter ~~90.84~~ RCW) and the federal *mitigation banking* guidelines as outlined in the Federal Register Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain State and federal certification. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
3. Preference shall be given to *mitigation banks* that implement *restoration* actions that have been identified formally by an adopted shoreline *restoration* plan or the Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Chinook Salmon Conservation Plan. Credits from a certified *wetland mitigation bank* may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific *wetland functions*.

J. *In Lieu Fee Programs*. To aid in the implementation of off-site *mitigation*, the City may develop an in-lieu fee (ILF) program or allow participation in an ILF program, such as King County's Mitigation Reserves Program. ILF programs shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee *mitigation*, and state water quality regulations. An approved ILF program sells compensatory *mitigation* credits to permittees whose obligation to provide compensatory *mitigation* is then transferred to the in-lieu program sponsor, a governmental or non-profit

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natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The *city manager* determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The *mitigation* will occur on a site identified using the site selection and prioritization process in the approved ILF program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
4. Land acquisition and initial physical and biological improvements of the *mitigation* site must be completed within three years of the credit sale. A one-year extension to this requirement may be granted by the *city manager* if the need for additional *mitigation* because of possible temporal loss is evaluated and addressed.
5. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the *applicant's* qualified *wetland* scientist using the method consistent with the credit assessment method specified in the approved instrument for the ILF program.
6. Credits from an approved ILF program may be used to compensate for impacts located within the service area specified in the approved ILF instrument.

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

L. *Alternative Mitigation Plans.* The *city manager* may approve alternative *critical areas mitigation* plans that are based on *best available science*, such as priority *restoration* plans that achieve *restoration* goals identified in the SMP. Alternative *mitigation* proposals must provide an equivalent or better level of protection of *critical area functions and values* than would be provided by the strict application of this chapter and must contain all of the standard components of a *mitigation* plan. The *city manager* shall consider the following for approval of an alternative *mitigation* proposal:

1. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, Olympia, WA, December 2009, or as revised).

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2. Creation or *enhancement* of a larger system of natural areas and *open space* is preferable to the preservation of many individual habitat areas.

3. There is clear potential for success of the proposed *mitigation* at the proposed *mitigation site*.

4. A *wetland* of a different type is justified based on regional needs or *functions and values*; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

Article X. Streams and Lakes – Designation and Rating

18.55.400 Designation and rating of streams and lakes.

A. Stream and Lake Classifications. Streams and lakes shall be designated Type 1, Type 2, Type 3, and Type 4 Type S, Type F, Type Np, and Type Ns according to the following criteria in this section identified in WAC 222-16-030.

1. Type ~~4S~~ streamsWaters are those streamssegments of natural waters identified as "shorelines of the State" under Chapter 90.58 RCW, including the Sammamish River and the main stem of Swamp Creek, as well as Lake Washington.

2. Type 2 streams are those streams that are:

- a. Natural streams that have perennial (year-round) flow and are used by salmonid fish; or
- b. Natural streams that have intermittent flow and are used by salmonid fish.

3. Type 3 streams are those streams that are:

- a. Natural streams that have perennial flow and are used by fish other than salmonids; or
- b. Natural streams that have intermittent flow and are used by fish other than salmonids.

4. Type 4 streams are those natural streams with perennial or intermittent flow that are not used by fish.

2. Type F Waters means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat.

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3. Type Np Waters means all segments of *natural waters* within the *bankfull width* of defined channels that are *perennial nonfish habitat streams*. *Perennial streams* are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

4. Type Ns Waters means all segments of *natural waters* within the *bankfull width* of the defined channels that are not Type S, F, or Np Waters. These are seasonal, *nonfish habitat streams* in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any *stream* reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

B. Presumption of fish use: Waters having any of the following characteristics are presumed to contain suitable *fish habitat*, and therefore are a Type F water:

1. *Stream* segments having a defined *channel width* of 2 feet or greater within the *bankfull width* and having a *channel gradient* of 16 percent or less;

2. *Stream* segments having a defined *channel width* of 2 feet or greater within the *bankfull width* and having a *channel gradient* greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size based on hydrographic boundaries;

3. Ponds or impoundments having a surface area of less than 1 acre at *seasonal low water* and having an outlet to a *fish stream*; or

4. Ponds or impoundments having a surface area greater than 0.5 acre at *seasonal low water*.

BC. Ditches. Ditches are artificial drainage features created in uplands through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. Purposeful creation must be demonstrated through documentation, photographs, statements and/or other evidence. Ditches are excluded from regulation as *streams*, unless they are used by *native species of* fish. Drainage setbacks are required as per the City's surface water runoff policy (Chapter 13.35 KMC).

D. Lakes and ponds, which terms can be used interchangeably and are loosely differentiated in common use by the larger size of lakes, are surface water bodies distinguished from *wetlands* by the presence of deep water, typically 2 meters (6.6 feet) or greater.

E. Lakes, ponds and impoundments deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration), and landscape amenities, are not regulated by this chapter unless they are used by native fish. Purposeful creation must be demonstrated through documentation, photographs, statements

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and/or other evidence. However, lakes, ponds and impoundments intentionally created from dry areas as mitigation for a critical areas impact are regulated by this chapter.

FB. Stream and Lake Buffers.

A1. Establishment of Stream Buffers. The establishment of *buffer* areas shall be required for all *development proposals* and activities in or adjacent to *streams and lakes*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream or lake* and provide habitat for *great blue* heron and other wildlife. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *stream or lake*, and implementation of appropriate *erosion* and sedimentation controls. *Native vegetation removal or disturbance is not allowed in established buffers.*

Required *buffer* widths shall reflect the sensitivity of the *stream* or the risks associated with *development* and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the *critical area*.

1. The following *buffers* are established for *streams and lakes* to protect *functions and values*, including heron habitat:

Stream Type	Buffer Width (Feet)
Type 4S - and Swamp Creek, Lake Washington and Sammamish River Little Swamp Creek	150 See KMC 16.65.020
Type F – Little Swamp Creek	150
Type 2F (other waterbodies used by or containing habitat suitable for salmonid fish)	100
Type 3F (waterbodies used by or containing habitat suitable for fish other than salmonids)	50
Type 4Np or Ns	25
Any type stream restored from a pipe	25

2. Measurement of *Stream Buffers*. *Stream b* Buffers shall be measured perpendicularly from the ordinary high water mark.

7. *Building Setback*. A building setback is required from the edge of the *buffer* per KMC 18.55.270.

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3. Increased **Stream-Buffer** Widths. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *stream or lake 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 or their functions*;
- b. The *buffer* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion-control* measures will not prevent adverse impacts to the *stream or lake*. The *buffer* should be measured from the toe of the slope. In such cases, the *buffer* shall be increased to include the slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection.

Article XI. Streams **and Lakes** – Additional Report Requirements

18.55.410 Critical areas report.

Requirements for *critical areas* reports for *streams and lakes* are available from the *city manager*.

Article XII. Streams **and Lakes** – **Performance Standards**~~Allowed Uses and Alterations~~

18.55.415 – Allowed Uses

5A. *Buffer* Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter **and Title 16 KMC (Shoreline Management)**, *stream and lake buffers* shall be retained in an undisturbed condition.

B. *Native vegetation* removal or disturbance is not allowed in established *buffers*.

6C. *Buffer Uses*. The following *uses* may be permitted within a *stream or lake buffer* in accordance with the review procedures of this chapter **and Title 16 KMC (Shoreline Management)**, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the *buffer* and adjacent *stream or lake*:

1a. Conservation and *Restoration* Activities. Conservation or *restoration* activities aimed at protecting the soil, water, *vegetation*, or wildlife;

2b. Passive Recreation. Passive recreation facilities designed in accordance with an approved *critical areas* report, including:

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(1)a. Private walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the stream or lake shall be located in the outer 25 percent of the buffer area;

(2) Walkway and trail surfaces in buffers shall be made of pervious materials and shall be a maximum of 5 feet wide except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;

b. Public walkways and trails; provided, that those pathways are located and designed based on existing site-specific conditions to minimize native vegetation removal, and are part of an approved public park or trail plan. The trail proposal shall be accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be improved. Walkway and trail surfaces in buffers shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront shoreline environment on Lake Washington, public access improvements may extend to the water's edge.

c. Walkways and trails proposed in stream and lake buffers by private parties as part of subdivisions, multifamily development, or commercial or institutional uses may be allowed subject to subsection C.2.b, if they will be accessible to the general public, identified with visible signage, and are recorded on title. Providing connectivity to existing City or regional trail systems or completing or contributing to a trail linkage identified in the City's Parks, Recreation and Open Space Plan or Walkways & Waterways Plan is encouraged.

d.(3) Wildlife viewing structures; and

e.(4) Fishing access areas; and

f. Interpretive and other signs, benches, railings, and similar accessories to passive recreation that do not require significant ground disturbance, native vegetation removal, or concrete foundations.

C3. Stormwater Management Facilities. Stormwater dispersion outfalls and bioswales Grass-lined swales and dispersal trenches may be located in the outer 25 percent of the buffer area. All other surface water management facilities are not allowed within the buffer area.

7. Building Setback. A building setback is required from the edge of the buffer per KMC 18.55.270.

18.55.420 Performance standards – General Alterations.

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A. Establishment of *Stream Buffers*. The establishment of *buffer* areas shall be required for all *development proposals* and activities in or adjacent to *streams*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream* and provide habitat for heron and other wildlife. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *stream*, and implementation of appropriate *erosion* and sedimentation controls. *Native vegetation* removal or disturbance is not allowed in established *buffers*.

Required *buffer* widths shall reflect the sensitivity of the *stream* or the risks associated with *development* and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the *critical area*.

B. *Stream Buffers*:

1. The following *buffers* are established for *streams* to protect *functions and values*, including heron habitat:

Stream Type	Buffer Width (Feet)
Type 1 and Little Swamp Creek	150
Type 2	100
Type 3	50
Type 4	25

2. Measurement of *Stream Buffers*. *Stream buffers* shall be measured perpendicularly from the *ordinary high water mark*.

3. Increased *Stream Buffer* Widths. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *stream 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* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion-control* measures will not prevent adverse impacts to the *stream*. The *buffer* should be measured from the toe of the slope. In such cases, the *buffer* shall be increased to include the

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slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection.

A. Modification of Standard *Buffer*.

1. The *City* may approve a modification of the minimum required *buffer* in cases where an improved right-of-way, associated with a legally established roadway, transects the *stream* or lake *buffer*. The *buffer* may be reduced to match the edge of the right-of-way closest to the *stream* or lake if the portion of the *buffer* on the other side of the roadway meets the following criteria:

- a. Does not provide additional protection to the proposed development from *flooding* or other hazard, or to the lake or *stream*; and
- b. Provides insignificant biological, geological or hydrological *buffer* functions relating to the other portion of the *buffer* adjacent to the lake or *stream*.

Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

2. The *City* may approve a modification of the minimum required *buffer* width where the proposed *development* or *use* is isolated from the *critical area* and its contiguous *buffer* by an existing legally-established *building*, detached garage, accessory dwelling unit, commercial parking area, *retaining wall* over six (6) feet in height, or similar structure. The modification may not be requested for such improvements as *fences*, sheds, patios, decks, driveways, or other similar structures and *impervious surfaces*. For the *buffer* modification to be approved, the *applicant* must demonstrative conclusively in a *critical area* report that all of the following criteria are met:

- a. The existing legal improvement between the proposed development or *use* and the *stream* or lake creates a substantial barrier to *buffer* function;
- b. The isolated section of *buffer* does not provide additional protection of the *critical area* from the proposed *development*; and
- c. The isolated section of *buffer* does not provide significant hydrological, water quality, and wildlife *buffer* functions relating to the portion of the *buffer* adjacent to the *critical area*.

7. *Building Setback*. A building *setback* from the *buffer* edge is required per KMC 18.55.270.

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4B. *Buffer Reduction with Enhancement.* Standard *buffer* widths for degraded *buffers* of Type F, Ns, or Np *waters* may be reduced a maximum of 25 percent of the standard width through a combination of *buffer enhancement* and *low impact development* strategies. The *applicant* shall demonstrate that through enhancing the *buffer* and use of *low impact development* strategies the reduced *buffer* will function at a higher level than the standard *buffer*. Type S *buffers* and *setbacks* may only be reduced as outlined in KMC 16.60.030 or under the *Shoreline Variance* requirements of KMC 16.75.030. *Buffers* may be reduced in the following manner according to *stream* type:

The following table describes the maximum *buffer* reduction and minimum *buffer* width when a degraded *buffer* is enhanced:

<i>Stream Type</i>	Maximum <i>Buffer</i> Reduction	Minimum <i>Buffer</i> Width (Feet)
Type S - Swamp Creek, Lake Washington and Sammamish River	See KMC 16.60.030 or 16.75.030	
Type F –Type 1 and Little Swamp Creek	25 percent	112.5 feet
Type F (other waterbodies used by or containing habitat suitable for salmonid fish) Type 2	25 percent	75 feet
Type F (waterbodies used by or containing habitat suitable for fish other than salmonids) Type 3	25 percent	37.5 feet
Type Np or Ns Type 4	25 percent	18.75 feet
Any type <i>stream</i> restored from a pipe	25 percent	18.75 feet

A1. Prior to approval of a reduced *buffer*, a *critical areas* application shall meet all of the decisional criteria listed below. A reduced *buffer* will be approved in a degraded *stream* or lake *buffer* only if:

- (1)a. It will provide an overall improvement in water quality;
- (2)b. It will provide an overall *enhancement* to fish, wildlife, or their habitat;

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~~(3)c.~~ It will provide a net improvement in drainage and/or stormwater detention capabilities;

~~(4)d.~~ It will not lead to unstable earth conditions or create an *erosion* hazard;

~~(5)e.~~ It will not be materially detrimental to any other property or the *City* as a whole; and

~~(6)f.~~ All exposed areas are stabilized with *native vegetation*, as appropriate.

~~b2.~~ As part of the *buffer* reduction request, the *applicant* shall submit a *buffer enhancement* plan prepared by a *qualified professional* and fund a review of the plan by the *City's wetlandcritical areas* consultant. The plan shall assess the habitat, water quality, stormwater detention, ground water recharge, shoreline protection, and *erosion* protection functions of the *buffer*; assess the effects of the proposed modification on those functions; and address the six criteria listed in subsection ~~(F)(4)(c)B.1~~ of this section.

~~5. Buffer Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter, stream buffers shall be retained in an undisturbed condition.~~

~~6. Buffer Uses. The following uses may be permitted within a stream buffer in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent stream:~~

~~a. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;~~

~~b. Passive Recreation. Passive recreation facilities designed in accordance with an approved critical areas report, including:~~

~~(1) Walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the stream shall be located in the outer 25 percent of the buffer area;~~

~~(2) Walkway and trail surfaces shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;~~

~~(3) Wildlife viewing structures; and~~

~~(4) Fishing access areas.~~

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e. ~~Stormwater Management Facilities. Grass-lined swales and dispersal trenches may be located in the outer 25 percent of the *buffer* area. All other surface water management facilities are not allowed within the *buffer* area.~~

7. ~~Building Setback. A building setback is required from the edge of the *buffer* per KMC 18.55.270.~~

C. *Stream* Crossings. *Stream* crossings may be allowed and may encroach on the otherwise required *stream buffer* if:

1. All crossings ~~are designed using the most recent version of Washington Department of Fish and Wildlife's *Water Crossing Design Guidelines* (Barnard and others, 2013, or as revised), prioritizing~~ use bridges or other construction techniques which do not disturb the *stream* bed or bank, except that bottomless culverts or other appropriate methods demonstrated to provide fisheries protection may be used for Type ~~2 or 3F~~ *streams* if the *applicant* demonstrates that such methods and their implementation will pose no harm to the *stream* nor inhibit migration of fish;
2. All crossings are constructed during the summer low flow and are timed to avoid *stream* disturbance during periods when use is critical to *salmonids*;
3. Crossings do not occur over *salmonid* spawning areas unless the *City* determines that no other possible crossing site exists;
4. Bridge piers or abutments are not placed within the *Federal Emergency Management Agency (FEMA) floodway* or below the *ordinary high water mark*;
5. Crossings do not diminish the *flood*-carrying capacity of the *stream*;
6. Underground utility crossings are laterally drilled and located at a depth of four feet below the maximum depth of scour for the *base flood* predicted by a civil engineer licensed by the State of Washington. Temporary bore pits to perform such crossings may be permitted within the *stream buffer* established in this chapter; and
7. Crossings are minimized and serve multiple purposes and properties whenever possible.

D. *Stream* Relocations.

1. *Stream* relocations may be allowed only for:
 - a. ~~All Type F, Type Np, and Type Ns~~ *streams* ~~types~~ as part of a public project for which a public agency and utility exception is granted pursuant to this chapter; or

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b. Type 3 or 4F streams with fish use other than salmonids, Np or Ns streams for the purpose of enhancing resources in the *stream* if:

(1) Appropriate floodplain protection measures are used; and

c. The location occurs on-site except that relocation off-site may be allowed if the *applicant* demonstrates that any on-site relocation is impracticable, the *applicant* provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage *sub-basin* as the original *stream*.

2. For any relocation allowed by this section, the *applicant* shall base the design on the most recent version of the multi-agency Stream Habitat Restoration Guidelines (Cramer, 2012 or as revised), and demonstrate, based on information provided by a civil engineer and a qualified *biologist*, that:

- a. The equivalent *base flood* storage volume and function will be maintained;
- b. There will be no adverse impact to local ground water;
- c. There will be no increase in velocity;
- d. There will be no interbasin transfer of water;
- e. There will be no increase in the sediment load;
- f. There is an overall increase in habitat function and value for *salmonids* and other fish;
- g. Requirements set out in the *mitigation* plan are met;
- h. The relocation conforms to other applicable laws; and
- i. All work will be carried out under the direct supervision of a qualified *biologist*.

E. Stream or Lake Enhancement/Restoration. Stream or lake enhancement and restoration not associated with any other *development proposal* may be allowed if:

- 1. aAccomplished according to a plan consistent with the most recent version of the multi-agency Stream Habitat Restoration Guidelines (Cramer, 2012 or as revised) for its design, implementation, maintenance and *monitoring* prepared by a civil engineer and a qualified *biologist* and carried out under the direction of a qualified *biologist*.

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F. *Minor Stream Restoration.* A minor stream restoration project for fish habitat enhancement may be allowed if:

24. The project results in an net increase in stream or lake functions and values;
2. The restoration is sponsored by a public agency with a mandate to do such work;
3. The enhancement or restoration is not associated with mitigation of a specific development proposal; and
4. The enhancement or restoration is limited to removal of non-native vegetation and enhancement of riparian vegetation, placement of rock weirs, log controls, spawning gravel and other specific salmonid habitat improvements;
5. The restoration only involves the use of hand labor and light equipment; or the use of helicopters, cranes, or aerial equipment which deliver supplies to the project site; provided, that they have no contact with critical areas or their buffers; and
6. The restoration is performed under the direction of a qualified biologist.

18.55.430 Performance standards – Mitigation requirements.

A. *Stream or Lake Mitigation.* Mitigation of adverse impacts to aquatic or riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near to the alteration as feasible, and be located in the same subdrainage basin as the impacted habitat unless mitigation will be implemented via a City-approved in-lieu fee program or mitigation bank. See also KMC 18.55.200, 18.55.210 and 18.55.220.

B. *Alternative Mitigation for Stream Areas.* The performance standards set forth in this section may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.

B. *Advance Mitigation.* Mitigation for projects with pre-identified impacts to streams, lakes or their buffers may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

C. *Alternative Mitigation Plans.* The city manager may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals shall provide an equivalent or better level of

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protection of *critical area functions and values* than would be provided by the strict application of this chapter and shall contain all of the standard components of a *mitigation* plan. The *city manager* shall consider the following for approval of an alternative *mitigation* proposal:

1. The proposal uses a watershed approach consistent with the joint U.S. Environmental Protection Agency and U.S. Army Corps of Engineers *Compensatory Mitigation for Losses of Aquatic Resources* (33 CFR Part 33, April 2008).
2. Creation or *enhancement* of a larger system of natural areas and *open space* is preferable to the preservation of many individual habitat areas.
3. There is clear potential for success of the proposed *mitigation* at the proposed *mitigation* site.
4. *Mitigation* in a different sub-basin is justified based on regional needs or *functions and values*; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

D. Mitigation Banking.

1. Credits from a *mitigation bank* may be approved for use as compensation for *unavoidable impacts* to aquatic habitats when:
 - a. The bank is certified under state rules;
 - b. The *city manager* determines that the *mitigation bank* provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. Accounting methods for quantifying project impacts and the necessary compensation shall be consistent with methods specified in the certified bank instrument.
3. Credits from a certified *mitigation bank* may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin.

E. In Lieu Fee Programs. To aid in the implementation of off-site *mitigation*, the *City* may develop an in-lieu fee (ILF) program or allow participation in an ILF program, such as King County's Mitigation Reserves Program. ILF programs shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee *mitigation*, and state water quality regulations. An approved

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ILF program sells compensatory *mitigation* credits to permittees whose obligation to provide compensatory *mitigation* is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The *city manager* determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The *mitigation* will occur on a site identified using the site selection and prioritization process in the approved ILF program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
4. Land acquisition and initial physical and biological improvements of the *mitigation* site shall be completed within three years of the credit sale. A one-year extension to this requirement may be granted by the *city manager* if the need for additional *mitigation* because of possible temporal loss is evaluated and addressed.
5. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the *applicant's* qualified *stream* or lake scientist using the method consistent with the credit assessment method specified in the approved instrument for the ILF program.
6. Credits from an approved ILF program may be used to compensate for impacts located within the service area specified in the approved ILF instrument.

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

A. Fish and wildlife habitats of importance are those habitat 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. In the *City*, habitats of importance meet any of the following criteria:

1. Documented presence of *species* listed by the federal government or the State of Washington as endangered, or threatened or sensitive; or

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2. Great blue hHeron rookeries or active nesting trees; or
 3. Pileated woodpecker breeding habitat as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species ProgramClass 1 wetlands as defined in these regulations; or
 4. Biodiversity areas and corridors as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species Program; orType 1 streams as defined in these regulations.
 5. Bald eagle habitat shall be, protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292)Federal Bald and Golden Eagle Protection Act; or
 6. Anadromous fish habitat; or
 7. Habitat for species nominated and approved by the City per KMC 18.55.500.C.
- B. All areas within the City meeting one or more of these criteria, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter.
- C. The City may accept and consider nominations by Kenmore residents or property owners for habitat areas and *species* to be designated as fish and wildlife habitats of importance. Nominations will be accepted by the city manager on an annual basis and will be considered for approval by the City Council following a public hearing on the nomination. Guidelines for nomination are available from the city manager.Information to be included with a nomination request includes:
1. Specific geographic boundaries and list of species proposed, including a list of functions;
 2. Rationale for nomination based on best available science, including the viability of the population in Kenmore and the contribution to biodiversity;
 3. Causes for vulnerability, including a description of activities that compromise these areas, as well as a list of proposed management and protection measures;
 4. Regulatory gaps regarding protection of the habitat or species; and
 5. Non-environmental impacts affecting the habitat area and species (e.g., legal, cultural, recreational, and economic significance).

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Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

18.55.510 Critical areas report – Habitat Management Plan.

Requirements for *critical areas* reports for fish and wildlife habitats of importance are available from the *city manager*. A. Habitat Management Plan. A habitat management plan is required when *the priority habitats and species* available maps or natural heritage program maps provided by the *City*, or other information, indicate the presence of *fish and wildlife habitats of importance* areas with which critical *species* listed as *endangered or threatened* under federal or State law have a primary association.

1. All habitat management plans shall be prepared *by a qualified professional* and are encouraged to *be prepared* in consultation with the *State* *Washington* Department of Fish and Wildlife. Habitat management plans for critical *species* listed as *endangered or threatened* shall be approved by the Department of Fish and Wildlife.
2. Habitat Management Plan Content Requirements. *Based on the characteristics of the site and information submitted by the applicant*, the *city manager* may require that all or a portion of the following be included in a habitat management plan. Requirements for habitat management plans are available from the *city manager*. Plans also shall include:
 - a. A map drawn to scale or survey showing the following information:
 - (1) All lakes, ponds, *streams*, and *wetlands* on, or adjacent to, the subject property, including the name (if named), *ordinary high water mark* of each, and the *stream type or wetland class* consistent with this chapter.
 - (2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the *City*.
 - (3) The location of any observed evidence of use by a listed *species*.
 - ba. An analysis of how the proposed *development* activities will affect the fish and wildlife habitats of importance and listed *species of importance*.
 - cb. Provisions to reduce or eliminate the impact of the proposed *development* activities on any fish and wildlife habitats of importance and listed *species*. An analysis of mitigation sequencing per KMC 18.55.210, including a *mitigation plan*.
 - dc. The habitat management plan should also address *Consideration of* the following issues:

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(1) Prohibition or limitation of *development* activities within the fish and wildlife habitats of importance;

(2) Establishment of a *buffer* around the fish and wildlife habitat conservation area of importance;

(3) Retention of certain *vegetation* or areas of *vegetation* critically important to the listed species of importance;

(4) Limitation of access to the fish and wildlife habitats of importance and *buffer*;

(5) Seasonal restrictions on construction activities on the subject property; and

(6) Clustering of *development* on the subject property; and

(7) The preservation or creation of a habitat area for the listed species.

d. Discussion of how the project complies with published Washington Department of Fish and Wildlife management recommendations for the species' habitat, if available.

3. When bald eagle habitat is the only potential fish and wildlife habitat of importance on a site, applicants may self-certify that they are in compliance with the Federal Bald and Golden Eagle Protection Act by submitting a document generated online through the U.S. Fish and Wildlife Service's *Bald and Golden Eagle Permit Recommendation Tool*. Washington Department of Fish and Wildlife no longer maps bald eagle nest sites, so applicants would complete the certification based on their knowledge of their site and local conditions. The City may review the applicant's certificate and require modification if more accurate information or updated standards for protection are available.

4. The applicant may combine a habitat management plan with any studies required by other laws and regulations (e.g. a Biological Assessment or Biological Evaluation).

Article XV. Fish and Wildlife Habitats of Importance – Performance Standards

18.55.520 Performance standards – General requirements.

A. Habitat Management Plan. A habitat management plan is required when the priority habitats and species maps or natural heritage program maps provided by the City, or other information, indicate the presence of areas with which critical species listed as endangered or threatened under federal or State law have a primary association.

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1. All habitat management plans shall be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical *species* listed as *endangered or threatened* shall be approved by the Department of Fish and Wildlife.
2. Habitat Management Plan Content Requirements. Based on the characteristics of the *site* and information submitted by the *applicant*, the *city manager* may require that all or a portion of the following be included in a habitat management plan:
 - a. A map drawn to scale or survey showing the following information:
 - (1) All lakes, ponds, *streams*, and *wetlands* on, or adjacent to, the subject property, including the name (if named), *ordinary high water mark* of each, and the *stream* type or *wetland* class consistent with this chapter.
 - (2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the *City*.
 - (3) The location of any observed evidence of use by a listed *species*.
 - b. An analysis of how the proposed *development* activities will affect the fish and wildlife habitats of importance and listed *species*.
 - c. Provisions to reduce or eliminate the impact of the proposed *development* activities on any fish and wildlife habitats of importance and listed *species*.
 - d. The habitat management plan should also address the following issues:
 - (1) Prohibition or limitation of *development* activities within the fish and wildlife habitats of importance;
 - (2) Establishment of a *buffer* around the fish and wildlife habitat conservation area;
 - (3) Retention of certain *vegetation* or areas of *vegetation* critically important to the listed *species*;
 - (4) Limitation of access to the fish and wildlife habitats of importance and *buffer*;
 - (5) Seasonal restrictions on construction activities on the subject property;

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(6) Clustering of *development* on the subject property; and

(7) The preservation or creation of a habitat area for the listed *species*.

GA. Buffers.

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer* areas for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer* widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the *Washington State Department of Fish and Wildlife*.
2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife *in a permit or in its management recommendations, or by another state or federal agency with expertise in the species or its habitat*, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

B. *Alterations* shall not degrade the *functions and values* of habitat. *Fish and wildlife* habitat areas of importance may be altered only if the proposed *alteration* of the habitat or the *mitigation* proposed does not degrade the quantitative and qualitative *functions and values* of the habitat. *Fish habitat areas of importance may be altered only when necessary to install water-dependent developments that are mitigated consistent with this chapter and Title 16 KMC (Shoreline Management), when applicable. All new structures and land alterations shall be prohibited from habitat areas of importance, except in accordance with this chapter.*

C. *Nonindigenous* species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a fish and wildlife habitat *area* of importance unless authorized by a State or federal permit or approval.

D. *Mitigation* shall result in contiguous habitat. *When feasible, mitigation* sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a *mitigation* plan that is part of an approved *critical areas* report to minimize the isolating effects of *development* on habitat areas, so long as *mitigation* of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

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E. *Mitigation* shall achieve equivalent or greater biological functions. *Mitigation of alterations* to habitat areas of importance shall achieve equivalent or greater biologic functions and shall include *mitigation* for adverse impacts upstream or downstream of the *development proposal site*. *Mitigation* shall address each function affected by the *alteration* to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the *best available science*. Any approval of *alterations* or impacts to a fish and wildlife habitat of importance shall be supported by the *best available science*. Special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, as required by WAC 365-195-900 through 365-195-925.

G. Buffers:

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer* areas for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer widths* shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the State Department of Fish and Wildlife.

2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

18.55.530 Performance standards – Specific habitats.

A. Endangered, Threatened, and Sensitive Species:

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

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

3. 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, a habitat management plan shall be developed by a *qualified professional*. Activities are adjacent to bald eagle sites when they are within 800 feet of an active nest, or within a quarter mile (2,640 feet) of an active nest and in a shoreline foraging area. 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 habitat management plan by the *City* and the Washington State Department of Fish and Wildlife.

BA. Great Blue Heron Rookery.

1. A *buffer* equal to the distance of a 900656-foot radius measured from the outermost nest *tree* in the rookery will be established around an active rookery. This area will be maintained in *native vegetation*. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the *buffer* excludes the area south of the north edge of the State Route 522 right-of-way and west of the east edge of the 73rd Avenue NE right-of-way.
2. Between January 1st and July 31st, no *clearing, grading* or land disturbing activity shall be allowed within 900656 feet of the rookery unless approved by the *City* and Washington State Department of Fish and Wildlife. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the area south of the north edge of the State Route 522 right-of-way and west of the east edge of 73rd Avenue NE right-of-way is excluded.
3. Approval of permits for activities within the heron rookery *buffer* shall not occur prior to the approval of a habitat management plan by the *City* and the Washington State Department of Fish and Wildlife.

CB. *Anadromous Fish.*

1. All activities, *uses*, and *alterations* proposed to be located in waterbodies used by *anadromous fish* or in areas that affect such water bodies shall give special consideration to the preservation and

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enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- a. Activities shall be timed to occur only during the allowable work window as designated by the Washington State Department of Fish and Wildlife for the applicable *species*;
- b. *Applicant must demonstrate that a*An alternative alignment or location for the activity is not feasible;
- c. The activity is designed so that it will *provide an overall improvement in*not degrade the functions or values of the *fish habitat* or other *critical areas*; and
- d. Any impacts to the functions or values of the *anadromous fish habitat conservation area* are mitigated in accordance with an approved *critical areas report*habitat management plan.

2. *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 migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed. *See also KMC 18.55.420.C.*

3. *Fills, when authorized by the City's shoreline management 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.*

Article XVI. Geologically Hazardous Areas – Designation

18.55.600 Purpose.

The primary purpose of *geologically hazardous area* regulations is to avoid and minimize potential impacts to life and property from geologic hazards.

18.55.610 Designation of geologically hazardous areas.

Geologically hazardous areas include areas susceptible to *erosion*, *land*sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible *development* is sited in *hazard areas of significant hazard*. Such incompatible *development* may not only place itself at risk, but also may 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*:

A. *Erosion* hazard;

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- B. *Landslide* hazard;
- C. Seismic hazard; and
- D. Other geological events including *mass wasting*, *debris flows*, *rock falls*, and *differential settlement*.

18.55.620 Designation of specific hazard areas.

A. *Erosion Hazard Areas*. *Erosion hazard areas* are those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service or identified by a special study as having a "moderate to severe," "severe," or "very severe" *erosion* potential.

B. High Landslide Hazard Areas. High Landslide hazard areas are areas potentially subject to a high risk of landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

1. Areas of historic failures, such as:
 - a. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building *site development*; or
 - b. Areas designated as Quaternary slumps, earthflows, mudflows, or *landslides* on maps published by the U.S. Geological Survey or State Department of Natural Resources; or
 - c. Areas identified on King County's 2017 map of unstable slopes and as amended.
2. Areas with all three of the following characteristics:
 - a. Slopes steeper than 15 percent; and
 - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying relatively impermeable sediment; and
 - c. Springs or ground water seepage;
3. Areas that have shown movement during the Holocene epoch post-glacial period (from 106,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch time period, as shown on U.S. Geological Survey, Washington Department of Natural Resources, or King County maps;

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

54. Areas potentially unstable because of rapid *stream* incision, *stream* bank *erosion*, and undercutting by wave action; and

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

C. *Moderate Landslide Hazard Areas.* Moderate *landslide hazard areas* are areas at moderate risk of *landslides* based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

71. Areas with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing its toe and measured by averaging the inclination over at least 10 feet of vertical relief.

CD. *Seismic Hazard Areas.* Seismic *hazard areas* are locations subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, tsunami, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

1. The magnitude of an earthquake;
2. The distance from the source of an earthquake;
3. The type or thickness of geologic materials at the surface; and
4. The type of subsurface geologic structure.

Settlement, and soil liquefaction, and lateral spreading conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table. Tsunami or seiche waves triggered by an earthquake or seismically-induced *landslides* can inundate shoreline-adjacent land, such as along Lake Washington or the lower reaches of the Sammamish River.

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In Kenmore, *seismic hazard areas* include liquefaction-prone areas and a potential strand of the Southern Whidbey Island Fault Zone known as the Kenmore Lineament as designated by the Washington Department of Natural Resources.

DE. Other Hazard Areas. *Geologically hazardous areas* shall also include areas determined by the city manager to be susceptible to other geological events including *mass wasting*, *debris flows*, and *differential settlement*.

Article XVII. Geologically Hazardous Areas – Report Requirements

18.55.630 Critical areas report.

A. A *critical areas* report shall be required for all proposed *alterations* of properties that are located within 200 feet of any *geologically hazardous area*. Requirements for *critical areas* reports for *geologically hazardous areas* are available from the city manager.

B. In the event that the *applicant's* geotechnical consultant and the City's geotechnical reviewer cannot resolve the geotechnical issues and do not agree on required *development* conditions, the city manager may require a third-party review of the *critical areas* report. The *applicant's* consultant and the City's reviewer shall select a mutually agreed upon *qualified professional* to provide the final opinion. The *applicant* shall fund this review and shall make substantive changes to the proposed *alteration* or provide additional analysis as directed by the third-party reviewer.

Article XVIII. Geologically Hazardous Areas – Performance Standards

18.55.640 Performance standards – General requirements.

BA. Structures and *site* improvements shall be *clustered* to avoid *geologically hazardous areas* and other *critical areas*;

AB. *Alterations* of *geologically hazardous areas* or associated *buffers* may only occur for activities that:

1. Will not increase the threat of the geological hazard to adjacent properties beyond predevelopment conditions;
2. Will not adversely impact other *critical areas*;
3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than predevelopment conditions; and

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4. Are ~~certified as determined to be~~ safe as ~~sited and~~ designed and under anticipated conditions by a qualified engineer ~~or geologist, or engineering geologist, as appropriate,~~ licensed in the State of Washington.

BC. Critical Facilities Prohibited. *Critical facilities* shall not be sited within *geologically hazardous areas* unless there is no other *practical alternative*. ~~If so sited, the design shall be adequate to mitigate the effects of the hazard.~~

18.55.650 Performance standards – Specific hazards.

A. ~~Erosion and Landslide~~ Hazard Areas. ~~Activities on sites containing e~~*Erosion or landslide* hazards ~~areas~~ shall meet the following requirements:

1. Buffer ~~Not~~ Required for *Erosion Hazard Areas*. No *buffer* is required from an area categorized as only an *erosion hazard area*.
- 2 *Best Management Practices*. *Best management practices* for sediment and *erosion control* shall ~~be implemented in an erosion hazard area.~~
53. *Vegetation Shall Be Retained*. Unless otherwise provided or as part of an approved *alteration*, removal of *vegetation* from an *erosion or landslide hazard area* ~~or related buffer~~ shall be prohibited.
64. *Seasonal Restriction*. ~~Clearing~~*Site development work* shall be allowed only from May 1st to October 1st of each year; provided, that the ~~City~~ *manager* may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved *forest practice* permit issued by the *City* or the Department of Natural Resources.
75. *Utility Lines and Pipes*. Utility lines and pipes shall be permitted in *erosion and landslide hazard areas* only when the *applicant* demonstrates that no other *practical alternative* is available. ~~Such utilities shall be designed by qualified professionals to resist ground movement and erosion. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.~~
86. *Point Discharges*. Point discharges from surface water facilities and roof drains onto or upstream from an *erosion or landslide hazard area* shall be prohibited except as follows:

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a. Conveyed via continuous storm pipe downslope to a point where there are no *erosion hazard areas* downstream *or downslope* from the discharge; *or*

b. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; *or*.

c. Dispersed discharge upslope of the steep slope onto a low gradient undisturbed *buffer* demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

37. Alterations. In addition to meeting the requirements in KMC 18.55.640, *A* alterations of an *erosion hazard area* *or a landslide hazard area and/or its buffer* may only occur for activities for which a special study is submitted *and certifies demonstrating* that:

a. *The alteration* will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;.

b. *The alteration* will not decrease slope stability on adjacent properties; and

c. Such *alterations* will not adversely impact other *critical areas*.

B. *Landslide Hazard Areas*. In addition to meeting the requirements in KMC 18.55.640, activities on sites containing *landslide hazards* shall meet the following requirements:

21. General Standards. The following standards shall apply in all *landslide hazard areas*:

a. *Buffer Required for Landslide Hazard Areas*. A *buffer* shall be established from all edges of *landslide hazard areas*. The size of the *buffer* shall be determined by the *city manager* to eliminate or minimize the risk of property damage, death or injury resulting from *landslides* caused in whole or part by the *development*, based upon review of and concurrence with a *critical area* report prepared by a *qualified professional*.

ai. Minimum *Buffer*. The minimum *buffer* shall be equal to the height of the slope, as measured from the toe to the top, or 50 feet, whichever is greater.

bii. *Buffer Reduction*. The *buffer* may be reduced to a minimum of 1025 feet when a *qualified professional* demonstrates to the *city manager's* satisfaction based upon review of a special study that the reduction will adequately protect the proposed *development*, adjacent

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developments and uses and the subject critical area through slope stability improvements or structural means.

gii. Increased Buffer. The buffer may be increased where the city manager determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.

d. Building Setback. A building setback is required from the edge of the buffer per KMC 18.55.270.

5b. Vegetation Shall Be Retained. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.

8c. Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

ai. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas landslide hazard areas downstream or downslope from the discharge;

bii. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or

ciii. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

7d. Utility Lines and Pipes.

i. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying landslide. It must be demonstrated by the applicant that a utility line within the landslide hazard area has been designed in a manner that does not negatively impact the stability of the slope, minimizes or eliminates the potential for rupture or failure, and assures that in the event of failure there will not be a life/safety risk. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior. Automatic shutoff valves shall be provided on petroleum or natural gas lines to isolate the landslide area.

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- bii. Access roads ~~and to serve~~ utilities may be permitted within a *landslide hazard area* and associated *buffer* if the *City* determines that no other feasible alternative exists, ~~and the road is designed so as not to lower the stability of the slope.~~ Such a road shall not be used for general ingress/egress to the property unless otherwise approved as part of a *development proposal*.
- 6e. Seasonal Restriction. *Permitted Clearingsite development work* shall be allowed only from May 1st to October 1st of each year; provided, that the *City manager* may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved *forest practice* permit issued by the *City* or the *Washington* Department of Natural Resources. *An exception may be granted by the city manager for emergency repair of structures or landslides when waiting for the clearing window will (1) create a life-threatening risk, (2) do additional damage to the structure, or (3) damage adjacent property or structures.*
- f. Trails. *Trails* shall be permitted when all of the following conditions have been met:
 - i. The proposed *trail* shall not decrease the existing factor of safety within the *landslide hazard area* or any required *buffer*.
 - ii. The proposed *trail* is for pedestrian use only, and is a maximum of 4 (four) feet wide;
 - iii. The *trail* shall not be sited within a *landslide hazard area* or associated *buffer* when there is such a high risk of *landslide* activity that the use of the *trail* would be hazardous; and
 - iv. The *trail* shall be designed and constructed using an engineered drainage system or other methods to prevent the *trail* surface from becoming a drainage course.
- 9g. Subdivisions. The division of land in *landslide hazard areas* and associated *buffers* is subject to the following:
 - ai. Land that is located wholly within a *landslide hazard area* or its *minimum buffer* ~~as required by 18.55.650.B.1.a KMC may shall~~ not be subdivided.
 - ii. Land that is located partially within a *landslide hazard area* or its *minimum buffer* may be divided; provided, that each resulting *lot* has sufficient buildable area outside of, and will not affect, ~~or be affected by,~~ the *landslide hazard area* or its *buffer*; ~~and.~~ For single-family residential subdivisions and short subdivisions on *sites* in the R-4 zone located partially within a *landslide hazard area* and its *minimum buffer*, minimum *lot* size in the area outside of the

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landslide hazard area and its *buffer* may be reduced to 5,400 sq.ft. with no limitation on the percentage of smaller *lots*, regardless of KMC 18.21.030 footnote 16. These smaller *lots* shall be located so as to have the least impact on surrounding properties in terms of consistency of *street frontages* and privacy of abutting properties and the *lot* area shall exclude access easements and access panhandles.

iii. Access roads shall be allowed within a *landslide hazard area* and associated *buffer* only if the *City* determines that no other feasible alternative exists, and the road is designed so as not to lower the stability of the slope.

10h. Prohibited *Development*. On-site sewage disposal systems, including drain fields, shall be prohibited within *landslide hazard areas* and related *buffers*.

2. High Landslide Hazard Areas – Additional Standards.

a. No new *alteration* shall be permitted in a high *landslide hazard area* unless approved as a *reasonable use* exception, KMC 18.55.180.

b. Modifications to a previously approved *alteration*, including remodeling of an existing residence, in a high *landslide hazard area* may be permitted only if a *critical areas report* is submitted demonstrating that the proposal is determined to be safe as sited and designed and under anticipated conditions by a qualified engineer, or engineering *geologist*, as appropriate, licensed in the State of Washington.

3. Moderate Landslide Hazard Areas – Additional Standards.

4a. Design Standards. *Alterations* of a moderate *landslide hazard area* and/or its *buffer* may only occur for activities for which a *critical areas report* is submitted. *Alterations within an erosion hazard area, landslide hazard area and/or buffer* shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this *chapter/article*. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic *development* design standards are:

ai. The proposed *development* shall not decrease the factor of safety for *landslide* occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions.

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Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

eli. Structures and improvements shall minimize *alterations* to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;

eliii. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

eliv. The proposed *development* shall not decrease slope stability on adjacent properties or result in greater risk or a need for increased buffers on neighboring properties;

elv. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

gvi. Development shall be designed to minimize impervious lot coverage.

11C. Slopes Created by Previous Grading. Artificial slopes meeting the criteria of a landslide hazard area based on slope steepness and height that were created through previous permitted grading or are legally non-conforming may be further altered or graded provided the applicant provides information from a qualified professional demonstrating that the naturally occurring slope, as it existed prior to the permitted grading, did not meet any of the criteria for a landslide hazard area and that a new hazard will not be created. Previously graded slopes meeting the criteria of a landslide hazard area that were not permitted or were illegally created are considered to be landslide hazard areas.

BD. Seismic Hazard Areas. Activities proposed to be located in seismic hazard areas shall meet the standards of KMC 18.55.640, Performance standards – General requirements, and the International Building Code. Development or renovation of property in designated tsunami or seiche zones, when identified by the USGS or Washington State Department of Natural Resources, may be allowed if taking into account Designing for Tsunamis, Seven Principles for Planning and Designing for Tsunami Hazards (National Tsunami Hazard Mitigation Program, 2001) and following the regulations for floodways.

CE. Other Hazard Areas. Activities on sites containing or adjacent to other geologically hazardous areas shall meet the standards of KMC 18.55.640, Performance standards – General requirements.

Article XIX. Flood Hazard Areas

(EXISTING ARTICLE XIX IS ENTIRELY REPLACED WITH THE FOLLOWING NEW TEXT)

18.55.700 Purpose.

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The Washington State Legislature has delegated the responsibility to each community to adopt *floodplain* management regulations consistent with the National Flood Insurance Program designed to promote the public health, safety and general welfare of its citizenry. The State Legislature also has established that *floodplains* and other areas subject to *flooding* perform important hydrologic functions, and as such they must also be regulated as *critical areas* under the Growth Management Act (GMA). This article addresses both mandates as an integrated set of regulations.

The *flood hazard areas* of the City of Kenmore, which encompass the Federal Emergency Management Agency (FEMA)-designated *areas of special flood hazard*, are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for *flood* protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These *flood* losses may be caused by the cumulative effect of development in areas of *flood hazard* which increase *flood* heights and velocities.

Uses that are inadequately floodproofed, elevated, anchored, or otherwise protected from *flood* damage contribute to *flood* losses and may cause damage in other areas. The purpose of this article is to establish minimum standards for developments located within or adjacent to *flood hazard areas*, including *areas of special flood hazard*. The following statements describe the purpose of this article:

- A. Protect human life and health;
- B. Minimize expenditure of public money and costly *flood* control projects;
- C. Minimize the need for rescue and relief efforts associated with *flooding*;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public infrastructure, facilities and utilities;
- F. Minimize damage to critical fish and wildlife habitat areas;
- G. Protect frequently flooded areas that provide natural and beneficial ecological functions, including providing vital habitat to support salmon and other fish and wildlife species;
- H. Ensure that potential buyers are notified that property is in a *flood hazard area*;
- I. Ensure that those who occupy *flood hazard areas* assume responsibility for their actions; and

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J. Qualify for participation in the National Flood Insurance Program, thereby providing owners located within the mapped *area of special flood hazard* the opportunity to purchase *flood insurance*.

18.55.705 Definitions.

Most of the terms used in this article are defined in Chapter 18.20 KMC. However, there are some terms used in this article that are required to have unique meanings separate from those in Chapter 18.20 KMC. Those terms listed below are defined in 44CFR 59.1 and supersede those provided in Chapter 18.20 KMC for purposes of administering this article. Any undefined terms used in these definitions will also be based on 44CFR 59.1.

A. "Appeal" means a request for a review of the interpretation of any provision of this article or a request for a variance.

B. "Development" means any man-made change to improved or unimproved real estate, including but not limited to *buildings* or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

C. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the *floodplain* management regulations adopted by the *City*.

D. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

E. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include a recreational vehicle.

F. "New construction" means, for the purposes of determining insurance rates, structures for which the *start of construction* commenced on or after the effective date of an initial *Flood Insurance Rate Map* or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For *floodplain* management purposes, new construction means structures for which the *start of construction* commenced on or after the effective date of a *floodplain* management regulation adopted by the *City* and includes any subsequent improvements to such structures.

G. "Recreational vehicle" means a vehicle which is:

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1. Built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

H. "Structure" means, for *floodplain* management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

I. "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of an *historic* structure, provided that the alteration will not preclude the structure's continued designation as an *historic structure*.

J. "Variance" means a grant of relief by the *City* from the terms of a *floodplain* management regulation.

18.55.707 Lands to which this Article applies.

This article shall apply to all *flood hazard areas* within the jurisdiction of the City of Kenmore, including *areas of special flood hazards* as mapped by FEMA and shown on the *FIRM*.

18.55.710 Basis for establishing flood hazard area.

A. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available *floodway* data for a *flood* having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year *flood*." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used.

B. The *areas of special flood hazard* identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled "The Flood Insurance Study of King County, Washington and Incorporated

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Areas," dated November 8, 1999, and any revisions thereto, with an accompanying effective *flood insurance rate map (FIRM)*, dated November 8, 1999, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article. The *flood insurance study* is on file at Kenmore City Hall. In areas where the *flood insurance study* for the City includes detailed *base flood elevation* calculations, those calculations will be used until projections of future flows are completed and approved by the City and FEMA.

C. The City may use other sources of *flood hazard data* to determine *floodplain* boundaries, *floodway* boundaries, *base flood elevations* or cross sections when identifying a *flood hazard area* if the data from sources listed below is more restrictive than the effective data:

1. Preliminary Flood Insurance Rate Maps;
2. Preliminary Flood Insurance Studies;
3. Draft *flood* boundary work maps and associated technical reports;
4. *Critical area* reports prepared in accordance with FEMA standards contained in 44 C.F.R. Part 65 and consistent with the King County Surface Water Design Manual provisions for *floodplain* analysis;
5. Approved Letter of map amendments;
6. Approved Letter of map revisions;
7. Channel migration zone maps and studies;
8. Historical *flood* hazard information;
9. Wind and wave data provided by the United States Army Corps of Engineers; and
10. Any other available data that accurately classifies and delineates the *flood hazard area* or *base flood elevation*.

D. Where elevation data is not available either through the *flood insurance study* or from the *FIRM*, or another authoritative source for the City to administer the *floodplain* development requirements, applications for building permits shall be reviewed to ensure that proposed construction will be reasonably safe from *flooding*. The test of reasonableness is a federal, state or local source; historical data; documented high water marks; photographs of past *flooding*; or additional modeling studies, etc., where available. Structures shall be elevated two feet above the highest adjacent grade in these zones.

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

18.55.715 Permits.

A. Development Permit Required. A development permit shall be obtained before construction or development begins within any *flood hazard area*. The permit shall be for all structures, including manufactured homes as defined in KMC 18.55.705, and for all development as defined in KMC 18.55.705.

B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the City of Kenmore and may include but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level and the effective *flood study base flood elevation* survey datum of the *lowest floor* (including *basement*) of all structures;
2. Elevation in relation to mean sea level and the effective *flood study base flood elevation* survey datum to which any structure has been floodproofed;
3. Map depicting existing conditions, *wetlands*, *streams*, waterbodies, designated fish and wildlife habitats of importance, the boundary of the *flood hazard area* and *floodway*, and the location of grading and structures in the proposed development.
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development; and
5. Certification by a registered professional engineer or architect that the *floodproofing* methods for any nonresidential structure meet the *floodproofing* standards in this article.

C. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

D. Prior to approving any permit, the *City* shall determine that all permits required by State or federal law have been obtained.

E. A notice on title shall be recorded consistent with KMC 18.55.250.

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18.55.720 Final certification by surveyor.

A. For all new structures or substantial improvements in a *flood hazard area*, the *applicant* shall provide certification by a professional land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the *lowest floor*, including *basement*; and
2. The actual as-built elevation to which the structure is floodproofed, if applicable.

B. The surveyor shall indicate if the structure has a *basement*.

18.55.723 Designation and responsibilities of the local administrator.

The *city manager* is hereby appointed to administer and implement this article by granting or denying development permit applications in accordance with its provisions. Duties of the *city manager* shall include, but not be limited to:

A. Review of the *flood hazard area* maps, and other source documents, for any *development proposal* to determine whether the proposed project area for a regulated activity falls within a potential *flood hazard area*;

B. Review of proposed development located within a *flood hazard area* to ensure compliance with the *flood hazard area* standards set forth in this article; and.

C. Interpretation of *flood hazard area* boundaries. The *city manager* shall make interpretations, where needed, as to exact location of the boundaries of the *flood hazard area*, including the FEMA-mapped *area of special flood hazard* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation to the *hearing examiner* as provided in KMC Chapter 19.30.

18.55.725. Information to be obtained and maintained by the City.

A. The *City* shall obtain, verify and record the actual elevation (in relation to mean sea level and the *base flood elevation datum*) of the *lowest floor* (including *basement*) of all new or substantially improved structures, and whether or not the structure contains a *basement*.

B. For all new or substantially improved floodproofed structures, the *City* shall maintain the *floodproofing* certifications required in this article.

C. Alteration of Watercourses.

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1. The *City* shall notify adjacent communities and the Department of Ecology, or federal resource agencies where required, prior to any *alteration* or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.
 2. The *City* shall require that the *flood* carrying capacity of the altered or relocation portion of said watercourse is maintained.
 3. *Base flood elevations* may increase or decrease resulting from physical changes affecting *flooding* conditions. If a project will alter the *base flood elevation* or boundaries of the *area of special flood hazard*, then the project proponent shall provide the *City* with engineering documentation and analysis regarding the proposed change. If the change to the *base flood elevation* or boundaries of the *area of special flood hazard* would normally require a Letter of Map Change, then the *applicant* shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR. As soon as practicable, but not later than six months after the date such information becomes available, the *city manager* shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. The *City* reserves the right to require the *applicant* to develop and provide the required technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting *flooding* conditions, risk premium rates and *floodplain* management requirements will be based upon current data.
 4. The *City* shall notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.
- D. The *City* shall maintain for public inspection all records pertaining to the provisions of this article.
- 18.55.730 Development standards applicable to all flood hazard areas.**
- Development proposals on sites within flood hazard areas, including the area of special flood hazard, shall meet the following requirements:*
- A. *Buffers. No critical area buffer is required for a flood hazard area.*
 - B. *Anchoring.*
 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

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

C. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to *flood* damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize *flood* damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other utility and service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of *flooding*.
4. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during *flooding*. They shall be, to the extent possible, located outside of the *flood hazard area*. The installation of a new on-site sewage disposal system in the *flood hazard area* may be allowed if no feasible alternative *site* is available.
4. Above-ground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of *nonhazardous substances*.
5. Buried utility transmission lines transporting *hazardous substances* shall be buried at a minimum depth of four feet below the maximum depth of scour for the *base flood*, as predicted by a

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professional civil engineer licensed by the State of Washington, and shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

6. Water wells shall be located on high ground that is not in the *floodway*.

E. Encroachments.

The cumulative effect of any proposed development, where combined with all other existing and anticipated development, shall not increase the water surface elevation of the *base flood* more than one foot at any point within the *City*.

18.55.740 Development standards for specific uses in flood hazard areas.

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the *lowest floor*, including *basement*, elevated one foot above the *base flood elevation*. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710.

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

a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to *flooding* shall be provided;

b. The bottom of all openings shall be no higher than one foot above grade; and

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

B. Manufactured Homes.

1. Except as noted in B.2, all manufactured homes to be placed or substantially improved within any *flood hazard area* shall be elevated on a permanent foundation such that the *lowest floor* of the manufactured home is elevated one foot above the *base flood elevation* and shall be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral

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movement. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710. The *City* reserves the right to require the *applicant* to perform the engineering studies necessary to determine the *base flood elevation*.

2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within a *flood hazard area* that have not incurred *substantial damage* as the result of a *flood* shall be elevated so that either:

a. The *lowest floor* of the manufactured home is elevated one foot above the *base flood elevation*; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

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

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

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

3. Be certified by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the *flood* depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications;

4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the *lowest floor* as described in subsection (A)(2) of this section;

5. Approved building permits for floodproofed nonresidential structures shall contain a statement notifying *applicants* that *flood insurance* premiums shall be based upon rates for structures which are one foot below the floodproofed level (e.g., a *building* floodproofed to the *base flood* level will be rated as one foot below);

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6. Sewage and agricultural waste storage facilities shall be floodproofed to the *flood protection elevation*.

D. Recreational Vehicles. Recreational vehicles placed on *sites* within *flood hazard areas* shall either:

1. Be on the *site* for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the *site* only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
3. Meet the requirements of subsection B of this section, including the elevation and anchoring requirements.

E. *Critical facility*. Construction of new *critical facilities* shall be, to the extent possible, located outside the limits of *flood hazard areas*, including the *area of special flood hazard*. Construction of new *critical facilities* shall be permissible within the *flood hazard area* if no feasible alternative *site* is available and if the proposal is evaluated through the *conditional use permit* process. *Critical facilities* constructed within the *flood hazard area* shall have the *lowest floor* elevated three feet or more above the level of the *base flood elevation* (100-year) at the *site*. *Floodproofing* and sealing measures shall be taken to ensure that *hazardous substances* will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the *base flood elevation* shall be provided to all *critical facilities* from the nearest maintained public *street* or roadway.

F. Subdivisions, short subdivisions and binding site plans shall meet the following requirements:

1. New building *lots* shall contain 5,000 square feet or more of buildable land outside the *flood hazard area*, and building *setback* areas shall be shown on the face of the plat to restrict permanent structures to this buildable area;
2. All utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed consistent with KMC 18.55.730;
3. *Base flood* data and *flood hazard* notes shall be shown on the face of the recorded subdivision, short subdivision or binding site plan including, but not limited to, the *base flood elevation*, required *flood protection elevations* and the boundaries of the *flood hazard area* and the *floodway*, if determined;

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4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision or binding site plan for all affected *lots*:

5. All subdivision proposals shall be consistent with the need to minimize *flood* damage; and

6. All subdivision proposals shall have adequate drainage provided to reduce exposure to *flood* damage.

NOTICE

Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

18.55.750 Development in the floodway.

A. Encroachments. Encroachments, including fill, new construction, substantial improvements, and other development, within the adopted regulatory *floodway* are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in *flood* levels within the *City* during the occurrence of the *base flood* discharge.

B. If the requirements in Subsection A are satisfied, the requirements which apply to *all flood hazard areas* (KMC 18.55.730 and .740), including the *area of special flood hazard*, shall also apply to all new construction and substantial improvements in the *floodway*. The more restrictive requirements shall apply where there is a conflict.

C. Any *development proposal*, including, but not limited to, new or reconstructed structures, that results in any increase in the *base flood elevation* shall meet the following requirements:

1. Amendments to the *flood insurance rate map* are approved and adopted by FEMA, in accordance with all requirements of 44CFR 65.7, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased *flood* elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

D. If allowed, post or piling construction techniques which permit water flow beneath a structure shall be used.

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18.55.760 Habitat assessment

To comply with Federal Endangered Species Act requirements, the *applicant* shall provide an assessment of impacts to federal, state or locally listed species, habitat, water quality and aquatic *riparian* habitat impacts, for any proposal lying within a mapped *area of special flood hazard*. See KMC Chapter 18.55, Article XIV.

18.55.770 Warnings and disclaimer of liability.

The degree of *flood* protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. *Floods* larger than the regulatory *base flood* can and will occur. *Flooding* and *flood* hazards may occur in unmapped areas. *Flood* heights may be increased by manmade or natural causes. This article does not imply that land outside *flood hazard areas* or uses permitted within such areas will be free from *flooding* or *flood* damages. This article shall not create liability on the part of the City of Kenmore, any officer or employee thereof, or the Federal Emergency Management Agency for any *flood* damages that result from reliance on this article or any administrative decision lawfully made hereunder.

18.55.780 Variances in flood hazard areas.**A. Conditions for Variances.**

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a *lot* of one-half acre or less in size contiguous to and surrounded by *lots* with existing structures constructed below the *base flood* level; providing subsections (B)(1) through (B)(11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances may be issued for the repair or rehabilitation of *historic structures* or the *City's* local landmarks, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a *historic structure* and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within a designated *floodway* if any increase in *flood* levels during the *base flood* discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the *flood hazard*, to afford relief.
5. Variances shall only be issued upon:

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a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance conditions except subsection (A)(1) of this section and otherwise complies with KMC 18.55.730(A) and (B).

8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

B. If a variance to the standards in this article is proposed, the decisionmaker shall consider, in addition to the conditions itemized in subsection A, above, and the standard variance criteria itemized in KMC 18.115.030:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

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6. The availability of alternative locations for the proposed *use* which are not subject to *flooding* or *erosion* damage;

7. The compatibility of the proposed *use* with existing and anticipated development;

8. The relationship of the proposed *use* to the comprehensive plan and *floodplain* management program for that area;

9. The safety of access to the property in times of *flood* for ordinary and emergency vehicles;

10. The expected depths, heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the *site*; and

11. The costs of providing governmental services during and after *flood* conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and *streets* and bridges.

C. The *city manager* shall report any variances to the Federal Emergency Management Agency upon request.

18.55.790 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violations of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the City of Kenmore from taking such other lawful action as is necessary to prevent or remedy any violation.

18.55.795 Abrogation and greater restrictions.

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

18.55.700 Flood hazard areas.

A. *Flood hazard areas* consist of the following components:

1. *Floodplain*;

2. *Flood fringe*;

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3. *Zero-rise floodway*; and

4. *Federal Emergency Management Agency (FEMA) floodway*.

B. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available floodway data for a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used. In areas where the flood insurance study for the *City* includes detailed *base flood* calculations, those calculations may be used until projections of future flows are completed and approved by the *City*.

18.55.710 Flood fringe — Development standards and permitted alterations.

Development proposals on sites within the *flood fringe* area shall meet the following requirements:

A. *Development proposals* shall not reduce the effective *base flood* storage volume of the *floodplain*. Grading or other activity which would reduce the effective storage volume shall be mitigated by creating *compensatory storage* on the site or off the site if legal arrangements can be made to assure that the effective *compensatory storage* volume will be preserved over time. Grading for construction of livestock manure storage facilities to control nonpoint source water pollution designed to the standards of and approved by the *City* is exempt from this *compensatory storage* requirement.

B. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

C. Subdivisions, short subdivisions and binding site plans shall meet the following requirements:

1. New building *lots* shall contain 5,000 square feet or more of buildable land outside the *zero-rise floodway*, and building *setback* areas shall be shown on the face of the plat to restrict permanent structures to this buildable area;

2. All utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed consistent with subsections D, E and H of this section;

3. *Base flood* data and flood hazard notes shall be shown on the face of the recorded subdivision, short subdivision or binding site plan including, but not limited to, the *base flood elevation*, required *flood protection elevations* and the boundaries of the *floodplain* and the *zero-rise floodway*, if determined; and

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4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision or binding site plan for all affected lots:

NOTICE

Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

D. New residential structures and substantial improvements of existing residential structures shall meet the following requirements:

1. The lowest floor shall be elevated to the flood protection elevation;
2. Portions of a structure which are below the lowest floor area shall not be fully enclosed. The areas and rooms below the lowest floor shall be designed to automatically equalize hydrostatic and hydrodynamic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for satisfying this requirement shall meet or exceed the following requirements:
 - a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers or other coverings or devices if they permit the unrestricted entry and exit of floodwaters;
3. Materials and methods which are resistant to and minimize flood damage shall be used; and
4. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the flood protection elevation.

E. New nonresidential structures and substantial improvements of existing nonresidential structures shall meet the following requirements:

1. The elevation requirement for residential structures contained in subsection (D)(1) of this section shall be met; or
2. The structure shall be floodproofed to the flood protection elevation and shall meet the following requirements:

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a. The *applicant* shall provide certification by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the flood depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications; and

b. Approved building permits for floodproofed nonresidential *structures* shall contain a statement notifying *applicants* that flood insurance premiums shall be based upon rates for *structures* which are one foot below the floodproofed level;

3. Materials and methods which are resistant to and minimize flood damage shall be used; and

4. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the *flood protection elevation*.

F. All new construction shall be anchored to prevent flotation, collapse or lateral movement of the *structure*;

G. *Mobile homes* and *mobile home parks* shall meet the following requirements:

1. *Mobile homes* shall meet all requirements for flood hazard protection for residential *structures*, shall be anchored and shall be installed using methods and practices which minimize flood damage; and

2. No permit or approval for the following shall be granted unless all *mobile homes* within the *mobile home park* meet the requirements for flood hazard protection for residential *structures*:

a. A new *mobile home park*;

b. An expansion of an existing *mobile home park*; or

c. Any repair or reconstruction of *streets*, utilities or pads in an existing *mobile home park* which equals or exceeds 50 percent of the value of such *streets*, utilities or pads;

H. Utilities shall meet the following requirements:

1. New and replacement utilities including, but not limited to, sewage treatment facilities shall be floodproofed to or elevated above the *flood protection elevation*;

EXHIBIT 1

2. New on-site sewage disposal systems shall be, to the extent possible, located outside the limits of the *base flood elevation*. The installation of new on-site sewage disposal systems in the *flood fringe* may be allowed if no feasible alternative *site* is available;

3. Sewage and agricultural waste storage facilities shall be floodproofed to the *flood protection elevation*;

4. Above-ground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of nonhazardous substances; and

5. Buried utility transmission lines transporting *hazardous substances* shall be buried at a minimum depth of four feet below the maximum depth of scour for the *base flood*, as predicted by a professional civil engineer licensed by the State of Washington, and shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

I. *Critical facilities* may be allowed within the *flood fringe* of the *floodplain*, but only when no feasible alternative *site* is available. *Critical facilities* shall be evaluated through the *conditional or special use permit* process. *Critical facilities* constructed within the *flood fringe* shall have the lowest floor elevated to three or more feet above the *base flood elevation*. Floodproofing and sealing measures shall be taken to ensure that *hazardous substances* will not be displaced by or released into floodwaters. Access routes elevated to or above the *base flood elevation* shall be provided to all *critical facilities* from the nearest maintained public *street* or roadway.

J. Prior to approving any permit for alterations in the *flood fringe*, the *City* shall determine that all permits required by State or federal law have been obtained.

18.55.720 Zero-rise floodway—Development standards and permitted alterations.

A. The requirements which apply to the *flood fringe* shall also apply to the *zero-rise floodway*. The more restrictive requirements shall apply where there is a conflict.

B. A *development proposal* including, but not limited to, new or reconstructed *structures* shall not cause any increase in the *base flood elevation* unless the following requirements are met:

1. Amendments to the *flood insurance rate map* are adopted by FEMA, in accordance with 44 CFR 70, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased flood elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

EXHIBIT 1

C. The following are presumed to produce no increase in *base flood elevation* and shall not require a special study to establish this fact:

1. New residential *structures* outside the *FEMA floodway* on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *zero-rise floodway* and which have a total building footprint of all proposed *structures* on the lot of less than 2,000 square feet;

2. *Substantial improvements* of existing residential *structures* in the *zero-rise floodway*, but outside the *FEMA floodway*, where the footprint is not increased; or

3. *Substantial improvements* of existing residential *structures* meeting the requirements for new residential *structures* in KMC 18.55.710.

D. Post or piling construction techniques which permit water flow beneath a *structure* shall be used.

E. All temporary *structures* or substances hazardous to public health, safety and welfare, except for *hazardous household substances* or consumer products containing *hazardous substances*, shall be removed from the *zero-rise floodway* during the flood season from September 30th to May 1st.

F. New residential *structures* or any *structure* accessory to a residential use shall meet the following requirements:

1. The *structures* shall be outside the *FEMA floodway*; and

2. The *structures* shall be on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *zero-rise floodway*.

G. Utilities may be allowed within the *zero-rise floodway* if the *City* determines that no feasible alternative *site* is available, subject to the following requirements:

1. Installation of new on-site sewage disposal systems shall be prohibited unless a waiver is granted by Seattle/King County public health; and

2. Construction of sewage treatment facilities shall be prohibited.

H. *Critical facilities* shall not be allowed within the *zero-rise floodway* except as provided in subsection J of this section.

EXHIBIT 1

I. Livestock manure storage facilities and associated nonpoint source water pollution facilities designed, constructed and maintained to the standards of and approved in a conservation plan by the City may be allowed if the City reviews and approves the location and design of the facilities.

J. Structures and installations which are dependent upon the floodway may be located in the floodway if the development proposal is approved by all agencies with jurisdiction. Such structures include, but are not limited to:

1. Dams or diversions for water supply, flood control, hydroelectric production, irrigation or fisheries enhancement;
2. Flood damage reduction facilities, such as levees and pumping stations;
3. Stream bank stabilization structures where no feasible alternative exists for protecting public or private property;
4. Stormwater conveyance facilities subject to the development standards for streams and wetlands and the surface water design manual;
5. Boat launches and related recreation structures;
6. Bridge piers and abutments; and
7. Other fisheries enhancement or stream restoration projects.

18.55.730 FEMA floodway — Development standards and permitted alterations.

A. The requirements which apply to the zero-rise floodway shall also apply to the FEMA floodway. The more restrictive requirements shall apply where there is a conflict.

B. A development proposal including, but not limited to, new or reconstructed structures shall not cause any increase in the base flood elevation.

C. New residential or nonresidential structures are prohibited within the FEMA floodway.

D. Substantial improvements of existing residential structures in the FEMA floodway, meeting the requirements of WAC 173-158-070, as amended, are presumed to produce no increase in base flood elevation and shall not require a special study to establish this fact.

18.55.740 Flood hazard areas — Certification by engineer or surveyor.

EXHIBIT 1

A. For all new *structures or substantial improvements* in a *flood hazard area*, the *applicant* shall provide certification by a professional civil engineer or land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the lowest floor, including *basement*; and
2. The actual as-built elevation to which the *structure* is floodproofed, if applicable.

B. The engineer or surveyor shall indicate if the *structure* has a *basement*.

C. The *City* shall maintain the certifications required by this section for public inspection.

18.55.750 Channel relocation and stream meander areas.

No *structure* shall be allowed which would be at risk due to channel relocation or stream meander until the promulgation of a public rule.

Article XX. Groundwater Susceptibility and Critical Aquifer Recharge Areas

(ARTICLE XX IS ENTIRELY NEW TEXT)

18.55.800 Designation of groundwater susceptibility and critical aquifer recharge areas.

Groundwater recharge areas play an important role in groundwater quality and the general environmental health of the area in which they are located. Although no critical aquifer recharge areas are designated within the city limits at this time, the *City* understands the importance of protecting its groundwater resources. For example, groundwater can be an important source of water in *City streams* and *wetlands*, particularly during dry summer months, which supports associated *vegetation* communities and aquatic habitat. Some communities rely on groundwater for irrigation or drinking water. In the *City*, areas susceptible to groundwater contamination have been designated using the City of Kenmore Groundwater Susceptibility Map, which was developed based on the *Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances* (Ecology, 1998). The map is the result of combining the ratings of a variety of factors for areas throughout the *City* including: geologic unit (i.e. depositional environment), near surface permeability (based on the county soil map), and depth to groundwater. The map identifies areas with "moderate" or "high" susceptibility to groundwater contamination.

18.55.810 Critical Areas Report.

A. The purpose of a hydrogeologic assessment report is to evaluate actual hydrogeologic conditions and determine a *site's* proximity to vulnerable groundwater resources. This information then is used to evaluate the likely impacts of proposed activities and to determine appropriate construction practices.

EXHIBIT 1

monitoring programs, and other *mitigation* measures required to ensure achievement of the purpose and intent of these regulations.

B. The information required by the hydrogeologic assessment report should be coordinated with the study and reporting requirements for any other *critical areas* located on the *site*.

C. The hydrogeologic assessment report shall be prepared by a *qualified professional* who is a hydrogeologist, *geologist*, or engineer licensed in the State of Washington and has experience in preparing hydrogeologic assessments.

D. The City of Kenmore Groundwater Susceptibility Map, referenced under KMC 18.55.800, identifies the level of evaluation required at a particular *site* within the *City*.

1. Level One Hydrogeological Assessment – Areas of Moderate Susceptibility.

a. A level one hydrogeologic assessment shall be required for any of the following non-residential proposed activities at *sites* located within groundwater susceptibility zones that are rated as "Moderate Susceptibility:"

i. The storage, handling, treatment, use, production, recycling, or disposal of *hazardous substances*, other than *hazardous household substances* used according to the directions specified on the packaging for domestic applications. See RCW 70.105.010.

ii. The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per acre.

iii. Any other activity determined by the *city manager* likely to have an adverse impact on groundwater quality or quantity, or on groundwater recharge.

a. A level one hydrogeologic assessment shall include the following *site* and *development*-related information at a minimum:

i. Information regarding geologic and hydrogeologic characteristics of the *site*, including the permeability of the unsaturated zone (soils located above the groundwater table) based on existing data.

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

EXHIBIT 1

- iii. Location of wells and springs within 1,300 feet of the project area.
- iv. Location of other *critical areas*, including surface waters, within 1,300 feet of the project site.
- v. Available historic water quality data for the area to be affected by the proposed activity.
- vi. *Best Management Practices (BMPs)* proposed to be utilized.

2. Level Two Hydrogeologic Assessment – Areas of High Susceptibility.

- a. A level two hydrogeologic assessment shall be required for any of the following non-residential, proposed activities at *sites* located within groundwater susceptibility zones that are rated as "High Susceptibility:"
 - i. The storage, handling, treatment, use, production, recycling, or disposal of *hazardous substances*, other than *hazardous household substances* used according to the directions specified on the packaging for domestic applications. See RCW 70.105.010.
 - ii. The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per acre.
 - iii. Any other activity determined by the *city manager* likely to have an adverse impact on groundwater quality or quantity, or on groundwater recharge.
- b. A level two hydrogeologic assessment shall include the following *site* and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeologic assessment:
 - i. Historic water quality and elevation data for the area to be affected by the proposed activity compiled for at least the previous five-year period, unless otherwise approved by the *city manager*.
 - ii. Groundwater *monitoring* plan provisions.
 - iii. Discussion of the effects of the proposed project on groundwater quality and quantity, including:

EXHIBIT 1

1. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features.
 2. Predictive evaluation of contaminant transport based on potential releases to groundwater.
-
- iv. Identification of the type and quantities of any hazardous materials that will be stored, handled, treated, used, produced, recycled, or disposed of on the *site*, including but not limited to materials, such as elevator lift/hydraulic fluid, hazardous materials used during construction, materials used by the building occupants, proposed storage and manufacturing uses, etc.
 - v. Proposed methods of storing any of the above substances, including containment methods to be used during construction and/or use of the proposed facility.
 - vi. Proposed plan for implementing protection standards during construction.
 - vii. A spill prevention, control and countermeasure (SPCC) plan that identifies equipment and/or *structures* that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of *structures* and equipment that could fail.
 - viii. A discussion of past environmental investigations, sampling, spills, or incidents that may have resulted in or contributed to contaminated soil or groundwater at the *site*. Attach copies of all historical and current reports, and sampling results.

EXHIBIT 2

Amendments to Chapter 18.20, Definitions**18.20.206.1 Area of special flood hazard**

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter "A" or "V." The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

18.20.228 Bankfull width.

"Bankfull width" means:

(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section.

(b) For lakes, ponds, and impoundments - Line of mean high water.

(c) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain 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.

18.20.230 Base flood.

"Base flood" means athe flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." Designation on the FIRM always includes the letter "A" or "V."

18.20.240 Base flood elevation

"Base flood elevation" means the water surface elevation of the *base flood* in relation to the National Geodetic Vertical Datum of 1929 ~~North American Vertical Datum 1988~~.

18.20.453 Channel width and gradient.

"Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

EXHIBIT 2

18.20.1055 Fish habitat.

"Fish habitat" means habitat that is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by *restoration* or management and off-channel habitat.

18.20.1057 Flood or flooding

"Flood" or "flooding" means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph A.2. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph A.2. of this definition.

18.20.105990 Flood ~~insurance elevation~~ study for King County

"Flood ~~insurance elevation~~ study for King County" means the official report provided by the Federal Insurance Administration which includes flood profiles and the *flood insurance rate map*. means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

18.20.1060 Flood fringe

"Flood fringe" means that portion of the *floodplain area of special flood hazard* outside of the *zero-rise floodway* which is covered by floodwaters during the *base flood*, generally associated with standing water rather than rapidly flowing water.

18.20.1070 Flood hazard areas

"Flood hazard areas" means those areas in the City subject to inundation by the *base flood* (see "area of special flood hazard") and those areas subject to flood risks from *channel relocation* or *stream meander* including, but not limited to, *streams*, *lakes*, *wetlands* and closed depressions.

EXHIBIT 2

The latter flood hazard areas may extend outside of the area of special flood hazard mapped by FEMA, but are defined and designated by the City.

18.20.1080 Flood insurance rate map (FIRM)

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration Insurance Administrator has delineated ~~some~~ both the special flood hazard areas and the risk premium zones applicable to the community. both the areas of special flood hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

18.20.1090 Flood insurance study (FIS) for King County

"Flood insurance study for King County" means the official report provided by the Federal Insurance Administration which includes flood profiles and the flood insurance rate map. See "Flood elevation study."

18.20.1110 Floodplain

"Floodplain" means the total area subject to inundation by the base flood; means any land area susceptible to being inundated by water from any source (see definition of "flooding").

18.20.1120 Floodproofing

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents adaptations which will make a structure that is below the flood protection elevation substantially impermeable to the passage of water and resistant to hydrostatic and hydrodynamic loads including the impacts of buoyancy.

18.20.10201125 Federal Emergency Management Agency (FEMA) Floodway

"Federal Emergency Management Agency (FEMA) Floodway" means the channel of the stream a river or other watercourse and that portion of the adjoining adjacent floodplain land areas that must be reserved in order to which is necessary to contain and discharge the base flood flow without cumulatively increasing the base floodwater surface elevation more than one foot a designated height. Also known as the "Regulatory Floodway" or "FEMA floodway."

18.20.1130 Floodway, zero-rise

"Zero-rise floodway" means the channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the FEMA floodway, but always includes the FEMA floodway. The boundaries of the 100-year floodplain, as shown on the flood insurance study for King County, are considered the boundaries of the zero-rise floodway unless otherwise delineated by a critical area special study.

EXHIBIT 2

18.20.1340 Historic structure

"Historic structure" means any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior or
2. Directly by the Secretary of the Interior in states without approved programs.

18.20.1673 Lowest floor

For purposes of flood hazard area regulations, "lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of article XIX of KMC Chapter 18.55.

18.20.1835 Natural waters.

"Natural waters" means all surface waters of the state, only excluding water conveyance systems which are artificially constructed and actively maintained for irrigation.

18.20.2102 Practical alternative.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration effectiveness, engineering feasibility, cost, safety, existing technology, and logistics in light of overall project needs, purposes and objectives, and has less impacts to critical areas. For example, a practical alternative to a proposal to place a sidewalk through a wetland might be to place an elevated boardwalk through the wetland.

18.20.2461 Seasonal low flow and seasonal low water.

"Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques.

EXHIBIT 2

18.20.2875 Start of construction.

For purposes of flood hazard area regulations, "start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of the property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

18.20.2900 Stream.

"Stream" means an area where open surface water produces a defined water contained within a channel or bed, either perennial or intermittent, and classified according to WAC 222-16-030 or 222-16-031. Streams also include natural watercourses modified by man. Streams do not include not including irrigation ditches, canals, wasteways, drains, outfalls, operational spillways, channels, storm or surface water runoff facilities or other wholly artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction, except those that directly result from the modification to a natural watercourse. Artificial drainage features with documented fish usage are regulated as streams. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

18.20.2955 Substantial damage

For purposes of flood hazard area regulations, "substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

18.20.3118 Utility.

"Utility" means an enterprise or facility serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

EXHIBIT 3

Amendments to other sections of the Zoning Code

18.30.190 Setbacks – Modifications.

The following *setback* modifications are permitted:

A. When the common property line of two *lots* is covered by a *building(s)*, the *setbacks* required by this chapter shall not apply along the common property line; and

B. When a *lot* is located between *lots* having nonconforming *street setbacks*, the required *street setback* for such *lot* may be the average of the two nonconforming *setbacks* or 60 percent of the required *street setback*, whichever results in the greater *street setback*.

C. The *city manager* may reduce *setbacks* in residential zones regulated by KMC 18.21 to 10 feet, and *setbacks* in other zones to 5 feet in order to maximize the protection of a *critical area* or *buffer* and avoid exceptions or variances.

18.40.030 Computation of required off-street parking spaces.

B. An *applicant* may request a modification of the minimum required number of *parking spaces* by providing a parking demand analysis demonstrating that parking demand can be met with a reduced parking requirement. In such cases, the *city manager* may approve a reduction of up to 50 percent of the minimum required number of spaces.

D. Where other provisions of this code stipulate maximum parking allowed or reduced minimum parking requirements, those provisions shall apply.

H. Tree Retention – DC and DR Zones. Where an applicant proposes retention of *trees* in accordance with KMC [18.35.100\(G\)](#) in the DC and DR zones, the *city manager* may reduce parking requirements by one *parking space* for every two *significant trees* that are saved in excess of the significant tree ordinance requirements.

EXHIBIT 3

I. Critical Area or Buffer Protection. When unavoidable, the *city manager* may reduce minimum parking requirements in order to maximize the protection of a *critical area* or its *buffer*. The reduction in the number of parking stalls or alternative stall or drive aisle dimensional requirements shall be in proportion to the area to be retained in the *buffer* or *critical area*.

ATTACHMENT 2

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0489**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; AMENDING THE SHORELINE SUB-
ELEMENT OF THE COMPREHENSIVE PLAN; REVISING
FIGURE LU-12, THE SHORELINE ENVIRONMENT
DESIGNATIONS MAP; AND PROVIDING AN EFFECTIVE
DATE.**

WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, the SMA's legislative findings identify that: 1) the shorelines of the state are among the most valuable and fragile of its natural resources; 2) there is great concern throughout the state relating to their utilization, protection, restoration, and preservation; and 3) that unrestricted construction on private or publicly owned shorelines is not in the best interest of the public; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines in the following order of preference which: 1) recognize and protect the State-wide interest over local interest; 2) preserve the natural character of the shoreline; 3) result in long-term over short-term benefit; 4) protect the resources and ecology of the shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, three bodies of water within the City are regulated under the City's Shoreline Master Program (SMP), including Lake Washington, the Sammamish River and Swamp Creek. Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the summer of 2018, the City began its update of the Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) with the assistance of grant funding from Ecology; and

WHEREAS, the City prepared a gap analysis to identify portions of the Shoreline Master Program needing amendment; and

ATTACHMENT 2

WHEREAS, the results of this analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted a supplemental analysis of potential cumulative impacts of the updated Shoreline Master Program. The supplemental cumulative impact analysis is contained in the document entitled, City of Kenmore, Cumulative Impacts Analysis Addendum, May 2019; and

WHEREAS, to satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1) and WAC 173-26-201(2)(a), the City has utilized best available science to draft the proposed SMP Update; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised a number of documents, including: the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; and proposed revisions to critical area regulations; and

WHEREAS, the purpose of the Shoreline Sub-Element of the Comprehensive Plan is to (1) promote the public health, safety and general welfare of the community; (2) provide long range, comprehensive policies for development and use of the shorelines within the City; (3) manage shorelines in a positive, effective and equitable manner; and (4) carry out the responsibilities established by the SMA for the City, and to adopt and foster the policies contained in RCW 90.58.020 of the SMA; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding a public open house and two public forums; creating a comprehensive and regularly-updated web page devoted to the SMP Update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City, and the City has reviewed and acted upon said comments; and

WHEREAS, the Planning Commission held a public hearing on the SMP Update on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019, and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

ATTACHMENT 2

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, staff and consultant input, Ecology's comments, and certain documents and information, including: 1) The Gap Analysis; 2) the Cumulative Impacts Analysis Addendum; 3) the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; 4) the City of Kenmore Shoreline Master Program draft shoreline regulations; 5) Ecology's Shoreline Master Program Periodic Review Checklist; 6) SEPA Determination of Nonsignificance; and 7) Docket Criteria Analysis; and

WHEREAS, consistent with WAC 173-26-186(d), the SMP Update evaluates and considers cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA; and

WHEREAS, to ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, the SMP Update contains policies, programs and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including use regulations, are considered a part of the City's development regulations; and

WHEREAS, RCW 36.70A.130(2)(a)(iii) allows amendments to a city's comprehensive plan more frequently than once per year if the amendment includes the adoption of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and

WHEREAS, the City Council desires to amend the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; now therefore,

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

ATTACHMENT 2

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Adoption of Amendments to the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan. The City Council adopts the amendments to the City of Kenmore Shoreline Sub-Element of the City of Kenmore Comprehensive Plan, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 3. Map Adopted. The City Council adopts revised Figure LU-12, the Shoreline Master Program Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen (14) days from the date of the Washington State Department of Ecology's written notice of final action approving the shoreline master program amendments.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____TH DAY OF _____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:
Effective Date:

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SHORELINE SUB-ELEMENT

SHORELINE PURPOSE, INTENT AND PRINCIPLES

INTRODUCTION

Washington's Shoreline Management Act (SMA) was passed by the State Legislature in 1971 and created in response to a growing concern among residents of the state that serious and permanent damage was being done to shorelines by unplanned and uncoordinated development. The goal of the SMA was "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." While protecting shoreline resources by regulating development, the SMA is also intended to provide for appropriate shoreline use by encouraging land uses that enhance and conserve shoreline functions and values.

The primary responsibility for administering the SMA is assigned to local governments through local shoreline master programs (SMPs), adopted under guidelines established by Ecology. The guidelines (WAC 173-26) establish goals and policies that provide a framework for development standards and use regulations in the shoreline. The State legislature established new guidelines in 2003 requiring all cities and counties to update shoreline policies and regulations. The new shoreline guidelines set a higher level of environmental protection for shorelines in the state and a goal of "no net loss" of shoreline function. Local SMPs are to be based on these State guidelines and tailored to the specific conditions and needs of individual communities. The SMP is also meant to be a comprehensive vision of how the shoreline area will be managed over time.

Kenmore adopted King County's original 1978 SMP when the City incorporated in 1998. ~~This~~The 2012 Shoreline Master Program update was drafted to meet State guidelines and develop a program that is more tailored to the City's current shoreline conditions and land use plans. In 2019, the City's SMP was updated as required by State law.

EXISTING CONDITIONS

The existing conditions of Kenmore's shorelines were evaluated in the Shoreline Inventory and Analysis (2008). That evaluation included a description of ecosystem and watershed processes, the physical environment and water quality of each water body, biological resources, cultural resources, land use and public access.

SHORELINE MANAGEMENT PURPOSE AND INTENT

These policies briefly define the overall purpose and intent of Kenmore's Shoreline Master Program and reference the City's regulatory authority to manage shorelines of the state. The language in this ~~new~~ section is entirely based on WAC 173-26 and RCW 90.58.020.

Authority

Authority for enactment and administration of this Program is the Shoreline Management Act of 1971, Chapter 90.58, Revised Code of Washington (RCW), also referred to herein as "the Act."

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Purpose and Intent

The purpose of this Program is: (A) to promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of City of Kenmore shorelines; (B) to manage shorelines in a positive, effective, and equitable manner; and (3C) to further assume and carry out the responsibilities established by the Act for the City of Kenmore, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the State:

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including, but not limited to, parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State.

Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

Governing Principles

The following principles along with the policy statements of RCW 90.58.020 establish basic concepts that underpin the goals, policies and regulations of this Shoreline Master Program.

- A. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.

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- B. The policies of this Program may be achieved by diverse means, one of which is regulation. Other means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or non-structural programs.
- C. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development; actions taken prior to the Act's adoption; and/or unregulated activities can impair shoreline ecological processes and functions. This Program protects shoreline ecology from such impairments in the following ways:
 - 1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
 - 2. By including policies and regulations that require mitigation of adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in KMC 18.55.210. This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of this Program.
 - 3. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
 - 4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the City of Kenmore Shoreline Restoration Plan.
- D. Regulation of private property – to implement Program goals such as public access and protection of ecological functions and processes – must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and State constitutions, recent federal and state case law, and state statutes.
- E. Regulatory or administrative actions contained herein must be implemented consistent with the Public Trust Doctrine and other applicable legal principles as appropriate and must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- F. The regulatory provisions of this Program are limited to shorelines of the state, whereas the Shoreline Restoration Plan may extend beyond the designated shoreline boundaries.
- G. The policies and regulations established by the Program must be integrated and coordinated with those policies and rules of the City of Kenmore Comprehensive Plan and development regulations adopted under the Growth Management Act (GMA).

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- H. Consistent with the policy and use preferences of RCW 90.58.020, the City of Kenmore should balance the various policy goals of this Program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

SHORELINE JURISDICTION

This section provides an overview of Kenmore's shoreline jurisdiction, the area where the Shoreline Management Act applies. "Shorelines" means lakes greater than 20 acres and rivers and streams with a minimum of twenty cubic feet per second mean annual flow, including the entire water body waterward from the ordinary high-water mark (OHWM) from its centerline or point, all water below the surface, and associated shorelands (RCW 90.58.030(2)(d)). Under the SMA, the shoreline jurisdiction includes areas that are 200 feet landward of the ordinary high-water mark (OHWM) of shorelines and their adjacent shorelands, defined in Kenmore as the upland area within 200 feet of the OHWM, as well as any associated wetlands and floodplains. Three waterbodies in Kenmore (Lake Washington, the Sammamish River, and Swamp Creek) are regulated under the SMA and the City's Shoreline Master Program (SMP). Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA [RCW 90.58.030(2)e].

The Kenmore shoreline jurisdiction is shown on the Shoreline Environment Designations Map, **Figure LU-12**.

SHORELINES OF STATEWIDE SIGNIFICANCE

This section includes principles and policies for managing shorelines of statewide significance. In the City of Kenmore, shorelines of statewide significance include only the Lake Washington shoreline, as it is a lake with a surface acreage over 1,000 acres. The Shoreline Management Act sets specific use priorities for these shorelines and calls for a higher level of effort in implementing policy goals. The state legislature declared that the public interest shall be paramount in the management of shorelines of statewide significance.

- Policy LU-16.1.1 The public interest in the use and enjoyment of shorelines of statewide significance in the City of Kenmore shall be paramount.

Management goals for shorelines of statewide significance were ranked in order of preference by the State (i.e., the first goal must be given priority over all subsequent goals), as listed in the following policy.

- Policy LU-16.1.2 In developing and implementing its Shoreline Master Program for Lake Washington, the City of Kenmore shall give preference, in the following order, to uses that:
1. Recognize and protect the statewide interest over local interest;
 2. Preserve the natural character of the shoreline;
 3. Result in long-term over short-term benefit;
 4. Protect the resources and ecology of the shoreline;

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5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline; and
7. Provide for any other element as defined in RCW 90.58.100.

SHORELINE ENVIRONMENT DESIGNATIONS

The Kenmore shoreline environment designations are shown on the Shoreline Environment Designations Map, **Figure LU-12**.

GOAL 17. IMPLEMENT THE OBJECTIVES, PURPOSE, DESIGNATION CRITERIA AND POLICIES FOR EACH SHORELINE ENVIRONMENT.

17.1 Downtown Waterfront Environment

Purpose: The purpose of the Downtown Waterfront Environment is to provide for mixed urban water-enjoyment-oriented uses, public access and recreation while protecting existing ecological functions.

Designation Criteria: The shoreline along the contiguous downtown waterfront that is zoned regional business and waterfront commercial in KMC Title 18 and does not meet the requirement for other designations is to be assigned the Downtown Waterfront Environment designation.

Management Policies

- | | |
|------------------|---|
| Policy LU-17.1.1 | Emphasis should be given to developing visual and physical public access to the shoreline in the Downtown Waterfront Environment. |
| Policy LU-17.1.2 | Multiple uses of the shoreline should be encouraged. |
| Policy LU-17.1.3 | Redevelopment and renewal should be encouraged in order to accommodate future users and capitalize on the shoreline resource. |
| Policy LU-17.1.4 | Aesthetic improvement should be actively promoted by means of sign control regulations, architectural design standards, appropriate development siting, landscaping requirements (such as encouraging shoreline revegetation), and other development standards. |
| Policy LU-17.1.5 | Development should not cause adverse impacts to existing ecological functions. Any adverse impacts shall be mitigated. Where applicable, new development shall include environmental cleanup of the shoreline in accordance with relevant state and federal laws. |
| Policy LU-17.1.6 | Water-dependent, water-related and water-enjoyment uses should be a priority over other uses in this environment. Non-water-oriented uses should not be allowed except as part of mixed-use developments that include water-dependent and water-related uses. A non-water-oriented development can be |

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considered water-oriented if public access for a significant number of persons is provided.

- Policy LU-17.1.7 Encourage redevelopment of industrial sites into mixed urban uses, including public access, recreation, residential ~~uses~~, and commercial uses.
- Policy LU-17.1.8 Identify strategic shoreline public access points and pursue linkages between public spaces along the waterfront, ~~including trails, boardwalks, and waterfront transportation~~. The Downtown ~~Circulation Map~~Sub-Element, Transportation Element and the ~~Kenmore Trails Map~~Parks, Recreation and Open Space Plan ~~shall~~ provide guidance for strategic shoreline public access points and linkages and should be used in regulating the location of public access improvements.

17.2 Swamp Creek Commercial Environment

Purpose: The purpose of the Swamp Creek Commercial Environment is to recognize existing and planned high-intensity commercial and high-density residential uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

Designation criteria: A Swamp Creek Commercial Environment designation should be assigned to shoreline areas adjacent to Swamp Creek if any of the following characteristics apply:

- (A) The shoreline currently supports high-intensity commercial or high-density residential uses, and is designated in the Comprehensive Plan and zoned to remain high-intensity, and
- (B) The shoreline does not meet the requirement for Urban Conservancy Environment or Shoreline Residential Environment designations.

Management Policies

- Policy LU-17.2.1 In regulating uses in the "Swamp Creek Commercial" environment, water-oriented uses are a priority over non-water-oriented uses.
- Policy LU-17.2.2 Non-water-oriented uses should be allowed in the following circumstances:
- A. As part of mixed use developments with water-dependent, water-related, or water-enjoyment uses;
 - B. When they provide substantial improvements to the degraded buffer along Swamp Creek;
 - C. When they do not conflict with or limit opportunities for water-oriented uses; or
 - D. Where there is no direct access to the shoreline.
- Policy LU-17.2.3 Development proposals should be designed or mitigated to assure no net loss of shoreline ecological functions.

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- Policy LU-17.2.4 Full utilization of the Swamp Creek Commercial designated land should be achieved before further expansion of intensive development is allowed.
- Policy LU-17.2.5 Where applicable, new development should include environmental cleanup of the shoreline, with restoration of the shoreline, in accordance with relevant state and federal laws governing sites that are contaminated by hazardous substances.
- Policy LU-17.2.6 Where feasible, visual and physical public access should be required consistent with the policies in Section 19, Public Access, Recreation and Views and Aesthetics, and SMP regulations.
- Policy LU-17.2.7 Development in the Swamp Creek Commercial designation should conform to sign control regulations, site plan requirements, landscaping standards, and commercial and multifamily design standards.
- Policy LU-17.2.8 Development should meet shoreline buffer standards and maintain natural vegetation.

17.23 Shoreline Residential Environment

Purpose: The purpose of the Shoreline Residential Environment is to accommodate residential development and appurtenant structures that are consistent with ~~this chapter~~ the Shoreline Sub-Element. An additional purpose is to provide appropriate public access and recreational uses within new multifamily developments or on public property.

Designation Criteria: The Shoreline Residential Environment designation should be assigned to shoreline areas if they are predominantly developed with single-family or multifamily residential development or are planned and platted for residential development, and the shoreline areas do not meet the criteria for other designations.

Management Policies

- Policy LU-17.23.1 Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available.
- Policy LU-17.23.2 Multifamily and multi-lot residential and recreational developments should provide public access and community recreational facilities.
- Policy LU-17.23.3 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development.

17.34 Urban Conservancy Environment

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Purpose: The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, streams, wetlands, and floodplains and other sensitive lands where they exist in urban and developed settings, including areas below the ordinary high-water mark in Swamp Creek, while allowing a variety of compatible uses.

Designation Criteria: An Urban Conservancy Environment designation is assigned to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring ecological functions of the area and that are not generally suitable for water-dependent uses if any of the following characteristics apply. This designation should be applied when:

- (A) The shoreline includes wetlands or exceptional riparian corridor that should not be more intensively developed is suitable for water-related or water-enjoyment uses and public access and recreation-related water-dependent uses;
- (B) The shoreline is in public ownership and has been altered or in public ownership that is small in size and not adjacent to other publicly owned properties includes open space, floodplain or other sensitive areas that should not be more intensively developed;
- (C) The shoreline has been altered but retains important ecological functions;
- (D) The shoreline has potential for ecological restoration or is a restoration priority; or
- (E) The shoreline has potential for development that is compatible with ecological restoration.

Management Policies

- Policy LU-17.34.1 Uses that preserve the natural character of the area or promote preservation of open space, floodplain or critical areas either directly or over the long term should be the primary allowed uses in the Urban Conservancy Environment. Uses that result in the restoration of ecological functions are allowed if the use is otherwise compatible with the purpose of the eEnvironment.
- Policy LU-17.34.2 New development should be restricted to those which are compatible with the natural and biophysical limitations of the land and water.
- Policy LU-17.34.3 Commercial and industrial uses are generally discouraged, but commercial uses consistent with underlying zoning may be allowed if accompanied by ecological restoration and public access enhancement.
- Policy LU-17.34.4 Diverse public access and recreational activities which are compatible with the Urban Conservancy Environment should be encouraged when adverse ecological impacts can be mitigated.
- Policy LU-17.34.5 Development which would be a hazard to public health and safety or would materially interfere with existing ecological processes and functions should not be allowed.

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- Policy LU-17.34.6 Water-oriented uses should be given priority over non-water-oriented uses. For shoreline areas in the Urban Conservancy Environment adjacent to Lake Washington and the Sammamish River, water-dependent uses should be given highest priority.
- Policy LU-17.34.7 Standards for residential density and development shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available
- Policy LU-17.34.8 New structural flood control devices should be strongly discouraged in the Urban Conservancy Environment.
- Policy LU-17.34.9 Developments should not be allowed unless connected to a sewer line.
- Policy LU-17.34.10 Developments should be regulated so as to minimize the following: erosion or sedimentation, the adverse impact on aquatic habitats and substantial degradation of the existing character of the Urban Conservancy Environment.
- Policy LU-17.34.11 Standards should be established for shoreline stabilization measures, vegetation conservation, water quality and shoreline modifications within the Urban Conservancy Environment.
- Policy LU-17.34.12 The protection and restoration of stream 0056 where it flows into Lake Washington should be prioritized.
- ~~Policy LU-17.3.13 Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.~~

17.45 Natural Environment

Purpose: The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered shorelines. Only low intensity uses are to be allowed in this eEnvironment to maintain existing ecological processes and functions.

Designation Criteria: A Natural Environment designation is assigned to shoreline areas if any of the following characteristics apply:

- (A) A relatively large, contiguous area of the shoreline is in public ownership and ecologically intact or minimally altered;
- (B) The shoreline represents ecological processes or functions that provide educational or scientific opportunities; or
- (C) The shoreline is unable to support active uses or development without adverse impacts to ecological functions.

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Management Policies

- Policy LU-17.45.1 The Natural Environment should remain free from development or uses that would degrade the ecological functions or adversely affect their natural character.
- Policy LU-17.45.2 The intensity and type of uses permitted should be restricted in the Natural Environment to maintain the natural systems and resources in their natural condition. The following new uses should not be allowed in the Natural Environment: commercial uses, industrial uses, non-water-oriented recreation, and roads, utility corridors, and parking areas that can be located outside of the Natural Environment.
- Policy LU-17.45.3 Limited access should be allowed to areas in the Natural Environment.
- Policy LU-17.45.4 Uses that are consumptive of the physical and biological resources or that may degrade the actual or potential value of the Natural Environment should be prohibited.
- Policy LU-17.45.5 Uses and activities in locations adjacent to the Natural Environment should be strictly regulated to ensure that the integrity of the shoreline ecology is not compromised.
- Policy LU-17.45.6 Scientific, historical, cultural and educational research uses and low-intensity water-oriented recreational access uses may be allowed provided that no adverse impact on the area will result.
- Policy LU-17.45.7 New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. The subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely affects ecological functions should not be allowed.

17.56 Aquatic Environment

Purpose: The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of navigable areas waterward of the ordinary high-water mark on the Sammamish River and Lake Washington.

Designation Criteria: Lake Washington and the Sammamish River below (waterward of) the ordinary high-water mark are to be designated as Aquatic Environment. In Lake Washington, the Aquatic Environment extends to the centerline of the lake.

Management Policies

- Policy LU-17.56.1 New over-water structures should be limited, with priority given to water-dependent uses, public access and ecological restoration.

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- Policy LU-17.56.2 The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
- Policy LU-17.56.3 To reduce the adverse impacts of shoreline development and increase effective use of water resources, multi-purpose use of over-water facilities should be encouraged.
- Policy LU-17.56.4 All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider any adverse impacts to public views, and to allow for the safe unobstructed passage of fish and wildlife, particularly those species dependent on migration.
- Policy LU-17.56.5 Uses that adversely affect the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020 and impacts shall be mitigated.
- Policy LU-17.56.6 Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrologic conditions.

GENERAL SHORELINE MANAGEMENT POLICIES

General shoreline management policies apply regardless of environment designation unless specifically stated within the policy, and are intended to provide general guidance in the management of shorelines. These general policies are organized by shoreline element.

18. Economic Development

GOAL 18.1. SHORELINE DEPENDENT DEVELOPMENT SHOULD PROVIDE LONG RANGE ECONOMIC BENEFITS WHILE ENSURING COMPATIBILITY WITH ENVIRONMENTAL AND LAND USE GOALS.

- Policy LU-18.1.1 Kenmore should plan for the location and design of ~~industries, industrial projects of statewide significance,~~ transportation facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state.
- Policy LU-18.1.2 New economic development in the shoreline should be encouraged to ~~cluster/locate~~ in ~~areas of~~ the Downtown Waterfront ~~e~~Environment ~~that can be upgraded and redeveloped.~~
- Policy LU-18.1.3 Economic development should be designed to minimize actual shoreline space occupied.
- Policy LU-18.1.4 Economic development in the shoreline involving high-intensity commercial land use should be confined to the Downtown Waterfront.
- Policy LU-18.1.5 Cooperative use of docks, parking and storage facilities should be encouraged among commercial uses along the shoreline.

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GOAL 18.2. SHORELINE ECONOMIC DEVELOPMENT SHOULD PROVIDE PUBLIC PHYSICAL AND VISUAL AVAILABILITY TO THE WATER, CONSISTENT WITH PUBLIC HEALTH AND SAFETY.

- Policy LU-18.2.1 Overlook points, historic areas and points of public access to the shoreline should be considered in commercial site planning.
- Policy LU-18.2.2 Economic development in the shoreline that utilizes public land should be designed to include public viewpoints, waterfront restaurants, and similar public facilities.
- Policy LU-18.2.3 Structures placed in the water for economic purposes should be designed to prevent adverse impacts to shoreline ecological processes and functions.
- Policy LU-18.2.4 Economic development in the shoreline should be prohibited in identified environmentally critical areas.

GOAL 18.3. WHENEVER FEASIBLE, WATERFRONT ECONOMIC DEVELOPMENT SITES SHOULD BE LOCATED IN AREAS THAT ARE ALREADY DEVELOPED WITH SIMILAR USES AND PLANNED SO AS TO PROVIDE MULTIPLE USES OF THE SHORELINES OF THE STATE.

- Policy LU-18.3.1 Consistent with public safety, waterfront ~~industrial~~ developments should be encouraged to provide ~~fishing piers, boat ramps and other facilities~~ public access and water-oriented recreation.
- Policy LU-18.3.2 In siting economic development in the shoreline, water-dependent uses should be given priority over water-oriented uses.
- Policy LU-18.3.4 To support the long-range economic base in Kenmore, shoreline economic development should include mixed urban uses, and shoreline public access and recreation should be encouraged.

GOAL 18.4. PRIORITY SHOULD BE GIVEN TO THOSE SHORELINE ECONOMIC DEVELOPMENTS WHICH MAINTAIN OPTIONS FOR FUTURE USERS OF THE WATER.

- Policy LU-18.4.1 Development of commercial and recreational fisheries should be encouraged through measures to protect and restore fish habitat and provision for boating facilities.
- Policy LU-18.4.2 Mining, dredging, channelizing or filling of shoreline should be discouraged.
- Policy LU-18.4.3 Priority should be given shoreline economic development of renewable over non-renewable resources.

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- Policy LU-18.4.4 In order to ensure that treaty rights are respected, public notice of application should be provided to affected tribes on all projects requiring general public notice.

19. Public Access, Recreation and Views and Aesthetics

Public Access

GOAL 19.1. INCREASE THE ABILITY OF THE GENERAL PUBLIC TO REACH, TOUCH AND ENJOY THE WATER'S EDGE, TO TRAVEL ON THE WATERS OF THE STATE, AND TO VIEW THE WATER AND THE SHORELINE FROM ADJACENT LOCATIONS, PROVIDED THAT PRIVATE PROPERTY RIGHTS, PUBLIC SAFETY AND SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS ARE PROTECTED CONSISTENT WITH THE U.S. AND STATE CONSTITUTIONS, STATE CASE LAW, AND STATE STATUTES.

- Policy LU-19.1.1 Development for the purpose of public access should respect and protect the enjoyment of private property rights along shorelines.
- Policy LU-19.1.2 Shoreline public access areas should be planned to provide for ancillary facilities such as parking and sanitation when appropriate.
- Policy LU-19.1.3 Shoreline public access and ancillary facilities should be designed and developed to provide adequate protection for adjacent private properties.
- Policy LU-19.1.4 Appropriate signs should be used to designate publicly-owned shorelines and designated public access on public shorelines.
- Policy LU-19.1.5 Public access to and along the water's edge should be available in publicly owned shorelines that are tolerant of human activity.

GOAL 19.2. PUBLIC ACCESS AND RECREATION SITES AND FACILITIES SHOULD BE WELL-MAINTAINED AND OPERATED.

- Policy LU-19.2.1 Public access should be policed and improved consistent with the planned intensity of recreational use.
- Policy LU-19.2.2 Shoreline public access should be limited to low-intensity, passive recreation in the Natural and Urban Conservancy eEnvironments.

GOAL 19.3. PRIORITY FOR ACCESS ACQUISITION SHOULD CONSIDER RESOURCE DESIRABILITY, AVAILABILITY AND PROXIMITY OF POPULATION.

- Policy LU-19.3.1 Where appropriate, improve, pursue or develop shoreline access, including, but not limited to, open space, boat launches, fishing facilities, trails, and

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streetscaping on publicly owned shorelands consistent with the Parks, and Recreation and Open Space Master Plan, Downtown Sub-Element and Transportation Element.

GOAL 19.4. PHYSICAL OR VISUAL ACCESS TO SHORELINES SHOULD BE REQUIRED AS A CONDITION OF APPROVAL FOR SHORELINE DEVELOPMENT ACTIVITIES COMMENSURATE WITH THE ADVERSE IMPACTS OF NEW MULTI-FAMILY AND COMMERCIAL SHORELINE DEVELOPMENT AND THE CORRESPONDING BENEFIT TO THE PUBLIC OF SUCH DEVELOPMENT, CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

- Policy LU-19.4.1 The City should provide incentives to encourage multi-family and commercial private property owners to provide public shoreline access.
- Policy LU-19.4.2 Public pedestrian easements should be required in future shoreline land use actions whenever shoreline features are appropriate for public use.
- Policy LU-19.4.3 Shorelines of the state that include but are not limited to any of the following conditions should be considered for pedestrian easements:
- a. Where a proposed trail in the Kenmore Trail System Parks, Recreation and Open Space Plan, or Downtown Plan Circulation improvement Sub-Element or Transportation Element is planned along the shoreline.
 - b. Areas presently being legally used or historically having been legally used by the public along the shoreline for access.
- Policy LU-19.4.4 Public access opportunities identified in the Shoreline Inventory and Characterization should be pursued as feasible over time to increase and improve public access to the shoreline.

GOAL 19.5. PUBLIC ACCESS TO SHORELINES OF THE STATE SHOULD BE DEVELOPED IN A WIDE RANGE OF LOCATIONS AND SHOULD BE OPEN TO ALL PEOPLE.

- Policy LU-19.5.1 Viewpoints, lookouts, and vistas of shorelines of the state and wetlands should be publicly accessible.
- Policy LU-19.5.2 Where appropriate, utility and transportation rights-of-way on the shoreline should be made available for public access and use.
- Policy LU-19.5.3 Publicly-owned street ends that abut the shoreline should be retained or reclaimed for public access.
- Policy LU-19.5.4 Shoreline recreational facilities and other public access points should be connected by trails, bicycle pathways and other access links where appropriate,

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as consistent with the Parks, and Recreation Master and Open Space Plan (2003), and Downtown Plan Sub-Element and Transportation Element.

- Policy LU-19.5.5 Public access points should be of a nature and scale that would be compatible with adjacent land uses, water-dependent uses, navigation and protection of natural features, including aquatic habitat.
- Policy LU-19.5.6 Public access should respect and protect ecological processes and functions and aesthetic values in the shorelines of the state.
- Policy LU-19.5.7 Environmentally critical areas in shoreline areas should be retained as open space. Public Access and use should be ~~restricted or prohibited such that there~~ allowed where there is no net loss of shoreline ecological processes and functions.

GOAL 19.6. PROVIDE FOR THE PRESERVATION AND EXPANSION OF SHORELINE-DEPENDENT AND WATER-ORIENTED RECREATION OPPORTUNITIES THAT FACILITATE THE PUBLIC'S ABILITY TO ENJOY THE PHYSICAL AND AESTHETIC QUALITIES OF THE SHORELINE THROUGH PARKS, PUBLIC ACCESS TO BEACHES, BICYCLE AND PEDESTRIAN TRAILS, VIEWPOINTS, AND OTHER RECREATIONAL AMENITIES.

GOAL 19.7. AREAS CONTAINING SPECIAL SHORELINE RECREATION QUALITIES NOT EASILY DUPLICATED SHOULD BE AVAILABLE FOR PUBLIC USE AND ENJOYMENT.

- Policy LU-19.7.1 Opportunities should be provided for the public to understand natural shoreline processes and experience natural resource features in diverse forms of water-oriented recreation.

Recreation

GOAL 19.8. SHORELINE RECREATIONAL MANAGEMENT AND DEVELOPMENT SHOULD PROTECT SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

- Policy LU-19.8.1 Low-intensity recreational uses should be allowed along intact shorelines; service facilities such as ~~footpaths, periphery car parks~~ parking lots and adequate sanitary facilities should only be allowed where appropriate.
- Policy LU-19.8.2 Already popular beaches and other predominantly undeveloped shorelines should be available and designated as medium-intensity recreational use areas to be free from expansive development; intensity of use should be consistent with the protection of shoreline ecological processes and functions.

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- Policy LU-19.8.3 Small or linear portions of the shoreline in public ownership that are suitable for recreational purposes should be made available for variable intensities of use, which may include vista points, pedestrian walkways, water entry points, street-ends, and shoreline areas adjacent to waterfront roads.
- Policy LU-19.8.4 Overall design and development in shoreline recreational areas should be responsive to the site characteristics of those areas and be consistent with the level of use in the area concerned.
- Policy LU-19.8.5 Non-water-oriented recreational facility development should be located inland away from the water's edge except where appropriate in the Downtown Waterfront eEnvironment. In the Downtown Waterfront environment, non-water dependent recreation facilities such as a children's play area or picnic tables may be appropriate near the water on the inner harbor area and may be allowed as part of an overall development providing substantial public access and other shoreline improvements.

GOAL 19.9. THE PROVISION OF ADEQUATE PUBLIC SHORELINE RECREATION LANDS SHOULD BE BASED ON AN ACQUISITION PLAN WITH CLEAR PUBLIC INTENT.

GOAL 19.10. A BALANCED VARIETY OF RECREATIONAL OPPORTUNITIES SHOULD BE PROVIDED REGIONALLY FOR PEOPLE OF DIFFERENT AGES, HEALTH, FAMILY STATUS, AND FINANCIAL ABILITY.

- Policy LU-19.10.1 Appropriate specialized recreation facilities should be provided for the handicappedthose with disabilities or others who might need them.
- Policy LU-19.10.2 Shoreline recreation areas should provide opportunities for different use intensities ranging from low (solitude) to high (many people).
- Policy LU-19.10.3 Opportunities for shoreline recreational experiences should include a wide range of accessibility and duration of use.
- Policy LU-19.10.3.5 Shoreline recreational experiences should include a wide range of different areas from remote-outdoor undeveloped areas to highly developed indoor-outdoor areas.
- Policy LU-19.10.4 Recreational development should meet the demands of population growth consistent with the protection of shoreline ecological processes and functions.
- Policy LU-19.10.5 Encourage private and public investment in recreation facilities.
- Policy LU-19.10.6 Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.

Views and Aesthetics

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GOAL 19.11. SCENIC, AESTHETIC AND ECOLOGICAL QUALITIES OF NATURAL AND DEVELOPED SHORELINES SHOULD BE PRESERVED AS VALUABLE RESOURCES.

- Policy LU-19.11.1 In shoreline areas, the natural topography should not be substantially altered.
- Policy LU-19.11.2 Setbacks should be established for new development and redevelopment in the shoreline jurisdiction to minimize adverse impacts to views of the water by the public and adjacent uses and to protect the visual quality of views of the shoreline.
- Policy LU-19.11.3 Shoreline structures should be sited and designed to minimize view obstruction and should be visually compatible with the shoreline character.
- Policy LU-19.11.4 Public viewing and interpretation should be encouraged at or near industrial, commercial, and governmental shoreline development when consistent with security and public safety.

20. Circulation

GOAL 20.1. CIRCULATION SYSTEMS IN SHORELINE AREAS SHOULD BE LIMITED TO THOSE THAT ARE SHORELINE DEPENDENT, THOSE THAT WOULD SERVE SHORELINE-DEPENDENT USES, AND THOSE THAT WOULD PROTECT SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

GOAL 20.2 NEW SURFACE TRANSPORTATION DEVELOPMENT SHOULD BE DESIGNED TO PROVIDE THE BEST POSSIBLE SERVICE WITH THE LEAST POSSIBLE INFRINGEMENT UPON THE SHORELINE ENVIRONMENT. ANY ADVERSE IMPACTS TO SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS SHOULD BE MINIMIZED AND MITIGATED.

- Policy LU- 20.2.1 New transportation facilities and improvements to existing facilities that substantially increase levels of air, noise, odor, visual or water pollution should be discouraged.
- Policy LU- 20.2.2 Transportation corridors should be designed to harmonize with the topography and other natural characteristics of the shoreline through which they traverse.
- Policy LU- 20.2.3 Surface transportation facilities in shoreline areas should be set back from the ordinary high-water mark far enough to make unnecessary such protective measures as bank stabilization, landfill, bulkheads, groins, jetties or substantial site regrade.

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- Policy LU- 20.2.4 New transportation developments in shoreline areas should provide turnout areas for scenic stops and off-road rest areas where the topography, view and natural features warrant.
- Policy LU- 20.2.5 Shoreline roadway corridors with historic significance or great aesthetic quality should be retained and maintained for those characteristics.
- Policy LU- 20.2.6 The City should encourage new transportation facilities crossing lakes, streams, rivers or wetlands to locate in existing corridors except where any adverse impact can be minimized by selecting an alternate corridor.

GOAL 20.3. SHORELINE CIRCULATION SYSTEMS SHOULD ENCOURAGE ALTERNATIVE ROUTES AND MODES OF TRAVEL.

- Policy LU- 20.3.1 Future development and maintenance of ferry services on Lake Washington should be encouraged in the Downtown Waterfront ~~e~~Environment, and integrated with the overall transportation system.
- Policy LU- 20.3.2 Circulation routes should provide for non-motorized means of travel.
- Policy LU- 20.3.3 The City should develop a public trail system along the north shore of the Sammamish River and through the Downtown Waterfront ~~shoreline~~ ~~e~~Environment on Lake Washington, as consistent with the Downtown ~~Plan~~Sub-Element, the Transportation Element (2003) and the Parks, Recreation and Open Space Plan.

GOAL 20.4. CIRCULATION SYSTEMS SHOULD BE LOCATED AND ATTRACTIVELY DESIGNED SO AS NOT TO UNNECESSARILY OR UNREASONABLY REDUCE THE BENEFITS DERIVED FROM PRIVATE PROPERTY.

- Policy LU- 20.4.1 Motorized vehicular traffic on beaches and other natural shoreline areas should be prohibited.
- Policy LU- 20.4.2 Transportation facilities providing access to shoreline development should be planned and designated in scale and character with the use proposed and should consider the future economic and social needs of the community consistent with the policies of the Kenmore SMP.

GOAL 20.5. CIRCULATION SYSTEMS DISRUPTIVE TO PUBLIC SHORELINE ACCESS AND OTHER SHORELINE USES SHOULD BE RELOCATED WHERE FEASIBLE.

- Policy LU- 20.5.1 Transportation elements disruptive to the shoreline character that cannot feasibly be relocated should be conditioned or landscaped to minimize visual and noise pollution.

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- Policy LU- 20.5.2 Kenmore should promote and encourage modes of transportation that consume the least amount of energy and produce the least pollution while providing the best efficiency.

21. Conservation and Protection

GOAL 21.1. PRESERVE OR DEVELOP SHORELINES, ADJACENT UPLANDS, AND ADJACENT WATER AREAS IN A MANNER THAT ENSURES NO NET LOSS OF SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

- Policy LU-21.1.1 Kenmore should support efforts to improve stream conditions and fish habitat, including re-establishing access to spawning and rearing areas.
- Policy LU-21.1.2 Buffers or setbacks should be established for new development and redevelopment in the shoreline jurisdiction to protect **existing** shoreline ecological processes and functions and to provide space for shoreline vegetation preservation and enhancement.
- Policy LU-21.1.3 Where appropriate, land and water uses should be located so that they do not interfere with the restoration or enhancement of shoreline ecological processes and functions.
- Policy LU-21.1.4 Environmentally critical areas in the shoreline, including critical freshwater habitats, should be protected from uses or activities that will have adverse effects.
- Policy LU-21.1.5 Kenmore should seek and use any available monitoring data on shoreline conditions in regulating development and making decisions that affect shoreline use, including, but not limited to, water quality monitoring by King County and the Department of Ecology, and monitoring data from hazardous material cleanup sites. The most recent data regarding a cleanup site should be obtained prior to issuing any permits for development on such sites.

GOAL 21.2. ENSURE PRESERVATION OF UNIQUE AND NON-RENEWABLE NATURAL RESOURCES AND ENSURE CONSERVATION OF RENEWABLE NATURAL RESOURCES FOR THE BENEFIT OF EXISTING AND FUTURE GENERATIONS AND THE PUBLIC INTEREST.

- Policy LU-21.2.1 Shorelines and shorelands that are of unique or valuable natural character should be acquired and preserved wherever feasible.
- Policy LU-21.2.2 Kenmore should encourage the conservation of fish, wildlife, and other renewable resources.
- Policy LU-21.2.3 All future shoreline development should be designed and sited to prevent adverse impacts on the natural shoreline environment. Adverse impacts shall be mitigated to ensure no net loss of shoreline ecological functions.

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- Policy LU-21.2.4 Shoreline activities, and developments should be planned, constructed and operated to maintain or enhance the quality of air, soil, and water on the shorelines.
- ~~Policy LU 21.2.5 Consumptive and extractive industries should allow the natural shoreline systems to function with a minimum of disruption during their operations and should return the shoreline to as near natural a state as possible upon their completion.~~
- Policy LU-21.2.65 Any structure or activity in or near the water should be constructed in such a way that it will prevent adverse physical or chemical effects on water quality, vegetation, fish, or wildlife.
- Policy LU-21.2.76 Uses or activities that degrade the natural resources of the shoreline should not be allowed.
- Policy LU-21.2.87 Some uses or activities may be allowed only when compensatory habitat enhancement is provided as mitigation. When considering compensatory habitat enhancement as mitigation for impacts from new structures, such as when a reduced buffer or a non-water-dependent use is requested, the enhancement should be proportional to the degree of impact of the new structure, and take into account the degree to which the existing buffer has already been compromised. Enhancement should focus on restoring shoreline ecological functions that are most critical and that have been most diminished in the Kenmore shoreline. ~~In approving any compensatory habitat enhancement plan, the Director shall consider the changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise, or activities) that the project would cause. Enhancements should generally focus on reducing or offsetting project impacts but may focus on restoring other critical ecological functions in the shoreline that have been lost or diminished (such as placement of large woody debris in water or restoring shallow water habitat). The Director may determine whether an enhancement that provides a broader benefit may be substituted for one that would offset the impacts of an individual project. The Director may deny a request to allow intrusion into a buffer or for development of a non-water-dependent use if the enhancement proposed does not fully mitigate the impacts of the project and provide a sufficient broader benefit.~~

Critical Areas

GOAL 21.3. THE KENMORE SHORELINE MASTER PROGRAM AND IMPLEMENTING REGULATIONS SHALL PROVIDE A LEVEL OF PROTECTION FOR CRITICAL AREAS AT LEAST EQUAL TO THAT PROVIDED BY KENMORE'S CRITICAL AREA POLICIES AND IMPLEMENTING REGULATIONS.

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- Policy LU-21.3.1 Kenmore shall protect shorelines and, where possible, should restore degraded habitat and critical area functions and values as consistent with the Comprehensive Plan Natural Environment Sub-Element.
- Policy LU-21.3.2 Kenmore shall apply the following sequence of steps listed in order of priority in evaluating and mitigating the adverse impacts of development and redevelopment on critical areas within the shoreline jurisdiction, as consistent with WAC 173-26-201(2)(e):
1. Avoid the impacts altogether;
 2. Minimize impacts;
 3. Rectify impacts by repairing, rehabilitating or restoring the affected environment;
 4. Reduce or eliminate the impacts over time;
 5. Compensate for impacts by replacing, enhancing or providing substitute resources; and
 6. Monitor the impact and take appropriate corrective measures.

Wetlands

GOAL 21.4. KENMORE SHOULD ALLOW ALTERATIONS TO WETLANDS ONLY IF THERE IS NO NET LOSS OF WETLAND FUNCTIONS AND VALUES.

- Policy LU-21.4.1 Kenmore regulations for wetlands in shorelines shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions:
1. Removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 2. Dumping, discharging, or filling with any material, including discharges of stormwater and domestic, commercial, or industrial wastewater;
 3. Draining, flooding, or disturbing of the open water level, duration of inundation, or groundwater table;
 4. Driving of pilings;
 5. Placing of obstructions;
 6. Construction, reconstruction, demolition, or expansion of any structure;
 7. Significant vegetation removal;

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8. Other uses or development that results in an adverse ecological impact to the physical, chemical or biological characteristics of wetlands; and

9. Activities reducing the functions of buffers.

Policy LU-21.4.2 Kenmore shall delineate buffers around wetlands to protect and maintain wetland functions. Buffer widths shall be based on ecological function, characteristics and setting, any potential conflicts with adjacent land use, and other relevant factors.

Policy LU-21.4.3 Kenmore may allow compensatory mitigation only after a mitigation sequence is applied consistent with Policy LU-21.3.2. Lower priority mitigation measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Critical Freshwater Habitat

GOAL 21.5 KENMORE SHALL ENSURE PROTECTION OF CRITICAL FRESHWATER HABITAT CONSISTENT WITH KENMORE CRITICAL AREA REGULATIONS FOR FISH AND WILDLIFE HABITAT OF IMPORTANCE (KMC 18.55.520 AND 18.55.530).

Policy LU-21.5.1 Kenmore should establish priorities for protection and restoration, where appropriate, along river corridors and lake shorelines.

Policy LU-21.5.2 Uses and development within and along stream channels, associated channel migration zones, wetlands, lake shorelines, and floodplains within the shoreline jurisdiction should be regulated to ensure that no net loss of ecological processes and functions results from new development near freshwaters of the state, including associated hyporheic zones.

Policy LU-21.5.3 Kenmore shall protect ecological functions associated with critical freshwater habitat as necessary to ensure no net loss from shoreline activities and associated changes.

Policy LU-21.5.4 Kenmore should facilitate appropriate restoration projects.

Flood Hazard Areas

GOAL 21.6. THE KENMORE SHORELINE MASTER PROGRAM SHALL UTILIZE THE POLICIES AND PROGRAMS ESTABLISHED IN THE KENMORE ~~FLOOD HAZARD MANAGEMENT PLAN AND FLOOD HAZARD AREA~~ REGULATIONS TO MEET THE REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT AND THE DEPARTMENT OF ECOLOGY'S GUIDELINES FOR FLOOD HAZARD REDUCTION.

Water Quality, Stormwater and Nonpoint Pollution

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GOAL 21.7. PREVENT ADVERSE IMPACTS TO WATER QUALITY AND STORM WATER QUANTITY THAT WOULD RESULT IN A NET LOSS OF SHORELINE ECOLOGICAL FUNCTIONS OR ADVERSE IMPACTS TO AESTHETIC QUALITIES OR RECREATIONAL OPPORTUNITIES.

- Policy LU- 21.7.1 Ensure consistency between shoreline management provisions and other regulations that address water quality and stormwater quantity. The regulations that are most protective of ecological functions and public safety shall apply.

Geologically Hazardous Areas

GOAL 21.8. PREVENT ADVERSE IMPACTS TO THE SHORELINE AND PUBLIC SAFETY AS A RESULT OF INAPPROPRIATE DEVELOPMENT IN GEOLOGICALLY HAZARDOUS AREAS, INCLUDING AREAS SUSCEPTIBLE TO EROSION, LANDSLIDING, EARTHQUAKE, OR OTHER GEOLOGICAL EVENTS.

- Policy LU- 21.8.1 Ensure consistency between shoreline management provisions and other regulations that address geologically hazardous areas by incorporating Kenmore critical areas regulations into the SMP.
- Policy LU- 21.8.2 Prohibit development or the creation of new lots that would cause foreseeable risk ~~from geological conditions~~ to people or improvements ~~due to geologic conditions~~, or would require structural stabilization of the shoreline to protect the development, over the life of the development.
- Policy LU- 21.8.3 If shoreline stabilization is required to protect existing development from geologic hazards, it shall be developed consistent with Section 24.2 of these policies.

22. Archaeological, Historic and Cultural Resources

GOAL 22.1. HISTORIC PROPERTIES IN THE SHORELINE JURISDICTION SHOULD BE PROTECTED TO PREVENT THE DESTRUCTION OF, OR DAMAGE TO, ANY SITE HAVING ARCHAEOLOGICAL, HISTORIC, CULTURAL, OR SCIENTIFIC VALUE THROUGH COORDINATION AND CONSULTATION WITH THE APPROPRIATE LOCAL, STATE AND FEDERAL AUTHORITIES, INCLUDING AFFECTED TRIBES.

1. Sites should be protected in collaboration with appropriate tribal, state, federal, and other local governments. Cooperation among public and private parties is to be encouraged in the identification, protection, and management of cultural resources.
2. Where appropriate, access to such sites should be made available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

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3. Opportunities for education related to archaeological, historical and cultural features should be provided where appropriate and incorporated into public and private programs and development.

- Policy LU-22.1.1 Kenmore should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known historic properties within the City in observance of applicable state and federal laws protecting such information from public disclosure. As appropriate, such sites should be preserved and/or restored for study, education and/or public enjoyment.
- Policy LU-22.1.2 Provisions for historic property preservation, restoration and education should be incorporated with open space or recreation areas in site development plans whenever compatible and feasible.
- Policy LU-22.1.3 Cooperation among involved private and public parties should be encouraged to achieve these historic, cultural, scientific and educational objectives.
- Policy LU-22.1.4 Private and public owners of historic properties should be encouraged to provide public access and educational opportunities at levels consistent with long-term protection of both historic values and shoreline ecological processes and functions. Site-specific conditions may require public site access to be restricted at times, but educational means should be provided whenever possible.
- Policy LU- 22.1.5 Historic property development should be planned and carried out so as to prevent adverse impacts to the resource. Adverse impacts to neighboring properties and other shoreline uses should be limited to temporary or reasonable levels.
- Policy LU- 22.1.6 Owners of historic properties are encouraged to make substantial development plans known well in advance of application so that appropriate agencies, such as the Washington State Department of Archaeology and Historic Preservation, Tribes and others may have ample time to assess the site and make arrangements to preserve historic, cultural, scientific and educational values as applicable.
- Policy LU- 22.1.7 If development is proposed adjacent to an historic property, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.

SHORELINE USE AND MODIFICATION POLICIES

23. Shoreline Use

General Use Policies

GOAL 23.1. DEVELOPMENT WITHIN THE SHORELINE JURISDICTION SHALL PROTECT THE PUBLIC'S HEALTH AND SAFETY, AND PRIVATE

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***PROPERTY RIGHTS, WHILE IMPLEMENTING THE POLICIES OF THE
SHORELINE MANAGEMENT ACT.***

***GOAL 23.2 PRESERVE OR DEVELOP SHORELINES, ADJACENT UPLANDS AND
ADJACENT WATER AREAS IN A MANNER THAT ENSURES AN
ORDERLY BALANCE OF SHORELINE USES.***

- Policy LU-23.2.1 Where there is a conflict between the uses permitted by zoning and the Shoreline Master Program, preference shall be given first to water-dependent uses, then to water-related uses, and finally to water-enjoyment uses.
- Policy LU-23.2.2 Kenmore shall adopt use policies and development regulations to achieve consistency between shorelands and adjacent lands as directed in RCW 90.58.340.
- Policy LU-23.2.3 Shoreline land and water areas particularly suited for specific and appropriate uses should be designated and reserved for such uses.
- Policy LU-23.2.4 Like or compatible shoreline uses should be clustered or distributed in a rational manner rather than be allowed to develop haphazardly.
- Policy LU-23.2.5 Multiple uses of the shoreline should be encouraged where location and integration of compatible uses are feasible.
- Policy LU-23.2.6 The City shall consider the goals and policies within the Shoreline Master Program in all land use management actions regarding the use or development of adjacent uplands or the water areas, adjacent uplands and associated wetlands or streams with less than 20 cubic feet per second mean annual flow within its jurisdiction where such use or development will have an adverse effect on designated shorelines.
- Policy LU-23.2.7 Adverse impacts associated with new development in the shoreline should be minimized and mitigated such that there is no net adverse impact to shoreline ecological processes and functions.
- Policy LU-23.2.8 Incentives should be provided to substantially reduce the impacts of existing nonconforming uses on ecological functions. Nonconforming uses should be allowed to expand or be reconfigured if it is demonstrated that the expanded or reconfigured use would reduce the impacts of the existing use on ecological functions.

23.3 Aquaculture

- Policy LU-23.3.1 Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological processes and functions. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species;

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adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.

- Policy LU-23.3.2 Aquaculture facilities should be designed, operated and located so as not to cause harm to humans, spread disease to native aquatic life, or establish new non-native species. Aquaculture facilities shall not cause adverse impacts to shoreline ecological processes and functions, aesthetic qualities or public access.
- Policy LU-23.3.3 Preference should be given to those forms of aquaculture that involve the least adverse environmental, visual and native plant and animal species impacts. In general, submerged aquaculture structures are preferred over those that involve substantial floating structures. Projects involving little or no substrate modification are preferred over those that involve substantial modification, recognizing that in some circumstances that importing sand or **pea** gravel on rocky or cobble substrates may result in more diverse habitat. Projects involving little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.
- Policy LU-23.3.4 Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of non-native species, or other adverse effects on native species or threatened or endangered species and their habitats should not be permitted.
- Policy LU-23.3.5 Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; or on the aesthetic qualities of a project area.
- Policy LU-23.3.6 Legally established aquaculture uses, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Uses or developments that have a high probability of damaging or destroying a legally established existing aquaculture use may be denied.
- Policy LU-23.3.7 Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.
- Policy LU-23.3.8 Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the State of Washington.
- Policy LU-23.3.9 Kenmore should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate Federal, State and local agencies; the Muckleshoot Tribe, the Tulalip Tribes and other tribes with treaty fishing rights; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by an

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aquaculture proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

Policy LU-23.3.10 The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed during the permit review process. Direct and early coordination between the applicant or proponent and the affected tribe should be encouraged.

Policy LU-23.3.11 Kenmore support should be given to **State** **Washington** Departments of Fisheries and **Game** **Wildlife** to improve stream conditions, open new spawning areas, and establish new fish runs.

23.4 Boating facilities

Policy LU-23.4.1 Boating facilities shall be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses, and:

1. Meet health, safety and welfare requirements;
2. Mitigate adverse aesthetic impacts;
3. Provide public access in new marinas, unless there is a safety or security concern;
4. Limit adverse impacts to shoreline resources from boaters living in their vessels;
5. Ensure no net loss of shoreline ecological processes and functions or other adverse impacts; and
6. Protect the rights of navigation.

Policy LU-23.4.2 The need for additional marinas should be balanced against other shoreline-dependent uses.

Policy LU-23.4.3 Local governments should coordinate in the planning and development of regional marina facilities for multi-jurisdictional use.

Policy LU-23.4.4 Marinas should be located only within the Downtown Waterfront and **adjacent** Aquatic **shoreline** **e** **Environments** **designations**.

Policy LU-23.4.5 Marina development and ancillary facilities should be designed to use minimal shoreline.

Policy LU-23.4.6 Parking areas that serve marinas shall conform to the parking regulations of the Kenmore Comprehensive Plan Transportation Element and Shoreline Master Program transportation and parking policies.

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| Policy LU-23.4.7 | Marinas should be planned to minimize traffic congestion and pedestrian/vehicle conflicts. |
| Policy LU-23.4.8 | Dry storage of boats should be encouraged in order to retain shoreline for other shoreline dependent uses or so that the greatest number of boats per foot of shoreline frontage can be accommodated. |
| Policy LU-23.4.9 | Viewpoints, walkways, picnic facilities, benches, telephones, restrooms, drinking fountains and other public use facilities should be encouraged at marinas. |
| Policy LU-23.4.10 | Covered moorage should be discouraged except for vessel repair or construction activity. |
| Policy LU-23.4.11 | Setbacks should be established for upland boating facilities to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent residents, and protect the visual quality of views of the shoreline. |
| Policy LU-23.4.12 | Marinas should be allowed to have live-aboard tenants provided they are limited to 10 percent of the boat slips in the marina, are occupied by single-family tenants, and the marina has adequate on-land and pump-out facilities. Where underlying zoning restrictions would otherwise prohibit live-aboards, such as through a P-suffix condition, those conditions should be removed if it has been demonstrated that compliance with the Shoreline Code will adequately address adverse impacts from live-aboards. |

23.5 Commercial

Preference should be given to water-dependent commercial uses over non-water-dependent commercial uses, then water-related and water-enjoyment commercial uses over non-water-oriented commercial uses. Some commercial uses within the shoreline jurisdiction may be required to incorporate appropriate design and operational elements to qualify as water-related or water-enjoyment.

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| Policy LU-23.5.1 | Kenmore shall require all commercial development on public land to provide public access, unless the use is incompatible or there are public safety concerns. |
| Policy LU-23.5.2 | Kenmore shall prohibit non-water-oriented commercial uses in the shoreline jurisdiction unless they meet the following criteria: <ol style="list-style-type: none"> 1. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration; or |

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2. Navigability is severely limited at the proposed site and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and/or ecological restoration.

- Policy LU-23.5.3 Kenmore may allow non-water-oriented commercial development in the shoreline jurisdiction if the site is physically separated from the shoreline by another property or public right-of-way, provided that a property should not be allowed to be subdivided in a manner that would thwart the purposes of this policy.
- Policy LU-23.5.4 Kenmore shall allow over-water non-water-dependent commercial uses only in existing structures or if the use is auxiliary to and necessary to support a water-dependent use. The area of any over-water structure shall be the minimum possible.
- Policy LU-23.5.5 Kenmore shall prohibit commercial development that will have adverse impacts on other shoreline uses, resources and values such as navigation, recreation and public access, and views. Kenmore shall require mitigation for all commercial development to ensure that it does not cause a net loss of ecological processes and functions.
- Policy LU-23.5.6 Setbacks should be established for commercial development in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, protect the visual quality of views of the shoreline, and allow for public access.
- Policy LU-23.5.7 Boat moorage, launching facilities and other services should be located where existing vehicular access and parking are available or can be made available.
- Policy LU-23.5.8 The use of porous materials should be encouraged for paved areas to allow water to infiltrate into the soil. Use of holding systems should be encouraged to control the runoff rate from parking lots and roof tops where the runoff would flow to Swamp Creek or any stream that is prone to flooding.

23.6 ~~Industrial~~ Heavy manufacturing

Kenmore has not identified any shoreline areas where heavy manufacturing or industrial uses would be appropriate.

- Policy LU-23.6.1 Kenmore ~~will give preference to all other uses~~ shall prohibit new heavy manufacturing or industrial uses in the shoreline jurisdiction ~~before industrial uses. Kenmore shall give preference to industrial uses in the following order: first, water-dependent industrial uses; second, water-related industrial uses; and third, nonwater-oriented industrial uses.~~

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- Policy LU-23.6.2 Kenmore should encourage public access on existing industrial sites in the shoreline jurisdiction, unless Kenmore determines that public access is infeasible or inappropriate.
- Policy LU-23.6.3 Kenmore should encourage redevelopment, environmental clean up and shoreline restoration on existing industrial sites.
- ~~Policy LU 23.6.4 Kenmore should prohibit new nonwater-oriented industrial development in the shoreline jurisdiction, except when the use is part of a mixed-use project that includes water-dependent uses or the use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and/or ecological restoration.~~
- ~~Policy LU 23.6.5 Kenmore may allow nonwater-oriented industrial uses in the shoreline jurisdiction if the site is physically separated from the shoreline by another property or public right-of-way.~~
- ~~Policy LU 23.6.6 Setbacks should be established for industrial development in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline cleanup if necessary, provide space for vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and improve the visual quality of views of the shoreline.~~
- ~~Policy LU 23.6.7 Industrial docks and piers should be designed to minimize adverse impact of such facilities upon other water-dependent uses and resources.~~
- ~~Policy LU 23.6.8 Industrial and commercial activities should be encouraged to share overwater structures and shoreline facilities.~~
- ~~Policy LU 23.6.9 Water reclamation plants, power plants, and sewage treatment facilities should be located where they are compatible with adjacent uses and do not interfere with recreational, residential, or other public uses of the shoreline.~~

23.7. In-Water Structures

In-water structure means a structure placed by humans within a stream, river, or lake waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish collection, or other purposes.

- Policy LU-23.7.1 In-water structures shall provide for the protection and preservation of shoreline ecological processes and functions, and cultural resources including, but not limited to, fish and fish passage, wildlife and water resources, critical areas, hydro-geological processes, and natural scenic vistas.

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- Policy LU-23.7.2 Planning for in-water structures shall give due consideration to the full range of public interests and ecological processes and functions, with special emphasis on protecting and restoring habitat for threatened or endangered species.

23.8. Mining

Kenmore has not identified any shoreline areas where mining ~~may~~would be appropriate.

- Policy LU-23.8.1 Mining shall be prohibited in the shoreline jurisdiction.

23.9. Recreation

Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Recreational development should be given priority and is to be primarily related to access to and enjoyment and use of the water and shorelines of the state.

- Policy LU-23.9.1 Recreational development is allowed in the shoreline jurisdiction and must be consistent with the purposes of the shoreline environment designation in which the property is located.
- Policy LU-23.9.2 Kenmore shall plan to provide public recreational uses on city-owned shoreline, consistent with the goals of this chapter.
- Policy LU-23.9.3 Recreational improvements and new facilities should be constructed so that they preserve the natural character of the shoreline.
- Policy LU-23.9.4 All recreational developments should be sited to enhance and protect ~~existing~~ shoreline ecological processes and functions.
- ~~Policy LU 23.9.5 New recreational buildings should be made sympathetic to the scale, form, and proportion of older development, to promote harmony in the visual relationships and transitions between new and older buildings.~~
- Policy LU-23.9.~~65~~ The use of conventional fertilizers and pesticides in public recreation areas should be minimized or replaced with ecologically friendly landscape management methods.
- Policy LU-23.9.~~76~~ Public recreational shoreline areas should serve as emergency refuge areas for boaters.
- Policy LU-23.9.~~87~~ Visual access to the water should be pursued on steep slopes, at view points from bluffs and stream valleys, and in general where it is consistent with public safety and where extensive flood or erosion protection would not be necessary.
- Policy LU-23.9.~~98~~ The acquisition of public easements to the shoreline should be encouraged.
- Policy LU-23.9.~~109~~ Setbacks should be established for recreational development in the shoreline jurisdiction to protect ~~existing~~ shoreline ecological processes and functions,

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provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and protect the visual quality of views of the shoreline.

Policy LU-23.9.11 Existing public recreation shorelines should be restored and, where possible during park master plan development or redevelopment, Kenmore should consider giving to revegetate the shoreline, re-siting roads and parking areas further away from the shoreline, and removing stream channelization and shoreline protection devices.

Policy LU-23.9.12 Prime fishing areas should be given priority and protected for recreational use.

Policy LU-23.9.13 Boating activities that increase shore erosion should be discouraged.

Policy LU-23.9.14 Effective interpretation should be provided to raise the quality of visitor experiences and to provide an understanding of the resource.

23.10. Residential

The term “residential development” includes single-family detached dwellings, attached and multifamily dwelling units, and subdivision of shoreline land into new residential lots. The Shoreline Management Act recognizes single-family residential development as a priority use within shorelines of the state.

Policy LU-23.10.1 Single-family residential development is a priority use in the shoreline jurisdiction in Kenmore.

Policy LU-23.10.2 Setbacks should be established for residential development in the shoreline jurisdiction to protect existing shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent residents, and protect the visual quality of views of the shoreline.

Policy LU-23.10.3 New shoreline residential development, including accessory structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that shoreline stabilization is not required to protect these structures and uses.

Policy LU-23.10.4 New over-water residences, including floating homes, are prohibited in the shoreline jurisdiction.

Policy LU-23.10.5 Kenmore should require multi-family residential development and subdivisions within the shoreline jurisdiction to provide community or public access.

Policy LU-23.10.6 Kenmore shall require subdivisions to:

1. Be designed, configured and developed in a manner that ensures no net loss of ecological processes and functions at full build-out of all lots;

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2. Be designed, configured and developed in a manner that prevents the need for new shoreline stabilization or flood risk reduction measures; and
3. Be consistent with the provisions and policies for shoreline environment designations and the general policy goals of this Plan.

~~Policy LU- 23.10.7 Residential development in flood hazard areas and channel migration areas shall be consistent with KMC 18.55.700-750.~~

~~Policy LU- 23.10.8 Residential development in geologically hazardous areas shall be consistent with KMC 18.55.600-650.~~

Policy LU- 23.10.97 In residential developments, the water's edge should be kept free of fences.

Policy LU-23.10.108 Every reasonable effort should be made to ensure the retention of native shoreline vegetation and other natural features of the landscape during site development and construction.

~~Policy LU- 23.10.11 The City should explore creation of a planned unit development (PUD) process to be employed within redeveloping areas of the shoreline area so that all facets of the development can be examined.~~

Policy LU-23.10.129 Residential developments should be designed to enhance the appearance of the shoreline and not substantially interfere with the public's view and access to the water.

Policy LU-23.10.130 Residential developments should be permitted only where there are adequate provisions for utilities, circulation, access, site layout and building design.

Policy LU-23.10.141 Residential development plans submitted for approval should contain provisions for protection of groundwater, erosion control, water quality, aesthetic characteristics and landscaping.

Policy LU-23.10.152 Subdivisions should provide public pedestrian access to the shorelines within the development in accordance with this Master Program.

Policy LU-23.10.163 Streets, roadways and roadway easements, whether publicly or privately owned, within the boundaries of any waterfront parcel, should not be used to compute lot area, lot dimensions, yards, open space or other required conditions of land subdivision or development.

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23.11. Transportation and Parking

Transportation and parking facilities may be necessary to support shoreline uses, to support the regional economy, and for access to privately owned property in the shoreline. Transportation planning in shorelines should not be focused only on automobiles, but should consider a wide range of options, including buses, light rail, commuter rail, bicycle, passenger-only ferries, and pedestrian facilities. Transportation planning can be a tool for finding opportunities to provide public access to the shorelines.

- Policy LU-23.11.1 Kenmore shall require transportation and parking plans and projects to be consistent with the public access policies in this Plan, the Comprehensive Plan Transportation Element, and shoreline and critical area protection provisions.
- Policy LU-23.11.2 Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the Kenmore Shoreline Master Program. Where appropriate, circulation system planning should include systems for pedestrian, bicycle and public transportation and combining transportation uses to minimize the footprint of transportation facilities.
- Policy LU-23.11.3 Transportation and parking facilities shall be planned, located and designed to have the least possible adverse impact on environmentally critical areas in the shoreline, not result in a net loss of shoreline ecological processes and functions or adversely affect existing or planned water-dependent uses. Where other options are available and feasible, new transportation facilities or transportation facility expansions should not be constructed within the shoreline jurisdiction.
- Policy LU-23.11.4 Parking facilities shall be prohibited in the Aquatic ~~shoreline~~ ~~e~~Environment unless necessary to support a water-dependent use, and then should be only allowed if no alternative exists, and should be the minimum needed to support the use.
- ~~Policy LU-23.11.5 Existing public recreation shorelines should be restored and, where possible, Kenmore should revegetate the shoreline, re-site roads and parking areas further away from the shoreline, and remove stream channelization and shoreline protection devices.~~
- Policy LU-23.11.65 Setbacks should be established for new transportation and parking facilities in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, and protect the visual quality of views of the shoreline. New parking facilities shall not impede the provision of new shoreline public access facilities and opportunities.
- Policy LU-23.11.76 Shoreline transportation facilities should be designed, located and maintained to fit the topography, minimize cuts and fills, and minimize erosion.

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- Policy LU-23.11.87 Transportation and utility facilities should be encouraged to coordinate joint use of rights-of-way and to consolidate crossings of water bodies when adverse impacts to the shoreline can be minimized by doing so.
- Policy LU-23.11.98 Shoreline roadways should have a high priority for arterial beautification funds.
- Policy LU-23.11.109 Transportation facilities crossing 100-year floodplains should be constructed on low profile designs so as not to function as dikes or levees to flood waters.
- Policy LU-23.11.110 Passenger only ferry facilities should be encouraged.
- Policy LU-23.11.121 Abandoned road or railroad rights-of-way that contain unique shoreline amenities should be acquired for public benefit.
- Policy LU-23.11.132 Kenmore should extend its pedestrian and bicycle trail system along the Sammamish River shoreline.

23.12 Utilities

Utilities include services and facilities that produce, convey, store, or process power, gas, water, sewage, stormwater, communications, oil, or waste. Utilities that are classified as on-site utilities serving only one primary use are considered "accessory utilities" and are considered part of the primary use.

- Policy LU-23.12.1 Utility facilities shall be designed and located to ensure no net loss of shoreline ecological processes and functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses, while meeting the needs of the projected future population in Kenmore.
- Policy LU-23.12.2 Kenmore shall allow modification of existing utility facilities and the location of new water-oriented portions of utility facilities in the shoreline jurisdiction provided that a mitigation sequence is applied per KMC 18.55.210 and there is no net loss of ecological processes and functions. As feasible, those parts of utility production and processing facilities that are not water-oriented, such as power plants and sewage treatment plants, shall be located outside of the shoreline jurisdiction.
- Policy LU-23.12.3 Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline jurisdiction where feasible. Transmission facilities located within the shoreline jurisdiction shall ensure no net loss of shoreline ecological processes and functions.
- Policy LU-23.12.4 Utilities should be located in existing developed rights-of-way and corridors whenever possible.
- Policy LU-23.12.5 Unless no other feasible alternative location exists, Kenmore should discourage the development of facilities that may require periodic maintenance that adversely affects shoreline ecological processes and functions.

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- Policy LU-23.12.6 Setbacks should be established for new utility facilities in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and protect the visual quality of views of the shoreline.
- Policy LU-24.12.2 Utilities located in wetlands and floodplains inappropriate for development should not make service available to those areas.
- Policy LU-23.12.7 Public access consistent with public safety and security should be encouraged where rights-of-way for utility facilities are located in shorelines of the state.
- Policy LU-23.12.8 New utility routes should be designed to minimize adverse impacts on views from the water and adjacent uplands.
- Policy LU-23.6-912.9 Water reclamation plants, power plants, and sewage treatment facilities should be located where they are compatible with adjacent uses and do not interfere with recreational, residential, or other public uses of the shoreline.**

23.13 Outdoor Advertising Signs and Billboards

- Policy LU-23.13.1 Vistas and viewpoints should be free from unnecessary signs.
- Policy LU-23.13.2 Signs, when permitted, should be placed so as not to impair views of the water or impair views upland from the water except where hazardous shoreline conditions require warning signs.
- Policy LU-23.13.3 Warning signs should be installed by Kenmore or by other appropriate entities where hazardous shoreline conditions may exist.
- Policy LU-23.13.4 Advertising signs, when permitted, should be limited to shoreline areas of high-intensity use.
- Policy LU-23.13.5 Signs in shoreline areas should be maintained in a state of security, safety and repair.
- Policy LU-23.13.6 Any new sign codes for Kenmore should recognize the unique aesthetic character and ecological qualities of shoreline areas.

23.14 Conditional Uses

For the purposes of the Kenmore Shoreline Master Program, a shoreline conditional use may be appropriate in order to:

1. Effectively address unanticipated uses that are not classified in the Shoreline Master Program;
2. Address cumulative impacts; or

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3. Provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific designation within the Shoreline Master Program or with the Shoreline Management Act policies.

Policy LU-23.14.1 The following types of uses and development should require a shoreline conditional use permit:

1. Uses and development that may significantly impair or alter the public's use of the water areas of the state; and
2. Uses and development which, by their intrinsic nature, may have an adverse impact on shoreline ecological processes and functions depending on location, design, and site conditions.

24. Shoreline Modification**General Modification Policies**

- Policy LU-24.1.1 Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- Policy LU-24.1.2 Reduce the effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
- Policy LU-24.1.3 Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
- Policy LU-24.1.4 Ensure that shoreline modifications individually and cumulatively do not result in a net loss of ecological processes or functions.
- Policy LU-24.1.5 Shoreline modifications that have the least adverse impact on ecological processes and functions should be prioritized and mitigation should be required for any impacts resulting from shoreline modifications.
- Policy LU-24.1.6 Incentives should be provided to substantially reduce the impacts of existing nonconforming structures on ecological functions. Nonconforming docks should be allowed to expand or be reconfigured only when the structure would reduce the impacts on critical fish habitat. Nonconforming bulkheads should be allowed to be reconstructed if they provide a pocket cove or beach and substantially reduce impacts on ecological functions.

24.2. Shoreline Stabilization

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Shoreline stabilization includes actions taken to address adverse erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as current, flood, wind or wave action. Shoreline stabilization includes structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of structures to be protected, groundwater management, planning and regulatory measures to avoid the need for structural stabilization. When structural stabilization is needed, “soft” methods can be used instead of “hard” methods (such as bulkheads, rip rap and groins) in some cases. Soft methods of shoreline stabilization include, but are not limited to, vegetation enhancement; upland drainage control; biotechnical measures; beach enhancement; and anchor trees.

- Policy LU-24.2.1 Kenmore shall require shoreline stabilization to be consistent with WAC 173-26-221(5) for vegetation retention and WAC 173-26-221(2) for protection of critical areas.
- Policy LU-24.2.2 Kenmore shall adopt standards to first avoid then mitigate adverse impacts to shoreline ecological processes and functions when alteration of the shoreline is allowed for the construction of single detached dwelling units and accessory structures. These standards shall address the design and type of protective measures and devices that are allowed.
- Policy LU-24.2.3 Kenmore shall require new development on steep slopes to be set back sufficiently to ensure that the need for shoreline stabilization is unlikely during the life of the structure, as demonstrated by a geotechnical analysis.
- Policy LU-24.2.4 Shoreline stabilization decisions should consider available scientific information and current shoreline conditions.
- Policy LU-24.2.5 Avoid and reduce adverse impacts from shoreline stabilization according to the mitigation sequence in General Shoreline Management Policies for Conservation – Critical Areas (Policy LU-21.3.2) and WAC 173-26-201(2)(e). Shoreline planning should consider off-site erosion, accretion or flood damage that might occur as a result of shoreline stabilization structures or activities.
- Policy LU-24.2.6 Shoreline stabilization on Lake Washington, the Sammamish River or Swamp Creek shorelines should not be used as the reason for creating new or newly usable land.
- Policy LU-24.2.7 Shoreline stabilization structures should allow passage of ground and surface waters into shorelines of the state.
- Policy LU-24.2.8 Shoreline stabilization should not reduce the volume and storage capacity of the Sammamish River, Swamp Creek, and adjacent wetlands or floodplains.
- Policy LU-24.2.9 Sammamish River and Swamp Creek shoreline stabilization should be planned, designed, and constructed to allow for channel relocation or stream meander whenever possible.
- Policy LU-24.2.10 Appropriate soft shore armoring methods, as determined by a qualified specialist professional, should be used for shoreline stabilization when

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necessary to protect existing property or, when for new development, no options exist to locate in such a manner as to avoid shoreline stabilization.

- Policy LU-24.2.11 Kenmore shall allow new hard structural stabilization measures only as follows:
1. The proposal is the minimum necessary to protect existing legally established primary structures, new non-water-dependent development, and existing or proposed water-dependent development and structures, and:
 - a. The erosion is not the result of upland conditions, such as the loss of vegetation and drainage;
 - b. Nonstructural measures, such as locating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;
 - c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report submitted by a qualified specialist. The damage must be caused by natural processes; and
 - d. Mitigation is provided such that the erosion control structure will not result in a net loss of shoreline ecological processes and functions.
 2. The proposal would protect shoreline restoration projects or hazardous substance remediation projects, and:
 - a. Nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient; and
 - b. The erosion control structure will not result in a net loss of shoreline ecological processes and functions.
- Policy LU-24.2.12 The burden of proof for the need for shoreline stabilization to protect existing or proposed developments rests on the applicant(s).
- Policy LU-24.2.13 Shoreline stabilization activities which may necessitate new or increased shoreline stabilization on the same or other affected properties where there has been no previous need for protection, should be discouraged.
- Policy LU-24.2.14 New development should be located and designed to avoid the need for future shoreline stabilization.
- Policy LU-24.2.15 Areas of significance in the spawning, nesting, rearing or residency of aquatic and terrestrial biota should be given special consideration when reviewing shoreline stabilization actions.
- Policy LU-24.2.16 Multiple use of shoreline stabilization structures or non-structural solutions should be encouraged.

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Policy LU-24.2.17 An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.

Policy LU-24.2.18 Kenmore shall require replacement of shoreline stabilization structures to be designed, located, sized, and constructed to ensure no net loss of ecological processes and functions or, if infeasible to provide such protection, to use the approach with the least adverse impacts and provide mitigation for unavoidable impacts.

~~Policy LU-24.2.19 Replacement walls or bulkheads protecting a residence shall not encroach waterward of the ordinary high water mark, unless the residence was occupied prior to January 21, 1992, and there are overriding safety and environmental concerns. In cases where there are overriding safety and environmental concerns, the replacement wall or bulkhead structure shall abut the existing shoreline stabilization structure and may be located on the waterward side of the existing wall or bulkhead structure.~~

Policy LU-24.2.2019 When shoreline stabilization is proposed, Kenmore shall require a geotechnical report to address the need to prevent potential damage to a primary structure. The report shall estimate time frames and rates of erosion and the urgency associated with the specific situation. Kenmore should not allow hard armoring solutions, unless a geotechnical report confirms that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is immediate would foreclose the opportunity to use measures that avoid adverse impacts to ecological processes and functions. If the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate authorization to protect against erosion using soft measures.

Policy LU-24.2.210 If structural shoreline stabilization measures are demonstrated to be necessary, Kenmore shall limit the size of stabilization measures to the minimum necessary.

Policy LU-24.2.221 Kenmore shall ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline, except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological processes and functions. Where feasible, Kenmore shall require ecological restoration and public access improvements to be incorporated into the project.

Policy LU-24.2.232 Adverse impacts of erosion and mass wasting should be mitigated through protection of geologically hazardous areas.

24.3 ~~Piers and Docks~~ Water Access Structures

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- Policy LU-24.3.1 Kenmore shall allow new ~~piers and docks~~water access structures only for water-dependent uses or public access. If it is designed and intended solely as a facility for access to watercraft, a dock ~~or pier~~ associated with a single-family residence is considered a water-dependent use.
- Policy LU-24.3.2 Kenmore shall require ~~pier and dock~~water access structure construction to be limited to the minimum size necessary to meet the needs of the proposed water-dependent use.
- Policy LU-24.3.3 Kenmore may allow water-related and water-enjoyment uses as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the structure is the minimum size required to serve the water-dependent use.
- Policy LU-24.3.4 Kenmore shall allow new ~~pier or dock construction~~water access structures; ~~excluding docks accessory to single-family residences;~~ only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. ~~Applicants for new piers and docks accessory to single-family residences are not required to demonstrate need.~~
- Policy LU-24.3.5 Kenmore shall require new residential development of two or more dwelling units to provide community ~~pier or~~ dock facilities, when feasible, rather than individual ~~piers or~~ docks for each dwelling unit. Kenmore shall allow only one pier or dock associated with residential development on a parcel.
- Policy LU-24.3.6 Kenmore shall require ~~piers and docks~~water access structures, including those accessory to single-family residences, to be designed and constructed to avoid and then minimize and mitigate the adverse impacts to ecological processes and functions. ~~Piers and docks~~Water access structures should be constructed of non-toxic materials. Where toxic materials, such as treated wood, are proposed, the proponent must show that no non-toxic alternative exists.
- Policy LU-24.3.7 Open pile pier construction should be preferred ~~on Lake Washington~~ where scenic values will not be impaired and where there will be no net loss of ecological processes and functions.
- Policy LU-24.3.8 ~~Floating pier~~Dock construction should be preferred in those areas where scenic values are high ~~and on the Sammamish River~~.
- Policy LU-24.3.9 ~~Piers and docks~~Water access structures should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by ~~pier~~water access structure construction.
- Policy LU-24.3.10 Preference should be given to shared use of ~~piers~~water access structures in all shoreline areas.
- Policy LU-24.3.11 Temporary moorages should be permitted for vessels used in the construction of shoreline facilities. The design and construction of such moorages shall be such that upon termination of the project the aquatic life can be returned to

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their original condition within one year at no cost to the environment or the public.

- Policy LU-24.3.12 Shoreline structures that are abandoned or structurally unsafe should be abated.
- Policy LU-24.3.13 Substantial additions or alterations, including, but not limited to, substantial developments, should be in conformance with the policies and regulations set forth in the Shoreline Master Program.
- Policy LU-24.3.14 ~~Piers and docks~~Water access structures should not interfere with navigation.

24.4 Fill

Fill means the addition of soil, sand, rock, gravel, sediment, earth retaining structures, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. ~~Fill is not permitted within the 100-year floodplain without providing compensatory flood storage to prevent a rise in the base flood, which is a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood."~~ Fill can adversely affect ecological processes and functions, including channel relocation or stream meander.

- Policy LU-24.4.1 Kenmore shall require fill to be located, designed, and constructed to protect shoreline ecological processes and functions and ecosystem-wide processes, including channel migration, stream meander and side channels. Mitigation shall be required consistent with Policy LU 21.3.2.
- Policy LU-24.4.2 Kenmore shall allow fill waterward of the ordinary high-water mark allowed only when necessary to support:
1. Water-dependent use;
 2. Public access;
 3. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
 4. Disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
 5. Expansion or alteration of SR 522 in the shoreline and then only upon a demonstration that alternatives to fill are not feasible; or
 6. Mitigation actions, environmental restoration, beach nourishment, enhancement projects and flood risk reduction projects.
- Policy LU-24.4.3 Kenmore shall require a shoreline conditional use permit for fill waterward of the ordinary high-water mark for any use except ecological restoration and maintenance, repair and replacement of flood protection facilities.

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| Policy LU-24.4.4 | Fill should be deposited so as to minimize disruption of normal surface and ground water passage. |
| Policy LU-24.4.5 | Fill should allow surface water penetration into the ground water supply where such conditions existed prior to fill. |
| Policy LU-24.4.6 | Fill within the 100-year floodplain should not reduce the river channel or floodplain water storage capacity, reduce the channel migration zone, or in any way increase flood hazard so as to endanger public safety. |
| Policy LU-24.4.7 | Land should be filled only after some ultimate use of the property is approved by Kenmore in accordance with the Comprehensive Plan and this Shoreline Master Program. |
| Policy LU-24.4.8 | Fill should be done at such time as to minimize damage to ecological processes and functions. |
| Policy LU-24.4.9 | Beach nourishment areas may be established by Kenmore on Lake Washington. |

24.5 Breakwaters, Groins and Weirs

Breakwaters, groins, and weirs are all structural elements that are constructed to absorb or deflect wave action or to control excess sediment. A breakwater is an off-shore structure, either floating or not, which may or may not be connected to the shore and is designed to absorb and reflect back into the water body the energy of the waves. A groin is a barrier-type structure extending from the backshore into the water across the beach, which is constructed to interrupt sediment movement along the shore. A weir is a small dam in a stream or river to control the flow of water. These structural elements should be allowed only under limited circumstances as they can have adverse effects on ecological processes and functions.

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| Policy LU-24.5.1 | Kenmore shall allow breakwaters and weirs located waterward of the ordinary high-water mark only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purposes. |
| Policy LU-24.5.2 | Groins are prohibited except as a component of a publicly-sponsored project to protect or restore shoreline ecological processes and functions. |
| Policy LU-24.5.3 | Kenmore shall require a shoreline conditional use permit for the construction of breakwaters, groins, weirs, and similar structures, except for those structures installed to protect or restore ecological processes and functions, such as woody debris installed in streams. |
| Policy LU-24.5.4 | Breakwaters, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in General Shoreline Management Policies for Conservation – Critical Areas (Policy LU-21.3.2) and WAC 173-26-201(2)(e). |

EXHIBIT 1

City of Kenmore
Comprehensive Plan

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| Policy LU-24.5.5 | Reduction of the opportunity to use surface water area which may result from breakwater construction should be weighed against the benefits of reduced wave action. |
| Policy LU-24.5.6 | Applicants for breakwaters, groins or weirs should consider structural alternatives and the related effects on ecological processes and functions. |
| Policy LU-24.5.7 | Breakwater, groin and weir design should include provisions for compatible public access or recreational uses when consistent with navigation and when public safety can be ensured. |
| Policy LU-24.5.8 | Care should be exercised in location, design, construction and expansion of breakwaters, groins and weirs relative to the shoreline environments and other shoreline dependent uses. |
| Policy LU-24.5.9 | Beach nourishment should be considered where breakwaters or groins affect shorelines. |

24.6 Dredging

Dredging is the removal, displacement, or disposal of unconsolidated earth material such as sand, silt, gravel, or other submerged materials, from the bottom of water bodies, ditches, or natural wetlands. Long-term maintenance and support activities are also considered dredging. Dredging can cause significant ecological damage. Mitigation measures should be required to ensure no net loss of ecological processes and functions.

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| Policy LU-24.6.1 | Kenmore shall require that new development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. |
| Policy LU-24.6.2 | Kenmore shall allow dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigational uses. Adverse ecological impacts shall be minimized and mitigation shall be provided such that there is no net loss of ecological processes and functions. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged or existing authorized location, depth, and width. |

~~Policy LU 24.6.3 — Kenmore shall not allow dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill material, except when the material is necessary for the restoration of ecological processes and functions. When allowed, the site where the fill is to be placed shall be located waterward of the ordinary high water mark. The project must be either associated with a habitat restoration project under the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act, or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.~~

EXHIBIT 1

City of Kenmore
 Comprehensive Plan

- Policy LU-24.6.43 Kenmore shall not allow disposal of dredge material on shorelands, **in wetlands and/or** in side channels within a channel relocation or stream meander area. ~~Kenmore shall not allow disposal of dredge material in wetlands located within the shoreline jurisdiction. In the limited instances where it is allowed, such disposal shall require a shoreline conditional use permit.~~
- Policy LU-24.6.54 Dredging and excavation in environmentally critical areas within the shoreline should not be allowed.
- Policy LU-24.6.65 Dredging operations should be scheduled so as to not materially interfere with the migration of native fish.
- Policy LU-24.6.76 When dredged spoil has suitable organic and physical properties, dredging operators should be encouraged to recycle dredged material for reuse.
- Policy LU-24.6.87 Dredging should be allowed only in the Aquatic **shoreline** ~~e~~Environment and to support water dependent uses.
- Policy LU-24.6.98 Disposal of dredge and excavation spoils within shorelines should be prohibited except when the material is necessary for the restoration of ecological processes and functions.

24.7 Restoration and Enhancement

Shoreline habitat and natural systems enhancement projects should be supported and coordinated with other plans and regulations, such as salmon conservation plans, the King County Flood Hazard Reduction Plan and Flood Control Zone District, and flood hazard management policies in the Kenmore Comprehensive Plan Natural Environment Sub-Element and Surface Water Element.

- Policy LU-24.7.1 Kenmore should allow for habitat and natural systems enhancement projects that include, but are not limited to:
1. Modification of vegetation;
 2. Removal of non-native or invasive plants;
 3. Shoreline stabilization using soft or non-structural techniques; and
 4. Dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological processes and functions of the shoreline.
- Policy LU-24.7.2 Habitat and natural systems enhancement projects should ensure that the projects address legitimate restoration needs and priorities and facilitate implementation of Kenmore's Shoreline Restoration Plan.

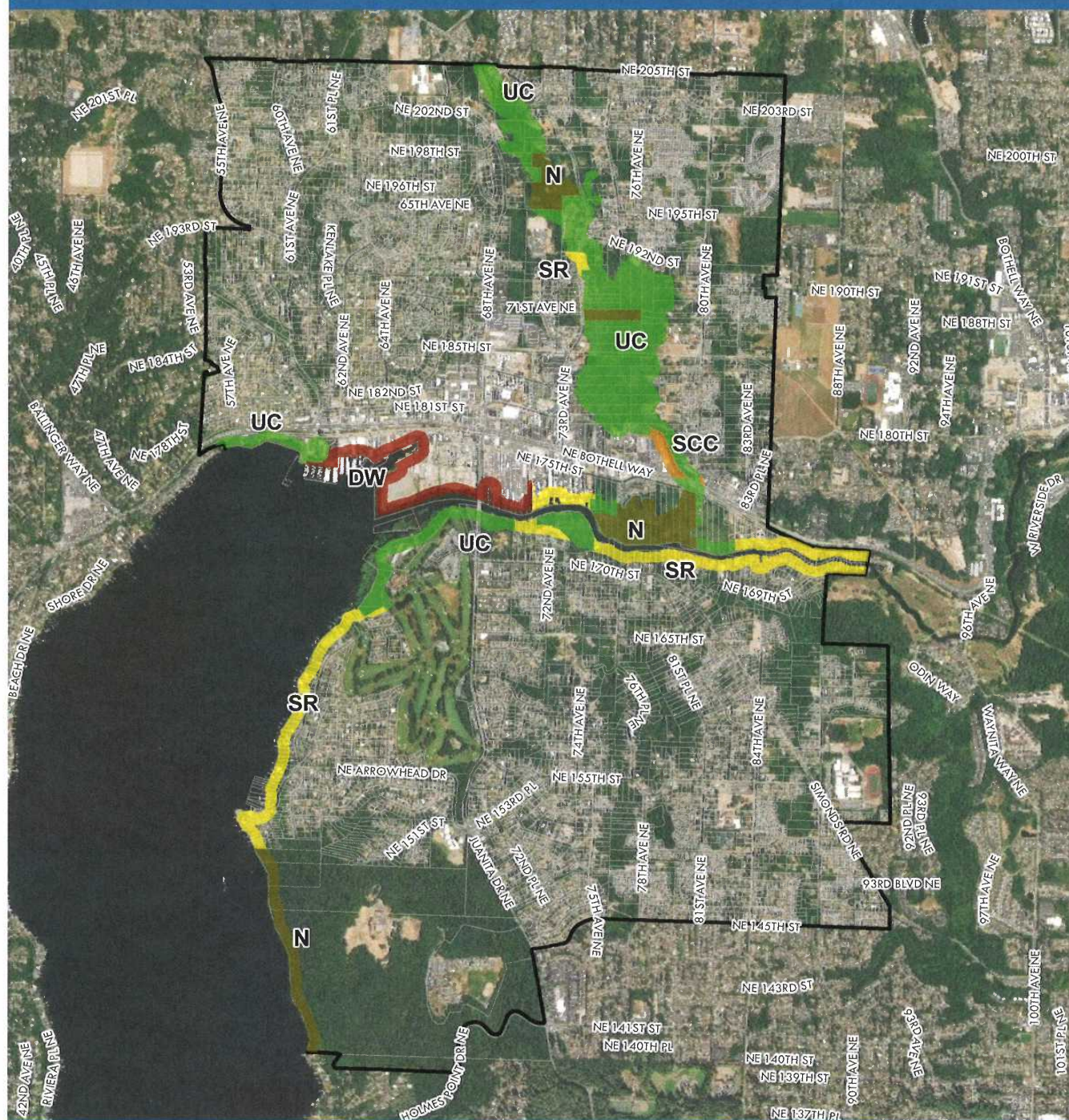
EXHIBIT 1

City of Kenmore
Comprehensive Plan

(Insert Revised Shoreline Map)

Figure LU-12

Shoreline Master Program Environment Designations

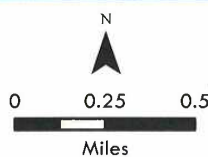


EMP Environment Designations

- Downtown Waterfront (DW)
- Swamp Creek Commercial (SCC)
- Natural (N)
- Shoreline Residential (SR)
- Urban Conservancy (UC)

 Kenmore City Boundary
 Kenmore Parcels

*All areas waterward of the Ordinary High Water Mark on the Sammamish River and Lake Washington have an Aquatic environment designation.



Sources: City of Kenmore, 2018.

The information included on this map has been compiled by City of Kenmore staff from a variety of sources and is subject to change without notice. City of Kenmore makes no representation or warranties, expressed or implied, as to the accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. City of Kenmore shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on the map is prohibited except by written permission of City of Kenmore.

Map Date: March 2019

ATTACHMENT 3

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0490**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; REVISING DIVISION 1 OF TITLE 16 OF
THE KENMORE MUNICIPAL CODE ENTITLED
SHORELINE MANAGEMENT; REVISING THE
SHORELINE ENVIRONMENT DESIGNATIONS MAP;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, the SMA's legislative findings identify that: 1) the shorelines of the state are among the most valuable and fragile of its natural resources; 2) there is great concern throughout the state relating to their utilization, protection, restoration, and preservation; and 3) that unrestricted construction on private or publicly owned shorelines is not in the best interest of the public; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines in the following order of preference which: 1) recognize and protect the State-wide interest over local interest; 2) preserve the natural character of the shoreline; 3) result in long-term over short-term benefit; 4) protect the resources and ecology of the shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, three bodies of water within the City are regulated under the City's Shoreline Master Program (SMP), including Lake Washington, the Sammamish River and Swamp Creek. Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the summer of 2018, the City began its update of the Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) with the assistance of grant funding from Ecology; and

WHEREAS, the City prepared a gap analysis to identify portions of the Shoreline Master Program needing amendment; and

ATTACHMENT 3

WHEREAS, the results of this analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted a supplemental analysis of potential cumulative impacts of the updated Shoreline Master Program. The supplemental cumulative impact analysis is contained in the document entitled, City of Kenmore, Cumulative Impacts Analysis Addendum, May 2019; and

WHEREAS, to satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1) and WAC 173-26-201(2)(a), the City has utilized best available science to draft the proposed SMP Update; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised a number of documents, including: the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; and proposed revisions to critical area regulations; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding a public open house and two public forums; creating a comprehensive and regularly-updated web page devoted to the SMP update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City, and the City has reviewed and acted upon said comments; and

WHEREAS, the Planning Commission held a public hearing on the SMP Update on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019, and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, staff and consultant input, Ecology's comments, and certain documents and information, including: 1) The

ATTACHMENT 3

Gap Analysis; 2) the Cumulative Impacts Analysis Addendum; 3) the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; 4) the City of Kenmore Shoreline Master Program draft shoreline regulations; 5) Ecology's Shoreline Master Program Periodic Review Checklist; 6) SEPA Determination of Nonsignificance; and 7) Docket Criteria Analysis; and

WHEREAS, consistent with WAC 173-26-186(d), the SMP Update evaluates and considers cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA; and

WHEREAS, to ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, the SMP Update contains policies, programs and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including use regulations, are considered a part of the City's development regulations; and

WHEREAS, the City Council desires to amend Division 1 of Title 16 of the KMC; now therefore

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Amendment of Title 16 KMC; Adoption of Shoreline Master Program Development Regulations. The City Council amends Title 16 of the Kenmore Municipal Code and adopts the City of Kenmore Shoreline Master Program Shoreline Regulations, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 3. Map Adopted. The City Council adopts revised Map 1, Shoreline Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

ATTACHMENT 3

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen (14) days from the date of the Washington State Department of Ecology's written notice of final action approving the shoreline master program amendments.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
__TH DAY OF ____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:

EXHIBIT 1

Title 16
ENVIRONMENT SHORELINE MANAGEMENT

Chapters:

Division I. Shoreline Management

16.05 Shoreline Management Code – Purpose and Scope

16.10 Definitions

16.15 Shoreline Environment Designations

16.20 Downtown Waterfront Environment

16.23 Swamp Creek Commercial Environment

16.25 Shoreline Residential Environment

16.30 Urban Conservancy Environment

16.35 Natural Environment

16.40 Aquatic Environment

16.45 General Shoreline Development Standards

16.50 Shoreline Uses

16.55 Shoreline Modifications

16.60 Vegetation Conservation

16.65 Shoreline Density and Dimensions

16.68 Signs

16.70 Subdivisions

16.75 Procedures

Division I. Shoreline Management

EXHIBIT 1

Chapter 16.05

SHORELINE MANAGEMENT CODE – PURPOSE AND SCOPE

Sections:

- 16.05.010 Purpose.**
- 16.05.020 Citation.**
- 16.05.030 Scope.**
- 16.05.050 Liberal construction.**
- 16.05.060 Relationship to other Kenmore programs.**
- 16.05.070 Severability.**

16.05.010 Purpose.

~~A. This title contains the regulations of the City of Kenmore Shoreline Master Program and the procedures to implement those regulations.~~ The purpose of this title is to implement the Shoreline Management Act of 1971 and to provide for the regulation of *development* which impacts those areas of the City of Kenmore under the jurisdiction of the Shoreline Management Act consistent with Chapter 173-26 WAC and the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

~~B. This title contains the regulations of the City of Kenmore Shoreline Master Program and the procedures to implement those regulations. These regulations and procedures are consistent with and implement the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.~~

16.05.020 Citation.

This title shall be known as “the shoreline management code.”

16.05.030 Scope.

A. No *development* shall be undertaken by any person on the *shorelines of the State* unless such *development* is consistent with the provisions of this title and the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

B. *Development* prohibited by this title but otherwise permitted by the City of Kenmore land use controls is prohibited only within the *shorelines of the State*.

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C. *Development* proposed on property in or adjacent to water bodies or *wetlands* under the jurisdiction of the Shoreline Management Act shall be evaluated in terms of the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

D. For purposes of this title, "shall" means a mandate; the action must be done. "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on the policies of Chapter 90.58 RCW and Chapter 173-26 WAC, against taking the action.

16.05.050 Liberal construction.

This title is exempted from the rule of strict construction and shall be liberally construed to give full effect to the purposes for which it was enacted.

16.05.060 Relationship to other Kenmore programs.

A. Kenmore shall issue no permit or approval ~~prior to approval pursuant to this title and shall take no action~~ contrary to the goals, policies, and regulations of the City of Kenmore *Shoreline Master Program* when property under the jurisdiction of the Shoreline Management Act is involved in a request for a decision in any of the following programs:

1. Building permit;
2. Right-of-way construction permit;
3. Short subdivision approval;
4. Grading permit;
5. Site plan approval;
6. Access permit;
7. Trail permit;
8. State flood control zone permit;
9. Zoning variance;
10. Conditional use permit;
11. Comprehensive plan amendment or addition;

EXHIBIT 1

- 12. Zone reclassification;
- 13. Special use permit;
- 14. Subdivision approval;
- 15. Mobile home park permit;
- 16. Mobile home permit;
- 17. Recreational vehicle park permit; and
- 18. Site plan review permit.

B. The following sections of the Kenmore Municipal Code are adopted and incorporated by reference as part of the *Shoreline Master Program*¹:

- 1. Chapter 1.20 KMC – Code Enforcement.
- 2. Chapter 18.55 KMC – Critical Areas, except for the following sections:
 - a. KMC 18.55.150 - Exemptions
 - b. KMC 18.55.160 – Exception – Public Agency and Utility
 - c. KMC 18.55.170 – Variances
 - d. KMC 18.55.180 – Exception – Reasonable Use
 - e. KMC 18.55.230 – Unauthorized critical area alterations and enforcement.

KMC 18.55.090 – Jurisdiction – Critical areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

3. KMC 18.55.130 – Mapping (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

4. KMC 18.55.140 – Signs and fencing of critical areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

5. KMC 18.55.150 – Exemptions (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

EXHIBIT 1

6. KMC 18.55.190 — Critical areas reports — Requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
7. KMC 18.55.200 — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
8. KMC 18.55.210 — Mitigation sequencing (as adopted in Ordinance No. 12-0334).
9. KMC 18.55.220 — Mitigation plan requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
10. KMC 18.55.230 — Unauthorized alterations and enforcement (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
11. KMC 18.55.250 — Notice on title (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
12. KMC 18.55.260 — Critical area tracts (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
13. KMC 18.55.270 — Building setbacks (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
14. KMC 18.55.280 — Bonds to ensure mitigation, maintenance, and monitoring (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
15. KMC 18.55.290 — Critical area inspections (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
16. KMC 18.55.300 — Designation and rating of wetlands (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
17. KMC 18.55.320 — Wetland performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).
18. KMC 18.55.330 — Wetland performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).

EXHIBIT 1

19. KMC 18.55.400 — Designation and rating of streams (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
20. KMC 18.55.420 — Streams performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
21. KMC 18.55.430 — Streams performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
22. KMC 18.55.500 — Designation of fish and wildlife habitats of importance (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
23. KMC 18.55.520 — Fish and wildlife habitat performance standards — General (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
24. KMC 18.55.530 — Fish and wildlife habitat performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).
25. KMC 18.55.600 — Geologically hazardous areas — Purpose (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
26. KMC 18.55.610 — Designation of geologically hazardous areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
27. KMC 18.55.620 — Designation of specific hazard areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
28. KMC 18.55.640 — Geologically hazardous areas performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
29. KMC 18.55.650 — Geologically hazardous areas performance standards — Specific areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
30. KMC 18.55.700 — Flood hazard areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

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31. KMC 18.55.710 – Flood fringe – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

32. KMC 18.55.720 – Zero-rise floodway – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

33. KMC 18.55.730 – FEMA floodway – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

34. KMC 18.55.740 – Flood hazard areas – Certification by engineer or surveyor (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

35. KMC 18.55.750 – Channel relocation and stream meander areas requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

Other sections of the Kenmore Municipal Code cross-referenced in this chapter are provided for reference purposes. Unless specifically stated, the *Shoreline Master Program* does not eliminate or reduce the requirements of any other portion of the Kenmore Municipal Code.

16.05.070 Severability.

If any provision of this title or the master program regulations and procedures hereby adopted or its application to any person or circumstance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this title or the master program.

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~~Certain c~~Critical area code sections from Chapter 18.55 KMC – as they existed at the time of *Shoreline Master Program* approval by the Washington Department of Ecology in 20122019 and are described in KMC 16.05.060(B) – have been adopted into the shoreline regulations as part of the *Shoreline Master Program*. Future amendments to these sections of Chapter 18.55 KMC will not be in effect in the shoreline jurisdiction unless and until the *Shoreline Master Program* also is amended.

EXHIBIT 1

Chapter 16.10

DEFINITIONS

Sections:

- 16.10.010 Applicability of RCW and WAC definitions.
- 16.10.030 Access, public.
- 16.10.032 Accessory structure.
- 16.10.035 Accessory use.
- 16.10.02038 Applicant.
- 16.10.040 Aquaculture.
- 16.10.050 Associated wetlands.
- 16.10.060 Average grade level.
- ~~16.10.070 Backfill.~~
- 16.10.080 Berm.
- 16.10.083 Boat launch
- 16.10.085 Boating facility.
- 16.10.090 Breakwater.
- 16.10.100 Bulkhead.
- 16.10.105 Channel migration zone.
- 16.10.106 City manager.
- ~~16.10.107 Commercial development.~~
- 16.10.110 Critical areas.
- ~~16.10.115 Critical freshwater habitat.~~
- 16.10.120 Department.
- 16.10.130 Development.
- ~~16.10.140 Director.~~
- 16.10.150 Dock.
- 16.10.160 Dredging.
- 16.10.170 Ecological functions.
- 16.10.173 Ecosystem-wide processes.
- 16.10.175 EIL.
- 16.10.178 Feasible.
- 16.10.180 Fill.
- 16.10.185 Fish and wildlife habitats area of importance.
- 16.10.190 Float.

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- 16.10.200 Floating home.
- 16.10.210 Floodplain.
- 16.10.220 Floodway.
- 16.20.225 Geotechnical report or geotechnical analysis.
- 16.10.230 Grading.
- 16.10.235 Government services.
- 16.10.240 Groin.
- 16.10.250 Hatchery.
- 16.10.260 Height.
- 16.10.270 Jetty.
- 16.10.275 Live-aboard.
- 16.10.280 Marina.
- 16.10.285 Manufacturing uses.
- 16.10.310285 No net loss.
- 16.10.290 Nonconforming structure.
- 16.10.300 Nonconforming use.
- 16.10.320 Non-water-oriented uses.
- 16.10.330 Normal protective bulkhead common to single-family residences.
- 16.10.340 Open space, required.
- 16.10.350 Ordinary high water mark.
- 16.10.355 Park/recreation recreational/cultural uses.
- 16.10.360 Pier.
- 16.10.370 Port.
- 16.10.375 Ramp
- 16.10.380 Recreational development.
- 16.10.390 Redesignation.
- 16.10.395 Residential development.
- 16.10.400 Restoration.
- 16.10.410 Riprap.
- 16.10.420 Sediment.
- 16.10.430 Shall.
- 16.10.440 Should.
- 16.10.45040 Shorelands.
- 16.10.445 Shoreline buffer.
- 16.10.460 Shoreline environment.
- 16.10.470 Shoreline Master Program.

EXHIBIT 1

- 16.10.480 Shoreline modifications.
- 16.10.500 Shoreline stabilization.
- 16.10.510 Shorelines.
- 16.10.520 Shorelines of statewide significance.
- 16.10.530 Shorelines of the State.
- 16.10.540 Sign.
- ~~16.10.550 Significant vegetation removal.~~
- 16.10.560 Solid waste.
- 16.10.570 Substantial development.
- ~~16.10.580 Utilities and utility facilities.~~
- ~~16.10.575 Water access structure.~~
- 16.10.590 Water-dependent use.
- 16.10.6100 Water-enjoyment use.
- 16.10.6210 Water-oriented use.
- 16.10.6020 Water-related use.
- ~~16.10.630 Water transmission pipeline.~~
- 16.10.640 Wetlands.

16.10.010 Applicability of RCW and WAC definitions.

The definitions contained in this chapter, KMC Title 18 (zoning code), Chapter 90.58 RCW and Chapter 173-26 WAC shall apply within the shoreline jurisdiction. The definitions in Chapter 90.58 RCW and Chapter 173-26 WAC shall apply in *shorelines* if there is a conflict with the definitions contained in this title and KMC Title 18.

16.10.030 Access, public.

"Public access" means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on waters of the State, and to view the water and the shoreline from adjacent locations.

16.10.032 Accessory structure.

"Accessory structure" means a structure that is incidental to the principal structure.

16.10.035 Accessory use.

~~"Accessory use" means a use that is incidental to a principal use.~~ "Accessory use" means a use typically subordinate in size to the principal use; that would not contribute significantly to traffic generation, noise, or nuisance; and that supports the primary use operation without displacing it. An accessory use may

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appear as an otherwise permitted, conditional or prohibited use in the use allowances for a given designation. Accessory uses are typically located upon the same lot occupied by a principal use. Examples of accessory uses include: equipment rental (bikes or skis) at a retail bike and ski shop, a secure facility required at an airport, and boat parking at a marina.

16.10.02038 Applicant.

"Applicant" means a person who files an application for a development proposal, permit or approval under this title and who is either the owner of the land on which that proposed activity would be located or the primary proponent of the project. A primary proponent shall have the permission of the landowner before proceeding with an application a property owner or a public agency or public or private utility which owns a right-of-way or other easement or has been adjudicated the right to such an easement pursuant to RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval.

16.10.040 Aquaculture.

"Aquaculture" means the culture or farming of fin fish, shellfish, algae or other plants or animals in fresh or marine waters. Excluded from the definition of aquaculture are related commercial or industrial uses such as wholesale or retail sales, or final processing, packing, or freezing.

16.10.050 Associated wetlands.

"Associated wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geohydraulic processes, presence of a surface connection, including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

16.10.060 Average grade level.

"Average grade level" is defined in WAC 173-27-030(3) and (11) as now or hereafter amended; as of insert effective date of ordinance, "average grade level" means "the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high-water mark. The "natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading.

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including excavation or filling. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure."

16.10.070 Backfill.

"Backfill" means the placement of earth material behind a retaining wall or structure.

16.10.080 Berm.

"Berm" means one or several linear mounds of sand and gravel at or landward of the *ordinary high-water mark* which are normally stable because of material size or vegetation.

16.10.083 Boat launch.

"Boat launch" means an inclined slab, set of pads, rails, planks, or graded slope which extends waterward of the *ordinary high-water mark*, and is used for transferring watercraft between uplands and the water by means of a trailer, hand, or mechanical device.

16.10.085 Boating facility.

"Boating facility" means developments and uses that support access to shoreline waters for purposes of boating, including *marinas*; community *docks* or *piers* serving more than four single-family residences or multifamily units; public *piers* and *docks*; and community, commercial or public *boat launch* facilities.

16.10.090 Breakwater.

"Breakwater" means an offshore structure, either floating or not, which may or may not be connected to the shore, such structure being designated to absorb and/or reflect back into the water body the energy of the waves.

16.10.100 Bulkhead.

"Bulkhead" means a solid or open pile wall of rock, concrete, steel or timber or other materials or a combination of these materials erected generally parallel to and near the *ordinary high-water mark* for the purpose of protecting adjacent *wetlands* and uplands from waves or currents.

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16.10.105 Channel migration zone.

"Channel migration zone" means the area within which a river channel ~~is likely~~ can be reasonably predicted to move over a period of time as a result of natural and normally-occurring hydrological and related processes when considered with the characteristics of the river and its surroundings., and The channel migration zone is therefore subject to risk due to stream bank destabilization, rapid stream incision, stream bank erosion, and shifts in the location of stream channels. Channel relocation and stream meander areas as defined at KMC 18.55.750 are channel migration zones.

16.10.106 City manager.

"City manager" means the City of Kenmore city manager or his or her designee(s).

16.10.107 Commercial development.

"Commercial development" includes general services, business services, and retail, defined as follows:

A. General services includes general personal services, funeral home/crematory, cemetery/columbarium/mausoleum, day care facilities, veterinary clinic, automotive repair, automotive services, vessel construction and outfitting, miscellaneous repair, churches/synagogues/temples, social services, stable, kennel/cattery, theatrical production services, artist studios, interim recycling facility, office/outpatient clinic, nursing and personal care facilities, hospital, medical/dental lab, miscellaneous health, and school district support facility.

B. Business services includes construction and trade, individual transportation and taxi, trucking and courier service, self-service storage, dry boat storage, commercial moorage, transportation service, freight or cargo service, passenger transportation service, communication offices, telegraph and other communications facilities, general business service, professional office, outdoor advertising service, miscellaneous equipment rental, automotive rental and leasing, professional sport teams/promoters, research development and testing, and commercial/industrial accessory uses.

C. Retail includes building/hardware/garden materials, forest products sales, department and variety stores, food stores, agricultural product sales, motor vehicle and boat dealers, auto supply stores, gasoline service stations, apparel and accessory stores, furniture and home furnishings stores, eating and drinking places, drug stores, liquor stores, used goods shops, sporting goods and related stores, book/stationery/video/art supply stores, jewelry stores, monuments/tombstones/gravestones, hobby/toy/game shops, photographic and electronic shops, fabric shops, fuel dealers, florist shops, personal medical supply stores, pet shops, bulk retail, auction houses, livestock sales, and food vendors.

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16.10.110 Critical areas.

"Critical areas" means any of the following areas or ecosystems: aquifer recharge areas, *fish and wildlife habitats* ~~areas of importance~~, frequently flooded areas, geologically hazardous areas, streams, and *wetlands*, as defined in Chapter 36.70A RCW and this chapter.

16.10.115 Critical freshwater habitat.

"Critical freshwater habitat" shall refer to ~~shorelines~~ meeting the definition of "fish and wildlife habitat of importance" in KMC ~~18.55.520~~.

16.10.120 Department.

"Department" means the ~~department of community development~~ city department or outside agency assigned by the city manager to administer a portion of the City code.

16.10.130 Development.

"Development" is defined in Chapter 90.58 RCW and WAC 173-27-030 as now or hereafter amended; as of insert effective date of ordinance, "development" means " a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any state of water level. Development does not include dismantling or removing structures if there is no other associated development or redevelopment."

16.10.140 Director.

"Director" means the ~~director of the department of community development or an authorized designee~~.

16.10.150 Dock.

"Dock" means ~~all platform structures or anchored devices in or on~~ an anchored walkway or other surface that abuts the shoreline and floats floating upon the water bodies to provide moorage for ~~pleasure craft~~ watercraft or landing for water-dependent recreation ~~including, but not limited to, floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps. Dock is the term which collectively applies to a ramp and float, or it may be comprised of a float only that abuts the shoreline.~~

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16.10.160 Dredging.

"Dredging" means the removal, displacement, and/or disposal of unconsolidated earth material such as sand, silt, gravel, or other submerged materials from the bottom of water bodies, ditches, or *wetlands*; maintenance dredging and/or support activities are included in this definition.

16.10.170 Ecological functions.

"Ecological functions" or shoreline functions means the work performed or role played by the physical, chemical and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

16.10.173 Ecosystem-wide processes.

"Ecosystem-wide processes" is defined in WAC 173-26-020(14) as now or hereafter amended; as of insert effective date of ordinance, "ecosystem-wide processes" means "the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions."

16.10.175 Ell.

"Ell" means a terminal *pier* section oriented perpendicular to the *pier* walkway.

16.10.178 Feasible.

"Feasible" is defined in WAC 173-26-020(15) as now or hereafter amended; as of insert effective date of ordinance, "feasible" means, for the purpose of this title, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

B. The action provides a reasonable likelihood of achieving its intended purpose; and

C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where this title requires certain actions unless they are infeasible, the burden of proving infeasibility is on the *applicant*.

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In determining an action's infeasibility, the *department* may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames."

16.10.180 Fill.

"Fill" means the addition of soil, sand, rock, gravel, *sediment*, earth retaining structure or other material to an area waterward of the *ordinary high-water mark*, in *wetlands*, or on *shorelands* in a manner that raises the elevation or creates dry land.

16.10.185 Fish and wildlife habitats area of importance.

"Fish and wildlife habitats area of importance" means those habitat areas defined in KMC 18.55.500 that meet any of the following criteria:

A. Documented presence of species listed by the federal government or the State of Washington as endangered or threatened; or

B. Heron rookeries or active nesting trees; or

C. Class 1 Category I *wetlands* as defined in KMC 18.55.300; or

D. Type 1 streams *S-waters* as defined in KMC 18.55.400; or

E. Bald eagle habitat protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292) federal Bald and Golden Eagle Protection Act.

Swamp Creek, the Sammamish River, and Lake Washington are all fish and wildlife habitats areas of importance.

16.10.190 Float.

"Float" means a structure or device which is not a breakwater floats on the surface of the water and which is moored, anchored, or otherwise secured in the waters of the City of Kenmore and which is not directly connected to or abutting the shoreline. A float which is directly connected to or abutting the shoreline is considered a dock.

16.10.200 Floating home.

"Floating home" means a houseboat, boat or building constructed on a float, used in whole or in part for human habitation as a dwelling unit, and which is moored, anchored, or otherwise secured in waters

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within the City of Kenmore single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

16.10.210 Floodplain.

"Floodplain" is defined in WAC 173-26-020(19) as now or hereafter amended; as of insert effective date of ordinance, "floodplain" is synonymous with "100-year floodplain" and means ~~thethat~~ land area ~~that~~ may be inundated by the base flood of a river or stream susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps, or a reasonable method which meets the objectives of the Shoreline Management Act."

16.10.220 Floodway.

"Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which floodwaters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation ground cover condition. The floodway shall not include lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the State, or the county.

16.20.225 Geotechnical report or geotechnical analysis.

"Geotechnical report" or "geotechnical analysis" is defined in WAC 173-26-020(21) as now or hereafter amended; as of insert effective date of ordinance, "geotechnical report" or "geotechnical analysis" means "a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes."

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16.10.230 Grading.

"Grading" means the addition, excavation, movement, or redistribution of soil, sand, rock, gravel, *sediment* or other material on a site in a manner that alters the natural contour of the land.

16.10.235 Government services.

"Government services" means a public agency or utility office, public agency or utility yard, public agency archives, court, police facility, fire facility, caretaker residence/accessory, City government offices, elementary school, middle/junior high school, secondary/high school, specialized instruction school, K-12 educational institutions (public or private), and colleges/universities.

16.10.240 Groin.

"Groyne" means a barrier-type structure extending from the backshore into the water across the beach. The purpose of a groin is to interrupt *sediment* movement along the shore.

16.10.250 Hatchery.

"Hatchery" means a facility for the rearing and/or holding of fish, the design of which is compatible with the natural environment and contains minimal development necessary for fish propagation.

16.10.260 Height.

"Height" is defined in WAC 173-27-030(9) as now or hereafter amended; as of insert effective date of ordinance, "height" shall be measured from the average finished grade to the highest point of the roof. The average finished grade shall be determined by first delineating the smallest square or rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the square or rectangle; provided, that the measured elevations do not include berms" is measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial numbers of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation."

16.10.270 Jetty.

"Jetty" means an artificial barrier used to change the natural littoral drift to protect inlet entrances from clogging by excess *sediment*.

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16.10.275 Live-aboard.

"Live-aboard" means a licensed vessel that is used as a primary residence.

16.10.280 Marina.

"Marina" means a marine retail sales and service use, in which a system of *piers*, buoys, docks or *floats* is used to provide moorage, primarily for pleasure craft, for sale or rent, usually on a monthly or yearly basis.

16.10.285 Manufacturing uses.

"Manufacturing uses" means production of food and kindred products, winery/brewery, apparel and other textile products, wood products, furniture and fixtures, leather and leather goods, stone/clay/glass/concrete products, computer and office equipment, electronic and other electric equipment, measuring and controlling instruments, printing and publishing, miscellaneous light manufacturing, tire retreading, movie production and distribution, and commercial barge loading and unloading facility.

16.10.310285 No net loss.

Per WAC 173-26-201(2)(c), the concept of "no net loss" of shoreline *ecological functions* means that the Kenmore *Shoreline Master Program* provisions shall, to the greatest extent *feasible*, protect existing shoreline ecological processes and functions and avoid new adverse impacts to ecological processes and functions. The term "net," as used herein, recognizes that any *development* has potential or actual for short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, avoidance of impacts and use of mitigation measures, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist.

16.10.290 Nonconforming structure.

"Nonconforming structure" means a structure that was lawfully constructed prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

16.10.300 Nonconforming use.

"Nonconforming use" means a use that was lawfully established prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

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16.10.320 Non-water-oriented uses.

"Non-water-oriented uses" means those uses that are not *water-dependent*, *water-related* or *water-enjoyment*.

16.10.330 Normal protective bulkhead common to single-family residences.

"Normal protective bulkhead common to single-family residences" means a *bulkhead* constructed on a building site zoned to permit one single-family residence and containing one single-family residence.

16.10.340 Open space, required.

"Required open space" means a portion of the area of a building site, which is required by this title, as set forth in different designations contained in this title, to be maintained as open area to be available for use by the persons specified in a development. Open spaces are required to be free and clear of buildings and structures and to remain open and unobstructed from the ground to the sky.

16.10.350 Ordinary high-water mark.

"Ordinary high-water mark" means the ordinary high-water mark as defined in Chapter 90.58 RCW as now or hereafter amended; as of insert effective date of ordinance, "ordinary high-water mark" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark shall be the line of mean high water."

16.10.355 Park/recreation recreational/cultural uses.

"Park/recreation recreational/cultural uses" means destination resorts, recreational vehicle park, theater, drive-in theater, bowling center, amusement and recreation services, amusement arcades, amusement park, library, museum, conference center, arboretum, cultural facilities, indoor recreational facilities (including sports clubs), open space, outdoor recreational facilities, parks, trails, wildlife shelter, and outdoor performance center.

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16.10.360 Pier.

"Pier" means any platform structure, fill, or anchored device in or floating upon water bodies to provide moorage for watercraft engaged in commerce an over-water, stationary, pile-supported structure that does not float on the water's surface and provides a location for boat moorage or other *water-oriented* or *water-dependent use*.

16.10.370 Port.

"Port" means public or private facilities for transfer of cargo or passengers from waterborne craft to land and vice versa; including, but not limited to: piers, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses.

16.10.375 Ramp.

"Ramp" means a walkway connecting a *pier*, or other shoreward structure or the shoreline to a *float* and providing access between the two.

16.10.380 Recreational development.

"Recreational development" means a private or public development operated and devoted to facilities and equipment for recreational purposes, including but not limited to swimming pools, tennis courts, playgrounds, picnic areas, campgrounds, resorts and other similar uses whether the use of such area is limited to those paying a fee or free to the public. Also see definition for "park/recreation recreational/cultural uses."

16.10.390 Redesignation.

"Redesignation" means a change in the *shoreline environment designation* by the procedures provided in Chapter [16.75](#) KMC.

16.10.395 Residential development.

"Residential development" includes single-family and multiple-family dwellings, group residences, temporary lodging, and uses that are accessory to residential development.

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A. "Dwelling, single-family" means a detached residence for one family.

B. "Dwelling, multiple-family" means a townhouse, apartment, and mobile home parks.

C. "Group residences" means community residential facilities, dormitory, and senior assisted housing.

D. "Temporary lodging" means hotel/motel, bed and breakfast guesthouse, and organization hotel/lodging houses.

E. "Accessory uses" means residential accessory uses, home occupation, and home industry.

16.10.400 Restoration.

"Restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

16.10.410 Riprap.

"Riprap" means hard angular quarry rock used for revetments or other bank stabilization projects.

16.10.420 Sediment.

"Sediment" means material settled from suspension in a liquid medium.

16.10.430 Shall.

"Shall" means a mandate; the action must be done.

16.10.440 Should.

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of Chapter 90.58 RCW and Chapter 173-26 WAC, against taking the action.

16.10.45040 Shorelands.

"Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high-water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all associated wetlands and river deltas associated with the streams and lakes that are subject to the provisions of Chapter 90.58 RCW.

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16.10.445 Shoreline buffer.

"Shoreline buffer" means a required vegetation conservation area measured horizontally upland from and perpendicular to the *ordinary high-water mark*, as described in KMC 16.65.020.

16.10.460 Shoreline environment.

"Shoreline environment" or "shoreline environment designation" means the categories of *shorelines of the State* established by the City of Kenmore shoreline management master program to differentiate between areas whose features imply differing objectives regarding their use and future development.

16.10.470 Shoreline Master Program.

A. "Shoreline Master Program" consists of the following two elements:

1. Shoreline management goals and policies contained in the shoreline subelement of the Kenmore comprehensive plan. The shoreline management goals and policies constitute the official policy of Kenmore regarding areas of the City subject to shoreline management jurisdiction under Chapter 90.58 RCW;
2. The shoreline regulations specified in this chapter.

B. The following technical and planning information provides a foundation for shoreline policies and regulations, and is intended to aid in implementing and evaluating the Shoreline Master Program:

1. The shoreline protection and *restoration* plan;
2. The cumulative impacts analysis, which provides a mechanism for examining the success of meeting the requirement for *no net loss of ecological functions*;
3. The Shoreline Master Program checklist and public involvement process, which shows how Kenmore meets the procedural requirements for updating the Shoreline Master Program; and
4. The shoreline inventory and characterization, which includes data and analytic methods used to develop Kenmore's shoreline inventory and shoreline characterization.

16.10.480 Shoreline modifications.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, *breakwater*, *pier*,

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fill, bulkhead, or other shoreline structure. Shoreline modifications can include other actions, such as clearing, grading, or application of chemicals.

16.10.500 Shoreline stabilization.

"Shoreline stabilization" means actions taken to address erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as current, flood, *tides*, wind or wave action. These actions include installation or expansion of structures, such as *bulkheads, jetties, groins* or vegetation, and nonstructural methods, such as relocation of the structure to be protected, or groundwater management.

16.10.510 Shorelines.

"Shorelines" means lakes greater than 20 acres and rivers and streams with a minimum of 20 cubic feet per second mean annual flow, including the entire water body waterward from the *ordinary high-water mark* from its centerline or point, all water below the surface and associated *shorelands*. Kenmore shorelines are shown on the adopted map entitled Kenmore Shoreline Environment Designations (attached to Ord. *12-033419-0490* as Exhibit 2, and incorporated by reference). If there is a discrepancy between the map and the criteria established in this section, the criteria shall constitute the official Kenmore shoreline jurisdiction.

16.10.520 Shorelines of statewide significance.

"Shorelines of statewide significance" means those *shorelines* described in RCW *90.58.030(2)(e)* which are within the City of Kenmore. *The Lake Washington shoreline is Kenmore's only "shoreline of statewide significance."*

16.10.530 Shorelines of the State.

"Shorelines of the State" means the total of all *shorelines* and *shorelines of statewide significance* within the City of Kenmore.

16.10.540 Sign.

"Sign" means any letters, figures, design, symbol, light, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine, merchandise or thing. Excluded from definition and regulation by this title are official traffic signs or signals, official public notices, signs required by law, warning signs, the flag of a government or noncommercial institution such as schools and temporary signs worn or carried by people.

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16.10.550 Significant vegetation removal.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, burning, chemical means, or other activity that causes significant adverse ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

16.10.560 Solid waste.

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including but not limited to garbage, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof and discarded commodities.

16.10.570 Substantial development.

"Substantial development" means any *development* which requires a shoreline management substantial development permit, as defined in RCW [90.58.030\(3\)\(e\)](#) as now or hereafter amended.

16.10.580 Utilities and utility facilities.

"Utilities" means all lines and facilities related to the distribution, collection, transmission or disposal of water, storm and sanitary sewage, oil, gas, power or refuse. Utility facilities include telephone exchanges, water pumping or treatment stations or distribution systems, electrical substations, water storage reservoirs or tanks, municipal groundwater well fields, natural gas gate stations and limiting stations, propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users, electrical wires and associated structural supports, private and public stormwater management facilities, nonregional stormwater management facility, and vector waste receiving facility.

16.10.575 Water access structure.

"Water access structure" means a pier, dock, buoy, float, boat launch, watercraft lift, or other improvement that facilitates physical access to the water.

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16.10.590 Water-dependent use.

"Water-dependent use" or "water-dependent development" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

16.10.6100 Water-enjoyment use.

"Water-enjoyment use" means a recreation use or other use that facilitates *public access* to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. The use must be open to the general public.

16.10.62010 Water-oriented use.

"Water-oriented use" means a use that is *water-dependent*, *water-related*, or *water-enjoyment*, or a combination of such uses.

16.10.6020 Water-related use.

"Water-related use" or "water-related development" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent on a waterfront location because:

- A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- B. The use provides a necessary service supportive of the *water-dependent uses*, and the proximity of the use to its customers makes its services less expensive and/or more convenient.

16.10.630 Water transmission pipeline.

"Water transmission pipeline" means a facility having as its primary purpose the transmission of water by a municipal purveyor for sale for domestic, commercial, and industrial use.

16.10.640 Wetlands.

"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 adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes,

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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 may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Chapter 16.15

SHORELINE ENVIRONMENT DESIGNATIONS

Sections:

16.15.010 Purpose.**16.15.020 Names of shoreline environment designations.****16.15.030 Limits of shoreline environment designations.****16.15.010 Purpose.**

A. The purpose of *shoreline environment designations* is to differentiate between areas whose geographical, hydrological, topographical or other features imply differing objectives regarding the use and future *development* of the *shorelines of the State*.

B. Each *shoreline environment designation* represents a particular emphasis in the type of uses, type of modifications, and the density and dimensions of *development* which should occur within it. The environment designation system is designed to encourage uses in each environment which enhance or are compatible with the character of the environment while at the same time requiring reasonable standards and restrictions on *development* so that the character of the environment is not adversely impacted.

6.15.020 Names of shoreline environment designations.

In order to accomplish the goals, policies, and regulations of the Kenmore *Shoreline Master Program*, the following *shoreline environment designations* have been established:

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A. Downtown Waterfront Environment.

B. Swamp Creek Commercial Environment.

C. Shoreline Residential Environment.

CD. Urban Conservancy Environment.

DE. Natural Environment.

EF. Aquatic Environment.

16.15.030 Limits of shoreline environment designations.

The *shoreline environment designations* are included on Map 1, entitled Shoreline Environment Designations Map. If there is a discrepancy between Map 1 and the criteria established in the Kenmore comprehensive plan for *shoreline environment designations*, the criteria shall constitute the official Kenmore *shoreline environment designation*. Any parcel of land included within the shoreline jurisdiction without a *shoreline environment designation* shall be considered Urban Conservancy Environment.

(INSERT NEW MAP)

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Chapter 16.20

DOWNTOWN WATERFRONT ENVIRONMENT

Sections:

16.20.010 Purpose.

16.20.020 Designation criteria.

16.20.010 Purpose.

The purpose of the Downtown Waterfront Environment is to provide for mixed urban *water-oriented uses*, *public access* and recreation while protecting existing *ecological functions*.

16.20.020 Designation criteria.

The shoreline along the contiguous downtown waterfront that is zoned regional business and waterfront commercial in KMC Title 18 and does not meet the requirement for Urban Conservancy or Shoreline Residential other designations is to be assigned the Downtown Waterfront Environment designation.

Chapter 16.23

SWAMP CREEK COMMERCIAL ENVIRONMENT

Sections:

16.23.010 Purpose.

16.23.020 Designation criteria.

16.23.010 Purpose.

The purpose of the Swamp Creek Commercial Environment is to recognize existing and planned high-intensity commercial and residential uses while protecting existing *ecological functions* and restoring *ecological functions* in areas that have been previously degraded.

16.23.020 Designation criteria.

A Swamp Creek Commercial Environment designation is to be assigned to shoreline areas adjacent to the west side of Swamp Creek if any of the following characteristics apply:

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A. The shoreline currently supports high-intensity commercial or high-density residential uses, and is designated in the Comprehensive Plan and zoned to remain high-intensity, and

B. The shoreline does not meet the requirement for Urban Conservancy Environment or Shoreline Residential Environment designations.

Chapter 16.25

SHORELINE RESIDENTIAL ENVIRONMENT

Sections:

16.25.010 Purpose.

16.25.020 Designation criteria.

16.25.010 Purpose.

The purpose of the Shoreline Residential Environment is to accommodate residential development and appurtenant structures. An additional purpose is to provide appropriate *public access* and recreational uses within new multifamily developments or on public property.

16.25.020 Designation criteria.

The Shoreline Residential Environment designation should be assigned to shoreline areas if they are predominantly developed for with single-family or multifamily residential uses or are planned and platted for residential development, and the shoreline areas do not meet the criteria for other designations.

Chapter 16.30

URBAN CONSERVANCY ENVIRONMENT

Sections:

16.30.010 Purpose.

16.30.020 Designation criteria.

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16.30.010 Purpose.

The purpose of the Urban Conservancy Environment is to protect and restore *ecological functions* of open space, streams, *wetlands*, and *floodplains*; where they exist in urban and developed settings, including areas below the *ordinary high-water mark* in Swamp Creek, while allowing a variety of compatible uses.

16.30.020 Designation criteria.

An Urban Conservancy Environment designation is assigned to shoreline areas appropriate and planned for *development* that is compatible with maintaining or restoring *ecological functions* and areas that are not generally suitable for water-dependent uses, if any of the following characteristics apply: Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated. This designation should be applied when:

A. The shoreline includes wetlands or exceptional riparian corridor that should not be more intensively developed is suitable for water-related or water-enjoyment uses;

B. The shoreline includes open space, floodplain or other sensitive areas that should not be more intensively developed;

B. The shoreline is in public ownership and has been altered or in public ownership that is small in size and not adjacent to other publicly owned properties;

C. The shoreline has been altered but retains important *ecological functions*;

D. The shoreline has potential for *ecological restoration* or is a *restoration* priority; or

E. The shoreline has potential for *development* that is compatible with *ecological restoration*.

Chapter 16.35

NATURAL ENVIRONMENT

Sections:

16.35.010 Purpose.

16.35.020 Designation criteria.

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16.35.010 Purpose.

The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered *shorelines*. Only low intensity uses are to be allowed in this **e**Environment to maintain existing ecological processes and functions.

16.35.020 Designation criteria.

A Natural Environment designation is assigned to shoreline areas if any of the following characteristics apply:

- A. A relatively large, contiguous area of the shoreline is in public ownership and ecologically intact or minimally altered;
- B. The shoreline represents ecological processes or functions that provide educational or scientific opportunities; or
- C. The shoreline is unable to support active uses or *development* without significant adverse impacts to *ecological functions*.

Chapter 16.40

AQUATIC ENVIRONMENT

Sections:

16.40.010 Purpose.**16.40.020 Designation criteria.****16.40.010 Purpose.**

The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of navigable areas waterward of the *ordinary high* **w**ater mark on the Sammamish River and Lake Washington.

16.40.020 Designation criteria.

Lake Washington and the Sammamish River below the *ordinary high* **w**ater mark are to be designated as Aquatic Environment. In Lake Washington, the Aquatic Environment extends to the centerline of the lake.

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Chapter 16.45

GENERAL SHORELINE DEVELOPMENT STANDARDS

Sections:

16.45.010 General shoreline development requirements.

16.45.010 General shoreline development requirements.

A. Kenmore shall ensure that uses and modifications within the shoreline jurisdiction do not cause a net loss of shoreline *ecological functions* and processes. Mitigation for impacts resulting in uses and modifications shall follow the mitigation sequencing requirements of KMC [18.55.210](#) and consider the priorities specified in the shoreline ~~protection and~~ restoration plan.

B. All shoreline uses and developments shall be subject to the following general development standards:

1. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and groundwater on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
2. *Solid* and liquid *wastes* and untreated effluents shall not enter any bodies of water or be discharged onto the land.
3. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational *marinas*, commercial moorage, and vessel repair facilities.
4. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected. The use of chemicals to control invasive aquatic weeds ~~is prohibited, except that milfoil may be removed~~

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using chemicals shall be limited to herbicides; provided, that the chemicals are applied by a licensed pesticide applicator and approved for aquatic use.

5. All shoreline developments and uses shall manage increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shoreline properties and features are not adversely affected. Control measures may include, but are not limited to, permeable surfacing, dikes, catch basins, settling ponds, interceptor drains and planted buffers.

6. All shoreline developments and uses shall control erosion during project construction and operation.

7. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance of or minimize adverse impacts to protect fish and wildlife habitats conservation areas of importance, including, but not limited to, spawning, nesting, rearing and habitat areas, and migratory routes. Where avoidance of adverse impacts is not practicable, the director/city manager may require that mitigation measures to protect species and habitat functions be developed in consultation with State resource management agencies and federally recognized tribes.

8. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, erosion and accretion.

9. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

10. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

11. All shoreline development shall be located, constructed and operated so as to protect public health, safety and welfare.

12. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.

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13. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry ~~by erosion from drainage, high water or other means~~ into any water body.

14. Navigation channels shall be kept free of hazardous or obstructing *development* or uses.

15. Historic properties, including historic buildings, sites, objects, districts and landscapes, prehistoric and historic archaeological resources, and traditional cultural places, shall be protected within *shoreline environments* as follows:

a. Known Historic Properties.

(1) Known historic properties inventoried by King County and Washington Department of Archaeology and Historic Preservation are subject to the procedures delineated in Chapter [2.20](#) KMC. Disturbance of known archaeological sites is also subject to State regulations, including Chapters [27.44](#), [27.53](#) and [68.80](#) RCW;

(2) If a known archaeological site or traditional cultural place is affected by a *development* proposal, the ~~director~~*city manager* shall require a site inspection or evaluation by a professional archaeologist and inform and consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes. To the extent feasible, the ~~director~~*city manager* shall coordinate county and State required permitting and compliance procedures and requirements to avoid substantial duplication of effort by permit *applicants*; and

(3) In considering shoreline permits or shoreline exemptions, the *department* may attach conditions to provide sufficient time for the ~~director~~*city manager* to consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes, and to ensure that historic properties are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term stewardship and protection arrangements. Provision for the protection and preservation of historic properties shall be incorporated in permits and exemptions to the maximum extent practical.

b. Inadvertent Discovery.

(1) Consistent with the definitions and requirements contained in Chapters [27.44](#), [27.53](#) and [68.80](#) RCW, whenever potentially significant historic properties or archaeological

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artifacts are discovered in the process of *development* on *shorelines*, work on that portion of the *development* site shall be stopped immediately and the find reported as soon as possible to the **directorcity manager** and, if an archaeological site or artifacts have been discovered, the Washington State Department of Archaeology and Historic Preservation, any concerned Native American tribes and other appropriate agencies;

(2) The **directorcity manager** shall require that a historic property assessment be conducted immediately by a professional archaeologist, ethnographer or historic preservation professional, as applicable, in consultation with State and tribal officials as appropriate, to determine the significance of the discovery and the extent of damage that may have occurred to the resource. The historic property assessment shall be provided to the **directorcity manager** and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of Archaeology and Historic Preservation, and any concerned Native American tribes to determine the significance of the discovery in accordance with Chapter 27.53 RCW and Chapter 25-48 WAC; and

(3) Upon receipt of a positive determination of a property's significance, or if available information suggests that a negative determination is erroneous, the **directorcity manager** may require that a historic property management plan be prepared by a qualified professional archaeologist or other appropriate professional if such action is reasonable and necessary to implement related program objectives.

c. Public Access to Historic Properties.

(1) If a private or publicly owned historic property is identified, *public access* shall be encouraged as appropriate for purposes of public education; provided, that:

(a) The type or level of *public access* is consistent with the long-term protection of both historic resource values and shoreline *ecological functions*; and

(b) An access management plan is developed in accordance with *development* site- and resource-specific conditions to address physical protection of the resource, hours of operation, interpretive or directional signage, lighting, pedestrian access, traffic, and parking, as appropriate, in consultation with the **directorcity manager** and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of

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Archaeology and Historic Preservation, any concerned Native American tribes, or other agencies, as appropriate; and

(2) For archaeological sites and traditional cultural places, approval of proposed access measures by the Washington State Department of Archaeology and Historic Preservation, any concerned Native tribes or other agencies, as appropriate, shall be required prior to provision of *public access* to a site.

16. All projects within the shoreline jurisdiction that are either publicly funded or on public land shall include improvements to shoreline *public access*.

17. Heating and cooling equipment may not be placed in waters of the State.

Chapter 16.50

SHORELINE USES

Sections:

- 16.50.010 General shoreline uses.
- 16.50.020 Interpretation of shoreline use table.
- 16.50.030 Shoreline use table and conditions.
- 16.50.040 Aquaculture.
- 16.50.050 ~~Public boat launching facilities and marinas~~ Boating facilities.
- 16.50.060 Public access.
- 16.50.070 Parks and Recreation.
- 16.50.075 Commercial and light manufacturing uses.
- 16.50.080 Utility facilities.
- 16.50.085 Transportation uses and facilities.
- 16.50.087 Parking
- 16.50.090 Residential uses.
- 16.50.100 Channel migration zone on Swamp Creek.

16.50.010 General shoreline uses.

A. All uses in the shoreline jurisdiction must comply with all City code provisions and with the Kenmore Shoreline Master Program. For a principal use to be permitted in the shoreline, it must be a permitted use

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in the underlying zone, and must be listed as a permitted or conditional use in KMC [16.50.030](#). This section may not authorize a land use that is not allowed by the underlying zoning, but may add restrictions or conditions or prohibit specific land uses within the shoreline jurisdiction.

B. Uses not specifically addressed in this table may be permitted as conditional uses in the shoreline jurisdiction, provided the use meets the criteria for a shoreline conditional use permit **and is compatible with the underlying zoning**.

C. When there is a conflict between permitted land uses, preference for shoreline uses shall first be given to *water-dependent uses*, then to *water-related uses*, then to *water-enjoyment uses*, and finally to *non-water-oriented uses*.

D. Uses existing as of March 30, 2012, that do not conform to these regulations may be continued subject to the provisions of this chapter.

16.50.020 Interpretation of shoreline use table.

A. The shoreline use table in KMC [16.50.030](#) indicates whether a specific use is allowed within each of the *shoreline environments* **designations** and whether it is permitted outright or allowed only as a shoreline conditional use. The process through which a use or development may be permitted is defined under procedures in Chapter [16.75](#) KMC.

B. In the table, *shoreline environments* **designations** are listed at the top of each column and the specific uses are listed along the left-hand side of each horizontal row. The cell at the intersection of a column and a row indicates whether a use may be allowed in a specific *shoreline environment* **designation** and whether additional use criteria apply. The table should be interpreted as follows:

1. If the letter "P" appears in the box at the intersection of the column and the row, the use may be permitted within the *shoreline environment* **designation** if the underlying zoning also allows the use.
2. If the letter "C" appears in the box at the intersection of the column and the row, the use may be allowed within the *shoreline environment* **designation** subject to the shoreline conditional use review procedures specified in Chapter [16.75](#) KMC, and only if the underlying zoning allows the use.

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3. If the letter "X" appears in the box at the intersection of the column and the row, the use is prohibited in that *shoreline environment designation*. These uses may not be authorized through a conditional use, shoreline exemption, or shoreline variance.

4. If the letter "U" appears in the box at the intersection of the column and the row, the use is subject to the same review process and standards as the immediately adjacent upland *shoreline environment designation*.

45. If a number appears after the letter "P₁" or "C" or "U" in the box at the intersection of the column and the row, additional use criteria apply. The use may be permitted subject to the appropriate review process in this section only if the specific use criteria indicated with the corresponding number immediately following the table are satisfied, and only if the underlying zoning allows the use. If more than one number appears at the intersection of the column and row, both numbers apply.

5. If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed within that *shoreline environment* subject to different sets of limitations or criteria depending on the review process indicated by the letter, the specific development criteria indicated in the development condition with the corresponding number immediately following the table, and only if KMC Title 18 allows the use.

6. Definitions of italicized uses in the table may be found in Chapter 18.20 KMC.

16.50.030 Shoreline use table and conditions.

A. Shoreline Use Table.

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
<u>Adult entertainment business</u>	P2	P2	X	X	X	X
<u>Air transportation service</u>	X	X	X	X	X	C14
<u>Ambulatory surgery center</u>	X	X	X	X	X	X
<u>Animal kennel/shelter</u>	X	X	X	X	X	X
<u>Recreational/cultural Arts, entertainment, indoor</u>	P25	P2	P6X	P62,18	P7X	C5X
<u>Arts, entertainment, outdoor</u>	P2	P2	X	P2	P6	X
<u>Auction house</u>	X	X	X	X	X	X
<u>Automotive sales and service, marine</u>	P2	P2	X	X	X	U3
<u>Automotive sales and service, non-marine</u>	X	X	X	X	X	X
<u>Business service, intensive</u>	X	X	X	X	X	X
<u>Business services, standard</u>	P2, X2	P2	X	P2, 3, X2	X	C2X
<u>Cemetery, columbarium or mausoleum</u>	X	X	X	X	X	X
<u>College/university</u>	P3	P3	P3	P3	X	U
<u>Community residential facility</u>	P2	P2	P	X	X	X
<u>Construction and trade</u>	X	X	X	X	X	X
<u>Day-care</u>	P2	P2	X	X	X	X
<u>Eating and drinking place</u>	P2	P2	X	P2,18	X	X

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
<u>Educational service</u>	P2	P2	P2	P2	X	X
<u>Family child-care home</u>	X	X	P	X	C	X
<u>Golf course</u>	X		X	C	X	X
<u>Government services</u> <u>Fire or police facility</u>	P43	P3	P43	PC43	P4X	C4U
<u>Funeral home/crematory</u>	X	X	X	X	X	X
<u>Health care and social assistance</u>	P2,15	P2,15	X	P2,15	X	X
<u>Hospital</u>	X	X	X	X	X	X
<u>Laboratory</u>	P2	P2	X	X	X	X
<u>Manufacturing, uses heavy</u>	P2X	X	X	X	X	X
<u>Manufacturing, light</u>	P2	P2	X	X	X	X
<u>Marijuana business</u>	P2	P2	X	X	X	X
<u>Marijuana cooperative</u>	X	X	X	X	X	X
<u>Marina (recreational-boat moorage)</u>	P8		X	P	X	P
<u>Mobile food service</u>	P2	P2	X	P2	X	P43
<u>Mobile home park</u> <u>Manufactured housing community</u>	X	X	C16	X	X	X
<u>Multiple-family dwelling, multiple-family. See also KMC Section 16.50.090.</u>	P2	P2	P	P2	X	X

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Office	P2	P2	X	P2	X	X
Park. See also KMC Section 16.50.070.	P4	P4	P5	P5	P6	P3
General services	P2, X2		X	P2, 3, X2	X	C2
Personal service	P2	P2	X	P2	X	X
Principal use parking	X		X	X	X	X
Public boat launch	P		X	P, C9	X	P
Recreational facility, indoor	P2	P2	X	P2	X	X
Recreational facility, outdoor. See also KMC Sections 16.50.050, 16.50.070, and 16.55.050.	P4, 17	P4, 17	P5, 17	P5, 17	P6	P3, 4
Regional land use, except for airport, ferry terminal, and highway and street, which are described below. See also KMC Section 16.50.085.	C7	C7	X	X	X	C3
Airport/heliport or helistop	C, X17, 14	X	X	X	X	C, X17, 14
Ferry terminal	C	X	X	X	X	C
Highway and street, except for in-water uses	C11, 10	C10	C11, 10	C11, 10, 12	C11, 10, 12	C11, 12
In-water and overwater highway and street facilities	X		C11, 14	C11, 14	C11, 14	C11, 14

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Expanded highway and street	P18		P18	P18	C18	C18
Wastewater treatment facility and municipal water production, except for in-water uses	C8, 12		C8, 12	X	X	X
In-water wastewater treatment facility, in-water municipal water production facility	X		C12	C12	C12	C12
Regional stormwater management facilities	P13		P13	P13	P13	X
Religious institution	P2	P2	X	X	X	X
Mining Resource land use, except for aquaculture, which is described below:	X	X	X	X	X	X
Aquaculture uses. See also KMC Section 16.50.040.	X	X	X	X	X	C1
In-water fish and wildlife management, except aquaculture	X		C	C	C	C
Retail sales	P2, X2	P2	X	P2, 3, X218	X	C2X
Retail sales, bulk	X	P2	X	X	X	X
Secure facility	X	X	X	X	X	X
Signs	P15		P15	P15	P15	P15

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Shoreline Use Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Use						
C – Shoreline Conditional Use						
X – Prohibited Use						
U – Same use allowances as in adjacent upland Environment						
Single detached dwelling units, single detached. See also KMC 16.50.090.	X	X	P	P	C	P940
Commuter Standalone parking. See also KMC Section 16.50.087.	C4613	X	X	X	X	X
Group residences Supportive living facility	P2	P2	P	PX	CX	X
Temporary lodging	P2	P2	X	X	X	X
Transportation. See also KMC Section 16.50.085.	C2	C2	X	X	X	X
Utility facility, except for in-water uses. See also KMC Section 16.50.080.	P4311	P11	P4311	P4311	P4311	XP3,11
In-water utility facilities	X		C13	C13	C13	C13
Vehicle or equipment rental	P3,18	X	X	P3,18	X	P3,18
Vehicle refueling station	P2	P2	X	X	X	C3
Warehousing	X	X	X	X	X	X
Wholesale trade	P2	P2	X	X	X	X
	Aquaculture					
	Commercial Development					
	Government Services					

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Shoreline Use Table

KEY		DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Use							
C – Shoreline Conditional Use							
X – Prohibited Use							
U – Same use allowances as in adjacent upland Environment							
Manufacturing							
Park/Recreation							
Residential Development							
Accessory uses		P		P	P	C	X
Regional Land Uses							
Utilities							
In-Water Structural Uses							
Signs							

B. Shoreline Use Criteria (Footnotes to Shoreline Use Table in Subsection A of This Section).

1. *Aquaculture* may be allowed only in Lake Washington and only under the following conditions:

- Aquaculture* operations are located at least 500 feet from the Shoreline Residential and Downtown Waterfront Environments.
- Aquaculture* operations waterward of the Natural Environment and Urban Conservancy Environment are limited to activities that do not require structures, facilities or mechanized harvest practices.

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2. *Water-dependent* and *water-related* commercial and manufacturing uses shall be permitted. Public access improvements consistent with this chapter are required for all commercial and manufacturing uses, unless precluded by public safety considerations. Non-*water-dependent* and non-*water-related* residential, commercial, and manufacturing uses shall be permitted only if the use meets the standards of subsections (a), (b), (c) and (d) below:

a. The development is:

(1) Part of a mixed use development that includes a *water-dependent use* and in which at least 50 percent of the land area within the shoreline jurisdiction on the project site is in a *water-dependent use* or *water-related use* (including uses accessory to a *water-dependent use* that are fully incidental and subordinate to the *water-dependent use*), dedicated *public access*, or substantial shoreline habitat enhancement consistent with KMC 16.60.010; or

(2) A new or expanding development in a commercial zone along the Swamp Creek shoreline north of Northeast Bothell Way, where the existing development does not conform with current stream buffer provisions of ~~the Kenmore SMP~~ KMC Chapter 18.55 and where the proposed development would substantially increase the width and enhance the habitat quality of the buffer along Swamp Creek; or

(3) on a site physically separated from the shoreline by another property or public right of way; or

(4) at a shoreline location where navigability is severely limited and the use provides a significant public benefit per "c" below.

b. The *non-water-oriented uses* are located on land unless otherwise authorized in 16.50.075; and

c. The development provides a significant public benefit to help achieve any of the following shoreline element goals:

(1) Economic development for uses that are *water-dependent*;

(2) *Public access*;

(3) *Water-oriented* recreation;

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- (4) Multimodal, *water-dependent* transportation circulation;
 - (5) Conservation or *restoration of critical areas*, scenic vistas, or fish and wildlife habitat;
or
 - (6) Preservation of historic properties;
- d. The development does not include the following uses, which are prohibited in the shoreline:
funeral home/crematory; veterinary clinic; cemetery/columbarium/mausoleum; automotive
repair; automotive services; stable/kennel/cattery; hospital; outdoor advertising service;
miscellaneous equipment rental; automotive rental and leasing; gasoline service stations; fuel
dealers; auction houses; livestock sales; amusement park; drive-in theater; public agency or
utility yard; and propane/compressed natural gas/liquefied natural gas storage tanks serving
multiple lots or uses from which fuel is distributed directly to individual users.
3. New commercial uses may be permitted only if allowed in the underlying zoning, and if *public
access* is provided and the project includes ecological enhancement consistent with KMC
16.60.010. Existing non-*water-dependent commercial* uses may be expanded, provided the
expansion complies with all development standards and the project includes ecological
enhancement consistent with KMC 16.60.010.
43. Only the *water-dependent* portion of the use shall be allowed in the *shoreline environment*,
except as provided in this section for utility uses.
54. In the Downtown Waterfront and AquaticSwamp Creek Commercial Environments, *water-
oriented* recreational uses including parks and *public access* trails and facilities may be allowed
together with accessory recreation facilities that provide water enjoyment for substantial numbers of
persons.; provided, that in the Downtown Waterfront minor non-water-oriented accessory uses
such as children's play equipment, picnic tables, or outdoor exercise course equipment may also
be allowed if they meet the other requirements of this chapter. All other recreational uses shall be
prohibited.
65. In Urban Conservancy and Shoreline Residential Environments, parks, and trails and *boating
facilities* shall be allowed. Golf course shall be a conditional use in the Urban Conservancy
Environment. All other recreational uses shall be prohibited.

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~~76.~~ In the Natural Environment, *water-oriented* passive and low-impact *recreational uses, including public access trails,* shall be allowed. All other *outdoor arts, entertainment or* recreational uses shall be prohibited.

~~87.~~ Wastewater treatment facilities, and municipal water production uses, except for in-water uses, shall be allowed only on Lake Washington *shorelines.* *The listed wastewater treatment facilities, municipal water production facilities, and marinas and* are prohibited on *shorelines* of the Sammamish River and Swamp Creek.

~~98.~~ A boat launch that accommodates motorized vehicles for launching vessels is a conditional use in the Urban Conservancy Environment. Facilities for hand launching of nonmotorized vessels may be allowed as permitted uses.

~~109.~~ New overwater residences, *including floating homes,* are prohibited except for *live-aboards.* They may be allowed; provided, that:

- a. They are for single-family use only;
- b. They are located in a *marina* that provides shower and toilet facilities on land and there are no sewage discharges to the water;
- c. *Live-aboards* do not exceed 10 percent of the total slips in the *marina*;
- d. They are owner-occupied vessels; and
- e. There are on-shore support services in proximity to the *live-aboards.*

~~110.~~ New highway and street construction is allowed only if:

- a. There is no *feasible* alternate location;
- b. Pedestrian, bicycle and public transport needs are addressed; and
- c. When located in the Natural Environment, the use is low-intensity transportation infrastructure; *parking facilities are prohibited in the Natural Environment unless supporting a water-dependent use.*

~~12.~~ The *water-dependent and in-water portions of wastewater treatment and municipal water production facilities may be allowed as a conditional use.*

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4311. Utility facilities may be located within the shoreline jurisdiction if there is no *feasible* alternate location, the alternative would result in unreasonable and disproportionate cost, or the facility is necessary to serve adjacent shoreline uses. In no case are propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users permitted.

4412. Highway and street infrastructure that must be located in water or over water, such as bridges and bridge supports, may be permitted; provided, that the priorities of the Kenmore shoreline *restoration* plan are considered in designing mitigation for impacts from the project.

15. Signs may be permitted subject to the provisions of the underlying zoning and provided:

- a. Signs shall not be erected nor painted on trees, rocks or other natural features.
- b. Glare from artificial lighting of signs shall be shielded or directed away from adjacent properties and the water.
- c. Signs waterward of the ordinary high water mark adjacent to the Downtown Waterfront Environment shall be permitted only to the extent necessary for the operation of a permitted water-dependent use, provided no such sign shall be larger than five square feet.
- d. In the Shoreline Residential, Urban Conservancy and Natural Environments, signs are not allowed except for signs of not more than five square feet within public parks or trails.
- e. Signs to protect public safety or prevent trespass may be allowed and should be limited in size and number to the maximum extent practical.

4613. Commuter parking may only, and only be allowed if it is designed to serve a passenger ferry system.

4714. Helistops and heliports are prohibited in all environments.

15. Veterinary clinics are prohibited in the *shoreline environment*.

16. Except for manufactured housing communities existing as of insert effective date of ordinance, which are permitted outright.

17. *Marinas* are prohibited on *shorelines* of the Sammamish River and Swamp Creek.

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18. Only when accessory to a park or recreational facility and related to water access for the public.

C. Accessory Uses.

1. Any principal use permitted in a specific shoreline environment either outright or as a special use or conditional use shall also be permitted as an accessory use outright or as a conditional use.

21. Uses Conditional or prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses. Examples of accessory uses include parking, offices, and outdoor storage areas. For purposes of this section, landfill, water-based airports, air transportation service, heliports and helistops shall not be considered to be accessory to a principal use and shall only be permitted as provided in the applicable shoreline environment.

32. Unless specifically stated otherwise in the regulations for the applicable environment, accessory uses that are non-water-dependent and non-water-related, even if accessory to water-dependent or water-related uses, shall not be permitted over water according to subsection A of this section only if unless either:

- a. The over-water location is necessary for the operation of the water-dependent or water-related use; or
- b. The lot has a depth of less than 50 feet of dry land.

43. Accessory Parking shall not be permitted over water unless it is accessory to a water-dependent or water-related use located on a lot with a depth of less than 50 feet of dry land and the director/city manager determines that adequate on-site or off-site dry land parking within 800 feet is not reasonably available.

54. Piers, floats, pilings, breakwaters, drydocks and similar accessory structures for moorage shall be permitted as accessory to permitted uses subject to the development standards unless specifically prohibited in the applicable shoreline environment.

65. Accessory uses shall be located on the same lot as the principal use; provided, that when the accessory use is also permitted as a principal use in the shoreline environment applicable to an adjacent lot, the accessory use may be located on that adjacent lot.

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6. KMC Section 16.50.090 contains additional standards for residential *accessory uses*.

D. Outdoor Storage.

Outdoor storage is allowed only in the Downtown Waterfront Environment and is prohibited in all other environments. Such use shall be accessory to a permitted *water-dependent use*, shall be at least 20 feet from the *ordinary high-water mark* and shall meet the following standards:

1. Storage shall not be permitted in required setbacks and shall not be located between the building(s) and the primary street.
2. Storage shall be screened from view from the public right-of-way and adjacent residential zones using a minimum six-foot-high solid wood fence, masonry wall, or vegetation approved by the *city manager*.
3. Storage shall be maintained in a neat, orderly and safe manner and shall not include the exterior accumulation of broken, abandoned or discarded materials, junk, trash, rubbish, or debris.
4. Outdoor storage areas shall be graded and shall meet the requirements of the City's Stormwater Pollution Prevention Manual. Outdoor storage areas may be surfaced with permeable materials if adequate drainage and erosion and dust control are provided.
5. Lighting shall be directed away from adjacent residential zones and shall be shielded as necessary to reduce impacts.

16.50.040 Aquaculture.

A. Any structure used for *aquaculture* that is placed waterward of the *ordinary high-water mark* shall be placed so as not to:

1. Be a significant hazard to navigation;
2. Cause significant damage to neighboring properties;
3. Be a significant hazard to divers and boaters who may frequent the area.

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B. Any byproducts of the aquatic resources facility which are discharged into the water shall not degrade the quality of the recipient water body.

C. *Aquaculture* shall be installed with minimum disturbance to banks and channels and shall not cause extensive erosion or accretion along adjacent *shorelines*.

D. *Aquaculture* facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

16.50.050 Public boat launching facilities and marinas Boating facilities.

~~Public boat launching~~ *Boating* facilities and marinas, including docks serving more than four single-family residences, shall meet the following standards:

A. The facility shall be designed and operated so that there is *no net loss of ecological function* in the shoreline. ~~Where the facility is developed in conjunction with restoration of like habitat areas, improvements in one area may be applied to mitigate impacts that would result from new facilities;~~

B. The streets serving the proposed facility must be adequate to accommodate traffic generated by such a facility safely and conveniently;

C. The facility shall provide adequate parking in accordance with underlying zoning requirements. Long-term parking areas shall be located away from the water. Short-term loading areas, however, may be located near berthing areas;

D. ~~The marina~~ *All boating facilities* shall be sited and designed to protect rights of navigation;

E. ~~The~~ *A* marina must have provisions available for cleanup of accidental spills of contaminants;

F. Lavatory facilities connected to a sanitary sewer and adequate to serve the *marina* shall be provided;

G. Self-service sewage pumpout facilities or the best available method of disposing of sewage wastes and appropriate disposal facilities for bilge wastes shall be provided at *marinas* having in excess of 3,500 lineal feet of moorage or slips large enough to accommodate boats larger than 20 feet in length, and shall be located so as to be conveniently available to all boats. An appropriate disposal facility for removal of bilge wastes shall be either a vacuum apparatus, or oil-absorbent materials and waste receptacles;

H. Untreated sewage shall not be discharged into the water at any time. Treated sewage shall not be discharged while boats are moored;

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- I. *Public access* shall be provided in accordance with KMC [16.50.060](#);
- J. The design shall be compatible with adjacent development;
- K. Covered moorage may only be permitted for vessel repair facilities; and
- L. Extended moorage on waters of the State without a lease or permission is prohibited.

16.50.060 Public access.

Public access shall be required for public projects and *development* on public lands (KMC [16.45.010](#)(B)(16)), commercial and *light* manufacturing uses (KMC [16.50.030](#)(B)(2)), *boating facilities and marinas* (KMC [16.50.050](#)), multifamily development (KMC [16.50.090](#)(A)(1)), and land divisions of more than four lots (KMC [16.50.090](#)(A)(2)). For *development* on private property, *public access* shall be required when such *development* would either generate or increase demand for *public access* and/or would impair existing legal access opportunities or rights.

A. The City adopts the following policies and plans as collectively constituting a shoreline *public access* plan for Kenmore:

- 1. Comprehensive Plan Downtown Sub-Element
- 2. Comprehensive Plan Transportation Element
- 3. Kenmore Parks, Recreation, and Open Space Plan
- 4. Other plans meeting the requirements of WAC 173-26-221(4) and developed through an open public process as provided in WAC 173-26-201(3)(b)(i).

B. Where *public access* is required, an *applicant* shall:

- 1. Seek to provide physical *public access* consistent with the shoreline *public access* plan;

AC. Where *public access* is required, it shall:

- 1. Connect to other public and private *public access* and recreation facilities on adjacent parcels along Lake Washington and the Sammamish River *shorelines* whenever *feasible*;
- 2. Be sited to ensure public safety;

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3. Be open to the general public and accessible directly from a public right-of-way or by an easement granted to the City for *public access*;

4. Enhance access and enjoyment of the shoreline and provide features in scale with the development such as, but not limited to:

- a. View points;
- b. Places to congregate in proportion to the scale of the development;
- c. Benches and picnic tables;
- d. Beach or water access for boats; and
- e. Pathways for pedestrians and bicycles.

BD. Where *public access* is required, the area dedicated and improved for *public access* shall be roughly proportional to the scale and character of the proposed development and its impacts.

CE. Where public access is required, the director/city manager shall prepare written findings demonstrating that the conditions imposed are consistent with the first consider the principles of nexus and rough proportionality, the Act and all relevant constitutional and other legal limits on regulation of private property.

DE. *Public access* improvements shall be designed to be compatible with the purpose and intent of the *shoreline environment* in which they are constructed.

E. Trails and other *public access* improvements are subject to the standards for recreational uses in KMC 16.65.020 and the vegetation management standards in KMC 16.60.020(B).

FG. The provisions of this section do not apply to the following:

- 1. Short plats of four or fewer lots; or
- 2. Where *public access* is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the *shoreline environment*; or Where physical public access is not feasible, opportunities for visual access or other approaches to enhance public access to the shoreline, shall be considered by the applicant. Alternative public access proposals shall be reviewed and approved by the city manager.

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3. Where constitutional or other legal limitations apply.

16.50.070 Parks and Recreation.

A. *Recreational development* in all environments must meet the following standards:

1. The construction of ~~swimming facilities, docks, piers, moorages, buoys, floats, and launching facilities~~ water access structures waterward of the *ordinary high-water mark* shall be governed by the regulations relating to ~~docks, piers, moorage, buoys, floats, or launching facility~~ water access structure construction in KMC 16.55.050.
2. Swimming areas shall be separated from *boat launch* areas and *marinas*, to the maximum extent practical, consistent with KMC 16.55.050.C.
3. New or expanded swimming facilities shall only be permitted if there is an ongoing water quality testing program guided by a monitoring plan approved by the ~~director~~ city manager to ensure public safety.
4. *Public access* trails within the shoreline shall be regulated by the provisions of KMC 16.50.060 and Chapter 18.55 KMC.

B. In the Natural Environment, recreational uses shall meet the following standards:

1. Vehicular access, parking and restrooms should be located outside the shoreline jurisdiction; if infeasible to locate outside of the shoreline jurisdiction, such facilities shall be located as far from the shoreline as is *feasible*;
2. Trails should be designed primarily for pedestrian access, including access by wheelchair where appropriate, and should be no larger/wider than is necessary to accommodate expected pedestrian traffic;
3. Removal of native vegetation for recreational uses shall be the minimum necessary to provide pedestrian access and limited visual access to the shoreline;
4. Public contact with unique and fragile areas shall be permitted where possible without destroying the natural character of the area; and

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5. Viewing, studying, and recording water and nature may be accommodated by platforms, benches or shelters, consistent with public safety and security.

16.50.075 Commercial and light manufacturing uses.

A. Water-dependent and water-related commercial and light manufacturing uses are permitted subject to the applicable requirements and conditions of KMC 16.50.030.A and B.

B. Non-water-dependent and non-water-related uses may be allowed if incorporated with water-dependent uses, if the site is separated from the shoreline, in areas of limited navigability, or if the proposed development provides public access, a significant ecological benefit, or another specified public benefit. (See KMC 16.50.030.B.2.)

C. Commercial or light manufacturing development proposals shall be designed or conditioned to ensure no net loss of shoreline ecological functions, and no significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

D. Non-water-dependent commercial or light manufacturing uses should not be allowed over water except in existing structures or in the limited instances where they are accessory to and necessary in support of water-dependent uses.

16.50.080 Utility facilities.

The following standards apply to utility uses within the *shoreline environment*:

A. Stormwater and sewage outfalls may be permitted in *shoreline environments* if upland treatment and infiltration to groundwater, streams or *wetlands* is not *feasible* per WAC [173-26-020](#) and there is *no long-term adverse* impact on salmon *spawning, rearing or migratory* habitat;

B. Water intakes shall not be permitted near fish spawning, *migratory*, or rearing areas;

C. Water intakes shall comply with Washington Department of Fish and Wildlife fish screening criteria, and to the maximum extent practical, intakes shall be placed at least 30 feet waterward of the *ordinary high-water mark*;

D. Cable crossings for telecommunications and power lines and pipelines for oil, gas, water and other utilities shall:

1. Use the best available technology to protect health, safety, and the environment;

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2. Be routed through sites that are already free of vegetation, such as existing roadways, or attached to existing bridges, to the greatest extent *feasible*;
3. Avoid critical aquatic habitat to the greatest extent *feasible*;
4. If crossing beneath a streambed, utilities shall be designed to avoid streambed mobilization and adverse impacts on groundwater flow, be placed in a sleeve or conduit that allows replacement without need for additional excavation, and return grades to existing or better condition that provides for normal floodwater flow; and
5. Provide mitigation for impacts to shoreline *ecological functions*.

16.50.085 Transportation uses and facilities.

A. Non-water-dependent transportation *uses* shall be located as far landward as possible.

EB. Transportation uses facilities shall employ mitigation sequencing specified in Chapter 18.55 KMC to avoid and mitigate for impacts to *critical areas*.

BC. Bridges, when necessary, should span open water and *floodways*.

CD. Roadways and bridges should be designed to avoid placement of *fill* or structures that would restrict *floodplain* capacity or limit channel migration. If transportation facilities are anticipated to impact floodplains or channel migration zones, mitigation sequencing as specified in Chapter 18.55 KMC shall be employed to avoid and mitigate for impacts.

DE. Construction of private bridges should be minimized, and shared access should be required whenever *feasible*, including when subdivision would create new lots requiring access by bridge.

F. Expansion of existing highways and streets in the shoreline jurisdiction shall be permitted only if the following criteria are met:

1. The expansion is included in the Transportation Element of the Comprehensive Plan, Neighborhood Transportation Plan, Transportation Improvement Program, ADA Compliance Plan, or Target Zero strategy implementation.
2. The expansion does not require acquisition of private property that was unanticipated in the plans under a., above.

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3. The expansion is located within existing rights-of-way or other City-managed land.

4. Alteration and/or fill is the minimum necessary to construct such facilities to meet established safety standards and all applicable SMP standards can be met.

5. Disturbed areas are restored immediately after the use of construction equipment.

If these criteria cannot be satisfied, expansion may only be permitted after approval of a conditional use permit.

F. Lighting from parking areas shall be screened from illuminating fish and wildlife habitat areas and their buffers; provided, that lighting necessary for safe operation of a permitted *water-dependent use* may be allowed, but should be screened to the extent possible from illuminating fish and wildlife habitat areas and their buffers.

16.50.087 Parking

A. Parking facilities in shoreline jurisdiction are not a preferred use and shall be allowed only as necessary to support an authorized use. Parking is prohibited in the Natural Environment unless it supports a *water-dependent use* and complies with subsections B, C and D of this section.

B. In all *shoreline environment designations*, parking should be located outside the shoreline jurisdiction; if infeasible to locate outside of the shoreline jurisdiction, such facilities shall be located as far from the shoreline as is *feasible* unless there are overriding needs for safe ADA (Americans with Disabilities Act) access.

C. Plan, locate and design proposed parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features and will not result in a net loss of shoreline *ecological functions* or adversely impact existing or planned *water-dependent uses*.

D. Lighting from parking areas shall be screened from illuminating fish and wildlife habitat areas and their buffers; provided, that lighting necessary for safe operation of a permitted *water-dependent use* may be allowed, but should be screened to the extent possible from illuminating fish and wildlife habitat areas and their buffers.

16.50.090 Residential uses.

A. *Public access* to the shoreline shall be required for the following residential developments:

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1. Multiple-family dwelling unit developments, including mixed use developments that contain multiple-family dwelling units; and
2. New subdivisions of more than four lots.

B. Residential *accessory uses* must meet the following standards:

1. Non-water-dependent *accessory structures* other than below-grade swimming pools shall be limited to a 150-square-foot footprint.
2. Below-grade swimming pools shall be sited and designed so that they do not adversely affect the flow of groundwater or endanger unstable slopes.
3. *Accessory structures* shall be sited to preserve visual access to the shoreline from adjacent properties and public rights-of-way to the maximum extent practical.
4. Non-water-dependent *accessory structures* and facilities such as sheds, gazebos, swimming pools, and driveways shall not be located in vegetation conservation areas described in Chapter 16.60 KMC.
5. Foot ramps, stairs, and paths to provide pedestrian access to a dock, pier, boat launch, or beach may be allowed in the vegetation conservation areas described in Chapter 16.60 KMC, but shall be limited to the minimum necessary a maximum width of 5' and shall avoid native vegetation removal to the maximum extent practicable to provide pedestrian access.
6. Private boat ramps serving a single residence shall not be located in vegetation conservation areas described in Chapter 16.60 KMC.

16.50.100 Channel migration zone on Swamp Creek.

A. Unless a site-specific study by a qualified professional concludes otherwise, Tthe channel migration zone shall include:

1. The 500-year *floodplain* of Swamp Creek within shoreline jurisdiction; and
2. All area within 112.5 feet of Swamp Creek.

B. Within the *channel migration zone*:

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1. There shall be no subdivision of land **within the channel migration zone** except for the purpose of creating permanent, nonbuildable open space tracts.
2. *Fill* shall not be allowed that impairs channel migration within the *channel migration zone*.
3. No new *development* is allowed where future stabilization, including bank stabilization as well as structural flood hazard reduction, would be necessary.
4. Existing structures can be protected but must use natural stabilization unless proven by a scientifically and technically valid study that the natural stabilization measures will not work.
5. Existing legal uses in the Swamp Creek *floodplain* can be repaired and maintained; provided, that such actions do not cause significant ecological impacts, increase flood hazards to other uses, and are consistent with other relevant laws.
6. Before new structural flood hazard reduction measures in shoreline jurisdiction can be approved, it must be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not *feasible*, that impacts on *ecological functions* and priority species and habitats can be successfully mitigated so as to assure *no net loss of ecological function*, and that appropriate vegetation conservation actions are undertaken.

C. A project proponent may have a *channel migration zone* study completed by a qualified professional hydrogeologist to be reviewed by the City. If the study demonstrates that the entirety of the development property is outside of the *channel migration zone*, then this section will not further apply to the project.

Chapter 16.55

SHORELINE MODIFICATIONS

Sections:

- 16.55.010 General shoreline modifications.**
- 16.55.020 Interpretation of shoreline modifications table.**
- 16.55.030 Shoreline modifications table and conditions.**
- 16.55.040 Shoreline stabilization.**
- 16.55.050 Water access structuresDocks, piers, moorage, buoys, floats or launching facilities.**
- 16.55.060 Grading, dredging, dredge material disposal and filling.**

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16.55.010 General shoreline modifications.

The *shoreline modifications* chapter shall not be used to authorize a *shoreline modification* that is not allowed by the underlying zoning, but may add additional restrictions or conditions or prohibit specific modifications within the shoreline jurisdiction. All *shoreline modifications* in the shoreline jurisdiction must comply with all relevant City code provisions and with the Kenmore *Shoreline Master Program*.

16.55.020 Interpretation of shoreline modifications table.

The *shoreline modification* table in KMC [16.55.030](#) determines whether a specific *shoreline modification* is allowed within each of the *shoreline environments*. The *shoreline environment* is located on the vertical column and the specific *use/modification* is located on the horizontal row of the table. The specific modifications *generally* are grouped by the *shoreline modification* categories in WAC [173-26-231](#). The table should be interpreted as follows:

A. If the letter "P" appears in the box at the intersection of the column and the row, the modification may be allowed within the *shoreline environment* only if the underlying zoning allows the modification.

B. If the letter "C" appears in the box at the intersection of the column and the row, the modification may be allowed within the *shoreline environment* subject to the shoreline conditional use review procedures specified in Chapter [16.75](#) KMC, and only if the underlying zoning allows the modification.

C. If the letter "U" appears in the box at the intersection of the column and the row, the modification is subject to the same review process and standards as in the immediately adjacent upland *shoreline environment designation*.

CD. If a number appears in the box at the intersection of the column and the row, the modification may be allowed subject to the appropriate review process indicated in this section, the specific development conditions indicated with the corresponding number immediately following the table, and only if the underlying zoning allows the modification. If more than one number appears at the intersection of the column and row, both numbers apply.

D. If more than one letter-number combination appears in the box at the intersection of the column and the row, the modification is allowed within that *shoreline environment* subject to different sets of limitations or conditions depending on the review process indicated by the letter, the specific development conditions indicated in the development condition with the corresponding number in KMC [16.55.030\(B\)](#), and only if the underlying zoning allows the modification.

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E. If the letter "X" appears in the box at the intersection of the column and the row, the modification is prohibited in that *shoreline environment*.

F. If "NA" appears in the box at the intersection of the column and the row, the modification is not applicable in that *shoreline environment*.

G. For purposes of interpreting the modifications table, "upland" means that the use or activity is landward of the shoreline waterbody's *ordinary high-water mark*.

16.55.030 Shoreline modifications table and conditions.

A. Shoreline Modifications Table.

Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
Shoreline stabilization. See also KMC Section 16.55.040.						
Shoreline stabilization, not including flood protection facilities	P1	P1	P1	C1	C1	C1, P1
Repair or maintenance of shoreline stabilization facilities	P2	P2	P2	P2	P2	P2
Flood protection facilities	P3	P3	P3	P3	C3	P3
Piers and docks Water access structures ⁴ . See also KMC Section 16.55.050.						
Docks, piers, moorage, buoys, floats or launching facilities	P4		P4	C4	C4	C4, P4
Boat launch – Soft-surface	P	X	X	C	X	U
Boat launch – Residential (including community), Hard-surface	C	X	X	X	X	U
Boat launch, Public or Commercial, Hard-surface	P	X	X	P	X	U
Dock or pier – Residential (including community)	P	X	P	C	X	U

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Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland						
Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
<u>Dock or pier – Public</u>	P	X	P	P	C	U
<u>Dock or pier– Commercial</u>	P	X	X	X	X	U
<u>Floatplane lifts</u>	C9	X	C	C	X	U
<u>Watercraft lifts (including jet ski lifts)</u>	P	X	P	X	X	U
<u>Other floats and moorage buoys</u>	P	X	P	P	P8	U
<u>Repair or replacement of existing water access structures</u>	P	P	P	P	P	P
Fill. See also KMC Section 16.55.060.						
<u>Filling Upland outside of floodplain</u>	P5, C5	P	P5, C5	P5, C5	C5	C5NA
<u>Upland inside of floodplain</u>	P	C	C	C	C	NA
<u>Waterward of the ordinary high-water mark, restoration</u>	NA	P	P	P	P	P
<u>Waterward of the ordinary high-water mark, non-restoration</u>	NA	C	C	C	C	C
Breakwaters, jetties, groins, and weirs						
<u>Breakwaters, jetties, groins and weirs</u>	C65	C5	C65	C65	C65	C65
Grading and dredging. See also KMC Section 16.55.060.						
<u>Grading, dredging, dredge material disposal</u>	P5, C5		P5, C5	P5, C5	C5	C5
<u>Dredging</u>	NA	P	P	P	P	P
<u>Grading</u>	P	P	P	P7	C	NA

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Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland						
Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
Disposal waterward of the <i>ordinary high-water mark</i>	NA	X	X	X	X	P
Upland disposal outside of <i>floodplain or channel migration zone</i>	P	P	P	P	C	NA
Upland disposal inside of <i>floodplain or channel migration zone</i>	C	C	C	C	C	NA
Shoreline habitat and natural systems enhancement projects						
Habitat and natural systems enhancement projects	P76	P6	P76	P76	P76	P76

B. Development Conditions (Footnotes for the Shoreline Modifications Table in Subsection A of this Section).

1. *Shoreline stabilization*, including *bulkheads*, shall be permitted only when it has been demonstrated that stabilization is necessary to protect existing legally established primary structures, public improvements, proposed or existing *water-dependent* development, or projects for the *restoration of ecological functions* or hazardous substance remediation, and must meet the standards in KMC [16.55.040](#). In the Aquatic Environment, stabilization requires conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential Environment.
2. An existing *shoreline stabilization* structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, *tidal action*, or waves. Normal maintenance and repair is allowed; provided, that all work is conducted in a manner that does not cause a net loss of *ecological functions*.

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3. Flood protection facilities must be consistent with the standards in Chapter 16.90 KMC, Flood Damage Prevention, Chapter 18.55 KMC, and the Integrated Stream Protection Guidelines (Washington Departments of Fish and Wildlife, Ecology, and Transportation, 2003).
4. Water access structures ~~Docks, piers, moorage, buoys, floats or launching facilities~~ shall meet the standards in KMC 16.55.050 and are allowed only for:
 - a. *Water-dependent uses*;
 - b. *Public access*;
 - c. Single detached residential units;
 - d. Joint use facilities for multiple-family dwelling unit developments; or
 - e. *Water-related or water-enjoyment uses* only as part of a mixed use development and only if auxiliary to and in support of a *water-dependent use*.

In the Aquatic Environment, docks, piers, moorage, buoys, floats and/or launching facilities require conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential Environment. Water access structures are not allowed in Swamp Creek.

5. Excavation, dredging and filling must meet the standards in KMC 16.55.060. Fill placed waterward of the ordinary high water mark for any use except ecological restoration or for the maintenance and repair of flood protection facilities requires a conditional use permit. Disposal of dredged material within shorelands or wetlands within the shoreline jurisdiction requires a conditional use permit.
65. *Breakwaters, jetties, groins* and weirs are only allowed where necessary to support *water-dependent uses*, *public access*, *approved shoreline stabilization*, or other public uses, as determined by the director *city manager*. *Groins* are only allowed as part of a *restoration* project sponsored or cosponsored by a public agency that has natural resource management as a primary function.
76. *Shoreline habitat and natural systems enhancement projects may include shoreline modifications* of vegetation, removal of nonnative or invasive plants, and *shoreline stabilization*, including the installation of large woody debris, *dredging* and filling, provided the primary purpose is clearly *restoration* of the natural character and *ecological functions* of the shoreline. Mitigation actions identified through biological assessments required by the NOAA Fisheries Service and applied to

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flood hazard mitigation projects may include *shoreline modifications* of vegetation, removal of nonnative or invasive plants, and *shoreline stabilization*, including the installation of large woody debris, *dredging* and filling.

7. *Grading in the Urban Conservancy Environment is only permitted to support public access, restoration, or water-oriented uses. Otherwise, a conditional use permit shall be required.*

8. *Floats and moorage buoys are only permitted waterward of the Natural Environment designation in Lake Washington.*

9. *Except floatplane lifts associated with a regional land use such as Kenmore Air Harbor which are permitted outright.*

16.55.040 Shoreline stabilization.

Shoreline stabilization may be permitted subject to the standards in this chapter, provided:

A. The *applicant* has demonstrated the following in order to construct new *shoreline stabilization*, including additions to, or increases in size of, existing *shoreline stabilization measures*:

1. A *geotechnical analysis* demonstrates that erosion from waves or currents is imminently threatening a primary structure, including residences and that damage is expected to occur within three years if the *shoreline stabilization* is not constructed;
2. The erosion rate exceeds that which would normally occur in a natural condition;
3. The erosion is not caused by upland conditions, such as the loss of vegetation and drainage, on the project site;
4. The proposed *shoreline stabilization* is the least hardened solution that is *feasible* to protect the structures or improvements, including consideration of nonstructural alternatives such as slope drainage systems, vegetative growth stabilization, and gravel *berms*;
5. The proposal is the minimum necessary to protect existing legally established primary structures, new non-water-dependent development, existing water-dependent development or projects for the restoration of ecological functions or hazardous substance remediation;
6. The proposed *shoreline stabilization* does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions; and

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7. Adequate mitigation measures that maintain existing shoreline processes and critical fish and wildlife habitat will be provided that ensure *no net loss* or function of riparian habitat.
- B. *Shoreline stabilization* to replace existing *shoreline stabilization* shall be placed landward of any existing *shoreline stabilization*, except that it may be placed waterward directly abutting the old structure only in cases where the existing *bulkhead* is protecting a residence that was installed occupied prior to January 1, 1992, and removal of the old structure would result in greater impact on ecological functions there are overriding safety or environmental concerns.
- C. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for *shoreline stabilization* by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- The maximum height of the proposed shoreline stabilization shall be no more than four feet in height on Lake Washington.
- D. *Shoreline stabilization* shall minimize the adverse impact on the property of others to the maximum extent practical.
- E. *Shoreline stabilization* shall not be used to create new lands. However, soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
- F. *Shoreline stabilization* shall not interfere with surface or subsurface drainage into the water body.
- G. Automobile bodies, tires or other junk or waste material which may release hazardous substances shall not be used for *shoreline stabilization*.
- H. *Shoreline stabilization* shall be designed so as not to constitute a hazard to navigation and shall not substantially interfere with visual access to the water.

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I. *Shoreline stabilization* shall be designed so as not to create a need for *shoreline stabilization* elsewhere.

J. *Shoreline stabilization* shall comply with the Integrated Stream Protection Guidelines (Washington Departments of Fish and Wildlife, Ecology, and Transportation, 2003) and shall be designed to allow for appropriate *public access* to the shoreline.

16.55.050 Docks, piers, moorage, buoys, floats or launching facilities
Water access structures.

A. ~~Any~~All *water access structures, including docks, piers, moorage, buoys, floats or launching facilities* authorized by this chapter shall ~~not interfere with navigation~~ comply with the following general standards:

~~B1.~~ Any *dock, pier, moorage, buoy, float or launching facility* *water access structure* authorized by this chapter shall ~~not interfere with navigation~~ be subject to the following requirements:

1. *Docks, piers, moorage, buoys, floats or launching facilities* shall not exceed the minimum size necessary to serve the use for which they are designed (see KMC ~~16.55.030(B)(4)~~).
2. *Docks, piers, moorage, buoys, floats or launching facilities* serving more than four single-family residences must also meet the standards in KMC ~~16.50.050~~.
3. Only joint use boat lift, dock, pier, moorage, buoys, float or launching facilities may be permitted for multiple-family dwelling unit development proposals.
4. Only one boat lift, dock, pier, moorage, buoy, float and launching facility may be permitted for each parcel developed with a single detached residential unit and only if the applicant demonstrates there is no other feasible option for shared use facilities. However, installation or retention of additional watercraft lifts beyond one, without a canopy, at a single residential use waterfront structure is allowed. A maximum of three lifts are allowed at a single residential use overwater structure. However, only two lifts can be ground-based; all other lift(s) must be floating or suspended lift(s).
5. Only joint use docks or piers are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a dock or pier.
6. The only structures permitted in the first 30 feet waterward of the ordinary high water mark are piers and ramps. All floats and ells must be at least 30 feet waterward of the ordinary high water mark.

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7. No skirting is allowed on any structure.
8. Surface coverage (includes all overwater portions of the floats, ramps, and ells) shall be limited as follows:
 - a. Moorage facilities serving only one residential waterfront lot shall not exceed 480 square feet;
 - b. Moorage facilities serving two residential waterfront lots shall not exceed 700 square feet; and
 - c. Moorage facilities serving three or more residential waterfront lots shall not exceed 1,000 square feet.
9. To protect anadromous salmon habitat, the following shall apply:
 - a. Docks with configurations that do not include any or all of the following elements shall be subject to the overall length and square footage limitations of this section and no portion of the dock shall exceed four feet in width, unless allowed in this subsection;
 - b. Piers shall not exceed four feet wide and shall be fully grated;
 - c. Ramps shall not exceed three feet wide and shall be fully grated;
 - d. Ells are allowed only over water with depths of nine feet or greater at the landward end of the ell; ells may be up to six feet wide by 20 feet long with a two-foot-wide strip of grating down the center; or ells may be up to six feet wide by 26 feet long with grating over the entire ell;
 - e. Floats are allowed only over water with depths of 10 feet or greater at the landward end of the float; and floats may be up to six feet wide by 20 feet long with a two-foot-wide strip of grating down the center;
 - f. In no case may any moorage facility extend more than 150 feet waterward of the ordinary high water mark;
 - g. The first (nearest shore) piling shall be steel, four-inch piling and at least 18 feet waterward of the ordinary high water mark. Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter;
 - h. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds. If ammoniacal copper zinc arsenate pilings are proposed, the

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applicant will meet all of the best management practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers; and

i. When steel piles are installed, approved sound attenuation measures must be used.

142. Existing habitat features (e.g., large and small woody debris, substrate materials spawning gravel, etc.) shall be retained to the maximum extent practicable and new or expanded moorage facilities water access structures placed to avoid disturbance of such features. Mitigation is required where habitat features cannot be avoided or when habitat features are removed to address navigation or access requirements.

143. Invasive aquatic weeds may be removed by mechanical or manual methods, or controlled with herbicides nonchemical means only, except that milfoil may be removed using chemicals, provided, that the chemicals are applied by a licensed applicator and approved for aquatic use.

124. In order to mitigate the impacts of new or expanded commercial moorage facilities water access structures, the applicant shall develop a mitigation plan that contains one or more of the following measures as necessary to demonstrate no net loss of ecological functions: plant emergent vegetation (if site-appropriate) and a buffer of vegetation a minimum of 10 feet wide along the entire length of the lot immediately landward of the ordinary high water mark. Planting shall consist of native shrubs and trees and, when possible, emergent vegetation. At least five native trees will be included in a planting plan containing one or more evergreen trees and two or more trees that like wet roots (e.g., willow species) per every 100 lineal feet of shoreline. Such planting shall be monitored for a period of five years according to an approved monitoring plan. This subsection is not intended to prevent reasonable access through the shoreline critical area buffer to the shoreline, or to prevent recreational use of the shoreline critical area. This requirement may be waived or reduced for water-dependent transportation uses where it is demonstrated that vegetation could result in safety or navigation hazards.

a. Removal of any additional existing over-water and/or in-water structures that are not the subject of the application or are not otherwise required to be removed.

b. Planting of native vegetation along the shoreline immediately landward of the ordinary high-water mark consisting of trees and/or shrubs native to Puget Sound lowlands.

c. Removal or ecological improvement of hardened shoreline, including existing launch ramps or hard structural shoreline stabilization. Improvements may consist of softening the face and

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toe of the stabilization with soil, gravel and/or cobbles and incorporating vegetation or large woody debris.

d. Removal of man-made debris or other material waterward of the *ordinary high-water mark* that is detrimental to *ecological functions and ecosystem-wide processes*.

e. Participation in an approved mitigation banking or in-lieu-fee program.

135. No ~~private moorage or other~~ *water access* structure waterward of the *ordinary high-water mark*, including structures attached thereto, shall be closer than 12 feet to any adjacent property line except when there is a mutual agreement of adjoining property owners. Excepted from the requirements of this section are boat lifts or portions of boat lifts that do not exceed 30 inches in height measured from the *ordinary high-water mark*.

156. No covered ~~boat lift, dock, pier, covered moorage, covered float, or other covered~~ *water access* structure is permitted waterward of the *ordinary high-water mark*, except as provided below:

a. Submerged, free-standing mechanical boat lifts associated with single detached residential docks or piers and recreational watercraft may be covered with a canopy, provided:

- (1) No canopy shall be more than 25 feet in length or wider than 15 feet;
- (2) No portion of the canopy shall exceed a height of 12 feet above the *ordinary high-water mark*;
- (3) The canopy shall at no time have any side partly or wholly enclosed;
- (4) The highest portion of the canopy shall be located below the lowest grade point on the waterward side of the existing homes on surrounding properties;
- (5) Canopies shall be made out of ~~canvas or other such~~ nontoxic materials that allow light transmission;
- (6) Canopies shall be of a translucent material to allow light transmission;
- (76) The total overwater coverage of the piers, floats, ramps, ells, and canopy for a single-family residence with a single-use moorage shall not exceed 600 square feet; and
- (87) Only one boat lift canopy per single detached residence shall be allowed.

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b. Covered moorage may be provided for commercial boat repair facilities. Applicants shall submit information demonstrating that the covered area is the minimum necessary to serve the proposed use.

447. Proposals to repair or replace existing legally established moorage facilities water access structures in the existing configuration and footprint are allowed, provided the following requirements are met, as applicable:

a. Materials used for pier and dock repairs shall meet the requirements established in subsection B of this section:

b. Any decking that is replaced shall be grated with material that has at least 40 percent open space to allow for light transmission, except on sections of floats where the decking overlays a float tub:

c. Any piles that are replaced shall be the minimum diameter and at the maximum spacing feasible to support the pier or dock configuration; and

d. Pier projects which replace 75 percent or more of the pier support piles shall be reviewed as new piers which must comply with all standards in this chapter.

where the nature of the repair is not described in KMC 16.55.030 shall be considered minor repairs and are permitted, consistent with any applicable standards of this title, KMC Title 18 and any other applicable codes or regulations.

168. No dwelling unit may be constructed on a dock or pier.

B. Any pier, dock, watercraft lift, or mooring buoy authorized by this chapter shall be subject to the following requirements:

Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
General	- No skirting is allowed on any structure. - When steel piles are installed, approved sound attenuation measures must be used. - Only one <u>dock</u> or <u>pier</u> may be permitted for each parcel developed with a single detached residential unit and only if the <u>applicant</u> demonstrates there is no other <u>feasible</u> option for shared use facilities. - Only joint-use <u>docks</u> or <u>piers</u> are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a <u>dock</u> or <u>pier</u>.	

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	- Only joint use boat lifts, docks, piers, moorage buoys, floats or launching facilities may be permitted for multiple-family dwelling unit development proposals. - Docks, or piers serving boating facilities must also meet the standards in KMC 16.50.050. - All float tubs shall be fully encapsulated. - If the standards in KMC 16.55.050.B cannot be met due to a public or private navigational or ecological concern, then an alternative design in lieu of meeting these requirements may be allowed without a shoreline variance if approved by other state and federal agencies, provided any impacts are appropriately mitigated and the facility does not interfere with public use of the shoreline.	
Maximum Area: surface coverage of over-water structures, including any ramps and floats	- Docks or piers shall not exceed the minimum size necessary to serve the use for which they are designed 480 sq. ft. for single residential unit 700 sq. ft. for joint-use facility used by 2 residential units 1,000 sq. ft. for joint-use facility used by 3 or more residential units	- Docks or piers shall not exceed the minimum size necessary to serve the use for which they are designed 120 sq. ft. for single residential unit 240 sq. ft. for joint-use facility used by 2 residential units 360 sq. ft. for joint-use facility used by 3 residential units 480 sq. ft. for joint-use facility used by 4 residential units
Maximum Width	Residential 4 ft. for pier or dock 4 ft. for ramp 6 ft. for ell and float Public or Commercial 4 ft. for main walkway. If project-specific justification of need is provided, the width may be increased to 6 ft. without a variance. 5 ft. for perpendicular fingers or ells 5 ft. for ramp, including railings (travel width is effectively 4 ft.) 8 ft. for ell and float.	Residential 4 ft. for ramp 6 ft. for float Public or Commercial 5 ft. for ramp 6 ft. for float
Maximum Length	26 ft. for ells 20 ft. for floats	20 ft. per float per residential unit, and laid end-to-end. The maximum length is

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	In no case may any moorage facility extend more than 150 feet waterward of the ordinary high-water mark.	thus 20 ft., 40 ft., 60 ft., and 80 ft. for facilities serving 1, 2, 3 and 4 residential units, respectively. Floats may be perpendicular to shore only within existing embayments off of the main river channel. - Public or commercial docks should be no longer than 80 feet unless project-specific justification of need is provided. - Ramps shall be the minimum length necessary to provide safe access to the float and to position the float so that the float and a moored boat would not ground on the substrate or disturb the substrate by boat propeller action.
Decking and Material Standards	- Ramps and piers, including ells and perpendicular fingers, shall be fully grated. - Floats shall be fully grated on all deck surfaces not underlain by float tubs, with a maximum area of float tub of 70 percent of the total float area. The number and area of float tubs shall be minimized to the amount necessary based on design and engineering considerations.	- Floats shall be fully grated on all deck surfaces not underlain by float tubs, with a maximum area of float tub of 70 percent of the total float area. The number and area of float tubs shall be minimized to the amount necessary based on design and engineering considerations. - Ramps shall be fully grated.
	The grating must be either multi-directional grating with a minimum of 40% open space or rectangular grating with a minimum of 60% open space. Provide documentation to show percent of open area.	
Location	The only structures permitted in the first 30 feet waterward of the ordinary high-water mark are piers and ramps.	Floats shall be located no less than 5 feet and no more than 10 feet from the ordinary high-water mark measured from the landward edge of the float. To avoid interfering with river navigation and public use of the water, private moorage

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	All floats and <i>ells</i> must be at least 30 feet waterward of the <i>ordinary high-water mark</i>.	facilities may extend no farther waterward than one-third the width of the river in the location of the proposed structure. - The <i>city manager</i> may allow floats to be positioned up to an additional 10 feet waterward from the <i>ordinary high-water mark</i> as needed to reach a sufficient boat moorage depth (greater than 3 feet). - Floats shall be located as far as <i>feasible</i> from the mouth of any named or numbered tributary entering the Sammamish River to reduce potential conflict with migrating salmon.
Piles	- The first (nearest shore) piling shall be steel, 4-inch-diameter or the smallest diameter necessary to serve the specific structure as demonstrated by an engineer, and at least 18 feet waterward of the <i>ordinary high-water mark</i>. - Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter unless required per project-specific engineering analysis.	- No more than two anchor piles shall be allowed per private moorage facility (joint-use, public or commercial facilities may have two piles per 20 feet of <i>float</i> length, but the number of piling for such facilities shall be the minimum number given site-specific engineering and design considerations). - Anchor piles shall be the minimum size <i>feasible</i> given site-specific engineering and design considerations and shall not exceed 12 inches in diameter unless a larger size allows for a reduced number of piles.
Materials	- Any paint, stain or preservative applied to components of the overwater structure must be leach-resistant, completely dried or cured prior to installation. - Materials shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds as outlined in the latest edition of the Western Wood Preservers Institute Best Management Practices for the Use of Treated Wood in Aquatic and Sensitive Areas.	

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	If ACZA-treated pilings are proposed, the <i>applicant</i> will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers Institute.	
Floatplane lifts	- The deck of the lift shall be fully grated and shall be the minimum size necessary. The following two standards do not apply to a regional land use such as Kenmore Air Harbor, but do apply to lifts associated with all other uses: - One platform lift serving a floatplane is allowed per lot. - Floatplanes may not be stored in the shoreline buffer.	Prohibited
Watercraft lifts	- One free-standing or floating boatlift with a canopy is allowed per detached dwelling unit. - Additional watercraft lifts, without a canopy, at a single residential use waterfront structure are allowed, not to exceed three and only two can be ground-based; all other lift(s) must be floating or suspended lift(s).	- One free-standing or floating boatlift with a canopy is allowed per detached dwelling unit OR 2 jet ski lifts or 1 fully grated platform lift is allowed, per detached dwelling unit - Boatlifts shall be located on the waterward, upstream or downstream sides of the dock, not on the landward side of the dock.
Mooring Buoys	- No more than one (1) mooring buoy is permitted per detached dwelling unit, in lieu of a dock or pier. - Mooring buoys shall not interfere with navigation. b. The use of buoys for moorage of recreational and commercial vessels is preferred over pilings or float structures. e. Buoys shall be located and managed in a manner that minimizes impacts to aquatic habitat. d. No more than four buoys per acre of surface water are allowed. - Use of helical anchors with a midline float to prevent dragging on the river or lake bottom is the preferred method to secure buoys.	

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17. Buoys shall meet the following conditions:

a. Buoys shall not impede navigation;

C. Any *boat launch* authorized by this chapter shall be subject to the following requirements:

1. Location Standards

a. *Boat launches* shall be sited so that they do not significantly damage fish and wildlife habitats and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent *feasible*.

b. *Boat launches* shall not be approved in cases when it can be reasonably foreseen that the development or use would require maintenance *dredging* during the life of the development or use.

c. *Boat launches* anticipated to be used by motorized boats shall be separated from existing designated swimming areas and other *water access structures* on adjacent properties by a minimum of 25 feet.

d. Public and commercial *boat launches* shall be located only at sites with suitable transportation access. The *applicant* must demonstrate that the streets serving the *boat launch* can safely handle traffic generated by such a facility, and that parking for vehicles and attached trailers is sufficient.

e. Public and commercial *boat launches* shall be located farther than 50 feet from the outlet of a stream, including piped streams, when *feasible*.

2. Size – The *applicant* shall demonstrate that the proposed size of the *boat launch* is the minimum width and length below the *ordinary high-water mark* necessary to safely launch the intended craft.

3. Design Standards

a. Soft-surface *boat launches* shall be constructed of gravel, vegetation-stabilized earth, or other similar natural material. When only vegetation, and not the ground surface or lake and river substrates, is modified to allow for hand-launch of nonmotorized watercraft, that modification is not considered a *boat launch* subject to these regulations.

b. Hard-surface *boat launch* designs, in order of preference, are:

(1) Open grid with minimum coverage of substrate.

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(2) Seasonal ramps that can be removed and stored upland.

(3) Structures with segmented pads and flexible connections that leave space for natural substrate and can adapt to changes in shoreline profile.

4. Public or commercial *boat launches* shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.

CD. Proposals that do not meet the requirements of subsection B (B)(6), (B)(8), (B)(9) or (B)(15) of this section and that are designed to support a commercial or light manufacturing *water-dependent* use, or to provide *public access*, or to serve residential uses, may be considered by the *director/city manager*. For any alternative proposal, the *applicant* must demonstrate that the proposed deviation is the minimum necessary to meet the needs of the specific use proposed, and provides an equal or greater degree of protection of *ecological functions* and anadromous species habitat than would strict adherence to the standards. For purposes of meeting this requirement, the *director/city manager* will review the required habitat management plan to determine whether the project is adequately protective.

16.55.060 Grading, dredging, dredge material disposal and filling.

Grading, dredging, dredge material disposal and filling must be consistent with Chapter 16.90 KMC and may be permitted in *shorelines* only as follows:

A. *Fill* may be permitted below the *ordinary high water mark* only:

1. When necessary to support a *water-dependent* use;
2. To provide for *public access*;
3. When necessary to mitigate conditions that endanger public safety, including flood risk reduction projects;
4. To allow for cleanup and disposal of contaminated *sediments* as part of an interagency environmental cleanup plan;
5. To allow for the disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
6. For expansion or alteration of transportation or utility facilities currently located on the shoreline and then only upon demonstration that alternatives to *fill* are not *feasible*; or

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7. As part of mitigation actions, environmental *restoration* projects and habitat enhancement projects.
- B. *Grading, dredging*, and filling shall be located, designed, and constructed to protect shoreline *ecological functions* and *ecosystem-wide processes*, including channel migration, and mitigation shall employ the mitigation sequence in KMC 18.55.210.
- C. *Dredging* and dredged material disposal below the *ordinary high-water mark* shall be permitted only:
1. When necessary for the operation of a *water-dependent use*;
 2. When necessary to mitigate conditions that endanger public safety or fisheries resources;
 3. For establishing, maintaining, expanding, relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigation uses when:
 - a. Significant ecological impacts are minimized;
 - b. Mitigation is provided, employing the mitigation sequence in KMC 18.55.210; and
 - c. *Dredging* is maintained to the existing authorized location, depth and width;
 4. For *restoration* projects associated with implementation of the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or any enhancement or *restoration* project; or
 5. For flood risk reduction projects conducted in accordance with Chapter 16.90 KMC.
- D. *Dredging* is not allowed waterward of the *ordinary high-water mark* for the primary purpose of obtaining fill material.
- E. Disposal of dredged material shall be done only in approved upland disposal sites and is not allowed within *critical areas* or their buffers.
- F. Stockpiling of dredged material in or under water is prohibited.
- G. In order to ensure that operations involving dredged material disposal and maintenance *dredging* are consistent with the *Shoreline Master Program* as required by RCW 90.58.140(1), no *dredging* may commence in any *shoreline environment* without the responsible person having first obtained either a *substantial development* permit or a statement of exemption. A statement of exemption or shoreline

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permit is not required prior to emergency *dredging* needed to protect property from imminent damage by the elements if a statement of exemption or *substantial development* permit is subsequently obtained following the procedures in Chapter 16.75 KMC.

H. The removal of gravel for flood management is allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of *ecological functions*, and is part of a comprehensive flood management solution.

Chapter 16.60

VEGETATION CONSERVATION IN BUFFERS

Sections:

16.60.010 Vegetation conservation areas.

16.60.020 Vegetation management within critical areas.

16.60.030 Vegetation management within Lake Washington shoreline buffers.

16.60.010 Vegetation conservation areas.

A. *Shoreline buffers* shall be considered vegetation conservation areas in which existing native vegetation is retained, except in the following circumstances:

1. The activity is part of a permitted shoreline *restoration* or enhancement project;
2. The activity is an allowed *water-dependent* or *water-enjoyment use* or modification;
3. The activity implements a *public access* or recreation maintenance plan; or
4. The vegetation removal is otherwise specifically allowed under Chapter 16.50, 16.55, or 18.55 KMC.

Vegetation clearing shall occur only in the minimum shoreline area that is necessary to support the permitted use and shall be mitigated. unless removal is specifically allowed in this chapter or it can be demonstrated that another management approach would provide equal or better protection for shoreline ecological processes and functions. Nonnative vegetation may be retained unless otherwise required to be replaced as part of an enhancement associated with *development* or expansion of *development* on the property.

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B. The vegetation management standards established in KMC Chapter 18.55 for *critical areas* and their buffers shall apply within all *shorelines*.

CB. Retention of forest communities along stream and river channels provides shade and a source of woody debris to the aquatic habitat. ~~Only Native and nonnative~~ trees determined by the City to be hazardous or diseased may be removed, ~~unless authorized under subsection A of this section~~. Selective pruning for safety and view protection is allowed, provided pruning is conducted in a manner that minimizes harm to the health of the trees being pruned.

DC. Nonnative vegetation may be removed as part of a *restoration* or enhancement project if replacement plantings will provide greater benefit to shoreline ecological processes than would be provided by strict application of this chapter.

ED. Landscaping plans for *shoreline buffers* associated with shoreline *development* regulated under the shoreline code must be prepared by a ~~landscape architect or certified professional wetland~~ ~~scientist~~ ~~qualified professional with experience developing native lake- or riverfront landscaping plans~~. Landscaping plans are not required for normal maintenance, including maintenance of existing nonconforming landscaping that complies with KMC 16.75.050.

FE. Landscaping plans for *shoreline buffers* should avoid adverse impacts on existing public views of the shoreline.

GF. Vegetation management in *shorelines* shall be consistent with the requirements for *grading* permits under Chapter 15.25 KMC. If there is a conflict between this chapter and Chapter 15.25 KMC, the more restrictive standards shall apply.

HG. When considering compensatory habitat enhancement as mitigation for impacts from new structures, such as when a reduced buffer ~~or shoreline setback~~ or a non-~~water-dependent use~~ is requested, the enhancement should:

1. ~~B~~be proportional to the degree of impact of the new structure ~~and associated alterations~~ on shoreline *ecological functions*; ~~For example, an approved buffer or setback reduction should be compensated with an equivalent area of native vegetation enhancement, including trees along the water's edge, when feasible;~~
2. ~~and it~~ take into account the degree to which the existing buffer has already been compromised;

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3. Offset changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise or activities) that are a result of the project; and
4. Enhancement should focus on restoring *ecological functions* that are most critical and that have been most diminished in the Kenmore shoreline.

In approving any compensatory habitat enhancement plan, the director shall consider the changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise, or activities) that the project would cause. Enhancements should generally focus on offsetting these impacts but may also focus on restoring other critical *ecological functions* in the shoreline that have been lost or diminished over time (such as placement of large woody debris in water or restoring shallow water habitat) at a sub-basin or watershed scale. The director/city manager may determine whether an enhancement that provides a broader *ecological* benefit may be substituted for one that would offset the impacts of an individual project.

The director/city manager may deny a request to allow intrusion into a buffer or for *development* of a non-water-dependent use if the enhancement proposed does not fully mitigate the impacts of the project or provide a sufficient broader *ecological* benefit.

16.60.020 Vegetation management within critical areas.

A. Vegetation management standards established in KMC ~~18.55.150(A)(5)~~, ~~18.55.320(F)(5)~~ and (6), ~~18.55.520(A)(2)(d)~~ and (G), ~~18.55.530~~ and ~~18.55.650(A)(5)~~ for *critical areas* and their buffers shall apply within all shorelines.

B. Vegetation management standards established in KMC ~~18.55.420~~ for streams and their buffers shall apply within Sammamish River and Swamp Creek shorelines. In addition to provisions for recreational uses in KMC ~~16.65.020~~ allowing limited modifications to critical area buffers for the purposes of public access improvements, the following standards shall apply in shorelines:

1. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the *ecological functions* of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if necessary to reduce impacts on critical areas or adjacent properties, or

EXHIBIT 1

access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer and wetlands.

2. When public access is being provided as a part of mixed use development allowed in the Urban Conservancy Environment under KMC 16.50.030(B)(2)(a)(2), the director may allow public access trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. [Ord. 12-0334 § 3 (Exh. 1).]

16.60.030 Vegetation management within Lake Washington shoreline buffers.

A. Vegetation removal within lake *shoreline buffers* is prohibited in the Shoreline Residential, Urban Conservancy, and Natural Shoreline Environments along Lake Washington unless the activity is part of a shoreline *restoration* or enhancement project or the vegetation removal is otherwise specifically allowed under Chapter 16.50 or 16.55 KMC.

B. Vegetation clearing for permitted water dependent uses is allowed in the Downtown Waterfront Environment. Such vegetation clearing must occur only in the minimum shoreline area that is necessary to support the permitted water dependent use.

Chapter 16.65

SHORELINE DENSITY AND DIMENSIONS

Sections:

16.65.010 Interpretation of shoreline density and dimensions table.

16.65.020 Shoreline density and dimensions table and development conditions.

16.65.010 Interpretation of shoreline density and dimensions table.

A. The shoreline density and dimensions table in KMC 16.65.020.A establishes the shoreline standards within each of the *shoreline environments*. The *shoreline environment* is located on the vertical column and the density and dimensions standard is located on the horizontal row of the table. The table should be interpreted as follows:

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1. If the cell is marked with a "Z" in the box at the intersection of the column and the row, the shoreline does not impose a specific buffer requirement on that use, although the standards for the underlying zoning apply. In some cases, no standard is provided because the use is prohibited under Chapter 16.50 KMC.

21. If the cell has a number in the box at the intersection of the column and the row, that number is the density or dimension standard for that *shoreline environment*.

32. If the cell has a parenthetical number in the box at the intersection of the column and the row, that parenthetical number identifies specific conditions listed in KMC 16.65.020(B) that are related to the density and dimension standard for that environment.

B. The density and dimensions enumerated in this section apply to any lot within the shoreline jurisdiction. If there is a conflict between the density and dimension standards in this section and the underlying zoning regulations, the more restrictive standard shall apply.

C. For development in critical areas and critical area buffers, the applicable provisions of Chapter 18.55 KMC apply unless a specific exception is provided in the shoreline code.

1. Because Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.

2. Within the shoreline jurisdiction, the required acreage replacement ratios for wetlands shall be as follows:

Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment (C/R)	Creation (C) or Reestablishment (R) plus Enhancement (E)	Enhancement (E) Only
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

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16.65.020 Shoreline density and dimensions table and development conditions.

A. Shoreline Density and Dimensions Table.

Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Standards						
Shoreline Buffers from OHWM on Lake Washington						
Residential development ¹						
Single-family	NA	NA	25 ft	115 ft	150 ft	--
Other	50 ft	NA	75 ft	115 ft	NA	
Water-oriented parks and outdoor recreational facilities	20 ft (3)	NA	25 ft (3)	75 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	50 ft (1)	NA	75 ft	100 ft	150 ft	--
Other water-oriented uses	20 ft	NA	100 ft	150 ft	150 ft	--
All other non-water-oriented uses	50 ft (1)	NA	150 ft	150 ft	150 ft	--
Water-dependent commercial development	20 ft (1)		Z	115 ft (1)	Z	0
Water-related commercial development	20 ft (1)		Z	115 ft (1)	Z	0
Non-water-dependent and non-water-related commercial development	50 ft (1)		Z	150 ft	Z	Z
Government services	20 ft (6)		20 ft (6)	20 ft (6)	20 ft (6)	0
Single-family residential development	Z		25 ft (2)	115 ft (2)	150 ft (2)	Z
Multifamily residential development	50 ft		75 ft	115 ft	Z	Z
Water-dependent and water-related manufacturing and industrial use	20 ft (1) (3)		Z	115 ft (1) (3)	Z	0
Non-water-related manufacturing and industrial use	50 ft		Z	Z	Z	Z

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Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Parks and recreation	50 ft (4)		75 ft (4)	115 ft (4)	115 ft (4)	0
Accessory surface parking	100 ft		100 ft	115 ft	150 ft	0
Utilities and regional land uses	50 ft (5)		75 ft (5)	115 ft (5)	115 ft (5)	Z
Shoreline Buffers from OHWM on the Sammamish River						
Residential development ¹	75 ft	NA	Reach ² : B1 - 150 ft B2 - 100 ft B3 - (4) B4 - 15 (6)	150 ft	150 ft	--
Water-oriented parks and outdoor recreational facilities	50 ft (3)	NA	50 ft (3)	100 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	100 ft	NA	75 ft	100 ft	150 ft	--
Other water-oriented uses	75 ft	NA	50 ft	100 ft	150 ft	--
All other non-water-oriented uses	100 ft	NA	150 ft	150 ft	150 ft	--
Shoreline Buffers from OHWM on Swamp Creek						
Residential development ¹	NA	60 ft	50 ft	150 ft	150 ft	--
Water-oriented parks and outdoor recreational facilities	NA	50 ft (3)	50 ft (3)	100 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	NA	60 ft	75 ft	100 ft	150 ft	--
Other water-oriented uses	NA	50 ft	50 ft	100 ft	150 ft	--
All other non-water-oriented uses	NA	60 ft	150 ft	150 ft	150 ft	--
Building Setback from the Shoreline Buffer						
Single-family usesAll uses	15 ft (2)	15 ft (2)	2515 ft (2)	15 ft (2)	15 ft (2)	Z--

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Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
All uses except single-family uses	15 ft		15 ft	15 ft	15 ft	Z
Building Height						
Base height	35 ft	35 ft	35 ft	35 ft	30 ft	35 ft
Additional height allowed when permitted in underlying zoning	Yes (57)	Yes (5)	Yes (57)	Yes (7) No	No	No

¹Residential development means community residential facility, family child-care home, manufactured housing community, multiple-family dwelling, single detached dwelling unit, supportive living facility, and temporary lodging.

²Sammamish River reaches are shown on Map 1, Shoreline Environment Designations.

B. Development Conditions (Footnotes to Shoreline Density and Dimensions Table in Subsection A of This Section).

1. New water-dependent uses may be allowed within a shoreline buffer only if impacts are mitigated consistent with the requirements in KMC 18.55.190 through 18.55.220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions.

1. The buffer associated with water-oriented uses may be applied to non-water-oriented uses director may allow non-water-dependent uses within the shoreline buffer along the inner harbor portion of the Downtown Waterfront area at the northeast end of Lake Washington, only if:

- a. The uses are developed in conjunction with a public access promenade adjacent to the water; and
- b. The uses do not interfere with public access or preclude the use of the shoreline for water-dependent uses; and

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c. Mitigation is provided consistent with the requirements in KMC 18.55.190 through 18.55.220, 18.55.330 and 18.55.430 such that there is *no net loss* of shoreline ecological processes or functions.

2. Single-family residential development shall provide buffers and ~~b~~Building setbacks as follows:

a. On Lake Washington in Shoreline Residential areas:

(1) A minimum ~~shoreline buffer~~ of 25 feet from the ~~ordinary high water mark~~ shall be provided as a vegetation conservation area.

(2) ~~The minimum building setback of 25 feet from the shoreline buffer may be~~ reduced to five feet if vegetation in the required buffer is reestablished or enhanced, according to the standards in KMC 16.60.010(GH).

b. On Lake Washington in Urban Conservancy areas:

(1) A minimum buffer of 115 feet from the ~~ordinary high water mark~~ shall be provided as a vegetation conservation area.

(2) A minimum building setback of 15 feet from the ~~shoreline buffer~~ shall be provided.

c. On Lake Washington in Natural areas:

(1) A minimum buffer of 150 feet from the ~~ordinary high water mark~~ shall be provided as a vegetation conservation area.

(2) A minimum building setback of 15 feet from the ~~shoreline buffer~~ shall be provided.

d. On all other ~~shorelines~~, single-family development shall provide a buffer as required by the provisions of Chapter 18.55 KMC. Buffers may be reduced to the specified minimum setbacks in this table only if the reduced buffers are allowed by the provisions of Chapter 18.55 KMC.

3. Outdoor storage for ~~water-dependent~~ manufacturing and industrial uses must be at least 20 feet from the ~~ordinary high water mark~~ in the Downtown Waterfront Environment and is prohibited in all other environments.

3. Public trails in ~~critical areas~~ and shoreline and ~~critical area~~ buffers are specifically addressed in Chapter 18.55 KMC. In recognition of the existing conditions of current and planned City shoreline parks and public or private outdoor recreational facilities, the following standards shall guide new

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development and redevelopment of *water-oriented* park and outdoor recreational facilities in buffers. For any allowed development or modification within a buffer, *applicants* shall submit a plan that addresses compliance with each of the following applicable standards and principles. The City may review and condition the project to more fully implement the principles below: *New public access* improvements shall comply with the requirements of Chapter ~~18.55~~ KMC; provided,

a. In addition to trails and *water-dependent* developments, such as *water access structures*, the following list of uses and modifications may be allowed within buffers if they support *water-oriented* parks and outdoor recreation facilities and demonstrate consistency with b through f below. This list will serve as a guide, and is not exclusive. The *city manager* has the discretion to decide if a proposed use or modification supports *water-oriented public access* and outdoor recreation, and shall consult the City's *public access* plan as identified in KMC 16.50.060.

(1) Benches, picnic tables and picnic shelters.

(2) Play and exercise equipment.

(3) Boating support improvements (e.g., boat storage, staging areas, temporary seating for events).

(4) Observation platforms.

(5) Visual and auditory art installations.

(6) Safety improvements (e.g., cameras, fencing, fire prevention).

b. that *new public access* improvements may be allowed within *critical areas*, or shoreline or *critical area* buffers, if *New or expanded water-oriented* development shall follow mitigation sequencing to protect existing riparian areas and other *critical areas*. Unavoidable impacts ~~are~~ shall be mitigated consistent with the requirements in KMC ~~18.55.190~~ through ~~18.55.220~~, ~~18.55.330~~ and ~~18.55.430~~ such that there is *no net loss* of shoreline ecological processes or functions, ~~and the public access~~ improvements meet the following standards:

a. In order to encourage public access improvements and improved shoreline habitat in the Downtown Waterfront shoreline, a public access trail may be located within the stream buffer required in KMC ~~18.55.420~~, when accompanied by a plan demonstrating that the ecological

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functions of the overall required buffer area on a project site would be substantially improved. Trails paralleling the shoreline of the Sammamish River in the Downtown Waterfront Environment shall be located at least 50 feet from the ordinary high water mark. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the buffer.

c. To the extent *feasible*, non-water-oriented park and outdoor recreational uses and modifications should be upland of *water-oriented uses* and modifications.

d. If parking improvements supporting *water-oriented parks* and outdoor recreation facilities cannot comply with KMC 16.50.087, parking within buffers shall be limited to that necessary to provide vehicle access to *boat launches*, to improve existing informal parking areas, to expand existing parking, or to provide ADA parking when there are no *feasible* locations outside of shoreline jurisdiction and outside of *shoreline buffers*. New or improved pollution-generating impervious surfaces shall provide water quality treatment consistent with the City's adopted Surface Water Design Manual. All parking should be located as far from the *ordinary high-water mark* as *feasible* and any expansions should not extend closer to the shoreline waterbody.

e. New and expanded *public access* and recreation uses in shoreline jurisdiction shall be located to avoid and minimize intrusion into riparian areas, as well as avoid tree and shrub removal. Necessary tree removal shall be mitigated at a 3:1 ratio, with an emphasis on use of native conifers placed to maximize ecological benefits to the shoreline waterbody, and the public access improvements meet the following standards:

f. A vegetation management strategy for any allowed uses in shoreline jurisdiction shall be developed that incorporates a site-specific plan for use of integrated pest management techniques, if applicable, identifying anticipated use of fertilizers, herbicides and pesticides. The strategy shall include methods of application that ensure that these materials will not enter the water.

b. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront Environment, *public access* improvements may extend to the water's edge when accompanied by a plan demonstrating that the *ecological functions* of the overall required buffer area on a project site would be substantially improved.

4. The *shoreline buffer* for residential development in the area designated on Map 1, Shoreline Environment Designations, as Reach B-3 shall be as follows:

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a. On lots with an average depth of less than 100 feet measured upland from the *ordinary high-water mark*, the buffer shall be 25 feet.

b. On lots with an average depth of greater than 100 feet measured upland from the *ordinary high-water mark*, the buffer shall be the lesser of 50 feet or 30 percent of the average lot depth.

5. Underground utilities are allowed in the *shoreline buffer*.

6. Only water-dependent government service uses are allowed and such uses may require *development* in the buffer. If, through mitigation sequencing per KMC 18.55.210, impacts to the buffer are found to be unavoidable, the buffer may be reduced, provided there is *no net loss of ecological functions*.

75. Additional *height* may be permitted in the Downtown Waterfront, Shoreline Residential and Swamp Creek Commercial environments under the following conditions:

- a. The structures would not obstruct the view of a substantial number of residences; and
- b. The structures are located in an area designated on Map 1, Shoreline Environment Designations (attached to Ord. 42-033419-0490 as Exhibit 2, and incorporated by reference), as allowing these additional *heights*; and
- c. The structure *height* complies with the allowable *height* of the underlying zone and the following additional *height* limits within the shoreline; and
- d. The additional *height* of the structures would not impair the *ecological functions* of the stream, lake, *wetland*, or the required buffer. In particular, the effects of shading and light impacts on the viability of vegetation in the buffer shall be considered when making this determination; and
- e. BeThe structures are outside of the *floodway* in effect at the time of permit application; and
- f. The structures would Not be within a *wetland* or *wetland* buffer as regulated by Chapter 18.55 KMC.

6. The *shoreline buffer* of 15 feet applies to the existing manufactured housing communities. A *shoreline buffer* of 75 feet shall apply to any proposed change of use, but may be reduced to 50 feet without a shoreline variance with implementation of (1) a buffer enhancement plan, consistent with

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KMC 16.60.010.H and applicable provisions of Chapter 18.55 KMC, and (2) a public access plan, consistent with KMC 16.50.060.

Additional Height Allowances

Distance from Structure to Ordinary High-Water Mark	Maximum Height Allowed Area H-1	Maximum Height Allowed Area H-2	Maximum Height Allowed Areas H-3 and H-4
Less than 50 feet	35 feet	35 feet	35 feet
50 to 100 feet	50 feet	45 feet	35 feet
100 to 112.5 feet	50 feet	75 feet	35 feet
112.5 to 200 feet	50 feet	75 feet	65 feet

The burden to demonstrate that the proposal meets the criteria of this section is on the *applicant*.

The ~~director~~*city manager* may require technical studies as necessary to demonstrate compliance.

C. Additional Shoreline Buffer Standards.

1. New *water-dependent uses* may be allowed within a *shoreline buffer* only if *the use is allowed per KMC 16.50.020 and if* impacts are mitigated consistent with the requirements in KMC ~~18.55.190 through 18.55.220, 18.55.330 and 18.55.430~~Chapter 18.55 such that there is *no net loss* of shoreline ecological processes or functions.

2. Underground utilities are allowed in the *shoreline buffer*.

Chapter 16.68

SIGNS

Sections:

16.65.010 Signs in the shoreline.

16.65.010 Signs in the shoreline.

Signs may be permitted subject to the provisions of the underlying zoning and provided:

A. *Signs* shall not be erected nor painted on trees, rocks or other natural features.

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B. Glare from artificial lighting of *signs* shall be shielded or directed away from adjacent properties and the water.

C. *Signs* waterward of the *ordinary high-water mark* adjacent to the Downtown Waterfront Environment shall be permitted only to the extent necessary for the operation of a permitted *water-dependent use*, provided no such *sign* shall be larger than five square feet.

D. In the Shoreline Residential, Urban Conservancy and Natural Environments, *signs* are not allowed except for *signs* of not more than nine square feet within public parks or trails.

E. *Signs* to protect public safety or prevent trespass may be allowed and should be limited in size and number to the maximum extent practical.

Chapter 16.70

SUBDIVISIONS

Sections:

16.70.010 Subdivisions.

16.70.010 Subdivisions.

A. Any legally created, existing lot that does not comply with the density and dimensions standards of Chapter 16.65 KMC and KMC Title 18 and that is located wholly or partially within the *shorelines of the State* shall be subject to the following provisions:

1. If the adjoining property is not under the same ownership as such lot, then the lot shall be considered a separate building site; and
2. If the adjoining property is under the same ownership as such lot, then the lot shall not be considered a separate building site until the lot is combined with adjoining property under the same ownership in such a way as to comply with the density and dimensions standards of Chapter 16.65 KMC and KMC Title 18.

B. Submerged land within the boundaries of any waterfront parcel shall not be used to compute lot area, lot dimensions, yards, recreation space or other similar required conditions of land subdivision or

EXHIBIT 1

development, except, where specifically authorized by ordinance, such lands may be used in area computations as an incentive to encourage common open space waterfront areas.

C. All newly created lots wholly or partially within the shoreline shall be of uniform size and dimension, whenever possible.

D. Subdivision of more than four lots shall provide an improved and maintained pedestrian easement to the shoreline that is of sufficient width to ensure usable *public access*. The *public access* to the shoreline shall be in conformance with the standards in KMC 16.50.060.

E. Subdivisions should be designed to locate structures outside the shoreline jurisdiction whenever *feasible*. When lots are located within the shoreline jurisdiction, the size and shape of the lots should allow for the construction of residential units that are outside of required buffers and setbacks and that do not require *shoreline stabilization*.

F. Subdivision of a waterfront lot for the purposes of creating a lot for a non-*water-dependent use* that would not otherwise be allowed is prohibited.

Chapter 16.75

PROCEDURES

Sections:

16.75.003 Interpretation**16.75.005 Additional administrative procedures.****16.75.010 Substantial development – Permit required – Exemption.****16.75.015 Developments not requiring shoreline permits or local reviews****16.75.020 Permits – Prerequisite to other permits.****16.75.025 Permits – Reasonable accommodation.****16.75.030 Permits – Variance.****16.75.040 Permits – Conditional use.****16.75.045 Public agency or utility maintenance plans.****16.75.050 Alteration or reconstruction of nonconforming use or development.****16.75.055 Relief from shoreline master program development standards and use regulations.****16.75.060 Permits – Combined hearing authority.**

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16.75.070 Permits – Approval or disapproval – Notification – Additional conditions – Limitations.

16.75.080 Appeals.

16.75.090 Rules of ~~director~~city manager.

16.75.100 Enforcement.

16.75.110 Shoreline environment redesignation.

16.75.120 Redesignation applications.

16.75.130 Redesignation initiated by motion.

16.75.140 Frequency of consideration of shoreline redesignations.

16.75.150 Shoreline redesignation and site-specific land use map amendment or zone reclassification.

16.75.160 Criteria for hearing examiner review.

16.75.003 Interpretation.

The *city manager* shall make administrative interpretations of this *Shoreline Master Program* and the Shoreline Management Act in accordance with Chapter 18.10 KMC. The *city manager* shall consult with the Washington State Department of Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of RCW Chapter 90.58 and WAC 173-26.

16.75.005 Additional administrative procedures.

In addition to the requirements of Chapter 19.25 KMC, the following administrative procedures apply to *development* in the shoreline jurisdiction.

16.75.010 Substantial development – Permit required – Exemption.

A. No *development* shall be undertaken by any person within the shoreline jurisdiction unless such *development* is consistent with the policies of RCW 90.58.020 and the *Shoreline Master Program*. *Development* within the shoreline jurisdiction shall conform to the *Shoreline Master Program* whether or not the *development* requires a permit from the City of Kenmore.

B. A *substantial development* permit shall be required for all proposed uses and modifications unless the proposal is specifically exempt from the definition of *substantial development* in RCW 90.58.030 and WAC 173-27-040 or is exempted by RCW 90.58.140, WAC 173-27-044 or WAC 173-27-045.

C. Any person claiming exception from the permit requirements of this chapter as a result of the exemptions described in subsection B of this section may be required to submit an application to the ~~director~~city manager for such an exemption in the manner prescribed by the ~~director~~city manager. A

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person requesting an exemption shall provide a written statement of exemption for activities that are exempt from the *substantial development* permit requirement in subsection B of this section when:

1. WAC 173-27-0540 applies; or
2. The activity will occur waterward of the *ordinary high-water mark*.

D. Whether or not a written statement of exemption under WAC 173-27-050 is required, all permits and approvals issued for *development* activities within the shoreline jurisdiction shall include a record of review indicating compliance with the City of Kenmore *Shoreline Master Program*.

E. Conditions of approval may be attached to the approval of *substantial development* permits, statements of exemptions, or exempted developments as necessary to ensure consistency of the project with the City of Kenmore *Shoreline Master Program*.

16.75.015 - Developments not requiring shoreline permits or local reviews

A. Requirements to obtain a *substantial development* permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a *substantial development* permit, conditional use permit, variance, letter of exemption, or other local review.
4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

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16.75.020 Permits – Prerequisite to other permits.

In the case of *development* subject to the permit requirements of this title, Kenmore shall not issue any other permit for such *development* until such time as approval has been granted pursuant to this title. Any *development* subsequently authorized by Kenmore shall be subject to the same terms and conditions which apply to the *development* authorized pursuant to this title, in addition to any other terms or conditions required for the subsequent authorization.

16.75.025 Permits – Reasonable accommodation.

The Federal Fair Housing Act and the Americans With Disabilities Act (ADA) requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped people equal opportunity to use and enjoy a dwelling or structure. The *director/city manager* is therefore authorized to make accommodations in the provisions of this title as applied to dwellings occupied or to be occupied by handicapped persons as defined in the Federal Fair Housing Act, when the *director/city manager* determines that such accommodations reasonably may be necessary in order to comply with such Acts.

16.75.030 Permits – Variance.

A. The *director/city manager* is authorized to grant a variance from the performance standards of the City of Kenmore *Shoreline Master Program* only under the conditions enumerated in WAC 173-27-170 (Review Criteria for Variance Permits) and using the procedures outlined in KMC 19.25. Shoreline variance permits are also subject to review and approval by the Washington Department of Ecology (RCW 90.58.140(10)). The purpose of a variance permit is limited to granting relief from development standards set forth in the City of Kenmore *Shoreline Master Program* where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the City of Kenmore *Shoreline Master Program* will impose unnecessary hardships on the *applicant* or thwart the policies set forth in RCW 90.58.020.

B. A variance from City zoning code requirements shall not be construed to mean a variance from the City of Kenmore *Shoreline Master Program* use or development regulations and vice versa.

C. Shoreline variances may not be used to permit a use that is specifically prohibited in Chapter 16.50 KMC.

D. The burden of proving that a proposed variance meets the requirements of subsections A through C of this section shall be on the *applicant*; absence of such proof shall be grounds for denial of the application.

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E. The fee which shall accompany an application for a shoreline variance shall be as adopted by resolution.

16.75.040 Permits – Conditional use.

A. The director/city manager is authorized to issue shoreline conditional use permits only under the conditions enumerated in RCW 90.58.140 and 90.58.143 and WAC 173-27-160 and using the procedures outlined in KMC 19.25. Conditional use permits are also subject to review and approval by the Washington Department of Ecology (RCW 90.58.140(10)).

B. The burden of proving that a proposed shoreline conditional use meets the criteria enumerated in WAC 173-27-160 shall be on the *applicant*. Absence of such proof shall be grounds for denial of the application; provided, however, that the director/city manager is authorized to determine and impose, on a case-by-case basis, those conditions and standards which may be required to enable any proposed shoreline conditional use to satisfy the criteria established in WAC 173-27-160.

16.75.045 Public agency or utility maintenance plans.

A. To simplify the future review of maintenance activities that are or will be ongoing in association with new or existing public parks, utilities, streets, or other public agency or utility facilities, the *city manager* may approve a 5-year maintenance plan that establishes best management practices or protocols to assure *no net loss of shoreline ecological functions*.

The maintenance plan shall contain, as applicable:

1. A description of proposed maintenance activities, including the area of disturbance and type, methods and frequency of maintenance activities;
2. Best management practices for maintenance activities;
3. A description of in-stream or in-lake habitat protection measures;
4. A description of riparian and *wetland* protection measures;
5. A description of site-appropriate water use management activities, including using less water-dependent landscaping, maximizing the efficiency of the water application system, and reducing the area irrigated;
6. A description of stormwater management practices to treat stormwater runoff to reduce both water quantity and water quality impacts;

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7. A description of erosion and *sediment* control practices that prevent off-site movement of sediment from stored soils and potential surface erosion areas;
8. A description of re-vegetation or *restoration* activities following maintenance; and
9. A description of chemical and nutrient use and containment practices that demonstrate minimization of overall inputs of these contaminants, restrict the type of inputs, and develop an acceptable method of application through a comprehensive management program, such as Integrated Pest Management (IPM).
10. Specific performance standards for subsections 3 through 9 above, as applicable, and corrective actions that will be implemented if the performance standard(s) is not met.
11. Demonstration that the proposed work qualifies for a shoreline exemption and that the work complies with the City of Kenmore *Shoreline Master Program*.

16.75.050 Alteration or reconstruction of nonconforming use or development.

A. The review of applications for the modification of a *nonconforming use* or *development* shall be subject to the regulations enumerated in KMC [18.100.020](#) through [18.100.060](#), and [18.100.080](#) through [18.100.087](#), except that a nonconforming *bulkhead* may be replaced with a new *bulkhead*; provided, that:

1. The reconstructed *bulkhead* does not create new dry land; and
2. At least 40 percent of the *bulkhead* is replaced with a pocket cove or beach; and
3. The proposed reconstruction would substantially reduce the impacts of the existing structure on shoreline *ecological functions*; and
4. The project would not cause adverse impacts on adjacent shoreline uses.

B. Existing legal uses as defined under KMC [18.20.965](#) are considered existing legal uses within the shoreline jurisdiction.

C. Expansion of a *nonconforming use* or structure may be approved through the provisions of KMC [16.75.040](#) when the *applicant* demonstrates the following:

1. The project would substantially reduce the impacts of the existing use or structure on shoreline *ecological functions*; and
2. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.

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3. For a *nonconforming structure* located on land, any waterward expansion of the structure into the required setback would be offset by removal of another *nonconforming structure* of equal or greater footprint area in the shoreline setback, and the shoreline setback area would be restored with native riparian vegetation.

D. Expansion of a nonconforming *dock or pier* may be allowed by the *director/city manager* when the *applicant* demonstrates the following:

1. The existing nonconformance results from noncompliance with the standards in KMC 16.55.050(B)(6), (B)(8), (B)(9) or (B)(15); and
2. The proposed expansion meets all other applicable standards in KMC 16.55.050; and
3. The proposed expansion would not increase the existing overwater coverage of the *dock or pier* to more than the existing condition or by above the limits established in KMC 16.55.050(B)(8), whichever is greater; and
4. The project would reduce the impacts of the existing *dock or pier* on critical fish habitat as demonstrated through the habitat management plan for the *development*; and
5. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.

16.75.055 Relief from shoreline master program development standards and use regulations.

A. Purpose of section. This section incorporates statutory direction from RCW 90.58.580. In adopting RCW 90.58.580, the legislature found that *restoration* of degraded shoreline conditions is important to the *ecological function* of our waters. However, *restoration* projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline *restoration* project shifts shoreline jurisdiction into areas that had not previously been regulated under the act or shifts the location of required *shoreline buffers*. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline *restoration* projects.

B. Conditions and criteria for providing relief. The *city* may grant relief from standards and use regulations in this title when the following apply:

1. A shoreline *restoration* project causes or would cause a landward shift in the *ordinary high-water mark*, resulting in the following:
 - a. Land that had not been regulated under this title prior to construction of the *restoration* project is brought under shoreline jurisdiction; or

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- b. Additional regulatory requirements apply due to a landward shift in required *shoreline buffers* or other regulations of the Kenmore SMP and this title; and
 - c. Application of this title would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
2. The proposed relief meets the following criteria:
- a. The proposed relief is the minimum necessary to relieve the hardship;
 - b. After granting the proposed relief, there is net environmental benefit from the *restoration project*;
 - c. Granting the proposed relief is consistent with the objectives of the *shoreline restoration project* and consistent with the Kenmore *Shoreline Master Program* and this title; and
 - d. Where a *shoreline restoration* project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
3. The application for relief must be submitted to the Washington State Department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a *shoreline substantial development* permit, conditional use permit, or variance. If no such permit is required, then Ecology shall conduct its review when the city provides a copy of a complete application and all supporting information necessary to conduct the review.
- a. Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its web site.
 - b. Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the city if additional public notice is not required.
 - c. A *substantial development* permit is not required on land that is brought under shoreline jurisdiction due to a *shoreline restoration* project creating a landward shift in the *ordinary high-water mark*.

16.75.060 Permits – Combined hearing authority.

- A. In those cases when proposed *development* under the jurisdiction of this title also requires a Type 3 or Type 4 decision and a public hearing before the hearing examiner is required, the *department* shall issue a recommendation on the proposal, and the examiner shall conduct a public hearing to receive evidence relating to the issuance of a *substantial development* permit or exemption therefrom, a shoreline management conditional use permit and/or a shoreline management variance, if applicable.
- B. The examiner shall conduct the hearing in accordance with the provisions of Chapter 19.30 KMC and shall exercise the powers therein.
- C. The decision of the examiner shall be the decision of the *director/city manager* and shall be the final decision of the City with regard to shoreline management.

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16.75.070 Permits – Approval or disapproval – Notification – Additional conditions

– Limitations.

A. In granting or extending a permit, the director/city manager may attach thereto conditions, modifications, or restrictions regarding the location, character and other features of the proposed *development* and related development and activity outside of the shoreline as necessary to make the permit compatible with the criteria set forth in KMC 16.05.030 and 16.75.010. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.

B. Issuance of a *substantial development* permit does not constitute approval pursuant to any other federal, State or City laws or regulations.

16.75.080 Appeals.

A. Appeals from the final decision of the City with regard to shoreline management shall be governed solely by the provisions of RCW 90.58.180, which shall prevail over any conflicting appeal procedures set forth in Chapter 19.25 KMC.

B. After all local permit decisions are complete and the permit documents are amended to incorporate any resulting changes, the city manager shall mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both conditional use permits and or variances shall be mailed simultaneously with any substantial development permits for the project.

1. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.

2. Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:

a. For projects that only require a substantial development permit (SDP): the date that Ecology receives the city decision.

b. For a conditional use permit (CUP) or variance: the date that Ecology's decision on the CUP or variance is transmitted to the applicant and city.

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c. For SDPs simultaneously mailed with a CUP or variance to Ecology: the date that Ecology's decision on the CUP or variance is transmitted to the *applicant* and the city.

BC. The effective date of the City's decision shall be the date of receiptfiling with the Department of Ecology as defined in RCW 90.58.140.

CD. When a hearing and decision have occurred pursuant to KMC 16.75.060 and the examiner's recommendation with regard to disposition of a proposed *development* pursuant to KMC Titles 18 and 19 requires city council action, the final decision of the City pursuant to this title shall be effective on the date of receiptfiling as defined in RCW 90.58.140 for the purposes of appeal as provided in RCW 90.50.140. However, no *development* may occur until the city council has taken final action on the examiner's recommendation required by KMC Titles 18 and/or 19.

16.75.090 Rules of directorcity manager.

The directorcity manager is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The directorcity manager may prepare and require the use of such forms as are necessary to its administration.

16.75.100 Enforcement.

A. The directorcity manager is authorized to enforce the provisions of this title, the ordinances and resolutions codified in it, and any rules and regulations promulgated thereunder pursuant to the enforcement and penalty provisions of Chapter 1.20 KMC.

B. Any person found to have willfully engaged in activities on the shorelines of the State in violation of this title or Chapter 90.58 RCW or in violation of the Kenmore Shoreline Master Program, or rules or regulations adopted pursuant thereto, is guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25.00 nor more than \$1,000, or by imprisonment for not more than 90 days, or by both fines and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000.

CB. The directorcity manager shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the State in conflict with the provisions of this title or Chapter 90.58 RCW or in conflict with the Shoreline Master Program, or rules or regulations adopted pursuant thereto, and to otherwise enforce the provisions of this chapter and Chapter 90.58 RCW.

DC. Any person subject to the regulatory provisions of this title who violates any provision of this title or the provisions of a permit issued pursuant thereto shall be liable for all damage to public or private

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property arising from such violation, including the cost of restoring the affected area, within a reasonable time, to its condition prior to such violation. The **director/city manager** shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. The court on its discretion may award attorney's fees and costs of the suit to the prevailing party.

16.75.110 Shoreline environment redesignation.

A. *Shoreline environments* designated by the *Shoreline Master Program* may be redesignated by the city council upon finding that such a *redesignation* will be consistent with the standards in KMC [16.75.160](#) and the requirements of WAC [173-26-100](#) and [173-26-110](#). A shoreline *redesignation* may be initiated by an *applicant* or by motion of the **city** council and requires Department of Ecology approval.

B. A *redesignation* initiated by an *applicant* shall be made on forms and processed in a manner prescribed in KMC [16.75.120](#). A *redesignation* initiated by the **city** council shall follow the process in KMC [16.75.130](#).

C. The fee which shall accompany an application for a shoreline *redesignation* shall be as adopted by resolution.

D. The departmental report and recommendation regarding an application for a site-specific *redesignation* initiated by council motion shall be forwarded to the hearing examiner for consideration together with all relevant testimony at a public hearing to be held consistent with the procedures for a zone reclassification as provided in Chapter [19.30](#) KMC.

16.75.120 Redesignation applications.

A. A *redesignation* initiated by an *applicant*, as described in KMC [16.75.110](#)(B), must follow the procedures in Chapters [19.25](#) and [19.30](#) KMC for *shorelines redesignations* and must include the following information in addition to the requirements in Chapter [19.25](#) KMC:

1. *Applicant* information, including signature, telephone number and address;
2. The *applicant's* interest in the property, such as owner, buyer or consultant;
3. Property owner concurrence, including signature, telephone number and address;
4. A property description, including parcel number, property street address and nearest cross street;
5. A county assessor's map outlining the subject property;

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6. Related or previous permit activity;
 7. A description of the proposed *shorelines redesignation*;
 8. A mitigation plan providing for significant enhancement of the first 100 feet adjacent to the shoreline and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent that the impacts of *development* can be determined at the time of the proposed shoreline *redesignation*; and
 9. A discussion of how the proposed shoreline *redesignation* meets the criteria in KMC [16.75.160](#).
- B. The **hearing** examiner shall make a recommendation to the **city** council based on the criteria for review in KMC [16.75.160](#).

16.75.130 Redesignation initiated by motion.

- A. A **city council** motion initiating a shoreline *redesignation*, as described in KMC [16.75.110](#)(B), must be accompanied by the following information:
1. A description of the shoreline and a property description, including parcel numbers, property street addresses and nearest cross streets, for all properties that the shoreline runs through or is adjacent to;
 2. A county assessor's map outlining the subject property or properties; and
 3. A description of the proposed *shorelines redesignation*.
- B. If the motion proposes site-specific *redesignation*, as "site" is defined in KMC Title [18](#), the *redesignation* shall be referred to the hearing examiner for consideration following the procedures of KMC [16.75.120](#) for consideration of *redesignation* applications. Any other *redesignation* proposal initiated by motion shall be referred to the *city manager* for consideration as part of the process for amendment of comprehensive plan or development regulations as outlined in Chapter [19.20](#) KMC.
- C. A motion initiating a site-specific *redesignation* must identify the resources and the work program required to provide the same level of review accorded to an *applicant*-generated shoreline *redesignation*. Before adoption of the motion, the *city manager* shall have the opportunity to provide an analysis of the motion's fiscal impact. If the *city manager* determines that additional funds are necessary to complete the work program, the *city manager* may transmit an ordinance requesting the appropriation of supplemental

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funds. The city council may consider the supplemental appropriation ordinance concurrently with the proposed motion referring the *shorelines redesignation* proposal to the hearing examiner.

D. The departmental report and recommendation regarding an application for a site-specific *redesignation* initiated by city council motion shall be forwarded to the hearing examiner for consideration.

DE. A site-specific *redesignation* initiated by motion shall follow the procedures in Chapters 19.25 and 19.30 KMC for *shorelines redesignations* with regard to the information to be provided and the notice and hearing processes, and shall meet the submittal requirements of KMC 16.75.120. The hearing examiner shall make a recommendation to the city council based on the criteria for review in KMC 16.75.160.

16.75.140 Frequency of consideration of shoreline redesignations.

A *shorelines redesignation* may not be initiated unless at least three years have elapsed since the city council's prior consideration of the current designation for the property. The *city manager* or the city council may waive this time limit if the proponent establishes that there exists either an obvious technical error or a change in circumstances justifying the need for earlier consideration of the *shorelines redesignation*.

16.75.150 Shoreline redesignation and site-specific land use map amendment or zone reclassification.

A site-specific *shorelines redesignation* may be accompanied by a related proposal for a site-specific land use map amendment or zone reclassification, or both, in which case City review of the two applications must be consolidated to the extent practical, consistent with this division and Chapter 19.25 KMC. The city council's consideration of a subarea or comprehensive plan *shorelines redesignation* is a legislative decision that must be determined before and separate from the city council's final consideration of a zone reclassification or site-specific *shorelines redesignation*, which is a quasi-judicial decision.

16.75.160 Criteria for hearing examiner review.

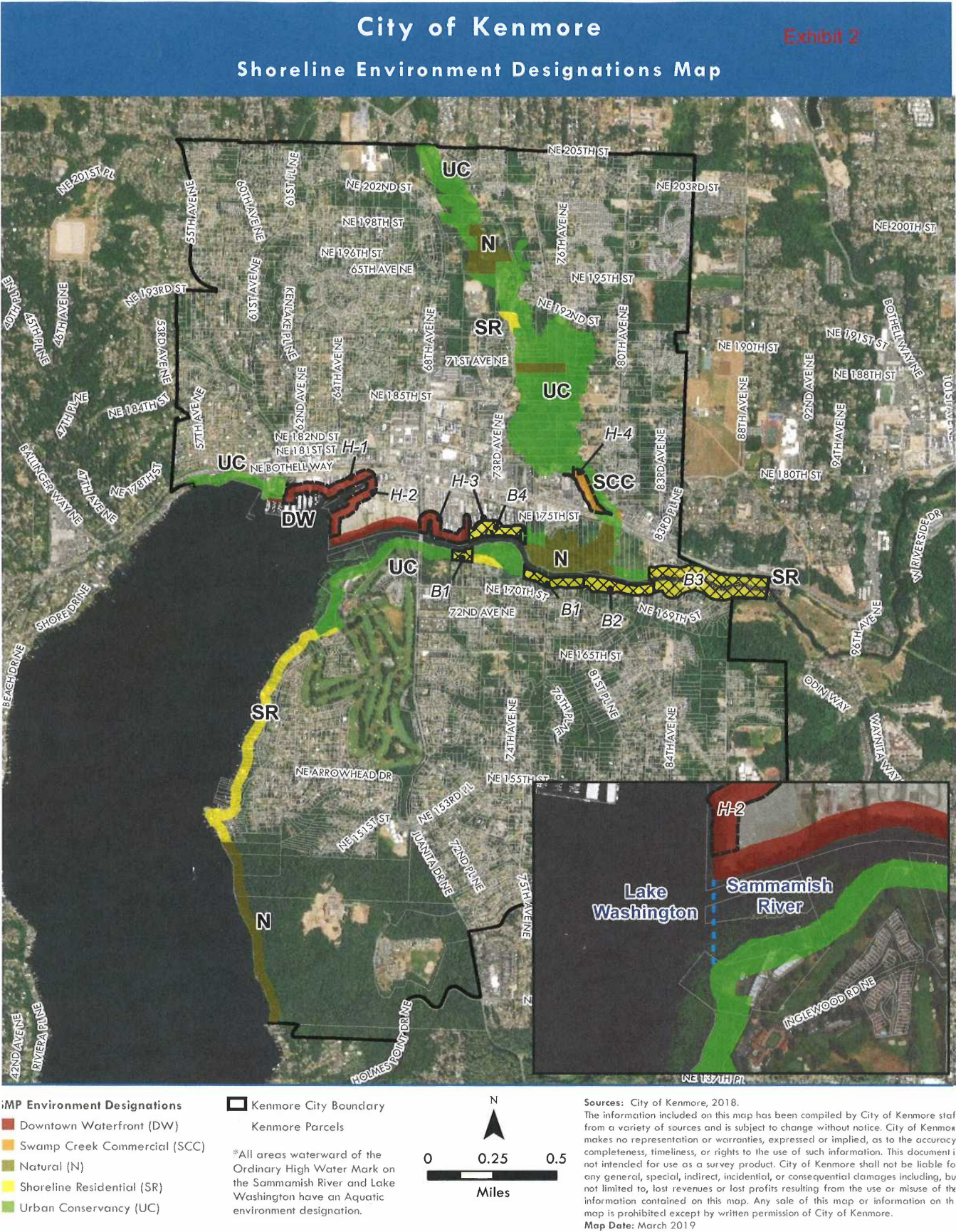
A *shorelines redesignation* referred to the hearing examiner for a public hearing shall be reviewed based upon the requirements of comprehensive plan policies and City *shorelines* management goals and objectives and the following additional standards:

A. The proposed change implements and supports the goals of the State Shorelines Management Act and City of Kenmore *Shoreline Master Program* requested;

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B. The impacts of *development* allowed by the proposed change will not permanently impair any habitat critical to endangered or threatened species; and

C. The impacts of *development* allowed by the proposed change are adequately addressed in a mitigation plan providing significant enhancement of the first 100 feet adjacent to the stream and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent those impacts may be determinable at the time of the *shorelines redesignation*. A full mitigation plan shall accompany each application, as provided in KMC 16.75.120 and 16.75.130.



ATTACHMENT 4

Critical Area Regulations and Shoreline Master Program Amendments

Docket Criteria Analysis

Proposed Comprehensive Plan and development regulation amendments must meet the criteria described in 19.20.090.A and C ("Amendment decision criteria"). Following is staff's analysis of these criteria:

A. Review Criteria Applicable to All Proposed Amendments. All proposed amendments must meet the following criteria:

- 1. The proposed amendment is consistent with the Growth Management Act and the countywide planning policies; and**

Staff response: The proposed amendments are consistent with the Growth Management Act (GMA) and the countywide planning policies. The GMA requires that cities adopt critical area regulations and that they be consistent with best available science. A GMA goal also is to ensure compliance with the shoreline management act (SMA). The SMA requires periodic updating of the City's Shoreline Master Program and that periodic review requirement is the purpose of the proposed amendments. The countywide planning policies support environmental protection within King County.

- 2. The proposed amendment eliminates an inconsistency or does not create an inconsistency within the comprehensive plan; and**

Staff response: The proposed critical area amendments are consistent with the Comprehensive Plan as it was amended in November 2018. The Shoreline Sub-Element of the Comprehensive Plan is being amended with this project to ensure consistency.

- 3. The proposed amendment meets at least one of the following criteria:**

- a. The proposed amendment is beneficial to the City as a whole and will not adversely affect public health, safety, and welfare; or**
- b. The proposed amendment addresses changed circumstances within the City as a whole; or**
- c. The proposed amendment accommodates new policy direction from the city council.**

Staff response: The proposed amendments are beneficial to the City as a whole and will not adversely affect public health, safety, and welfare. The purpose of the proposed critical area regulations is to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, as well as to protect lives and property from hazards. The shoreline regulations regulate development along the City's shorelines, consistent with statewide goals to protect the resources and ecology of the shoreline and increase public access to, and recreational opportunities for, the public in the shoreline.

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C. Additional Review Criteria for Development Regulations.

1. The proposed amendment is consistent with the policies, objectives, and goals of the comprehensive plan; and

Staff response: As described above, the proposed critical area amendments are consistent with the Comprehensive Plan, particularly the Natural Environment Element, as it was amended in November 2018. The Shoreline Sub-Element of the Comprehensive Plan is being amended with this project to ensure consistency between the goals, objectives and policies and the amended regulations.

2. The proposed amendment does not duplicate or conflict with other portions of the Kenmore Municipal Code.

Staff response: The amendments have been reviewed for duplication and conflict with other portions of the Kenmore Municipal Code. Changes have been made, as necessary. In particular, the conflicts between Title 16, Division II, Flood Damage Prevention and Chapter 18.55, Article XIX, Flood Hazard Areas, have been resolved and the two code sections consolidated.



City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic: Public Hearing and Consideration of Ordinances 19-0488, 19-0489 and 19-0490 amending the City's Critical Area Regulations and Shoreline Master Program Proposed Council Action/Motion: Hold a public hearing and consider adoption of Ordinances 19-0488, 19-0489 and 19-0490.	For Council Meeting Agenda of: 6/10/19 Department: <u>Community Development</u> Prepared by: <u>Debbie Bent, Community Development Director and Lauri Anderson, Principal Planner</u> Initial & Date Approved by Department Head: <u>OS 5/24/19</u> Approved by City Attorney: <u>5/22, 5/24/19 DR, email</u> Approved by Finance Director: <u>me 5/31/19</u> Approved by City Manager: <u>for</u> Exhibits/Attachments: 1. Ordinance 19-0488 2. Ordinance 19-0489 3. Ordinance 19-0490 4. Docket Criteria Analysis
<u>INFORMATION/BACKGROUND:</u> On May 13 and May 20, the City Council considered amendments to the Municipal Code related to the City's critical area regulations and Shoreline Master Program as recommended by the Planning Commission. Changes requested by Council at those meetings have been incorporated into the attached ordinances (see Attachment 1-3). Because Ordinance 19-0488 (Attachment 1) includes a significant amendment not considered during the Planning Commission's public hearing, a public hearing in front of the City Council is needed. The relevant sections are found in changes to the definitions (18.20.665, definition of degraded wetland buffer or degraded wetland) and in 18.55.300, Increased Wetland Buffer Widths. Although these changes resulted in the need for the public hearing, all of the proposed amendments could be addressed during the hearing. After the public hearing, staff recommends that the Council consider adoption of Ordinances 19-0488, 19-0489 and 19-0490. Adoption of the critical areas ordinance (19-0488) should occur prior to adoption of the two Shoreline Master Program ordinances. Staff also has provided a "docket criteria analysis" (see Attachment 4), addressing the criteria for approval of the amendments. <u>FISCAL CONSIDERATION:</u> \$150,000 in 2018 and \$50,000 in 2019 have been budgeted to support consultant help with this project. A \$20,000 grant from the Department of Ecology also has been received and is being used for the project. <u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Council Goal 10: Protect and enhance the climate, water, air and forest environment.	

ATTACHMENT 1

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0488**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; AMENDING CHAPTER 18.55, CRITICAL
AREAS, OF THE KENMORE MUNICIPAL CODE;
REPEALING DIVISION II OF TITLE 16, FLOOD DAMAGE
PREVENTION, OF THE KENMORE MUNICIPAL CODE;
AMENDING CHAPTER 18.20, DEFINITIONS, OF THE
KENMORE MUNICIPAL CODE; AMENDING SECTIONS
18.30.190 AND 18.40.030 OF THE KENMORE MUNICIPAL
CODE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Growth Management Act, Chapter 36.70A RCW (GMA), requires that the City periodically review and revise its development regulations, including its critical areas regulations, to incorporate best available science and conform to State guidelines; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend Shoreline Master Programs (SMPs) for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, an update to the City's SMP is underway and must be completed by June 30, 2019, and the City desires to achieve general consistency between its critical area regulations within and outside of the jurisdiction of the SMP; and

WHEREAS, in the summer of 2018, the City began its SMP update to its Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) and review of its critical area regulations, adopted under Chapter 18.55 of the Kenmore Municipal Code (CAR Amendments) with the assistance of grant funding from Ecology; and

WHEREAS, the City retained Shannon & Wilson, Inc., qualified scientific experts, to 1) identify scientific information, 2) determine the best available science and assess its applicability to relevant critical areas, and 3) assist the City in the SMP Update and CAR Amendments; and

WHEREAS, Shannon & Wilson has assisted the City in developing the SMP Update and CAR Amendments by preparing updated GIS maps of streams and wetlands, geologically hazardous areas and areas of groundwater susceptibility; preparing a gap analysis to identify portions of the critical area regulations and Shoreline Master Program needing amendment; and drafting the CAR Amendments; and

WHEREAS, the results of the gap analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

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WHEREAS, consistent with RCW 36.70A.172(1), the City has included the best available science in developing the CAR Amendments to protect the functions and values of critical areas, and the City has given special consideration in the CAR Amendments to conservation or protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, the City has considered the definitions and guidelines adopted in Chapter 365-190 of the Washington Administrative Code (WAC), including WAC 365-195-900 through WAC 365-195-925, "Growth Management Act – Best Available Science", when preparing the CAR Amendments; and

WHEREAS, the City Council has considered the "Best Available Science Evaluation of the proposed Public Agency and Utility Exception (PAUE)," prepared by Shannon & Wilson, Inc., and BERK (Evaluation), and consistent with WAC 365-195-915, the City Council relies upon the analysis and rationales within the Evaluation for any departure from best available science relating to PAUEs; and

WHEREAS, the City desires to consolidate the regulations in Title 16, Division II, Flood Damage Prevention and Chapter 18.55, Article XIX, Flood Hazard Areas into a single section of the Kenmore Municipal Code; and

WHEREAS, the City Council desires to amend Chapter 18.20, Definitions, of the Kenmore Municipal Code to amend and add certain definitions relating to critical areas within the City to more fully protect the values and functions of critical areas; and

WHEREAS, to aid in implementation of the proposed critical area regulations, the City Council desires to amend Sections 18.30.190 and 18.40.030 of the Kenmore Municipal Code; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised the proposed critical area regulations amendments; and

WHEREAS, throughout the update process for the CAR Amendments, the City has complied with the requirements of RCW 36.70A.140, and provided early and continuous public participation in the development of the CAR Amendments, including holding a public open house and two public forums; holding public hearings, creating a comprehensive and regularly-updated web page devoted to the update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed CAR Amendments and submitted comments to the City, and the City has considered and acted upon said comments; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has reviewed the consolidated flood hazard area regulations to ensure consistency with the National Flood Insurance Program; and

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WHEREAS, the Planning Commission held a public hearing on the regulations on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update and CAR Amendments to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019 and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed CAR Amendments and SMP Update; and

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed CAR Amendments and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed CAR Amendments and SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, Ecology's comments, and staff and consultant input; and

WHEREAS, the City Council has considered and relied upon the scientific expertise of Shannon & Wilson, Inc., and certain documents and information, including: 1) the Gap Analysis; 2) the City of Kenmore Shoreline Master Program draft shoreline regulations; 3) the City of Kenmore draft critical area regulations; 4) Ecology's Critical Areas Checklist; 5) SEPA Determination of Nonsignificance; 6) Best Available Science Evaluation for the PAUE; and 6) Docket Criteria Analysis; and

WHEREAS, pursuant to RCW 36.70A.020, the City Council has been guided by the GMA planning goals in its adoption of this ordinance; and

WHEREAS, the City Council desires to amend the City's critical area regulations and associated definitions and development regulations; now therefore

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Amendment of Chapter 18.55 – Critical Areas. The City Council amends Chapter 18.55 of the Kenmore Municipal Code, "Critical Areas", as set forth in Exhibit 1, attached hereto and incorporated by reference.

ATTACHMENT 1

Section 3. Repealer. The City Council repeals Division II of Title 16, Chapter 16.90 of the Kenmore Municipal Code, "Flood Damage Prevention".

Section 4. Amendments to Chapter 18.20, Definitions. The City Council amends Chapter 18.20 of the Kenmore Municipal Code, "Definitions", as set forth in Exhibit 2, attached hereto and incorporated by reference.

Section 5. Amendments to Sections 18.30.190 and 18.40.030. The City Council amends Sections 18.30.190 and 18.40.030 of the Kenmore Municipal Code, as set forth in Exhibit 3, attached hereto and incorporated by reference.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
____TH DAY OF _____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:

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**Chapter 18.55
CRITICAL AREAS**

Sections:

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- 18.55.010 Purpose and goals.**
- 18.55.020 Authority.**
- 18.55.030 Relationship to other regulations.**
- 18.55.040 Administrative procedures.**
- 18.55.050 Fees.**
- 18.55.070 Administrative rules.**
- 18.55.080 Interpretation.**
- 18.55.090 Jurisdiction – Critical areas.**
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Article II. Best Available Science

- 18.55.110 Best available science.**

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- 18.55.130 Mapping.**
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- 18.55.160 Exception – Public agency and/or utility.**
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- 18.55.190 Critical areas reports – Requirements.**
- 18.55.200 Mitigation requirements.**
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Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

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18.55.520 Performance standards – General requirements.

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18.55.610 Designation of geologically hazardous areas.

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Note that this is a complete rewrite of the previous Article XIX

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18.55.800 Designation of groundwater susceptibility and critical aquifer recharge areas.

18.55.810 Critical Areas Report.

Article I. Purpose and General Provisions

18.55.010 Purpose and goals.

A. The purpose of this chapter is to designate and classify ecologically critical and geologic **and flood hazard areas** in order to protect ecologically *critical areas* and protect lives and property from hazards, while also allowing for *reasonable use of* **public or private** property.

B. The *City* finds that *critical areas* provide a variety of valuable and beneficial biological and physical functions that benefit the *City* and its residents, and/or may pose a threat to human safety or to public and *private* property. The beneficial *functions and values* provided by *critical areas* include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, *flood* storage, ground water recharge and discharge, *erosion* control, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

C. By limiting *alteration of critical areas*, this chapter seeks to:

1. Strive to protect lives and public and *private* property from *flooding*;
2. Strive to protect slopes from *erosion* and sliding;
3. Minimize the potential for damage due to liquefaction and seismic hazards;
4. Protect *wetlands* from encroachment and degradation and encourage *wetland restoration*;
5. Protect *streams* from encroachment and degradation and encourage *stream restoration*; **and**
6. Maintain and promote a diversity of *species* and habitat within the *City*; **and**

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7. Address critical aquifer recharge areas and protect groundwater.

D. The regulations of this chapter are intended to protect *critical areas* in accordance with the GMA and through the application of *best available science*.

E. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property.

F. The *City's* enactment and enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

18.55.020 Authority.

A. As provided herein, the *city manager* is given the authority to interpret, apply, and enforce this chapter to accomplish the stated purpose.

B. The *City* may withhold, condition, or deny *development permits* or activity approvals to ensure that the proposed action is consistent with this chapter.

C. In the event that multiple *critical areas* occur on a *site*, it is the authority of the *city manager* to balance the protection of the multiple *critical areas* and provide appropriate *mitigation*.

18.55.030 Relationship to other regulations.

A. These *critical areas* regulations shall be in addition to zoning and other regulations adopted by the *City*. Compliance with other regulations does not exempt the *applicant* from *critical areas* regulations.

B. The *critical area* regulations set forth in KMC 16.05.060(B) shall apply to all *critical areas* located within the jurisdiction of the Kenmore shoreline master program (Title 16 KMC).

C. These *critical areas* regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (Chapter 19.35 KMC).

D. Any individual *critical area* adjoined by another type of *critical area* shall have the *buffer* and meet the requirements that provide the most protection to the *critical areas* involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the *critical areas* shall apply.

E. Compliance with the provisions of this chapter does not constitute compliance with other federal, State, and local regulations and permit requirements that may be required (for example, shoreline substantial

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development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife *hydraulic project approval* (HPA), **U.S.** Army Corps of Engineers *Section 404 permits*, and National Pollution **Discharge Elimination System** (NPDES) permits). The *applicant* is responsible for complying with these requirements, apart from the process established in this chapter.

18.55.040 Administrative procedures.

The administrative procedures followed during the *critical area* review process shall conform to the standards and requirements of the *City* development regulations, except that, where *critical areas* are located within the jurisdiction of the Kenmore shoreline master program, administrative procedures shall conform to the standards and requirements of Chapter 16.75 KMC. This shall include, but not be limited to, timing, permits, variances, exemptions, exceptions, appeals, and fees associated with applications covered by this chapter.

18.55.050 Fees.

The *City* by resolution shall establish fees for *critical area* review processing and other services provided by the *City* as required by this chapter.

18.55.070 Administrative rules.

Applicable *departments* within the *City* are authorized to adopt such administrative rules and regulations as necessary and appropriate to implement this chapter and to prepare and require the use of such forms as necessary for its administration.

18.55.080 Interpretation.

In the interpretation and application of this chapter, the provisions of this chapter shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this chapter, and shall be deemed to neither limit nor repeal any other provisions under State statute.

18.55.090 Jurisdiction – Critical areas.

A. The *City* shall regulate all *uses*, activities, and *developments* within, adjacent to, or likely to affect one or more *critical areas*, consistent with *best available science* and the provisions herein.

B. *Critical areas* regulated by this chapter include:

1. *Wetlands* as designated in KMC 18.55.300, Designation and rating of *wetlands*;
2. *Streams* **and lakes** as designated in KMC 18.55.400, Designation and rating of *streams* **and lakes**;
3. Fish and wildlife habitats of importance as designated in KMC 18.55.500, Designation of fish and wildlife habitats of importance;

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4. *Geologically hazardous areas* as designated in KMC [18.55.610](#), Designation of *geologically hazardous areas*; **and**
5. Frequently flooded areas as designated in KMC [18.55.7007](#), **Frequently flooded areas and Flood damage prevention hazard areas;** and
6. **Critical aquifer recharge areas and groundwater as designated in KMC 18.55.800, Designation of groundwater susceptibility and critical aquifer recharge areas.**

C. All areas within the *City* meeting the definition of one or more *critical areas*, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter.

D. Areas Adjacent to *Critical Areas* Subject to Regulation. Areas adjacent to *critical areas* shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the *functions and values* of *critical areas*. "Adjacent" shall mean any activity located:

1. On a *site* immediately adjoining a *critical area*;
2. A distance equal to or less than the required *critical area buffer* width and building *setback*;
3. A distance equal to or less than **one-half mile (2,640 feet) 660 feet** from a bald eagle nest;
4. A distance equal to or less than **900 656** feet from the closest nest of a **great blue** heron rookery; or
5. Within the *floodway*, *floodplain* or channel migration zone.

18.55.100 Protection of critical areas.

Any action taken pursuant to this chapter shall result in equivalent or greater *functions and values* of the *critical areas* associated with the proposed action, as determined by the *best available science*. All actions and *developments* shall be designed and constructed in accordance with *mitigation* sequencing (KMC [18.55.210](#)) to avoid, minimize, restore, and compensate for adverse impacts. *Applicants* must first demonstrate an inability to avoid or reduce impacts before *restoration* and compensation of impacts will be allowed. No activity or *use* shall be allowed that results in a net loss of the *functions and values* of *critical areas*.

Article II. Best Available Science

18.55.110 Best available science.

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A. Protection for *Functions and Values and Anadromous Fish*. *Critical areas* reports and decisions to alter *critical areas* shall rely on the *best available science* to protect the *functions and values* of *critical areas*. The *best available science* is scientific information applicable to the *critical area* prepared by local, State or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through 365-195-925. Special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, as required by WAC 365-195-900 through 365-195-925.

Article III. Applicability, Exemptions, and Exceptions

18.55.120 Applicability.

A. The provisions of this chapter shall apply to all lands, all land *uses* and development activity, and all *structures* and facilities in the *City* whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the *City*. No person, company, agency, or *applicant* shall alter a *critical area* or *buffer* except as consistent with the purposes and requirements of this chapter.

B. The *City* shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or *vegetation*, or to construct or alter any *structure* or improvement in, over, or on a *critical area* or associated *buffer*, without first assuring compliance with the requirements of this chapter. For development on lands regulated under the Kenmore shoreline master program, compliance with this chapter includes compliance with the requirements of the shoreline master program as well as with the requirements of this chapter.

C. Approval of a permit or *development proposal* pursuant to the provisions of this chapter does not discharge the obligation of the *applicant* to comply with the provisions of this chapter.

18.55.130 Mapping.

A. The approximate location and extent of *critical areas* are shown on the *City's critical area* maps. These maps are to be used as a guide and may be updated as new *critical areas* are identified. They are a reference and do not provide a final *critical area* designation. The exact location of a *critical area* and its boundary shall be determined on-site through a field investigation by a *qualified professional*.

B. The following is a list of some maps sources that identify known/potential *critical areas* located in the *City*:

1. *Wetlands and Streams*.

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- a. City stream and wetland inventory;
- b. King County critical areas map folio, Washington State Department of Fish and Wildlife Priority Habitats and Species online mapping system;
- c. Washington State Department of Fish and Wildlife SalmonScape online mapping system; and
- d. Washington State Department of Natural Resources water type maps.

2. Fish and Wildlife Habitats of Importance.

- a. Washington State Department of Fish and Wildlife ~~p~~Priority ~~h~~Habitats and ~~s~~Species map online mapping system;
- b. Washington State Department of Natural Resources ~~official~~ water type ~~reference~~ maps, as amended;
- c. Washington State Department of Fish and Wildlife SalmonScape online mapping system;
- ~~d~~c. Anadromous and resident *salmonid* distribution maps contained in the Habitat Limiting Factors Reports published by the Washington State Conservation Commission; and
- ~~e~~d. Washington State Department of Natural Resources State natural area preserves and natural resource conservation area maps.

3. Geologically Hazardous Areas.

- a. City geologically hazardous areas inventory;
- ba. King County's Landslide Hazards Along King County River Corridors interactive, web-based map folio critical areas map folio, as modified by the City;
- cb. U.S. Geological Survey landslide hazard and seismic hazard maps Washington State Department of Natural Resources Geologic Information Portal;
- ~~d~~c. Washington State Department of Natural Resources ~~seismic hazard maps for Western Washington~~ liquefaction susceptibility map for King County; and
- ~~e~~d. Washington State Department of Natural Resources slope stability maps.

4. Flood Hazard Areas.

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a. City stream and wetland inventory; and

b. Federal Emergency Management Administration flood insurance rate maps and studies.

5. Critical Aquifer Recharge Areas and Groundwater.

a. City map of aquifer susceptibility.

18.55.140 Signs and fencing of critical areas.

A. Signs.

1. Temporary Markers. The outer perimeter of the *critical area* or *buffer* and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the *city manager* prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent *signs*, if required, are in place.
2. Permanent *Signs*. As a condition of any permit or authorization issued pursuant to this chapter, the *city manager* may require that the *applicant* install permanent *signs* along the boundary of a *critical area* or *buffer*.

Permanent *signs* shall be made of a metal face and attached to a metal post, or another material of equal durability. *Signs* must be posted at an interval of every 50 feet. If the length of the *lot* is 50 feet or less, one *sign* per *lot* is required. The *sign* must be maintained by the property owner in perpetuity. *Signs* must be placed in a visible location and remain visible throughout any future *site development*. The *signs* shall include the City's logo and shall be worded as follows or with alternative language approved by the *city manager* based on specifications available from the City:

Environmentally Critical Area
Do Not Disturb
Contact the City of Kenmore
425-398-8900
Regarding Uses and Restriction

B. Fencing.

1. The *city manager* shall condition any permit or authorization issued pursuant to this chapter to require the *applicant* to install a permanent *fence* at the edge of the *critical area* and *buffer* associated with a *stream*, lake, *wetland*, or fish and wildlife habitat of importance, when fencing will prevent future impacts to the habitat conservation area ecological function. When the *buffer* is in a legally altered state and is permitted to remain in that condition, the fencing may be placed at the

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upland edge of any properly functioning portion of the *buffer*. The *city manager* may also waive the requirement for a *fence* if the *applicant* can demonstrate that a *fence* would interfere with current, legal public access or use.

2. A required permanent *fence* may be:

a. The *applicant* shall be required to install a permanent naturalUntreated wood, split-rail, or *fence* around the *critical area* and *buffer*.

b. Dense *vegetation* using native material appropriate for the ecoregion. *Vegetation* shall be maintained at a minimum height of 3 feet, with thorny species incorporated to deter intrusion.

3. Fencing installed shall be designed so as to not interfere with *species* migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

4. Fencing is not required for single-family residential *lots* where subdivision is not proposed.

C. Maintenance. To ensure long-term maintenance of signs and fencing, the owner of the property shall file a maintenance agreement as directed by the *City*. This agreement shall be recorded and run with the land.

18.55.150 Exemptions.

Exempt activities shall avoid impacts to *critical areas*. All exempted activities shall use reasonable methods to avoid potential impacts to *critical areas*. To be exempt from this chapter does not give permission to degrade a *critical area* or ignore risk from natural hazards. Any incidental damage to, or alteration of, a *critical area* shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better.

A. Exempt Activities. The following *developments*, activities, and associated *uses* shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, State, and federal laws and requirements:

1. Activities, including routine maintenance, involving artificial drainage features intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features;
2. Normal and routine maintenance, operation and reconstruction of existing roads, *streets*, utilities and associated rights-of-way and *structures*; provided, that reconstruction of any *structures* may not increase the *impervious surface* area or remove *flood* storage capacity;

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3. Normal maintenance and repair, and reconstruction or remodeling of residential or commercial *structures*, or legal preexisting and ongoing *uses* of the *site*; provided, that reconstruction of any *structures* may not increase the previously approved *building* footprint;
 4. *Site* investigative work and studies necessary for preparing *site development or modification plans* *land-use applications*, including soils tests, water quality studies, wildlife studies and similar tests and investigations, where such activities do not require construction of new roads or significant amounts of excavation; and provided, that any disturbance of the *critical area* shall be the minimum necessary to carry out the work or studies and disturbed areas shall be immediately restored;
 5. Educational activities, scientific research, and passive outdoor recreational activities, including but not limited to interpretive field trips, *and* birdwatching, *and previous trails for hiking*, that will not have a significant adverse effect on the *critical area*;
 6. *Emergency* activities necessary to prevent an immediate threat to public health, safety, property or welfare; *provided that the critical areas shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better within one year of the activity. The restoration, rehabilitation, and/or replacement of the critical area is limited to that area impacted by the prevention effort; this section does not require the responsible party to restore, rehabilitate or replace critical areas damaged by natural disaster;*
 7. Minor activities not mentioned above and determined by the *city manager* to have minimal impacts to a *critical area*; *and*
 8. *Existing and ongoing agricultural activities, including farm pond maintenance, provided that they implement applicable best management practices (BMPs) and minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.*
 8. *Installation, construction, replacement, repair or alteration of utilities and their associated facilities, lines, pipes, mains, equipment or appurtenances in improved City street rights-of-way.*
- B. Operation, Maintenance or Repair. Operation, maintenance or repair of existing *structures*, infrastructure improvements, utilities, public or *private* roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the *critical area* or *buffer* and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.
- C. Modification to Existing *Structures*.

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1. Structural modification of, addition to, or replacement of single detached residences in existence before November 27, 1990, which do not meet the building *setback* or *buffer* requirements for *wetlands*, *streams* or *landslide hazard areas* if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described *buffer* or building *setback* area by more than 500 square feet over that existing before November 27, 1990. No portion of the modification, addition or replacement may be located closer than the closest point of the residence to the *critical area* or, if the existing residence is in the *critical area*, no portion may extend farther into the *critical area*.
2. Structural modification of, addition to, or replacement of *structures*, except single detached residences, in existence before November 27, 1990, which do not meet the building *setback* or *buffer* requirements for *wetlands*, *streams* or *landslide hazard areas* if modification, addition, replacement or related activity does not increase the existing footprint of the *structure* lying within the above-described building *setback* area, *critical area* or *buffer*.

D. Activities within the Improved Right-of-Way. Repair, replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

E. Select *Vegetation Removal Activities*. The following *vegetation* removal activities; provided, that no *vegetation* shall be removed from a *critical area* or its *buffer* without approval from the *city manager*:

1. The removal of *vegetation* listed in King County's *noxious weed* list.
2. The removal of *trees* that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to *private* property, from *critical areas* and *buffers*; provided, that the *city manager* determines that the disturbance to the *critical area* is minimal. Topping or limbing the tree to eliminate the hazard should be considered before removal. When removal is necessary, place the hazard tree in the critical area or buffer to provide habitat as downed wood unless doing so would pose a safety risk or increase a geologic hazard. Replacement trees at a 3:1 ratio are required.
3. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed *vegetation* shall be

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replaced *in-kind* or with similar native species within one year in accordance with an approved restoration plan.

18.55.160 Exception – Public agency and/or utility.

A. If the strict application of this chapter would prohibit a development proposal by a public agency or public utility the following:

1. expansion of an existing facility operated by a public agency that is site-specific and non-linear, including, but not limited to, a school facility, a fire or police facility, a governmental office, a recreational facility, a park, or a stormwater retention/detention facility, or
2. expansion or extension of a linear public transportation facility, such as a street, highway or sidewalk, or
3. expansion or extension of a utility

then the public agency or utility may apply for relief from strict application of this chapter through an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC.

B. Adjustment of critical area standards for new site-specific and non-linear facilities to be operated by a public agency, such as schools, fire or police facilities, governmental offices, recreational facilities, parks or stormwater retention/detention facilities, shall be considered through the variance process (KMC 18.55.170) if adjustments to buffers or building setbacks are required, or as a reasonable use exception if direct impacts to the critical area are proposed (KMC 18.55.180).

BC. Exception Request and Review Process. An application for a public agency and/or utility exception shall be made to the city and shall include a critical areas report, including mitigation plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (SEPA).

CD. City Manager Review. The city manager shall review the application as a Type 2 land use decision under KMC 19.25.020. The city manager shall approve, approve with conditions, or deny the request based on the proposal's demonstrated ability to comply with all of the public agency and utility exception criteria in subsection DE of this section.

DE. Public Agency and Utility Exception Review Criteria. The criteria for review and approval of a public agency and/or utility exceptions are as follows:

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1. There is no other feasible location for the proposed *development* with less adverse impact on the *critical area or buffer*;
 2. There is no other *practical alternative* to the proposed *development* with less impact on the *critical areas or buffer*. "*Practical alternatives*" include but are not limited to:
 - a. Location outside of the *critical area* and its buffer;
 - b. Pursuit and exhaustion of other administrative code modifications or exceptions including but not limited to: front yard *setback* modifications at KMC 18.30.190; modifications of minimum parking standards in KMC 18.40; and allowances for nonconforming uses in KMC 18.100;
 23. The application of this chapter would unreasonably restrict the ability to provide *public agency or utility* services to the public;
 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;
 5. The *development proposal* protects and mitigates impacts to the *critical area functions and values* consistent with *best available science*;
 6. The *development proposal* achieves no net loss of *critical area functions and values*;
 7. Mitigation sequencing through KMC 18.55.210 has been demonstrated in the *critical areas* report, along with a demonstration of the how the *public agency or utility* will provide *mitigation* using a watershed approach;
 8. Development activities involve the least intrusion into and disruption of the *critical area* necessary while fulfilling a public purpose and need;
 9. The proposal is consistent with a *public agency or utility* system plan, capital facilities plan, *master plan*, program, or policy that has been the subject of a public review process; and
 10. The proposal is consistent with the general purpose and intent of the *City's* comprehensive plan and adopted development regulations.
- F. Approval conditions. Conditions for approval of a *public agency or utility* exception shall include, at a minimum:
1. Conformance with the development standards and *mitigation* plans identified in the approved *critical areas* report; and
 2. Appropriate best management practices, as described in this chapter and in other science-based documents, including but not limited to the Washington State Department of Commerce Critical Areas

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Guidebook, as amended, sources of science by State agencies with expertise, and standard conditions of approval published by federal agencies.

18.55.170 Variances – Buffer widths and building setbacks.

A. *Variances* from the *buffer* width and building *setback* standards of this chapter may be authorized by the *City* in accordance with the procedures set forth in the *City's* zoning code, unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC.

B. No *variance* is allowed in order to create additional *lots*.

C. The *City* may grant a *variance*; provided, that the *applicant* demonstrates that all of the following criteria are met:

1. Special circumstances

a. Private development proposals: There are special circumstances applicable to the subject property or to the intended *use* such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a *variance* from the buffer width or building setback requirements;

b. New public agency development proposals: There is no other *practical alternative* that allows the *public agency* to meet its public service obligations pursuant to applicable laws, rules, or adopted plans. "*Practical alternatives*" include but are not limited to:

i. Location out of the critical area buffer;

ii. Pursuit and exhaustion of other code modifications or exceptions; and

2. Necessary for rights or use:

a. Private development proposals: Such *variance* is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question;

b. New public agency development proposals: Such *variance* is necessary for a *public agency* proposal to fulfil a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital

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facilities plan, system plan, or other *master plan* that has been subject to a public review process which commonly includes an evaluation of alternative sites; and

3. The granting of such buffer width *or building setback* variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and
4. The granting of the buffer width *or building setback* variance will not significantly impact the subject *critical area*; and
5. The decision to grant the *variance* includes the *best available science* and gives special consideration to conservation or protection measures necessary to preserve or enhance *anadromous fish habitat*; and
6. The granting of the *variance* is consistent with the general purpose and intent of the *City's* comprehensive plan and adopted development regulations.

D. Conditions May Be Required. In granting any *variance*, the *City* may prescribe such conditions and safeguards as are necessary to secure adequate protection of *critical areas* from adverse impacts, and to ensure conformity with this chapter.

E. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the *variance* criteria in this section.

F. Time Limit.

1. Establishment of any development activity authorized pursuant to a *variance* shall occur within four years of the effective date of the decision for such *variance*. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.
2. For the purpose of this subsection, "establishment" shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

G. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and upon which any decision has to be made on the application.

18.55.180 Exception – Reasonable use.

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A. If the application of this chapter pertaining to *critical areas* will prevent the *applicant* from making any *reasonable use* of the subject property, the *applicant* may apply for an exception pursuant to this section unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC. An application for a reasonable use exception must accompany a *development permit* application through the City's review and decision process.

1. Criteria for Granting. The *city manager* shall grant a *reasonable use* allowance only when all of the following criteria are met:

a. Reasonable Use

i. Private proposals: The *applicant* demonstrates that the application of this chapter will deny all *reasonable use* of the subject property otherwise allowed by applicable law;

ii. New public agency development proposals: The *applicant* demonstrates that the application of this chapter would interfere with a *public agency* proposal to fulfill a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities plan, system plan, or other *master plan* that has been subject to an alternative *site evaluation and public review process*;

b. The development activities involve the least intrusion into and disruption of the *critical area* necessary to allow a *reasonable use* of the subject property by a private applicant or to achieve a public agency responsibility consistent with adopted laws, rules, and plans per criterion "a";

c. The development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety or welfare;

d. The *applicant's* inability to make *reasonable use* of the subject property has not resulted from any of the following:

(1) Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise; or

(2) Prior actions taken in violation of this chapter or any local, State, or federal law or regulation;

e. No other *reasonable use* of the property has less impact on the *critical area*;

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f. The inability of the *applicant* to derive *reasonable use* of the property is not the result of actions by the *applicant* after the effective date of the ordinance codified in this chapter, or its predecessor; and

g. *Mitigation* proposed by the *applicant* is sufficient to protect the *functions and values* of the *critical area* and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

2. Appeals. The *applicant* may appeal a decision of the *city manager* on a *reasonable use* allowance application to the *hearing examiner* pursuant to the provisions of the Kenmore Municipal Code.

B. Exception Request and Review Process. An application for a *reasonable use* exception shall be made to the *City* and shall include a *critical areas* report, including *mitigation* plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 19.35 KMC).

C. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the criteria in subsection A of this section.

D. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

E. Time Limit.

1. Establishment of any development activity authorized pursuant to a *reasonable use* exception shall occur within four years of the effective date of the decision for such *reasonable use* exception. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.

2. For the purpose of this subsection, "establishment" shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

Article IV. Critical Areas Report

18.55.190 Critical areas reports – Requirements.

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A. Prepared by *Qualified Professional*. The *applicant* shall submit a *critical areas* report prepared by a *qualified professional* as defined herein.

B. Incorporating *Best Available Science*. The *critical areas* report shall use scientifically valid methods and studies in the analysis of *critical area* data and field reconnaissance and reference the source of science used. The *critical areas* report shall evaluate the proposal and all probable impacts to *critical areas* in accordance with the provisions of this chapter.

C. *Critical Areas* Report Contents. Requirements for *critical areas* reports are available from the *city manager*. In addition, the *applicant* shall provide any additional known information pertaining to the *critical area(s)* on the subject property and adjacent properties.

18.55.200 Mitigation requirements.

A. The *applicant* shall avoid all impacts that degrade the *functions and values* of *critical areas* **unless there is no practicable alternative**. Unless otherwise provided in this chapter, 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 in accordance with an approved *critical areas* report and SEPA documents.

B. *Mitigation* shall be *in-kind* and on-site, when possible, and sufficient to maintain the *functions and values* of the *critical area*, or to prevent risk from a hazard posed by a *critical area*.

18.55.210 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been **examinedmade to identify and evaluate practicable alternatives** with the intent to avoid and minimize impacts to *critical areas* **while still achieving the overall project purposes**. When an *alteration* to a *critical area* is proposed, such *alteration* shall be avoided, minimized, or compensated for as outlined by WAC [197-11-768](#), in the following order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- 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 during the life of the action;

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E. Compensating for the impact by replacing or providing substitute resources or environments; and/or

F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

18.55.220 Mitigation plan requirements.

When *mitigation* is required, the *applicant* shall submit for approval by the *City* a *mitigation* plan as part of the *critical areas* report. *Mitigation* plan requirements are available from the *city manager*.

Within 30 days of installation of the approved *mitigation*, the *applicant* shall submit an affidavit **or as-built drawing** signed by the *qualified professional* described in KMC [18.55.190](#) certifying that the *mitigation* has been installed consistent with the approved plan, unless the installed *mitigation* has been inspected and accepted by the *department*.

Article V. Unauthorized Alterations and Enforcement

18.55.230 Unauthorized critical area alterations and enforcement.

A. When a *critical area* or its *buffer* has been altered in violation of this chapter, all ongoing *development* work shall stop and the *critical area* shall be restored. The *City* shall have the authority to issue a stop work order to cease all ongoing *development* work, and order *restoration*, rehabilitation or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.

B. *Restoration Plan Required.* All *development* work shall remain stopped and the *site* stabilized until a *restoration* plan is prepared and approved by the *City*. Such a plan shall be prepared by a *qualified professional* and shall describe how the actions proposed meet the minimum requirements described in subsection C of this section. The *city manager* shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the *applicant* or violator for revision and resubmittal.

C. *Minimum Performance Standards for Restoration.* For *alterations* to *wetlands*, *streams* **and lakes**, **geologically hazardous areas**, **and** fish and wildlife habitats **areas** of importance, **and flood hazard areas**, the following minimum performance standards shall be met for the *restoration* of a *critical area*; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

1. The historic structural and functional values shall be restored, including water quality and habitat functions;

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2. The historic soil types and configuration shall be replicated;
3. The *critical area* and *buffers* shall be replanted with *native vegetation* that replicates the *vegetation* historically found on the *site* in species types, sizes, and densities; and
4. The historic *functions and values* should be replicated at the location of the *alteration*.

D. *Site Investigations*. The *city manager* is authorized to make *site* inspections and take such actions as are necessary to enforce this chapter. The inspector shall present proper credentials and make a reasonable effort to contact any property owner before entering onto *private* property.

E. *Monitoring*. *Monitoring* shall be required for five years unless otherwise determined by the *city manager*. A performance and/or maintenance bond of 125 percent of the estimated cost of restoring the *functions and values* of the *critical area* shall be posted to assure that all work or actions are satisfactorily completed **or and** maintained in accordance with the approved plans, specifications, permit or approval requirements, and applicable regulations, and to **as en**sure that all work or actions will be completed.

Article VI. General Critical Area Protective Measures

18.55.250 Notice on title.

A. In order to inform subsequent purchasers of real property of the existence of *critical areas*, the owner of any property containing a *critical area* or *buffer* on which a *development proposal* is submitted shall file a notice with the county records and elections division according to the direction of the *City*. The notice shall state the presence of the *critical area* or *buffer* on the property, of the application of this chapter to the property, and the fact that limitations on actions in or affecting the *critical area* or *buffer* may exist. The notice shall run with the land.

B. This notice on title shall not be required for a *development proposal* by a *public agency* or **public or private utility**:

1. Within a recorded easement or right-of-way;
2. Where the agency or *utility* has been adjudicated the right to an easement or right-of-way; or
3. On the *site* of a permanent public facility.

C. The *applicant* shall submit proof that the notice has been filed for public record before the *City* approves any *development proposal* for the property or, in the case of subdivisions, short subdivisions, and binding site plans, at or before recording.

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18.55.260 Critical area tracts.

A. *Critical area tracts* shall be used in *development proposals* for subdivisions, short subdivisions, site plan reviews, commercial and multifamily building permits, and binding site plans to delineate and protect those contiguous *critical areas* and *buffers* listed below:

1. All *wetlands* and *their buffers*;
2. All *streams, lakes* and *their buffers*;
3. All fish and wildlife habitats *areas* of importance;
4. *Geologically hazardous areas* and *buffers*, if applicable; and
5. All other lands to be protected from *alterations* as conditioned by project approval.

B. *Critical area tracts* shall be recorded on all documents of title of record for all affected *lots*.

C. *Critical area tracts* shall be designated on the face of the plat, short plat or recorded drawing in a format approved by the *City*. The designation shall include the following restriction:

1. An assurance that *native vegetation* will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and *erosion*, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
2. The right of the *City* to enforce the terms of the restriction.

D. The *City* shall determine at the *City's* discretion that any required *critical area tract* be dedicated to the *City*, held in an undivided interest by each owner of a building *lot* within the *development* with the ownership interest passing with the ownership of the *lot*, or held by an incorporated homeowners' association or other legal entity (such as a land trust), which assures the ownership, maintenance, and protection of the tract).

18.55.270 Building setbacks.

Unless otherwise provided *in this Chapter or in Title 16 KMC (Shoreline Management)*, *buildings* and other *structures* shall be set back a distance of 15 feet from the edges of all *critical area buffers* or from the edges of all *critical areas*, if no *buffers* are required. *Structures* that may extend into or be located in the required *setback* are listed in KMC [18.30.230](#).

18.55.280 Bonds to ensure mitigation, maintenance, and monitoring.

EXHIBIT 1

A. When *mitigation* required pursuant to a *development proposal* is not completed prior to the *City* final permit approval, such as final plat approval or final building inspection, the *City* shall require the *applicant* to post a performance bond or other security in a form and amount deemed acceptable by the *City*. If the *development proposal* is subject to *mitigation*, the *applicant* shall post a *mitigation* bond or other security in a form and amount deemed acceptable by the *City* to ensure *mitigation* is fully functional.

B. The performance bond shall be in the amount of 125 percent of the estimated cost of the installed *mitigation* project (including *monitoring*) or the estimated cost of restoring the *functions and values* of the *critical area* that are at risk, whichever is greater.

C. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the *city* attorney.

D. Bonds or other security authorized by this section shall remain in effect until the *City* determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the *City* for a minimum of five years to ensure that the required *mitigation* has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an *applicant* or violator to complete required *mitigation*, maintenance, *monitoring*, or *restoration*.

F. Public *development proposals* shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for *mitigation*, maintenance, *monitoring*, or *restoration*.

G. Any failure to satisfy *critical area* requirements established by law or condition including, but not limited to, the failure to provide a *monitoring* report within 30 days after it is due or comply with other provisions of an approved *mitigation* plan shall constitute a default, and the *City* may demand payment of any *financial guarantees* or require other action authorized by the *City* code or any other law.

H. Any funds recovered pursuant to this section shall be used to complete the required *mitigation*.

18.55.290 Critical area inspections.

Reasonable access to the *site* shall be provided to the *City*, State, and federal agency review staff for the purpose of inspections of the *critical area* during any proposal review, *restoration*, *emergency* action, or *monitoring* period.

Article VII. Wetlands – Designation and Rating

EXHIBIT 1

18.55.300 Designation and rating of wetlands.

A. Designating *Wetlands*. All areas within the *City* meeting the *wetland* designation criteria in the *Washington State Identification and Delineation Manual (1997)*, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter. *Identification of wetlands* and delineation of their boundaries shall be done in accordance with the *Corps of Engineers wetlands delineation manual (Corps, 1987)* and applicable regional supplement (*Corps, 2010*), as revised or as may be revised in WAC 173-22-035 and 173-22-080.

B. *Wetland Ratings*. *Wetlands*, as defined by this chapter, shall be rated using criteria outlined below: classified and scored using the 2014 Department of Ecology *Washington State Wetland Rating System for Western Washington*, Publication #14-06-029 (Hruby, 2014 or latest edition), which contains the definitions and methods for determining whether the criteria below are met.

1. *Wetlands Classification*. *Wetlands*, as defined by this chapter, shall be designated Class 1, Class 2, and Class 3 according to the criteria below.

a. Class 1 *wetlands* are those *wetlands* that meet any of the following criteria:

- (1) Documented habitat for federal or State listed *endangered or threatened* fish, animal, or plant species; or
- (2) *Wetlands* listed as high quality habitats in the Natural Heritage Information System; or
- (3) *Wetlands* with irreplaceable ecological functions, including sphagnum bogs and fens or natural forested swamps; or
- (4) *Wetlands* of exceptional local significance, specifically those *wetlands* proximal to and influenced by the main stem of Swamp Creek, the Sammamish River, or Lake Washington.

b. Class 2 *wetlands* are those *wetlands* which are not Class 1 *wetlands* and meet any of the following criteria:

- (1) *Wetlands* that have significant functions that may not be adequately replicated through creation or restoration; or
- (2) *Wetlands* associated with Type 2 or 3 *streams*; or
- (3) *Wetlands* greater than one acre in size; or

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(4) *Wetlands equal to or less than one acre having three or more classes of wetland vegetation (as defined in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al., 1979)); or*

(5) *Wetlands containing a forested wetland class.*

e. *Class 3 wetlands are those wetlands not rated as Class 1 or 2 wetlands, but greater than 1,000 square feet in size.*

1. *Category I. Category I wetlands are:*

a. *Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;*

b. *Bogs;*

c. *Mature and old-growth forested wetlands larger than 1 acre; or*

d. *Wetlands that perform many functions well (scoring 23 points or more).*

These wetlands: (1) represent unique or rare wetland types, (2) are more sensitive to disturbance than most wetlands, (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or (4) provide a high level of functions.

2. *Category II. Category II wetlands are wetlands larger than 1 acre or those found in a mosaic of wetlands, or wetlands with a moderately high level of functions (scoring between 20 and 22 points).*

3. *Category III. Category III wetlands have a moderate level of functions (scoring between 16 and 19 points) and can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.*

4. *Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that can often be adequately replaced with a well-planned mitigation project, or in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.*

C. *Buffer Areas.*

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1. The establishment of *buffer* areas shall be required for all development proposals and activities in or adjacent to *wetland* areas. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *critical area*, and/or to protect life, property and resources from risks associated with development on unstable or critical lands.
2. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *critical area*, and implementation of appropriate erosion and sedimentation controls.
3. Native vegetation removal or disturbance is not allowed in established *buffers*, unless the removal or disturbance is part of a *restoration* activity or is allowed by other provisions of this chapter. In all cases, the removal or disturbance should be appropriately mitigated consistent with KMC 18.55.200 and 18.55.210.
2. Required buffer widths (KMC 18.55.320(F)) shall reflect the sensitivity of the particular critical area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the critical area.

F. *Wetland Buffers*:

14. *Wetland buffers* shall be established as follows:

Wetland Type	Buffer Width (Feet) Based on Habitat Score (points)		
	3-5	6-7	8-9
Class 1 Category I	75	150 110	225
Class 2 Category II	75	100 110	225
Class 3 Category III	60	60 110	225
Category IV	40	40	40

5. To minimize the impacts of adjacent land uses, *development proposals* and activities proposed in or adjacent to *wetland* areas must implement the following measures if applicable:

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Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from <i>wetland</i>
Noise	• Locate activity that generates noise away from <i>wetland</i> • If warranted, enhance existing <i>buffer</i> with <i>native vegetation</i> plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated <i>buffer</i> strip immediately adjacent to the outer <i>wetland buffer</i>
Toxic runoff	• Route all new, untreated runoff away from <i>wetland</i> while ensuring <i>wetland</i> is not dewatered • Establish covenants limiting use of pesticides within 150 ft of <i>wetland</i> • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the <i>buffer</i> • Use <i>low impact development</i> techniques
Change in water regime	• Infiltrate or treat, detain, and disperse into <i>buffer</i> new runoff from <i>impervious surfaces</i> and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense <i>vegetation</i> to delineate <i>buffer</i> edge and to discourage disturbance using <i>vegetation</i> appropriate for the ecoregion • Place <i>wetland</i> and its <i>buffer</i> in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

6. For *wetlands* that score 6 points or more for habitat function, a relatively undisturbed, vegetated corridor at least 100 feet wide shall be protected when feasible between the *wetland* and any other *priority habitats* as defined by the Washington State Department of Fish and Wildlife. Presence or absence of a nearby *priority habitat* must be confirmed by a *qualified professional* and documented in a *critical areas* report. The corridor must be protected for the entire distance between the *wetland* and the *priority habitat* by some type of legal protection such as a conservation easement or *critical area tract*.

27. Measurement of *Wetland Buffers*. *Wetland buffers* shall be measured from the *wetland edge* as delineated and marked in the field using the methodology specified in KMC 18.55.300.A, 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and current regional supplements or as may be revised in WAC 173-22-035 and 173-22-080 or the most recent approved federal manual and regional supplements.

38. Increased *Wetland Buffer Widths*. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional biologist* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *wetland functions* and

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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* or their functions;
- b. The *buffer* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion*-control measures will not prevent adverse impacts to the *wetland*. In such cases, the *buffer* shall be increased to include the slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection; or

c. A *degraded wetland buffer* is present. In this case, the standard *buffer* on the entire *site* shall be increased by 33 percent unless new net *impervious surface* between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer* equals or is less than 500 square feet or a *buffer* revegetation plan is provided meeting all of the following criteria:

(1) The *buffer* revegetation plan shall be prepared by a *qualified professional* and the *applicant* shall fund a review of the plan by the *City's* wetland consultant. Enhancements shall include revegetation with native species appropriate for the *site*, and may also include installation of special habitat features, such as snags, downed wood, bat boxes, or other wildlife habitats. The *buffer* revegetation plan shall meet the requirements for a mitigation plan as described in KMC Section 18.55.220, including five years of maintenance and monitoring consistent with KMC Section 18.55.280.

(2) The *degraded wetland buffer* shall be enhanced at a 1:1 ratio relative to the total net new *impervious surface* located between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer*, up to the total on-site square footage of *degraded wetland buffer* outside of any legal *nonconformances*. When the available *degraded wetland buffer* area is exceeded by the new net *impervious surface* area, the remaining required area of revegetation shall be implemented in *degraded wetland*, if present on the *site*.

(3) If the total new net *impervious surface* area between the upland edge of the standard *buffer* and the upland edge of the potentially increased *buffer* exceeds the area of *degraded wetland buffer* outside of any legal *nonconformances* and *degraded wetland*, the applicant should consider opportunities to convert areas of legal *nonconformances* to enhanced *buffer*.

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ED. Limited Exemptions. Class 3 wetlands less than 1,000 square feet may be exempted from the provisions of KMC 18.55.300 to 18.55.330 and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.

1. All isolated Category IV wetlands meeting certain criteria that are less than 4,000 square feet may be exempt from the requirement to avoid wetland and buffer impacts (KMC 18.55.210.A), and they may be altered or filled if the impacts are fully mitigated based on the remaining actions in Chapter 18.55.210.B through F. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. A critical area report for wetlands meeting the requirements in KMC 18.55.310 must be submitted that demonstrates that the wetland is eligible for this exemption by confirming that the following criteria are met:

- a. The wetland is not associated with riparian areas or their buffers;
- b. The wetland is not associated with shorelines of the state or their associated buffers;
- c. The wetland is not part of a wetland mosaic;
- d. The wetland does not score 6 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology); and
- e. The wetland does not contain a fish and wildlife habitat of importance as identified in 18.55.500.

2. All isolated Category IV wetlands meeting certain criteria that are less than 1,000 square feet may be exempt from the buffer provisions contained in this Chapter. A critical area report for wetlands meeting the requirements in KMC 18.55.310 must be submitted that demonstrates that the wetland is eligible for this exemption by confirming that the following criteria are met:

- a. Criteria 1.a through 1.e of this subsection, and
- b. The wetland does not contain federally listed species or their critical habitat.

7. Building Setback. A building setback from the buffer edge is required per KMC 18.55.270.

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Article VIII. Wetlands – Additional Report Requirements

18.55.310 Critical areas report.

Requirements for *critical areas* reports for *wetlands* are available from the *city manager*.

Article IX. Wetlands – ~~Performance Standards~~ Allowed Uses and Alterations18.55.320 ~~Performance standards – General requirements~~ Allowed Uses.

~~BA.~~ Activities and *uses* shall be prohibited from *wetlands* and *wetland buffers*, except as provided for in this chapter.

~~AB.~~ Unless otherwise allowed by this chapter, ~~a~~Activities may only be permitted in a *wetland* or *wetland buffer* after demonstration of *mitigation sequencing*, and if the *applicant* can show that the proposed activity will not degrade the *functions and values* of the *wetland* and other *critical areas* and no other feasible site design exists that results in less encroachment or impact to the *wetland* or *wetland buffer*.

C. ~~Class 1~~Category I and II *Wetlands*. Activities and *uses* shall be prohibited from ~~Class 1~~Category I and II *wetlands*, except as provided for in the *exemptions*, *public agency* and *utility* exception, or *reasonable use* exception sections of this chapter, or in subsection E of this section.

D. ~~Class 2 and 3~~Category III and IV *Wetlands*. Activities may be permitted, if the *city manager* determines, based upon review of special studies completed by *qualified professionals*, that the activity meets avoidance and minimization requirements outlined in KMC 18.55.210 and will not:

1. Adversely affect water quality;
2. Adversely affect fish, wildlife, or their habitat;
3. Have an adverse effect on drainage and/or stormwater detention capabilities;
4. Lead to unstable earth conditions or create an *erosion* hazard or contribute to scouring actions;
5. Be materially detrimental to any other property or the *City* as a whole; or
6. Have adverse effects on any other *critical areas*.

~~6E.~~ *Wetland and Buffer Uses*. The following *uses* may be permitted within a *wetland and wetland buffer* in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the *buffer* and adjacent *wetland*:

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a1. Conservation and *Restoration* Activities. Conservation or *restoration* activities aimed at protecting or restoring the soil, water, *vegetation*, or wildlife;

b2. Passive Recreation. Passive recreation facilities designed in accordance with an approved *critical areas* report, including:

(1)a. Private walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the *wetland* shall be located in the outer 25 percent of the *buffer* area. Walkway and trail surfaces in buffers shall be made of pervious materials and shall be a maximum of 5 feet wide. Where private walkways and trails must cross a wetland to reach a permitted water access structure, such as a dock, or a pedestrian bridge over an associated waterbody, the walkway or trail must be a raised boardwalk supported by piles that allow free movement of water beneath the structure;

b. Public walkways and trails; provided, that those pathways are located and designed based on existing site-specific conditions to minimize *native vegetation* removal, and are part of an approved public *park* or *trail* plan. The *trail* proposal shall be accompanied by a plan demonstrating that the existing ecological functions of the *wetland* or required *buffer* area on a project *site* would be improved. Trails may extend in or across a wetland if necessary to access viewing platforms or other viewpoints, access pedestrian bridges over an associated waterbody, or provide some other public purpose. Walkway and trail surfaces in buffers shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality. Trail segments in wetlands must be a raised boardwalk supported by piles that allow free movement of water beneath the structure, but should be limited to protect ecological functions of the buffer and wetland.

Walkway and trail surfaces shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;

c. Walkways and trails proposed in wetlands and buffers by private parties as part of subdivisions, multifamily development, or commercial or institutional uses may be allowed subject to subsection E.2.b, if they will be accessible to the general public, identified with visible signage, and are recorded on title. Providing connectivity to existing City or regional trail systems or completing or contributing to a trail linkage identified in the City's Parks, Recreation and Open Space Plan or Walkways & Waterways Plan is encouraged.

d. Wildlife viewing structures; and

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e. Fishing access areas; and

f. Interpretive and other signs, benches, railings, and similar accessories to passive recreation that do not require significant ground disturbance, vegetation clearing, or concrete foundations.

C3. Stormwater Management Facilities. Stormwater dispersion outfalls and bioswales Grass-lined swales and dispersal trenches may be located in the outer 25 percent of the *buffer* area of Category III and IV Class 2 and 3 wetlands only. All other surface water management facilities are not allowed within the *buffer* area.

18.55.325 Buffer Width Alterations.

5A. Buffer Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter, *wetland buffers* shall be retained in an undisturbed condition.

4B. Averaged or Reduced Buffer Widths. Buffer widths may be averaged or reduced if an applicant receives approval as provided in this section. An applicant may request either (1) *buffer averaging*, or (2) *buffer reduction with enhancement*. A combination of these two *buffer* modification approaches shall not be used.

A. Wetland Buffer Width Averaging. The city manager may allow averaging of the *wetland buffer* width in accordance with an approved *critical areas* report and the *best available science* on a case-by-case basis. Averaging of *buffer* widths may only be allowed where a *qualified professional biologist* demonstrates that:

- (1) Additional protection to the *wetland* will be provided through implementation of a *buffer enhancement* plan;
- (2) It will not reduce *wetland functions* or values;
- (3) 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;
- (4) The total area contained in the *buffer* after averaging is no less than that which would be contained within the standard *buffer*; and

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(5). For Class 1 and 2 wetlands, the buffer width shall not be reduced by more than 2025 percent in any one place. For Class 3 wetlands, the buffer width shall not be reduced to less than 50 feet in any one place.

B. *Buffer Reduction with Enhancement.* Standard buffer widths for degraded wetland buffers may be reduced through a combination of buffer enhancement and low impact development strategies. The applicant shall demonstrate that through enhancing the buffer and use of low impact development strategies the reduced buffer will function at a higher level than the standard buffer. Buffers may be reduced in the following manner according to wetland type:

Wetland Category	Maximum Buffer Reduction	Minimum Buffer Width (Feet)
1	25 percent	112.5 feet
2	25 percent	75 feet
3	25 percent	45 feet

C. *Decisional Criteria.* Prior to approval of a reduced buffer, a critical areas application shall meet all of the decisional criteria listed below. A reduced buffer will be approved in a degraded wetland buffer only if:

- (1) It will provide an overall improvement in water quality;
- (2) It will provide an overall enhancement to fish, wildlife, or their habitat;
- (3) It will provide a net improvement in drainage and/or stormwater detention capabilities;
- (4) It will not lead to unstable earth conditions or create an erosion hazard;
- (5) It will not be materially detrimental to any other property or the City as a whole; and
- (6) All exposed areas are stabilized with native vegetation, as appropriate.

D. *Buffer Enhancement Plan.* As part of the buffer reduction request, the applicant shall submit a buffer enhancement plan prepared by a qualified professional and fund a review of the plan by

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the City's wetland consultant. The plan shall assess the habitat, water quality, stormwater detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the six criteria listed in subsection (F)(4)(c) of this section.

C. The City may approve a modification of the minimum required buffer in cases where an improved right-of-way, associated with a legally established roadway, transects the buffer. The buffer may be reduced to match the edge of the right-of-way closest to the wetland if the portion of the buffer on the other side of the roadway meets the following criteria:

1. Does not provide additional protection to the proposed development from flooding or other hazard, or to the wetland; and
2. Provides insignificant biological, geological or hydrological buffer functions relating to the other portion of the buffer adjacent to the wetland.

Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

D. The City may approve a modification of the minimum required buffer width where the proposed development or use is isolated from the critical area and its contiguous buffer by an existing legally established building, detached garage, accessory dwelling unit, commercial parking area, or retaining wall over six (6) feet in height. The modification may not be requested for such improvements as fences, sheds, patios, decks, driveways, or other similar structures and impervious surfaces.

For the buffer modification to be approved, the applicant must demonstrate conclusively in a critical area report that all of the following criteria are met.

1. The existing legal improvement between the proposed development or use and the wetland creates a substantial barrier to buffer function;
2. The isolated section of buffer does not provide additional protection of the critical area from the proposed development; and
3. The isolated section of buffer does not provide significant hydrological, water quality, and wildlife buffer functions relating to the portion of the buffer adjacent to the critical area.

~~7. Building Setback. A building setback from the buffer edge is required per KMC 18.55.270.~~

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18.55.330 Performance standards – Mitigation requirements.

A. *Mitigation Shall Achieve Equivalent or Greater Ecological Functions.* *Mitigation for alterations to wetlands and buffers shall achieve equivalent or greater ecologic functions than exist in the impacted wetland and buffer. Mitigation plans shall be generally consistent with the Department of Ecology Guidelines found in Wetland Mitigation in Washington State – Part 2, Version 1, March 2006, Publication No. 06-060-011b.*

B. *Mitigation for Lost Functions and Values.* *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:*

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

C. *Buffers for Mitigation Shall Be Consistent.* ~~All mitigation sites shall have~~ *When mitigation for a wetland impact includes creation of new wetland area, that new area shall be provided with a functioning buffers* consistent with the *buffer* requirements of this chapter, unless determined by the *city manager* through a *variance* or a *reasonable use* exemption that a different *buffer* would provide adequate protection to the *critical area*.

D. *Preference of Mitigation Actions.* *Mitigation sequencing outlined in KMC 18.55.210 shall be demonstrated in each development proposal. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:*

1. Restoring *wetlands* on upland sites that were formerly *wetlands*.
2. Creating *wetlands* in upland areas, considering degraded areas first.
3. Enhancing significantly *degraded wetlands*.
4. Preserving high quality *wetlands* that are under imminent threat.

E. *Type and Location of Mitigation.* *Mitigation actions shall be conducted within the same sub-drainage basin or on the same site as the alteration except when all of the following apply:*

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1. There are no reasonable on-site or in-*subdrainage-basin* opportunities, or on-site and in-*subdrainage-basin* opportunities do not have a high likelihood of success due to development pressures or adjacent land *uses*, or on-site *buffers* or connectivity is inadequate;
2. Off-site *mitigation* has a greater likelihood of providing equal or improved *wetland functions* than the impacted *wetland*; and
3. Off-site locations shall be in the same *subdrainage basin* unless established regional or 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*.

F. *Mitigation Timing*. Where feasible, *mitigation* or *restoration* projects shall be completed 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 wildlife and flora.

G. *Mitigation Ratios*.

1. *Acreage Replacement Ratios*. The following ratios shall apply to creation or *restoration* that is *in-kind*, on-site, the same *classcategory*, 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 on a case-by-case basis. These ratios do not apply to the use of credits from a State-certified *wetland mitigation bank*. The first number specifies the acreage of replacement *wetlands* and the second specifies the acreage of *wetlands* altered.

Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

The required acreage replacement ratios for *wetlands* within the jurisdiction of the Kenmore shoreline master program are different from these standards. See KMC 16.65.010(C) for required wetland mitigation ratios in the shoreline jurisdiction.

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Standard Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation ¹	Enhancement ²
Category I (Mature Forested)	6:1	12:1	24:1
Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1
Buffer	1:1	1:1	1:1

¹Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a *site* with the goal of repairing natural or historic functions and processes of a *degraded wetland*. Rehabilitation results in a gain in *wetland* function but does not result in a gain in *wetland* acres. An example would be breaching a dike to reconnect *wetlands* to a *floodplain*.

²Enhancement means the manipulation of the physical, chemical, or biological characteristics of a *wetland* to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the *vegetation* present. Enhancement is undertaken for specified purposes such as water quality improvement, *flood* water retention, or wildlife habitat. Enhancement results in a change in *wetland* function(s) and can lead to a decline in other *wetland* functions, but does not result in a gain in *wetland* acres. Examples are planting *vegetation*, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

2. Increased Replacement Ratio. The *city manager* may increase the ratios under the following circumstances:

- a. Uncertainty exists as to the probable success of the proposed *restoration* or creation; or
- b. A significant period of time will elapse between impact and replication of *wetland* functions; or
- c. *Mitigation* will occur off-site versus on-site; or
- d. Proposed *mitigation* will result in a lower category *wetland* or reduced functions relative to the *wetland* being impacted; or
- e. The impact was an unauthorized impact.

3. Decreased Replacement Ratio.

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a. The *city manager* may decrease the replacement/creation/reestablishment ratios required for Class 1 and 2 Category II and III wetlands to 2:1 and 1.5:1, respectively, under the following circumstances:

- (1) The *applicant's* qualified *biologist* provides documentation that increases the certainty of success of the proposed *wetland restoration* or creation. At a minimum, this documentation shall include ground water *monitoring* in the area of proposed *restoration* or creation in the early growing season over a sufficient period of time to determine that there is a high probability of creating or restoring *wetlands* in that location; or
- (2) Proposed *mitigation* will result in a higher functioning *wetland* (higher class) relative to the functions of the *wetland* being impacted; or
- (3) The *mitigation* is successfully installed for a period of one year prior to the *wetland* being impacted. Successful installation shall be determined by a qualified *biologist*.

b. When a decreased replacement ratio is allowed, the *mitigation* shall be monitored for a period of no less than 10 years.

4. Credit/Debit Method. As an alternative to the standard mitigation ratios, the *City* may allow *mitigation* based on the "credit/debit" method developed by the Department of Ecology and documented in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington, Final Report, March 2012* (Hruby, 2012 or as revised).

H. *Wetlands Enhancement as Mitigation*. 1. Impacts to *wetlands* may be mitigated by *enhancement* of existing significantly *degraded wetlands*. *Applicants* proposing to enhance *wetlands* must produce a *critical areas* 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*. An *enhancement* proposal must also show whether existing *wetland functions* will be reduced by the *enhancement* actions.

2. At a minimum, *enhancement* acreage shall be double the acreage required for creation or *restoration*.

I. *Mitigation Banking*. The *City* may consider and approve *mitigation banking* as a form of compensatory *mitigation* for *wetland* impacts when the provisions of this chapter require *mitigation* and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of *critical area*

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functions and values when compared to on-site *mitigation*; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of *critical areas*, important *species*, habitats, and when they are consistent with the City comprehensive plan and create a viable alternative to the piecemeal *mitigation* for individual project impacts to achieve ecosystem-based conservation goals. Credits from a *wetland mitigation bank* may be approved for use as compensation for *unavoidable impacts* to wetlands when:
 - a. The bank is certified under state rules;
 - b. The *city manager* determines that the *wetland mitigation bank* provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule (Chapter 173-700 WAC) or as revised, and (Chapter 90.84 RCW) and the federal *mitigation banking* guidelines as outlined in the Federal Register Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain State and federal certification. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
3. Preference shall be given to *mitigation banks* that implement *restoration* actions that have been identified formally by an adopted shoreline *restoration* plan or the Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Chinook Salmon Conservation Plan. Credits from a certified *wetland mitigation bank* may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific *wetland functions*.

J. *In Lieu Fee Programs*. To aid in the implementation of off-site *mitigation*, the City may develop an in-lieu fee (ILF) program or allow participation in an ILF program, such as King County's Mitigation Reserves Program. ILF programs shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee *mitigation*, and state water quality regulations. An approved ILF program sells compensatory *mitigation* credits to permittees whose obligation to provide compensatory *mitigation* is then transferred to the in-lieu program sponsor, a governmental or non-profit

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natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The *city manager* determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The *mitigation* will occur on a site identified using the site selection and prioritization process in the approved ILF program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
4. Land acquisition and initial physical and biological improvements of the *mitigation* site must be completed within three years of the credit sale. A one-year extension to this requirement may be granted by the *city manager* if the need for additional *mitigation* because of possible temporal loss is evaluated and addressed.
5. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the *applicant's* qualified *wetland* scientist using the method consistent with the credit assessment method specified in the approved instrument for the ILF program.
6. Credits from an approved ILF program may be used to compensate for impacts located within the service area specified in the approved ILF instrument.

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

L. *Alternative Mitigation Plans.* The *city manager* may approve alternative *critical areas mitigation* plans that are based on *best available science*, such as priority *restoration* plans that achieve *restoration* goals identified in the SMP. Alternative *mitigation* proposals must provide an equivalent or better level of protection of *critical area functions and values* than would be provided by the strict application of this chapter and must contain all of the standard components of a *mitigation* plan. The *city manager* shall consider the following for approval of an alternative *mitigation* proposal:

1. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, Olympia, WA, December 2009, or as revised).

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2. Creation or *enhancement* of a larger system of natural areas and *open space* is preferable to the preservation of many individual habitat areas.

3. There is clear potential for success of the proposed *mitigation* at the proposed *mitigation site*.

4. A *wetland* of a different type is justified based on regional needs or *functions and values*; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

Article X. Streams and Lakes – Designation and Rating

18.55.400 Designation and rating of streams and lakes.

A. Stream and Lake Classifications. Streams and lakes shall be designated Type 1, Type 2, Type 3, and Type 4 Type S, Type F, Type Np, and Type Ns according to the following criteria in this section identified in WAC 222-16-030.

1. Type ~~1S~~ streams ~~Waters~~ are those streams ~~segments of natural waters~~ identified as "shorelines of the State" under Chapter 90.58 RCW, including the Sammamish River and the main stem of Swamp Creek, as well as Lake Washington.

2. Type 2 streams are those streams that are:

- a. Natural streams that have perennial (year-round) flow and are used by salmonid fish; or
- b. Natural streams that have intermittent flow and are used by salmonid fish.

3. Type 3 streams are those streams that are:

- a. Natural streams that have perennial flow and are used by fish other than salmonids; or
- b. Natural streams that have intermittent flow and are used by fish other than salmonids.

4. Type 4 streams are those natural streams with perennial or intermittent flow that are not used by fish.

2. Type F Waters means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat.

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3. Type Np Waters means all segments of *natural waters* within the *bankfull width* of defined channels that are *perennial nonfish habitat streams*. *Perennial streams* are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

4. Type Ns Waters means all segments of *natural waters* within the *bankfull width* of the defined channels that are not Type S, F, or Np Waters. These are seasonal, *nonfish habitat streams* in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any *stream* reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

B. Presumption of fish use: Waters having any of the following characteristics are presumed to contain suitable *fish habitat*, and therefore are a Type F water:

1. *Stream* segments having a defined *channel width* of 2 feet or greater within the *bankfull width* and having a *channel gradient* of 16 percent or less;

2. *Stream* segments having a defined *channel width* of 2 feet or greater within the *bankfull width* and having a *channel gradient* greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size based on hydrographic boundaries;

3. Ponds or impoundments having a surface area of less than 1 acre at *seasonal low water* and having an outlet to a *fish stream*; or

4. Ponds or impoundments having a surface area greater than 0.5 acre at *seasonal low water*.

BC. Ditches. Ditches are artificial drainage features created in uplands through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. Purposeful creation must be demonstrated through documentation, photographs, statements and/or other evidence. Ditches are excluded from regulation as *streams*, unless they are used by *native species of* fish. Drainage setbacks are required as per the City's surface water runoff policy (Chapter 13.35 KMC).

D. Lakes and ponds, which terms can be used interchangeably and are loosely differentiated in common use by the larger size of lakes, are surface water bodies distinguished from *wetlands* by the presence of deep water, typically 2 meters (6.6 feet) or greater.

E. Lakes, ponds and impoundments deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration), and landscape amenities, are not regulated by this chapter unless they are used by native fish. Purposeful creation must be demonstrated through documentation, photographs, statements

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and/or other evidence. However, lakes, ponds and impoundments intentionally created from dry areas as mitigation for a critical areas impact are regulated by this chapter.

FB. Stream and Lake Buffers.

A1. Establishment of Stream Buffers. The establishment of *buffer* areas shall be required for all *development proposals* and activities in or adjacent to *streams and lakes*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream or lake* and provide habitat for *great blue* heron and other wildlife. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *stream or lake*, and implementation of appropriate *erosion* and sedimentation controls. *Native vegetation removal or disturbance is not allowed in established buffers.*

Required *buffer* widths shall reflect the sensitivity of the *stream* or the risks associated with *development* and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the *critical area*.

1. The following *buffers* are established for *streams and lakes* to protect *functions and values*, including heron habitat:

Stream Type	Buffer Width (Feet)
Type 4S - and Swamp Creek, Lake Washington and Sammamish River Little Swamp Creek	150 See KMC 16.65.020
Type F – Little Swamp Creek	150
Type 2F (other waterbodies used by or containing habitat suitable for salmonid fish)	100
Type 3F (waterbodies used by or containing habitat suitable for fish other than salmonids)	50
Type 4Np or Ns	25
Any type stream restored from a pipe	25

2. Measurement of *Stream Buffers*. *Stream b* Buffers shall be measured perpendicularly from the ordinary high water mark.

7. *Building Setback*. A building setback is required from the edge of the *buffer* per KMC 18.55.270.

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3. Increased **Stream-Buffer** Widths. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *stream or lake 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 or their functions*;
- b. The *buffer* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion-control* measures will not prevent adverse impacts to the *stream or lake*. The *buffer* should be measured from the toe of the slope. In such cases, the *buffer* shall be increased to include the slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection.

Article XI. Streams **and Lakes** – Additional Report Requirements

18.55.410 Critical areas report.

Requirements for *critical areas* reports for *streams and lakes* are available from the *city manager*.

Article XII. Streams **and Lakes** – **Performance Standards**~~Allowed Uses and Alterations~~

18.55.415 – Allowed Uses

5A. *Buffer* Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter **and Title 16 KMC (Shoreline Management)**, *stream and lake buffers* shall be retained in an undisturbed condition.

B. *Native vegetation* removal or disturbance is not allowed in established *buffers*.

6C. *Buffer Uses*. The following *uses* may be permitted within a *stream or lake buffer* in accordance with the review procedures of this chapter **and Title 16 KMC (Shoreline Management)**, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the *buffer* and adjacent *stream or lake*:

1a. Conservation and *Restoration* Activities. Conservation or *restoration* activities aimed at protecting the soil, water, *vegetation*, or wildlife;

2b. Passive Recreation. Passive recreation facilities designed in accordance with an approved *critical areas* report, including:

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(1)a. Private walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the stream or lake shall be located in the outer 25 percent of the buffer area;

(2) Walkway and trail surfaces in buffers shall be made of pervious materials and shall be a maximum of 5 feet wide except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;

b. Public walkways and trails; provided, that those pathways are located and designed based on existing site-specific conditions to minimize native vegetation removal, and are part of an approved public park or trail plan. The trail proposal shall be accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be improved. Walkway and trail surfaces in buffers shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront shoreline environment on Lake Washington, public access improvements may extend to the water's edge.

c. Walkways and trails proposed in stream and lake buffers by private parties as part of subdivisions, multifamily development, or commercial or institutional uses may be allowed subject to subsection C.2.b, if they will be accessible to the general public, identified with visible signage, and are recorded on title. Providing connectivity to existing City or regional trail systems or completing or contributing to a trail linkage identified in the City's Parks, Recreation and Open Space Plan or Walkways & Waterways Plan is encouraged.

d.(3) Wildlife viewing structures; and

e.(4) Fishing access areas; and

f. Interpretive and other signs, benches, railings, and similar accessories to passive recreation that do not require significant ground disturbance, native vegetation removal, or concrete foundations.

C3. Stormwater Management Facilities. Stormwater dispersion outfalls and bioswales Grass-lined swales and dispersal trenches may be located in the outer 25 percent of the buffer area. All other surface water management facilities are not allowed within the buffer area.

7. Building Setback. A building setback is required from the edge of the buffer per KMC 18.55.270.

18.55.420 Performance standards – General Alterations.

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A. Establishment of *Stream Buffers*. The establishment of *buffer* areas shall be required for all *development proposals* and activities in or adjacent to *streams*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream* and provide habitat for heron and other wildlife. *Buffers* shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the *stream*, and implementation of appropriate *erosion* and sedimentation controls. *Native vegetation* removal or disturbance is not allowed in established *buffers*.

Required *buffer* widths shall reflect the sensitivity of the *stream* or the risks associated with *development* and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the *critical area*.

B. *Stream Buffers*:

1. The following *buffers* are established for *streams* to protect *functions and values*, including heron habitat:

Stream Type	Buffer Width (Feet)
Type 1 and Little Swamp Creek	150
Type 2	100
Type 3	50
Type 4	25

2. Measurement of *Stream Buffers*. *Stream buffers* shall be measured perpendicularly from the *ordinary high water mark*.

3. Increased *Stream Buffer* Widths. The *city manager* shall require increased *buffer* widths in accordance with the recommendations of a *qualified professional* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *stream 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* has a slope greater than 30 percent or is susceptible to *erosion* and standard *erosion-control* measures will not prevent adverse impacts to the *stream*. The *buffer* should be measured from the toe of the slope. In such cases, the *buffer* shall be increased to include the

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slope or the standard *buffer* shall be drawn from the top of the slope, whichever provides greater protection.

A. Modification of Standard *Buffer*.

1. The *City* may approve a modification of the minimum required *buffer* in cases where an improved right-of-way, associated with a legally established roadway, transects the *stream* or lake *buffer*. The *buffer* may be reduced to match the edge of the right-of-way closest to the *stream* or lake if the portion of the *buffer* on the other side of the roadway meets the following criteria:

- a. Does not provide additional protection to the proposed development from *flooding* or other hazard, or to the lake or *stream*; and
- b. Provides insignificant biological, geological or hydrological *buffer* functions relating to the other portion of the *buffer* adjacent to the lake or *stream*.

Improved rights-of-way are those that are maintained out of necessity as a cleared, graded, paved, mowed or otherwise altered surface to allow for access, maintenance, or safety.

2. The *City* may approve a modification of the minimum required *buffer* width where the proposed *development* or *use* is isolated from the *critical area* and its contiguous *buffer* by an existing legally-established *building*, detached garage, accessory dwelling unit, commercial parking area, *retaining wall* over six (6) feet in height, or similar structure. The modification may not be requested for such improvements as *fences*, sheds, patios, decks, driveways, or other similar structures and *impervious surfaces*. For the *buffer* modification to be approved, the *applicant* must demonstrative conclusively in a *critical area* report that all of the following criteria are met:

- a. The existing legal improvement between the proposed development or *use* and the *stream* or lake creates a substantial barrier to *buffer* function;
- b. The isolated section of *buffer* does not provide additional protection of the *critical area* from the proposed *development*; and
- c. The isolated section of *buffer* does not provide significant hydrological, water quality, and wildlife *buffer* functions relating to the portion of the *buffer* adjacent to the *critical area*.

7. *Building Setback*. A building *setback* from the *buffer* edge is required per KMC 18.55.270.

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4B. *Buffer Reduction with Enhancement.* Standard *buffer* widths for degraded *buffers* of Type F, Ns, or Np *waters* may be reduced a maximum of 25 percent of the standard width through a combination of *buffer enhancement* and *low impact development* strategies. The *applicant* shall demonstrate that through enhancing the *buffer* and use of *low impact development* strategies the reduced *buffer* will function at a higher level than the standard *buffer*. Type S *buffers* and *setbacks* may only be reduced as outlined in KMC 16.60.030 or under the *Shoreline Variance* requirements of KMC 16.75.030. *Buffers* may be reduced in the following manner according to *stream* type:

The following table describes the maximum *buffer* reduction and minimum *buffer* width when a degraded *buffer* is enhanced:

<i>Stream Type</i>	Maximum <i>Buffer</i> Reduction	Minimum <i>Buffer</i> Width (Feet)
Type S - Swamp Creek, Lake Washington and Sammamish River	See KMC 16.60.030 or 16.75.030	
Type F –Type 1 and Little Swamp Creek	25 percent	112.5 feet
Type F (other waterbodies used by or containing habitat suitable for salmonid fish) Type 2	25 percent	75 feet
Type F (waterbodies used by or containing habitat suitable for fish other than salmonids) Type 3	25 percent	37.5 feet
Type Np or Ns Type 4	25 percent	18.75 feet
Any type <i>stream</i> restored from a pipe	25 percent	18.75 feet

A1. Prior to approval of a reduced *buffer*, a *critical areas* application shall meet all of the decisional criteria listed below. A reduced *buffer* will be approved in a degraded *stream* or lake *buffer* only if:

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

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

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~~(3)c.~~ It will provide a net improvement in drainage and/or stormwater detention capabilities;

~~(4)d.~~ It will not lead to unstable earth conditions or create an *erosion* hazard;

~~(5)e.~~ It will not be materially detrimental to any other property or the *City* as a whole; and

~~(6)f.~~ All exposed areas are stabilized with *native vegetation*, as appropriate.

~~b2.~~ As part of the *buffer* reduction request, the *applicant* shall submit a *buffer enhancement* plan prepared by a *qualified professional* and fund a review of the plan by the *City's wetlandcritical areas* consultant. The plan shall assess the habitat, water quality, stormwater detention, ground water recharge, shoreline protection, and *erosion* protection functions of the *buffer*; assess the effects of the proposed modification on those functions; and address the six criteria listed in subsection ~~(F)(4)(c)B.1~~ of this section.

~~5. Buffer Conditions Shall Be Maintained. Except as otherwise specified or allowed in accordance with this chapter, stream buffers shall be retained in an undisturbed condition.~~

~~6. Buffer Uses. The following uses may be permitted within a stream buffer in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent stream:~~

~~a. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;~~

~~b. Passive Recreation. Passive recreation facilities designed in accordance with an approved critical areas report, including:~~

~~(1) Walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the stream shall be located in the outer 25 percent of the buffer area;~~

~~(2) Walkway and trail surfaces shall be made of pervious materials except that public multipurpose trails may be of impervious materials if they meet all other requirements, including water quality;~~

~~(3) Wildlife viewing structures; and~~

~~(4) Fishing access areas.~~

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e. ~~Stormwater Management Facilities. Grass-lined swales and dispersal trenches may be located in the outer 25 percent of the *buffer* area. All other surface water management facilities are not allowed within the *buffer* area.~~

7. ~~Building Setback. A building setback is required from the edge of the *buffer* per KMC 18.55.270.~~

C. *Stream* Crossings. *Stream* crossings may be allowed and may encroach on the otherwise required *stream buffer* if:

1. All crossings ~~are designed using the most recent version of Washington Department of Fish and Wildlife's *Water Crossing Design Guidelines* (Barnard and others, 2013, or as revised), prioritizing~~ use bridges or other construction techniques which do not disturb the *stream* bed or bank, except that bottomless culverts or other appropriate methods demonstrated to provide fisheries protection may be used for Type ~~2 or 3F~~ *streams* if the *applicant* demonstrates that such methods and their implementation will pose no harm to the *stream* nor inhibit migration of fish;
2. All crossings are constructed during the summer low flow and are timed to avoid *stream* disturbance during periods when use is critical to *salmonids*;
3. Crossings do not occur over *salmonid* spawning areas unless the *City* determines that no other possible crossing site exists;
4. Bridge piers or abutments are not placed within the *Federal Emergency Management Agency (FEMA) floodway* or below the *ordinary high water mark*;
5. Crossings do not diminish the *flood*-carrying capacity of the *stream*;
6. Underground utility crossings are laterally drilled and located at a depth of four feet below the maximum depth of scour for the *base flood* predicted by a civil engineer licensed by the State of Washington. Temporary bore pits to perform such crossings may be permitted within the *stream buffer* established in this chapter; and
7. Crossings are minimized and serve multiple purposes and properties whenever possible.

D. *Stream* Relocations.

1. *Stream* relocations may be allowed only for:
 - a. ~~All Type F, Type Np, and Type Ns~~ *streams* ~~types~~ as part of a public project for which a public agency and utility exception is granted pursuant to this chapter; or

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b. Type 3 or 4F streams with fish use other than salmonids, Np or Ns streams for the purpose of enhancing resources in the *stream* if:

(1) Appropriate floodplain protection measures are used; and

c. The location occurs on-site except that relocation off-site may be allowed if the *applicant* demonstrates that any on-site relocation is impracticable, the *applicant* provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage *sub-basin* as the original *stream*.

2. For any relocation allowed by this section, the *applicant* shall base the design on the most recent version of the multi-agency Stream Habitat Restoration Guidelines (Cramer, 2012 or as revised), and demonstrate, based on information provided by a civil engineer and a qualified *biologist*, that:

- a. The equivalent *base flood* storage volume and function will be maintained;
- b. There will be no adverse impact to local ground water;
- c. There will be no increase in velocity;
- d. There will be no interbasin transfer of water;
- e. There will be no increase in the sediment load;
- f. There is an overall increase in habitat function and value for *salmonids* and other fish;
- g. Requirements set out in the *mitigation* plan are met;
- h. The relocation conforms to other applicable laws; and
- i. All work will be carried out under the direct supervision of a qualified *biologist*.

E. Stream or Lake Enhancement/Restoration. Stream or lake enhancement and restoration not associated with any other *development proposal* may be allowed if:

- 1. aAccomplished according to a plan consistent with the most recent version of the multi-agency Stream Habitat Restoration Guidelines (Cramer, 2012 or as revised) for its design, implementation, maintenance and *monitoring* prepared by a civil engineer and a qualified *biologist* and carried out under the direction of a qualified *biologist*.

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F. *Minor Stream Restoration*. A minor stream restoration project for fish habitat enhancement may be allowed if:

24. The project results in an net increase in stream or lake functions and values;
2. The restoration is sponsored by a public agency with a mandate to do such work;
3. The enhancement or restoration is not associated with mitigation of a specific development proposal; and
4. The enhancement or restoration is limited to removal of non-native vegetation and enhancement of riparian vegetation, placement of rock weirs, log controls, spawning gravel and other specific salmonid habitat improvements;
5. The restoration only involves the use of hand labor and light equipment; or the use of helicopters, cranes, or aerial equipment which deliver supplies to the project site; provided, that they have no contact with critical areas or their buffers; and
6. The restoration is performed under the direction of a qualified biologist.

18.55.430 Performance standards – Mitigation requirements.

A. *Stream or Lake Mitigation*. Mitigation of adverse impacts to aquatic or riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near to the alteration as feasible, and be located in the same subdrainage basin as the impacted habitat unless mitigation will be implemented via a City-approved in-lieu fee program or mitigation bank. See also KMC 18.55.200, 18.55.210 and 18.55.220.

B. *Alternative Mitigation for Stream Areas*. The performance standards set forth in this section may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.

B. *Advance Mitigation*. Mitigation for projects with pre-identified impacts to streams, lakes or their buffers may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

C. *Alternative Mitigation Plans*. The city manager may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals shall provide an equivalent or better level of

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protection of *critical area functions and values* than would be provided by the strict application of this chapter and shall contain all of the standard components of a *mitigation* plan. The *city manager* shall consider the following for approval of an alternative *mitigation* proposal:

1. The proposal uses a watershed approach consistent with the joint U.S. Environmental Protection Agency and U.S. Army Corps of Engineers *Compensatory Mitigation for Losses of Aquatic Resources* (33 CFR Part 33, April 2008).
2. Creation or *enhancement* of a larger system of natural areas and *open space* is preferable to the preservation of many individual habitat areas.
3. There is clear potential for success of the proposed *mitigation* at the proposed *mitigation* site.
4. *Mitigation* in a different sub-basin is justified based on regional needs or *functions and values*; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

D. Mitigation Banking.

1. Credits from a *mitigation bank* may be approved for use as compensation for *unavoidable impacts* to aquatic habitats when:
 - a. The bank is certified under state rules;
 - b. The *city manager* determines that the *mitigation bank* provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. Accounting methods for quantifying project impacts and the necessary compensation shall be consistent with methods specified in the certified bank instrument.
3. Credits from a certified *mitigation bank* may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin.

E. In Lieu Fee Programs. To aid in the implementation of off-site *mitigation*, the *City* may develop an in-lieu fee (ILF) program or allow participation in an ILF program, such as King County's Mitigation Reserves Program. ILF programs shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee *mitigation*, and state water quality regulations. An approved

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ILF program sells compensatory *mitigation* credits to permittees whose obligation to provide compensatory *mitigation* is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The *city manager* determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The *mitigation* will occur on a site identified using the site selection and prioritization process in the approved ILF program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
4. Land acquisition and initial physical and biological improvements of the *mitigation* site shall be completed within three years of the credit sale. A one-year extension to this requirement may be granted by the *city manager* if the need for additional *mitigation* because of possible temporal loss is evaluated and addressed.
5. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the *applicant's* qualified *stream* or lake scientist using the method consistent with the credit assessment method specified in the approved instrument for the ILF program.
6. Credits from an approved ILF program may be used to compensate for impacts located within the service area specified in the approved ILF instrument.

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

A. Fish and wildlife habitats of importance are those habitat 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. In the *City*, habitats of importance meet any of the following criteria:

1. Documented presence of *species* listed by the federal government or the State of Washington as endangered, or threatened or sensitive; or

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2. Great blue hHeron rookeries or active nesting trees; or
 3. Pileated woodpecker breeding habitat as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species ProgramClass 1 wetlands as defined in these regulations; or
 4. Biodiversity areas and corridors as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species Program; orType 1 streams as defined in these regulations.
 5. Bald eagle habitat shall be, protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292)Federal Bald and Golden Eagle Protection Act; or
 6. Anadromous fish habitat; or
 7. Habitat for species nominated and approved by the City per KMC 18.55.500.C.
- B. All areas within the City meeting one or more of these criteria, regardless of any formal identification, are hereby designated *critical areas* and are subject to the provisions of this chapter.
- C. The City may accept and consider nominations by Kenmore residents or property owners for habitat areas and *species* to be designated as fish and wildlife habitats of importance. Nominations will be accepted by the city manager on an annual basis and will be considered for approval by the City Council following a public hearing on the nomination. Guidelines for nomination are available from the city manager.Information to be included with a nomination request includes:
1. Specific geographic boundaries and list of species proposed, including a list of functions;
 2. Rationale for nomination based on best available science, including the viability of the population in Kenmore and the contribution to biodiversity;
 3. Causes for vulnerability, including a description of activities that compromise these areas, as well as a list of proposed management and protection measures;
 4. Regulatory gaps regarding protection of the habitat or species; and
 5. Non-environmental impacts affecting the habitat area and species (e.g., legal, cultural, recreational, and economic significance).

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Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

18.55.510 Critical areas report – Habitat Management Plan.

Requirements for *critical areas* reports for fish and wildlife habitats of importance are available from the *city manager*. A. Habitat Management Plan. A habitat management plan is required when *the priority habitats and species* available maps or natural heritage program maps provided by the *City*, or other information, indicate the presence of *fish and wildlife habitats of importance* areas with which critical *species* listed as *endangered or threatened* under federal or State law have a primary association.

1. All habitat management plans shall be prepared *by a qualified professional* and are encouraged to *be prepared* in consultation with the *State* *Washington* Department of Fish and Wildlife. Habitat management plans for *critical species* listed as *endangered or threatened* shall be approved by the Department of Fish and Wildlife.
2. Habitat Management Plan Content Requirements. *Based on the characteristics of the site and information submitted by the applicant*, the *city manager* may require that all or a portion of the following be included in a habitat management plan. Requirements for habitat management plans are available from the *city manager*. Plans also shall include:
 - a. A map drawn to scale or survey showing the following information:
 - (1) All lakes, ponds, *streams*, and *wetlands* on, or adjacent to, the subject property, including the name (if named), *ordinary high water mark* of each, and the *stream type or wetland class* consistent with this chapter.
 - (2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the *City*.
 - (3) The location of any observed evidence of use by a listed *species*.
 - ba. An analysis of how the proposed *development* activities will affect the fish and wildlife habitats of importance and *listed species of importance*.
 - cb. Provisions to reduce or eliminate the impact of the proposed *development* activities on any fish and wildlife habitats of importance and listed *species*. An analysis of mitigation sequencing per KMC 18.55.210, including a *mitigation plan*.
 - dc. The habitat management plan should also address *Consideration of* the following issues:

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(1) Prohibition or limitation of *development* activities within the fish and wildlife habitats of importance;

(21) Establishment of a *buffer* around the fish and wildlife habitat *conservation area* of importance;

(32) Retention of certain *vegetation* or areas of *vegetation* critically important to the *listed species* of importance;

(43) Limitation of access to the fish and wildlife habitats of importance and *buffer*;

(54) Seasonal restrictions on construction activities on the subject property; and

(65) Clustering of *development* on the subject property; and.

(7) The preservation or creation of a habitat area for the listed *species*.

d. Discussion of how the project complies with published Washington Department of Fish and Wildlife management recommendations for the *species'* habitat, if available.

3. When bald eagle habitat is the only potential fish and wildlife habitat of importance on a *site*, *applicants* may self-certify that they are in compliance with the Federal Bald and Golden Eagle Protection Act by submitting a document generated online through the U.S. Fish and Wildlife Service's *Bald and Golden Eagle Permit Recommendation Tool*. Washington Department of Fish and Wildlife no longer maps bald eagle nest sites, so *applicants* would complete the certification based on their knowledge of their *site* and local conditions. The *City* may review the *applicant's* certificate and require modification if more accurate information or updated standards for protection are available.

4. The *applicant* may combine a habitat management plan with any studies required by other laws and regulations (e.g. a Biological Assessment or Biological Evaluation).

Article XV. Fish and Wildlife Habitats of Importance – Performance Standards

18.55.520 Performance standards – General requirements.

A. Habitat Management Plan. A habitat management plan is required when the *priority habitats* and *species maps* or natural heritage program maps provided by the *City*, or other information, indicate the presence of areas with which critical *species* listed as *endangered* or *threatened* under federal or State law have a primary association.

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1. All habitat management plans shall be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical *species* listed as *endangered or threatened* shall be approved by the Department of Fish and Wildlife.
2. Habitat Management Plan Content Requirements. Based on the characteristics of the *site* and information submitted by the *applicant*, the *city manager* may require that all or a portion of the following be included in a habitat management plan:
 - a. A map drawn to scale or survey showing the following information:
 - (1) All lakes, ponds, *streams*, and *wetlands* on, or adjacent to, the subject property, including the name (if named), *ordinary high water mark* of each, and the *stream* type or *wetland* class consistent with this chapter.
 - (2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the *City*.
 - (3) The location of any observed evidence of use by a listed *species*.
 - b. An analysis of how the proposed *development* activities will affect the fish and wildlife habitats of importance and listed *species*.
 - c. Provisions to reduce or eliminate the impact of the proposed *development* activities on any fish and wildlife habitats of importance and listed *species*.
 - d. The habitat management plan should also address the following issues:
 - (1) Prohibition or limitation of *development* activities within the fish and wildlife habitats of importance;
 - (2) Establishment of a *buffer* around the fish and wildlife habitat conservation area;
 - (3) Retention of certain *vegetation* or areas of *vegetation* critically important to the listed *species*;
 - (4) Limitation of access to the fish and wildlife habitats of importance and *buffer*;
 - (5) Seasonal restrictions on construction activities on the subject property;

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(6) Clustering of *development* on the subject property; and

(7) The preservation or creation of a habitat area for the listed *species*.

GA. Buffers.

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer* areas for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer* widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the *Washington State Department of Fish and Wildlife*.
2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife *in a permit or in its management recommendations, or by another state or federal agency with expertise in the species or its habitat*, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

B. *Alterations* shall not degrade the *functions and values* of habitat. *Fish and wildlife* habitat areas of importance may be altered only if the proposed *alteration* of the habitat or the *mitigation* proposed does not degrade the quantitative and qualitative *functions and values* of the habitat. *Fish habitat areas of importance may be altered only when necessary to install water-dependent developments that are mitigated consistent with this chapter and Title 16 KMC (Shoreline Management), when applicable. All new structures and land alterations shall be prohibited from habitat areas of importance, except in accordance with this chapter.*

C. *Nonindigenous* species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a fish and wildlife habitat *area* of importance unless authorized by a State or federal permit or approval.

D. *Mitigation* shall result in contiguous habitat. *When feasible, mitigation* sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a *mitigation* plan that is part of an approved *critical areas* report to minimize the isolating effects of *development* on habitat areas, so long as *mitigation* of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

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E. *Mitigation* shall achieve equivalent or greater biological functions. *Mitigation of alterations* to habitat areas of importance shall achieve equivalent or greater biologic functions and shall include *mitigation* for adverse impacts upstream or downstream of the *development proposal site*. *Mitigation* shall address each function affected by the *alteration* to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the *best available science*. Any approval of *alterations* or impacts to a fish and wildlife habitat of importance shall be supported by the *best available science*. Special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, as required by WAC 365-195-900 through 365-195-925.

G. Buffers:

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer* areas for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer widths* shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the State Department of Fish and Wildlife.

2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

18.55.530 Performance standards – Specific habitats.

A. Endangered, Threatened, and Sensitive Species:

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

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

3. 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, a habitat management plan shall be developed by a *qualified professional*. Activities are adjacent to bald eagle sites when they are within 800 feet of an active nest, or within a quarter mile (2,640 feet) of an active nest and in a shoreline foraging area. 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 habitat management plan by the *City* and the Washington State Department of Fish and Wildlife.

BA. Great Blue Heron Rookery.

1. A *buffer* equal to the distance of a 900656-foot radius measured from the outermost nest *tree* in the rookery will be established around an active rookery. This area will be maintained in *native vegetation*. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the *buffer* excludes the area south of the north edge of the State Route 522 right-of-way and west of the east edge of the 73rd Avenue NE right-of-way.
2. Between January 1st and July 31st, no *clearing, grading* or land disturbing activity shall be allowed within 900656 feet of the rookery unless approved by the *City* and Washington State Department of Fish and Wildlife. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the area south of the north edge of the State Route 522 right-of-way and west of the east edge of 73rd Avenue NE right-of-way is excluded.
3. Approval of permits for activities within the heron rookery *buffer* shall not occur prior to the approval of a habitat management plan by the *City* and the Washington State Department of Fish and Wildlife.

CB. *Anadromous Fish.*

1. All activities, *uses*, and *alterations* proposed to be located in waterbodies used by *anadromous fish* or in areas that affect such water bodies shall give special consideration to the preservation and

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enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- a. Activities shall be timed to occur only during the allowable work window as designated by the Washington State Department of Fish and Wildlife for the applicable *species*;
- b. *Applicant must demonstrate that a*An alternative alignment or location for the activity is not feasible;
- c. The activity is designed so that it will *provide an overall improvement in*not degrade the functions or values of the *fish habitat* or other *critical areas*; and
- d. Any impacts to the functions or values of the *anadromous fish habitat conservation area* are mitigated in accordance with an approved *critical areas report*habitat management plan.

2. *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 migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed. *See also KMC 18.55.420.C.*

3. *Fills, when authorized by the City's shoreline management 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.*

Article XVI. Geologically Hazardous Areas – Designation

18.55.600 Purpose.

The primary purpose of *geologically hazardous area* regulations is to avoid and minimize potential impacts to life and property from geologic hazards.

18.55.610 Designation of geologically hazardous areas.

Geologically hazardous areas include areas susceptible to *erosion*, *land*sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible *development* is sited in *hazard areas of significant hazard*. Such incompatible *development* may not only place itself at risk, but also may 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*:

A. *Erosion* hazard;

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- B. *Landslide* hazard;
- C. Seismic hazard; and
- D. Other geological events including *mass wasting*, *debris flows*, *rock falls*, and *differential settlement*.

18.55.620 Designation of specific hazard areas.

A. *Erosion Hazard Areas*. *Erosion hazard areas* are those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service or identified by a special study as having a "moderate to severe," "severe," or "very severe" *erosion* potential.

B. High Landslide Hazard Areas. High Landslide hazard areas are areas potentially subject to a high risk of landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

1. Areas of historic failures, such as:
 - a. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building *site development*; or
 - b. Areas designated as Quaternary slumps, earthflows, mudflows, or *landslides* on maps published by the U.S. Geological Survey or State Department of Natural Resources; or
 - c. Areas identified on King County's 2017 map of unstable slopes and as amended.
2. Areas with all three of the following characteristics:
 - a. Slopes steeper than 15 percent; and
 - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying relatively impermeable sediment; and
 - c. Springs or ground water seepage;
3. Areas that have shown movement during the Holocene epoch post-glacial period (from 106,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch time period, as shown on U.S. Geological Survey, Washington Department of Natural Resources, or King County maps;

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

54. Areas potentially unstable because of rapid *stream* incision, *stream* bank *erosion*, and undercutting by wave action; and

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

C. *Moderate Landslide Hazard Areas.* Moderate *landslide hazard areas* are areas at moderate risk of *landslides* based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

71. Areas with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing its toe and measured by averaging the inclination over at least 10 feet of vertical relief.

CD. *Seismic Hazard Areas.* Seismic *hazard areas* are locations subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, tsunami, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

1. The magnitude of an earthquake;
2. The distance from the source of an earthquake;
3. The type or thickness of geologic materials at the surface; and
4. The type of subsurface geologic structure.

Settlement, and soil liquefaction, and lateral spreading conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table. Tsunami or seiche waves triggered by an earthquake or seismically-induced *landslides* can inundate shoreline-adjacent land, such as along Lake Washington or the lower reaches of the Sammamish River.

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In Kenmore, *seismic hazard areas* include liquefaction-prone areas and a potential strand of the Southern Whidbey Island Fault Zone known as the Kenmore Lineament as designated by the Washington Department of Natural Resources.

DE. Other Hazard Areas. *Geologically hazardous areas* shall also include areas determined by the city manager to be susceptible to other geological events including *mass wasting*, *debris flows*, and *differential settlement*.

Article XVII. Geologically Hazardous Areas – Report Requirements

18.55.630 Critical areas report.

A. A *critical areas* report shall be required for all proposed *alterations* of properties that are located within 200 feet of any *geologically hazardous area*. Requirements for *critical areas* reports for *geologically hazardous areas* are available from the city manager.

B. In the event that the *applicant's* geotechnical consultant and the City's geotechnical reviewer cannot resolve the geotechnical issues and do not agree on required *development* conditions, the city manager may require a third-party review of the *critical areas* report. The *applicant's* consultant and the City's reviewer shall select a mutually agreed upon *qualified professional* to provide the final opinion. The *applicant* shall fund this review and shall make substantive changes to the proposed *alteration* or provide additional analysis as directed by the third-party reviewer.

Article XVIII. Geologically Hazardous Areas – Performance Standards

18.55.640 Performance standards – General requirements.

BA. Structures and *site* improvements shall be *clustered* to avoid *geologically hazardous areas* and other *critical areas*;

AB. *Alterations* of *geologically hazardous areas* or associated *buffers* may only occur for activities that:

1. Will not increase the threat of the geological hazard to adjacent properties beyond predevelopment conditions;
2. Will not adversely impact other *critical areas*;
3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than predevelopment conditions; and

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4. Are ~~certified as determined to be~~ safe as ~~sited and~~ designed and under anticipated conditions by a qualified engineer ~~or geologist, or engineering geologist, as appropriate,~~ licensed in the State of Washington.

BC. Critical Facilities Prohibited. *Critical facilities* shall not be sited within *geologically hazardous areas* unless there is no other *practical alternative*. ~~If so sited, the design shall be adequate to mitigate the effects of the hazard.~~

18.55.650 Performance standards – Specific hazards.

A. ~~Erosion and Landslide Hazard Areas.~~ ~~Activities on sites containing e~~*Erosion or landslide* hazards ~~areas~~ shall meet the following requirements:

1. ~~Buffer~~ **Not** Required for *Erosion Hazard Areas*. No *buffer* is required from an area categorized as only an *erosion hazard area*.
- 2 ~~Best Management Practices.~~ *Best management practices* for sediment and *erosion control* shall ~~be implemented in an erosion hazard area.~~
53. *Vegetation Shall Be Retained.* Unless otherwise provided or as part of an approved *alteration*, removal of *vegetation* from an *erosion or landslide hazard area* ~~or related buffer~~ shall be prohibited.
64. *Seasonal Restriction.* ~~Clearing~~*Site development work* shall be allowed only from May 1st to October 1st of each year; provided, that the ~~City~~ *manager* may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved *forest practice* permit issued by the *City* or the Department of Natural Resources.
75. *Utility Lines and Pipes.* Utility lines and pipes shall be permitted in *erosion and landslide hazard areas* only when the *applicant* demonstrates that no other *practical alternative* is available. ~~Such utilities shall be designed by qualified professionals to resist ground movement and erosion. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.~~
86. *Point Discharges.* Point discharges from surface water facilities and roof drains onto or upstream from an *erosion or landslide hazard area* shall be prohibited except as follows:

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a. Conveyed via continuous storm pipe downslope to a point where there are no *erosion hazard areas* downstream ~~or downslope~~ from the discharge; ~~or~~

b. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; ~~or~~.

~~c. Dispersed discharge upslope of the steep slope onto a low gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.~~

37. *Alterations.* ~~In addition to meeting the requirements in KMC 18.55.640, A~~alterations of an *erosion hazard area* ~~or a landslide hazard area and/or its buffer~~ may only occur for activities for which a special study is submitted ~~and certifies demonstrating~~ that:

~~a. The~~ *alteration* will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions; ~~;~~

~~b. The alteration will not decrease slope stability on adjacent properties; and~~

~~c. Such alterations will not adversely impact other critical areas.~~

B. Landslide Hazard Areas. ~~In addition to meeting the requirements in KMC 18.55.640, activities on sites containing landslide hazards shall meet the following requirements:~~

21. *General Standards.* ~~The following standards shall apply in all landslide hazard areas:~~

~~a. Buffer Required for Landslide Hazard Areas.~~ A *buffer* shall be established from all edges of *landslide hazard areas*. The size of the *buffer* shall be determined by the *city manager* to eliminate or minimize the risk of property damage, death or injury resulting from *landslides* caused in whole or part by the *development*, based upon review of and concurrence with a *critical area* report prepared by a *qualified professional*.

~~a.~~ *Minimum Buffer.* The minimum *buffer* shall be equal to the height of the slope, as measured from the toe to the top, or 50 feet, whichever is greater.

~~bii.~~ *Buffer Reduction.* The *buffer* may be reduced to a minimum of ~~1025~~ feet when a *qualified professional* demonstrates to the *city manager's* satisfaction based upon review of a special study that the reduction will adequately protect the proposed *development*, adjacent

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developments and uses and the subject critical area through slope stability improvements or structural means.

gii. Increased Buffer. The buffer may be increased where the city manager determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.

d. Building Setback. A building setback is required from the edge of the buffer per KMC 18.55.270.

5b. Vegetation Shall Be Retained. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.

8c. Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

ai. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas landslide hazard areas downstream or downslope from the discharge;

bii. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or

ciii. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

7d. Utility Lines and Pipes.

i. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying landslide. It must be demonstrated by the applicant that a utility line within the landslide hazard area has been designed in a manner that does not negatively impact the stability of the slope, minimizes or eliminates the potential for rupture or failure, and assures that in the event of failure there will not be a life/safety risk. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior. Automatic shutoff valves shall be provided on petroleum or natural gas lines to isolate the landslide area.

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- bii. Access roads ~~and to serve~~ utilities may be permitted within a *landslide hazard area* and associated *buffer* if the *City* determines that no other feasible alternative exists, ~~and the road is designed so as not to lower the stability of the slope.~~ Such a road shall not be used for general ingress/egress to the property unless otherwise approved as part of a *development proposal*.
- 6e. Seasonal Restriction. *Permitted Clearingsite development work* shall be allowed only from May 1st to October 1st of each year; provided, that the *City manager* may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved *forest practice* permit issued by the *City* or the *Washington* Department of Natural Resources. *An exception may be granted by the city manager for emergency repair of structures or landslides when waiting for the clearing window will (1) create a life-threatening risk, (2) do additional damage to the structure, or (3) damage adjacent property or structures.*
- f. Trails. *Trails* shall be permitted when all of the following conditions have been met:
- i. The proposed *trail* shall not decrease the existing factor of safety within the *landslide hazard area* or any required *buffer*.
 - ii. The proposed *trail* is for pedestrian use only, and is a maximum of 4 (four) feet wide;
 - iii. The *trail* shall not be sited within a *landslide hazard area* or associated *buffer* when there is such a high risk of *landslide* activity that the use of the *trail* would be hazardous; and
 - iv. The *trail* shall be designed and constructed using an engineered drainage system or other methods to prevent the *trail* surface from becoming a drainage course.
- 9g. Subdivisions. The division of land in *landslide hazard areas* and associated *buffers* is subject to the following:
- ai. Land that is located wholly within a *landslide hazard area* or its *minimum buffer* ~~as required by 18.55.650.B.1.a KMC may shall~~ not be subdivided.
 - ii. Land that is located partially within a *landslide hazard area* or its *minimum buffer* may be divided; provided, that each resulting *lot* has sufficient buildable area outside of, and will not affect, ~~or be affected by,~~ the *landslide hazard area* or its *buffer*; ~~and.~~ For single-family residential subdivisions and short subdivisions on *sites* in the R-4 zone located partially within a *landslide hazard area* and its *minimum buffer*, minimum *lot* size in the area outside of the

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landslide hazard area and its *buffer* may be reduced to 5,400 sq.ft. with no limitation on the percentage of smaller *lots*, regardless of KMC 18.21.030 footnote 16. These smaller *lots* shall be located so as to have the least impact on surrounding properties in terms of consistency of *street frontages* and privacy of abutting properties and the *lot* area shall exclude access easements and access panhandles.

iii. Access roads shall be allowed within a *landslide hazard area* and associated *buffer* only if the *City* determines that no other feasible alternative exists, and the road is designed so as not to lower the stability of the slope.

10h. Prohibited *Development*. On-site sewage disposal systems, including drain fields, shall be prohibited within *landslide hazard areas* and related *buffers*.

2. High Landslide Hazard Areas – Additional Standards.

a. No new *alteration* shall be permitted in a high *landslide hazard area* unless approved as a *reasonable use* exception, KMC 18.55.180.

b. Modifications to a previously approved *alteration*, including remodeling of an existing residence, in a high *landslide hazard area* may be permitted only if a *critical areas report* is submitted demonstrating that the proposal is determined to be safe as sited and designed and under anticipated conditions by a qualified engineer, or engineering *geologist*, as appropriate, licensed in the State of Washington.

3. Moderate Landslide Hazard Areas – Additional Standards.

4a. Design Standards. *Alterations* of a moderate *landslide hazard area* and/or its *buffer* may only occur for activities for which a *critical areas report* is submitted. *Alterations within an erosion hazard area, landslide hazard area and/or buffer* shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this *chapter/article*. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic *development* design standards are:

ai. The proposed *development* shall not decrease the factor of safety for *landslide* occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions.

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Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

eli. Structures and improvements shall minimize *alterations* to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;

elii. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

eliv. The proposed *development* shall not decrease slope stability on adjacent properties or result in greater risk or a need for increased *buffers* on neighboring properties;

elv. The use of *retaining walls* that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

gvi. Development shall be designed to minimize impervious lot coverage.

11C. Slopes Created by Previous Grading. Artificial slopes meeting the criteria of a *landslide hazard area* based on slope steepness and height that were created through previous permitted *grading* or **are legally non-conforming** may be further altered or graded provided the *applicant* provides information from a *qualified professional* demonstrating that the naturally occurring slope, as it existed prior to the permitted *grading*, did not meet any of the criteria for a *landslide hazard area* and that a new hazard will not be created. **Previously graded slopes meeting the criteria of a landslide hazard area that were not permitted or were illegally created are considered to be landslide hazard areas.**

BD. Seismic Hazard Areas. Activities proposed to be located in *seismic hazard areas* shall meet the standards of KMC **18.55.640**, Performance standards – General requirements, **and the International Building Code. Development or renovation of property in designated tsunami or seiche zones, when identified by the USGS or Washington State Department of Natural Resources, may be allowed if taking into account *Designing for Tsunamis, Seven Principles for Planning and Designing for Tsunami Hazards* (National Tsunami Hazard Mitigation Program, 2001) and following the regulations for floodways.**

CE. Other Hazard Areas. Activities on sites **containing or** adjacent to **other** geologically hazardous areas shall meet the standards of KMC **18.55.640**, Performance standards – General requirements.

Article XIX. Flood Hazard Areas

(EXISTING ARTICLE XIX IS ENTIRELY REPLACED WITH THE FOLLOWING NEW TEXT)

18.55.700 Purpose.

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The Washington State Legislature has delegated the responsibility to each community to adopt *floodplain* management regulations consistent with the National Flood Insurance Program designed to promote the public health, safety and general welfare of its citizenry. The State Legislature also has established that *floodplains* and other areas subject to *flooding* perform important hydrologic functions, and as such they must also be regulated as *critical areas* under the Growth Management Act (GMA). This article addresses both mandates as an integrated set of regulations.

The *flood hazard areas* of the City of Kenmore, which encompass the Federal Emergency Management Agency (FEMA)-designated *areas of special flood hazard*, are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for *flood* protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These *flood* losses may be caused by the cumulative effect of development in areas of *flood hazard* which increase *flood* heights and velocities.

Uses that are inadequately floodproofed, elevated, anchored, or otherwise protected from *flood* damage contribute to *flood* losses and may cause damage in other areas. The purpose of this article is to establish minimum standards for developments located within or adjacent to *flood hazard areas*, including *areas of special flood hazard*. The following statements describe the purpose of this article:

- A. Protect human life and health;
- B. Minimize expenditure of public money and costly *flood* control projects;
- C. Minimize the need for rescue and relief efforts associated with *flooding*;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public infrastructure, facilities and utilities;
- F. Minimize damage to critical fish and wildlife habitat areas;
- G. Protect frequently flooded areas that provide natural and beneficial ecological functions, including providing vital habitat to support salmon and other fish and wildlife species;
- H. Ensure that potential buyers are notified that property is in a *flood hazard area*;
- I. Ensure that those who occupy *flood hazard areas* assume responsibility for their actions; and

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J. Qualify for participation in the National Flood Insurance Program, thereby providing owners located within the mapped *area of special flood hazard* the opportunity to purchase *flood insurance*.

18.55.705 Definitions.

Most of the terms used in this article are defined in Chapter 18.20 KMC. However, there are some terms used in this article that are required to have unique meanings separate from those in Chapter 18.20 KMC. Those terms listed below are defined in 44CFR 59.1 and supersede those provided in Chapter 18.20 KMC for purposes of administering this article. Any undefined terms used in these definitions will also be based on 44CFR 59.1.

A. "Appeal" means a request for a review of the interpretation of any provision of this article or a request for a variance.

B. "Development" means any man-made change to improved or unimproved real estate, including but not limited to *buildings* or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

C. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the *floodplain* management regulations adopted by the *City*.

D. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

E. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include a recreational vehicle.

F. "New construction" means, for the purposes of determining insurance rates, structures for which the *start of construction* commenced on or after the effective date of an initial *Flood Insurance Rate Map* or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For *floodplain* management purposes, new construction means structures for which the *start of construction* commenced on or after the effective date of a *floodplain* management regulation adopted by the *City* and includes any subsequent improvements to such structures.

G. "Recreational vehicle" means a vehicle which is:

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1. Built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

H. "Structure" means, for *floodplain* management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

I. "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of an *historic* structure, provided that the alteration will not preclude the structure's continued designation as an *historic structure*.

J. "Variance" means a grant of relief by the *City* from the terms of a *floodplain* management regulation.

18.55.707 Lands to which this Article applies.

This article shall apply to all *flood hazard areas* within the jurisdiction of the City of Kenmore, including *areas of special flood hazards* as mapped by FEMA and shown on the *FIRM*.

18.55.710 Basis for establishing flood hazard area.

A. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available *floodway* data for a *flood* having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year *flood*." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used.

B. The *areas of special flood hazard* identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled "The Flood Insurance Study of King County, Washington and Incorporated

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Areas," dated November 8, 1999, and any revisions thereto, with an accompanying effective *flood insurance rate map (FIRM)*, dated November 8, 1999, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article. The *flood insurance study* is on file at Kenmore City Hall. In areas where the *flood insurance study* for the City includes detailed *base flood elevation* calculations, those calculations will be used until projections of future flows are completed and approved by the City and FEMA.

C. The City may use other sources of *flood hazard data* to determine *floodplain* boundaries, *floodway* boundaries, *base flood elevations* or cross sections when identifying a *flood hazard area* if the data from sources listed below is more restrictive than the effective data:

1. Preliminary Flood Insurance Rate Maps;
2. Preliminary Flood Insurance Studies;
3. Draft *flood* boundary work maps and associated technical reports;
4. *Critical area* reports prepared in accordance with FEMA standards contained in 44 C.F.R. Part 65 and consistent with the King County Surface Water Design Manual provisions for *floodplain* analysis;
5. Approved Letter of map amendments;
6. Approved Letter of map revisions;
7. Channel migration zone maps and studies;
8. Historical *flood* hazard information;
9. Wind and wave data provided by the United States Army Corps of Engineers; and
10. Any other available data that accurately classifies and delineates the *flood hazard area* or *base flood elevation*.

D. Where elevation data is not available either through the *flood insurance study* or from the *FIRM*, or another authoritative source for the City to administer the *floodplain* development requirements, applications for building permits shall be reviewed to ensure that proposed construction will be reasonably safe from *flooding*. The test of reasonableness is a federal, state or local source; historical data; documented high water marks; photographs of past *flooding*; or additional modeling studies, etc., where available. Structures shall be elevated two feet above the highest adjacent grade in these zones.

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

18.55.715 Permits.

A. Development Permit Required. A development permit shall be obtained before construction or development begins within any *flood hazard area*. The permit shall be for all structures, including manufactured homes as defined in KMC 18.55.705, and for all development as defined in KMC 18.55.705.

B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the City of Kenmore and may include but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level and the effective *flood study base flood elevation* survey datum of the *lowest floor* (including *basement*) of all structures;
2. Elevation in relation to mean sea level and the effective *flood study base flood elevation* survey datum to which any structure has been floodproofed;
3. Map depicting existing conditions, *wetlands*, *streams*, waterbodies, designated fish and wildlife habitats of importance, the boundary of the *flood hazard area* and *floodway*, and the location of grading and structures in the proposed development.
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development; and
5. Certification by a registered professional engineer or architect that the *floodproofing* methods for any nonresidential structure meet the *floodproofing* standards in this article.

C. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

D. Prior to approving any permit, the *City* shall determine that all permits required by State or federal law have been obtained.

E. A notice on title shall be recorded consistent with KMC 18.55.250.

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18.55.720 Final certification by surveyor.

A. For all new structures or substantial improvements in a *flood hazard area*, the *applicant* shall provide certification by a professional land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the *lowest floor*, including *basement*; and
2. The actual as-built elevation to which the structure is floodproofed, if applicable.

B. The surveyor shall indicate if the structure has a *basement*.

18.55.723 Designation and responsibilities of the local administrator.

The *city manager* is hereby appointed to administer and implement this article by granting or denying development permit applications in accordance with its provisions. Duties of the *city manager* shall include, but not be limited to:

A. Review of the *flood hazard area* maps, and other source documents, for any *development proposal* to determine whether the proposed project area for a regulated activity falls within a potential *flood hazard area*;

B. Review of proposed development located within a *flood hazard area* to ensure compliance with the *flood hazard area* standards set forth in this article; and.

C. Interpretation of *flood hazard area* boundaries. The *city manager* shall make interpretations, where needed, as to exact location of the boundaries of the *flood hazard area*, including the FEMA-mapped *area of special flood hazard* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation to the *hearing examiner* as provided in KMC Chapter 19.30.

18.55.725. Information to be obtained and maintained by the City.

A. The *City* shall obtain, verify and record the actual elevation (in relation to mean sea level and the *base flood elevation datum*) of the *lowest floor* (including *basement*) of all new or substantially improved structures, and whether or not the structure contains a *basement*.

B. For all new or substantially improved floodproofed structures, the *City* shall maintain the *floodproofing* certifications required in this article.

C. Alteration of Watercourses.

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1. The City shall notify adjacent communities and the Department of Ecology, or federal resource agencies where required, prior to any *alteration* or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.
 2. The City shall require that the *flood* carrying capacity of the altered or relocation portion of said watercourse is maintained.
 3. *Base flood elevations* may increase or decrease resulting from physical changes affecting *flood*ing conditions. If a project will alter the *base flood elevation* or boundaries of the *area of special flood hazard*, then the project proponent shall provide the City with engineering documentation and analysis regarding the proposed change. If the change to the *base flood elevation* or boundaries of the *area of special flood hazard* would normally require a Letter of Map Change, then the *applicant* shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR. As soon as practicable, but not later than six months after the date such information becomes available, the *city manager* shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. The City reserves the right to require the *applicant* to develop and provide the required technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting *flood*ing conditions, risk premium rates and *floodplain* management requirements will be based upon current data.
 4. The City shall notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.
- D. The City shall maintain for public inspection all records pertaining to the provisions of this article.

18.55.730 Development standards applicable to all flood hazard areas.

Development proposals on sites within flood hazard areas, including the area of special flood hazard, shall meet the following requirements:

A. Buffers. No *critical area buffer* is required for a *flood hazard area*.

B. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

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

C. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to *flood* damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize *flood* damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other utility and service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of *flooding*.
4. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during *flooding*. They shall be, to the extent possible, located outside of the *flood hazard area*. The installation of a new on-site sewage disposal system in the *flood hazard area* may be allowed if no feasible alternative *site* is available.
4. Above-ground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of *nonhazardous substances*.
5. Buried utility transmission lines transporting *hazardous substances* shall be buried at a minimum depth of four feet below the maximum depth of scour for the *base flood*, as predicted by a

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professional civil engineer licensed by the State of Washington, and shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

6. Water wells shall be located on high ground that is not in the *floodway*.

E. Encroachments.

The cumulative effect of any proposed development, where combined with all other existing and anticipated development, shall not increase the water surface elevation of the *base flood* more than one foot at any point within the *City*.

18.55.740 Development standards for specific uses in flood hazard areas.

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the *lowest floor*, including *basement*, elevated one foot above the *base flood elevation*. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710.

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

a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to *flooding* shall be provided;

b. The bottom of all openings shall be no higher than one foot above grade; and

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

B. Manufactured Homes.

1. Except as noted in B.2, all manufactured homes to be placed or substantially improved within any *flood hazard area* shall be elevated on a permanent foundation such that the *lowest floor* of the manufactured home is elevated one foot above the *base flood elevation* and shall be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral

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movement. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710. The *City* reserves the right to require the *applicant* to perform the engineering studies necessary to determine the *base flood elevation*.

2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within a *flood hazard area* that have not incurred *substantial damage* as the result of a *flood* shall be elevated so that either:

a. The *lowest floor* of the manufactured home is elevated one foot above the *base flood elevation*; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

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

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

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

3. Be certified by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the *flood* depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications;

4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the *lowest floor* as described in subsection (A)(2) of this section;

5. Approved building permits for floodproofed nonresidential structures shall contain a statement notifying *applicants* that *flood* insurance premiums shall be based upon rates for structures which are one foot below the floodproofed level (e.g., a *building* floodproofed to the *base flood* level will be rated as one foot below);

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6. Sewage and agricultural waste storage facilities shall be floodproofed to the *flood protection elevation*.

D. Recreational Vehicles. Recreational vehicles placed on *sites* within *flood hazard areas* shall either:

1. Be on the *site* for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the *site* only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
3. Meet the requirements of subsection B of this section, including the elevation and anchoring requirements.

E. *Critical facility*. Construction of new *critical facilities* shall be, to the extent possible, located outside the limits of *flood hazard areas*, including the *area of special flood hazard*. Construction of new *critical facilities* shall be permissible within the *flood hazard area* if no feasible alternative *site* is available and if the proposal is evaluated through the *conditional use permit* process. *Critical facilities* constructed within the *flood hazard area* shall have the *lowest floor* elevated three feet or more above the level of the *base flood elevation* (100-year) at the *site*. *Floodproofing* and sealing measures shall be taken to ensure that *hazardous substances* will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the *base flood elevation* shall be provided to all *critical facilities* from the nearest maintained public *street* or roadway.

F. Subdivisions, short subdivisions and binding site plans shall meet the following requirements:

1. New building *lots* shall contain 5,000 square feet or more of buildable land outside the *flood hazard area*, and building *setback* areas shall be shown on the face of the plat to restrict permanent structures to this buildable area;
2. All utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed consistent with KMC 18.55.730;
3. *Base flood* data and *flood hazard* notes shall be shown on the face of the recorded subdivision, short subdivision or binding site plan including, but not limited to, the *base flood elevation*, required *flood protection elevations* and the boundaries of the *flood hazard area* and the *floodway*, if determined;

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4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision or binding site plan for all affected *lots*:

5. All subdivision proposals shall be consistent with the need to minimize *flood* damage; and

6. All subdivision proposals shall have adequate drainage provided to reduce exposure to *flood* damage.

NOTICE

Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

18.55.750 Development in the floodway.

A. Encroachments. Encroachments, including fill, new construction, substantial improvements, and other development, within the adopted regulatory *floodway* are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in *flood* levels within the *City* during the occurrence of the *base flood* discharge.

B. If the requirements in Subsection A are satisfied, the requirements which apply to *all flood hazard areas* (KMC 18.55.730 and .740), including the *area of special flood hazard*, shall also apply to all new construction and substantial improvements in the *floodway*. The more restrictive requirements shall apply where there is a conflict.

C. Any *development proposal*, including, but not limited to, new or reconstructed structures, that results in any increase in the *base flood elevation* shall meet the following requirements:

1. Amendments to the *flood insurance rate map* are approved and adopted by FEMA, in accordance with all requirements of 44CFR 65.7, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased *flood* elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

D. If allowed, post or piling construction techniques which permit water flow beneath a structure shall be used.

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18.55.760 Habitat assessment

To comply with Federal Endangered Species Act requirements, the *applicant* shall provide an assessment of impacts to federal, state or locally listed species, habitat, water quality and aquatic *riparian* habitat impacts, for any proposal lying within a mapped *area of special flood hazard*. See KMC Chapter 18.55, Article XIV.

18.55.770 Warnings and disclaimer of liability.

The degree of *flood* protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. *Floods* larger than the regulatory *base flood* can and will occur. *Flooding* and *flood* hazards may occur in unmapped areas. *Flood* heights may be increased by manmade or natural causes. This article does not imply that land outside *flood hazard areas* or uses permitted within such areas will be free from *flooding* or *flood* damages. This article shall not create liability on the part of the City of Kenmore, any officer or employee thereof, or the Federal Emergency Management Agency for any *flood* damages that result from reliance on this article or any administrative decision lawfully made hereunder.

18.55.780 Variances in flood hazard areas.**A. Conditions for Variances.**

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a *lot* of one-half acre or less in size contiguous to and surrounded by *lots* with existing structures constructed below the *base flood* level; providing subsections (B)(1) through (B)(11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances may be issued for the repair or rehabilitation of *historic structures* or the *City's* local landmarks, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a *historic structure* and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within a designated *floodway* if any increase in *flood* levels during the *base flood* discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the *flood hazard*, to afford relief.
5. Variances shall only be issued upon:

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a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance conditions except subsection (A)(1) of this section and otherwise complies with KMC 18.55.730(A) and (B).

8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

B. If a variance to the standards in this article is proposed, the decisionmaker shall consider, in addition to the conditions itemized in subsection A, above, and the standard variance criteria itemized in KMC 18.115.030:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

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6. The availability of alternative locations for the proposed *use* which are not subject to *flooding* or *erosion* damage;

7. The compatibility of the proposed *use* with existing and anticipated development;

8. The relationship of the proposed *use* to the comprehensive plan and *floodplain* management program for that area;

9. The safety of access to the property in times of *flood* for ordinary and emergency vehicles;

10. The expected depths, heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the *site*; and

11. The costs of providing governmental services during and after *flood* conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and *streets* and bridges.

C. The *city manager* shall report any variances to the Federal Emergency Management Agency upon request.

18.55.790 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violations of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the City of Kenmore from taking such other lawful action as is necessary to prevent or remedy any violation.

18.55.795 Abrogation and greater restrictions.

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

18.55.700 Flood hazard areas.

A. *Flood hazard areas* consist of the following components:

1. *Floodplain*;

2. *Flood fringe*;

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3. *Zero-rise floodway*; and

4. *Federal Emergency Management Agency (FEMA) floodway*.

B. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available floodway data for a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used. In areas where the flood insurance study for the *City* includes detailed *base flood* calculations, those calculations may be used until projections of future flows are completed and approved by the *City*.

18.55.710 Flood fringe — Development standards and permitted alterations.

Development proposals on sites within the *flood fringe* area shall meet the following requirements:

A. *Development proposals* shall not reduce the effective *base flood* storage volume of the *floodplain*. *Grading* or other activity which would reduce the effective storage volume shall be mitigated by creating *compensatory storage* on the *site* or off the *site* if legal arrangements can be made to assure that the effective *compensatory storage* volume will be preserved over time. *Grading* for construction of livestock manure storage facilities to control nonpoint source water pollution designed to the standards of and approved by the *City* is exempt from this *compensatory storage* requirement.

B. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

C. Subdivisions, short subdivisions and binding site plans shall meet the following requirements:

1. New building *lots* shall contain 5,000 square feet or more of buildable land outside the *zero-rise floodway*, and building *setback* areas shall be shown on the face of the plat to restrict permanent structures to this buildable area;

2. All utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed consistent with subsections D, E and H of this section;

3. *Base flood* data and flood hazard notes shall be shown on the face of the recorded subdivision, short subdivision or binding site plan including, but not limited to, the *base flood elevation*, required *flood protection elevations* and the boundaries of the *floodplain* and the *zero-rise floodway*, if determined; and

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4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision or binding site plan for all affected lots:

NOTICE

Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

D. New residential structures and substantial improvements of existing residential structures shall meet the following requirements:

1. The lowest floor shall be elevated to the flood protection elevation;
2. Portions of a structure which are below the lowest floor area shall not be fully enclosed. The areas and rooms below the lowest floor shall be designed to automatically equalize hydrostatic and hydrodynamic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for satisfying this requirement shall meet or exceed the following requirements:
 - a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers or other coverings or devices if they permit the unrestricted entry and exit of floodwaters;
3. Materials and methods which are resistant to and minimize flood damage shall be used; and
4. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the flood protection elevation.

E. New nonresidential structures and substantial improvements of existing nonresidential structures shall meet the following requirements:

1. The elevation requirement for residential structures contained in subsection (D)(1) of this section shall be met; or
2. The structure shall be floodproofed to the flood protection elevation and shall meet the following requirements:

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a. The *applicant* shall provide certification by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the flood depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications; and

b. Approved building permits for floodproofed nonresidential *structures* shall contain a statement notifying *applicants* that flood insurance premiums shall be based upon rates for *structures* which are one foot below the floodproofed level;

3. Materials and methods which are resistant to and minimize flood damage shall be used; and

4. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the *flood protection elevation*.

F. All new construction shall be anchored to prevent flotation, collapse or lateral movement of the *structure*;

G. *Mobile homes* and *mobile home parks* shall meet the following requirements:

1. *Mobile homes* shall meet all requirements for flood hazard protection for residential *structures*, shall be anchored and shall be installed using methods and practices which minimize flood damage; and

2. No permit or approval for the following shall be granted unless all *mobile homes* within the *mobile home park* meet the requirements for flood hazard protection for residential *structures*:

a. A new *mobile home park*;

b. An expansion of an existing *mobile home park*; or

c. Any repair or reconstruction of *streets*, utilities or pads in an existing *mobile home park* which equals or exceeds 50 percent of the value of such *streets*, utilities or pads;

H. Utilities shall meet the following requirements:

1. New and replacement utilities including, but not limited to, sewage treatment facilities shall be floodproofed to or elevated above the *flood protection elevation*;

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2. New on-site sewage disposal systems shall be, to the extent possible, located outside the limits of the *base flood elevation*. The installation of new on-site sewage disposal systems in the *flood fringe* may be allowed if no feasible alternative *site* is available;

3. Sewage and agricultural waste storage facilities shall be floodproofed to the *flood protection elevation*;

4. Above-ground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of nonhazardous substances; and

5. Buried utility transmission lines transporting *hazardous substances* shall be buried at a minimum depth of four feet below the maximum depth of scour for the *base flood*, as predicted by a professional civil engineer licensed by the State of Washington, and shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

I. *Critical facilities* may be allowed within the *flood fringe* of the *floodplain*, but only when no feasible alternative *site* is available. *Critical facilities* shall be evaluated through the *conditional or special use permit* process. *Critical facilities* constructed within the *flood fringe* shall have the lowest floor elevated to three or more feet above the *base flood elevation*. *Floodproofing* and sealing measures shall be taken to ensure that *hazardous substances* will not be displaced by or released into floodwaters. Access routes elevated to or above the *base flood elevation* shall be provided to all *critical facilities* from the nearest maintained public *street* or roadway.

J. Prior to approving any permit for alterations in the *flood fringe*, the *City* shall determine that all permits required by State or federal law have been obtained.

18.55.720 Zero-rise floodway—Development standards and permitted alterations.

A. The requirements which apply to the *flood fringe* shall also apply to the *zero-rise floodway*. The more restrictive requirements shall apply where there is a conflict.

B. A *development proposal* including, but not limited to, new or reconstructed *structures* shall not cause any increase in the *base flood elevation* unless the following requirements are met:

1. Amendments to the *flood insurance rate map* are adopted by FEMA, in accordance with 44 CFR 70, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased flood elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

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C. The following are presumed to produce no increase in *base flood elevation* and shall not require a special study to establish this fact:

1. New residential *structures* outside the *FEMA floodway* on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *zero-rise floodway* and which have a total building footprint of all proposed *structures* on the lot of less than 2,000 square feet;

2. *Substantial improvements* of existing residential *structures* in the *zero-rise floodway*, but outside the *FEMA floodway*, where the footprint is not increased; or

3. *Substantial improvements* of existing residential *structures* meeting the requirements for new residential *structures* in KMC 18.55.710.

D. Post or piling construction techniques which permit water flow beneath a *structure* shall be used.

E. All temporary *structures* or substances hazardous to public health, safety and welfare, except for *hazardous household substances* or consumer products containing *hazardous substances*, shall be removed from the *zero-rise floodway* during the flood season from September 30th to May 1st.

F. New residential *structures* or any *structure* accessory to a residential use shall meet the following requirements:

1. The *structures* shall be outside the *FEMA floodway*; and

2. The *structures* shall be on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *zero-rise floodway*.

G. Utilities may be allowed within the *zero-rise floodway* if the *City* determines that no feasible alternative *site* is available, subject to the following requirements:

1. Installation of new on-site sewage disposal systems shall be prohibited unless a waiver is granted by Seattle/King County public health; and

2. Construction of sewage treatment facilities shall be prohibited.

H. *Critical facilities* shall not be allowed within the *zero-rise floodway* except as provided in subsection J of this section.

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I. Livestock manure storage facilities and associated nonpoint source water pollution facilities designed, constructed and maintained to the standards of and approved in a conservation plan by the City may be allowed if the City reviews and approves the location and design of the facilities.

J. Structures and installations which are dependent upon the floodway may be located in the floodway if the development proposal is approved by all agencies with jurisdiction. Such structures include, but are not limited to:

1. Dams or diversions for water supply, flood control, hydroelectric production, irrigation or fisheries enhancement;
2. Flood damage reduction facilities, such as levees and pumping stations;
3. Stream bank stabilization structures where no feasible alternative exists for protecting public or private property;
4. Stormwater conveyance facilities subject to the development standards for streams and wetlands and the surface water design manual;
5. Boat launches and related recreation structures;
6. Bridge piers and abutments; and
7. Other fisheries enhancement or stream restoration projects.

18.55.730 FEMA floodway — Development standards and permitted alterations.

A. The requirements which apply to the zero-rise floodway shall also apply to the FEMA floodway. The more restrictive requirements shall apply where there is a conflict.

B. A development proposal including, but not limited to, new or reconstructed structures shall not cause any increase in the base flood elevation.

C. New residential or nonresidential structures are prohibited within the FEMA floodway.

D. Substantial improvements of existing residential structures in the FEMA floodway, meeting the requirements of WAC 173-158-070, as amended, are presumed to produce no increase in base flood elevation and shall not require a special study to establish this fact.

18.55.740 Flood hazard areas — Certification by engineer or surveyor.

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A. For all new *structures or substantial improvements* in a *flood hazard area*, the applicant shall provide certification by a professional civil engineer or land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the lowest floor, including *basement*; and
2. The actual as-built elevation to which the *structure* is floodproofed, if applicable.

B. The engineer or surveyor shall indicate if the *structure* has a *basement*.

C. The *City* shall maintain the certifications required by this section for public inspection.

18.55.750 Channel relocation and stream meander areas.

No *structure* shall be allowed which would be at risk due to channel relocation or stream meander until the promulgation of a public rule.

Article XX. Groundwater Susceptibility and Critical Aquifer Recharge Areas

(ARTICLE XX IS ENTIRELY NEW TEXT)

18.55.800 Designation of groundwater susceptibility and critical aquifer recharge areas.

Groundwater recharge areas play an important role in groundwater quality and the general environmental health of the area in which they are located. Although no critical aquifer recharge areas are designated within the city limits at this time, the *City* understands the importance of protecting its groundwater resources. For example, groundwater can be an important source of water in *City streams* and *wetlands*, particularly during dry summer months, which supports associated *vegetation* communities and aquatic habitat. Some communities rely on groundwater for irrigation or drinking water. In the *City*, areas susceptible to groundwater contamination have been designated using the City of Kenmore Groundwater Susceptibility Map, which was developed based on the *Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances* (Ecology, 1998). The map is the result of combining the ratings of a variety of factors for areas throughout the *City* including: geologic unit (i.e. depositional environment), near surface permeability (based on the county soil map), and depth to groundwater. The map identifies areas with "moderate" or "high" susceptibility to groundwater contamination.

18.55.810 Critical Areas Report.

A. The purpose of a hydrogeologic assessment report is to evaluate actual hydrogeologic conditions and determine a *site's* proximity to vulnerable groundwater resources. This information then is used to evaluate the likely impacts of proposed activities and to determine appropriate construction practices.

EXHIBIT 1

monitoring programs, and other *mitigation* measures required to ensure achievement of the purpose and intent of these regulations.

B. The information required by the hydrogeologic assessment report should be coordinated with the study and reporting requirements for any other *critical areas* located on the *site*.

C. The hydrogeologic assessment report shall be prepared by a *qualified professional* who is a hydrogeologist, *geologist*, or engineer licensed in the State of Washington and has experience in preparing hydrogeologic assessments.

D. The City of Kenmore Groundwater Susceptibility Map, referenced under KMC 18.55.800, identifies the level of evaluation required at a particular *site* within the *City*.

1. Level One Hydrogeological Assessment – Areas of Moderate Susceptibility.

a. A level one hydrogeologic assessment shall be required for any of the following non-residential proposed activities at *sites* located within groundwater susceptibility zones that are rated as "Moderate Susceptibility:"

i. The storage, handling, treatment, use, production, recycling, or disposal of *hazardous substances*, other than *hazardous household substances* used according to the directions specified on the packaging for domestic applications. See RCW 70.105.010.

ii. The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per acre.

iii. Any other activity determined by the *city manager* likely to have an adverse impact on groundwater quality or quantity, or on groundwater recharge.

a. A level one hydrogeologic assessment shall include the following *site* and *development*-related information at a minimum:

i. Information regarding geologic and hydrogeologic characteristics of the *site*, including the permeability of the unsaturated zone (soils located above the groundwater table) based on existing data.

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

EXHIBIT 1

- iii. Location of wells and springs within 1,300 feet of the project area.
- iv. Location of other *critical areas*, including surface waters, within 1,300 feet of the project site.
- v. Available historic water quality data for the area to be affected by the proposed activity.
- vi. *Best Management Practices (BMPs)* proposed to be utilized.

2. Level Two Hydrogeologic Assessment – Areas of High Susceptibility.

- a. A level two hydrogeologic assessment shall be required for any of the following non-residential, proposed activities at *sites* located within groundwater susceptibility zones that are rated as "High Susceptibility:"
 - i. The storage, handling, treatment, use, production, recycling, or disposal of *hazardous substances*, other than *hazardous household substances* used according to the directions specified on the packaging for domestic applications. See RCW 70.105.010.
 - ii. The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per acre.
 - iii. Any other activity determined by the *city manager* likely to have an adverse impact on groundwater quality or quantity, or on groundwater recharge.
- b. A level two hydrogeologic assessment shall include the following *site* and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeologic assessment:
 - i. Historic water quality and elevation data for the area to be affected by the proposed activity compiled for at least the previous five-year period, unless otherwise approved by the *city manager*.
 - ii. Groundwater *monitoring* plan provisions.
 - iii. Discussion of the effects of the proposed project on groundwater quality and quantity, including:

EXHIBIT 1

1. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features.
 2. Predictive evaluation of contaminant transport based on potential releases to groundwater.
-
- iv. Identification of the type and quantities of any hazardous materials that will be stored, handled, treated, used, produced, recycled, or disposed of on the *site*, including but not limited to materials, such as elevator lift/hydraulic fluid, hazardous materials used during construction, materials used by the building occupants, proposed storage and manufacturing uses, etc.
 - v. Proposed methods of storing any of the above substances, including containment methods to be used during construction and/or use of the proposed facility.
 - vi. Proposed plan for implementing protection standards during construction.
 - vii. A spill prevention, control and countermeasure (SPCC) plan that identifies equipment and/or *structures* that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of *structures* and equipment that could fail.
 - viii. A discussion of past environmental investigations, sampling, spills, or incidents that may have resulted in or contributed to contaminated soil or groundwater at the *site*. Attach copies of all historical and current reports, and sampling results.

EXHIBIT 2

Amendments to Chapter 18.20, Definitions**18.20.206.1 Area of special flood hazard**

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter "A" or "V." The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

18.20.228 Bankfull width.

"Bankfull width" means:

(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section.

(b) For lakes, ponds, and impoundments - Line of mean high water.

(c) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain 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.

18.20.230 Base flood.

"Base flood" means ~~at~~ the flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." Designation on the FIRM always includes the letter "A" or "V."

18.20.240 Base flood elevation

"Base flood elevation" means the water surface elevation of the *base flood* in relation to the National Geodetic Vertical Datum of 1929 ~~North American Vertical Datum 1988~~.

18.20.453 Channel width and gradient.

"Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

EXHIBIT 2

18.20.1055 Fish habitat.

"Fish habitat" means habitat that is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by *restoration* or management and off-channel habitat.

18.20.1057 Flood or flooding

"Flood" or "flooding" means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph A.2. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph A.2. of this definition.

18.20.105990 Flood ~~insurance elevation~~ study for King County

"Flood ~~insurance elevation~~ study for King County" means the official report provided by the Federal Insurance Administration which includes flood profiles and the *flood insurance rate map*. means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

18.20.1060 Flood fringe

"Flood fringe" means that portion of the *floodplain area of special flood hazard* outside of the *zero-rise floodway* which is covered by floodwaters during the *base flood*, generally associated with standing water rather than rapidly flowing water.

18.20.1070 Flood hazard areas

"Flood hazard areas" means those areas in the City subject to inundation by the *base flood* (see "area of special flood hazard") and those areas subject to flood risks from *channel relocation* or *stream meander* including, but not limited to, *streams*, *lakes*, *wetlands* and closed depressions.

EXHIBIT 2

The latter flood hazard areas may extend outside of the area of special flood hazard mapped by FEMA, but are defined and designated by the City.

18.20.1080 Flood insurance rate map (FIRM)

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration Insurance Administrator has delineated ~~some~~ both the special flood hazard areas and the risk premium zones applicable to the community. both the areas of special flood hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

18.20.1090 Flood insurance study (FIS)for King County

"Flood insurance study for King County" means the official report provided by the Federal Insurance Administration which includes flood profiles and the flood insurance rate map. See "Flood elevation study."

18.20.1110 Floodplain

"Floodplain" means the total area subject to inundation by the base flood; means any land area susceptible to being inundated by water from any source (see definition of "flooding").

18.20.1120 Floodproofing

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents adaptations which will make a structure that is below the flood protection elevation substantially impermeable to the passage of water and resistant to hydrostatic and hydrodynamic loads including the impacts of buoyancy.

18.20.10201125 Federal Emergency Management Agency (FEMA)Floodway

"Federal Emergency Management Agency (FEMA) Floodway" means the channel of the stream a river or other watercourse and that portion of the adjoining adjacent floodplain land areas that must be reserved in order to which is necessary to contain and discharge the base flood flow without cumulatively increasing the base floodwater surface elevation more than one foot a designated height. Also known as the "Regulatory Floodway" or "FEMA floodway."

18.20.1130 Floodway, zero-rise

"Zero-rise floodway" means the channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the FEMA floodway, but always includes the FEMA floodway. The boundaries of the 100-year floodplain, as shown on the flood insurance study for King County, are considered the boundaries of the zero-rise floodway unless otherwise delineated by a critical area special study.

EXHIBIT 2

18.20.1340 Historic structure

"Historic structure" means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior or
 - 2. Directly by the Secretary of the Interior in states without approved programs.

18.20.1673 Lowest floor

For purposes of flood hazard area regulations, "lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of article XIX of KMC Chapter 18.55.

18.20.1835 Natural waters.

"Natural waters" means all surface waters of the state, only excluding water conveyance systems which are artificially constructed and actively maintained for irrigation.

18.20.2102 Practical alternative.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration effectiveness, engineering feasibility, cost, safety, existing technology, and logistics in light of overall project needs, purposes and objectives, and has less impacts to critical areas. For example, a practical alternative to a proposal to place a sidewalk through a wetland might be to place an elevated boardwalk through the wetland.

18.20.2461 Seasonal low flow and seasonal low water.

"Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques.

EXHIBIT 2

18.20.2875 Start of construction.

For purposes of flood hazard area regulations, "start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of the property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

18.20.2900 Stream.

"Stream" means an area where open surface water produces a defined water contained within a channel or bed, either perennial or intermittent, and classified according to WAC 222-16-030 or 222-16-031. Streams also include natural watercourses modified by man. Streams do not include not including irrigation ditches, canals, wasteways, drains, outfalls, operational spillways, channels, storm or surface water runoff facilities or other wholly artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction, except those that directly result from the modification to a natural watercourse. Artificial drainage features with documented fish usage are regulated as streams. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

18.20.2955 Substantial damage

For purposes of flood hazard area regulations, "substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

18.20.3118 Utility.

"Utility" means an enterprise or facility serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

EXHIBIT 3

Amendments to other sections of the Zoning Code

18.30.190 Setbacks – Modifications.

The following *setback* modifications are permitted:

A. When the common property line of two *lots* is covered by a *building(s)*, the *setbacks* required by this chapter shall not apply along the common property line; and

B. When a *lot* is located between *lots* having nonconforming *street setbacks*, the required *street setback* for such *lot* may be the average of the two nonconforming *setbacks* or 60 percent of the required *street setback*, whichever results in the greater *street setback*.

C. The *city manager* may reduce *setbacks* in residential zones regulated by KMC 18.21 to 10 feet, and *setbacks* in other zones to 5 feet in order to maximize the protection of a *critical area* or *buffer* and avoid exceptions or variances.

18.40.030 Computation of required off-street parking spaces.

B. An *applicant* may request a modification of the minimum required number of *parking spaces* by providing a parking demand analysis demonstrating that parking demand can be met with a reduced parking requirement. In such cases, the *city manager* may approve a reduction of up to 50 percent of the minimum required number of spaces.

D. Where other provisions of this code stipulate maximum parking allowed or reduced minimum parking requirements, those provisions shall apply.

H. Tree Retention – DC and DR Zones. Where an applicant proposes retention of *trees* in accordance with KMC [18.35.100\(G\)](#) in the DC and DR zones, the *city manager* may reduce parking requirements by one *parking space* for every two *significant trees* that are saved in excess of the significant tree ordinance requirements.

EXHIBIT 3

I. Critical Area or Buffer Protection. When unavoidable, the *city manager* may reduce minimum parking requirements in order to maximize the protection of a *critical area* or its *buffer*. The reduction in the number of parking stalls or alternative stall or drive aisle dimensional requirements shall be in proportion to the area to be retained in the *buffer* or *critical area*.

ATTACHMENT 2

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0489**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; AMENDING THE SHORELINE SUB-
ELEMENT OF THE COMPREHENSIVE PLAN; REVISING
FIGURE LU-12, THE SHORELINE ENVIRONMENT
DESIGNATIONS MAP; AND PROVIDING AN EFFECTIVE
DATE.**

WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, the SMA's legislative findings identify that: 1) the shorelines of the state are among the most valuable and fragile of its natural resources; 2) there is great concern throughout the state relating to their utilization, protection, restoration, and preservation; and 3) that unrestricted construction on private or publicly owned shorelines is not in the best interest of the public; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines in the following order of preference which: 1) recognize and protect the State-wide interest over local interest; 2) preserve the natural character of the shoreline; 3) result in long-term over short-term benefit; 4) protect the resources and ecology of the shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, three bodies of water within the City are regulated under the City's Shoreline Master Program (SMP), including Lake Washington, the Sammamish River and Swamp Creek. Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the summer of 2018, the City began its update of the Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) with the assistance of grant funding from Ecology; and

WHEREAS, the City prepared a gap analysis to identify portions of the Shoreline Master Program needing amendment; and

ATTACHMENT 2

WHEREAS, the results of this analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted a supplemental analysis of potential cumulative impacts of the updated Shoreline Master Program. The supplemental cumulative impact analysis is contained in the document entitled, City of Kenmore, Cumulative Impacts Analysis Addendum, May 2019; and

WHEREAS, to satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1) and WAC 173-26-201(2)(a), the City has utilized best available science to draft the proposed SMP Update; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised a number of documents, including: the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; and proposed revisions to critical area regulations; and

WHEREAS, the purpose of the Shoreline Sub-Element of the Comprehensive Plan is to (1) promote the public health, safety and general welfare of the community; (2) provide long range, comprehensive policies for development and use of the shorelines within the City; (3) manage shorelines in a positive, effective and equitable manner; and (4) carry out the responsibilities established by the SMA for the City, and to adopt and foster the policies contained in RCW 90.58.020 of the SMA; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding a public open house and two public forums; creating a comprehensive and regularly-updated web page devoted to the SMP Update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City, and the City has reviewed and acted upon said comments; and

WHEREAS, the Planning Commission held a public hearing on the SMP Update on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019, and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

ATTACHMENT 2

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, staff and consultant input, Ecology's comments, and certain documents and information, including: 1) The Gap Analysis; 2) the Cumulative Impacts Analysis Addendum; 3) the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; 4) the City of Kenmore Shoreline Master Program draft shoreline regulations; 5) Ecology's Shoreline Master Program Periodic Review Checklist; 6) SEPA Determination of Nonsignificance; and 7) Docket Criteria Analysis; and

WHEREAS, consistent with WAC 173-26-186(d), the SMP Update evaluates and considers cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA; and

WHEREAS, to ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, the SMP Update contains policies, programs and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including use regulations, are considered a part of the City's development regulations; and

WHEREAS, RCW 36.70A.130(2)(a)(iii) allows amendments to a city's comprehensive plan more frequently than once per year if the amendment includes the adoption of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and

WHEREAS, the City Council desires to amend the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; now therefore,

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

ATTACHMENT 2

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Adoption of Amendments to the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan. The City Council adopts the amendments to the City of Kenmore Shoreline Sub-Element of the City of Kenmore Comprehensive Plan, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 3. Map Adopted. The City Council adopts revised Figure LU-12, the Shoreline Master Program Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen (14) days from the date of the Washington State Department of Ecology's written notice of final action approving the shoreline master program amendments.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
__TH DAY OF ____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:
Effective Date:

EXHIBIT 1

City of Kenmore
Comprehensive Plan

SHORELINE SUB-ELEMENT

SHORELINE PURPOSE, INTENT AND PRINCIPLES

INTRODUCTION

Washington's Shoreline Management Act (SMA) was passed by the State Legislature in 1971 and created in response to a growing concern among residents of the state that serious and permanent damage was being done to shorelines by unplanned and uncoordinated development. The goal of the SMA was "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." While protecting shoreline resources by regulating development, the SMA is also intended to provide for appropriate shoreline use by encouraging land uses that enhance and conserve shoreline functions and values.

The primary responsibility for administering the SMA is assigned to local governments through local shoreline master programs (SMPs), adopted under guidelines established by Ecology. The guidelines (WAC 173-26) establish goals and policies that provide a framework for development standards and use regulations in the shoreline. The State legislature established new guidelines in 2003 requiring all cities and counties to update shoreline policies and regulations. The new shoreline guidelines set a higher level of environmental protection for shorelines in the state and a goal of "no net loss" of shoreline function. Local SMPs are to be based on these State guidelines and tailored to the specific conditions and needs of individual communities. The SMP is also meant to be a comprehensive vision of how the shoreline area will be managed over time.

Kenmore adopted King County's original 1978 SMP when the City incorporated in 1998. ~~This~~The 2012 Shoreline Master Program update was drafted to meet State guidelines and develop a program that is more tailored to the City's current shoreline conditions and land use plans. In 2019, the City's SMP was updated as required by State law.

EXISTING CONDITIONS

The existing conditions of Kenmore's shorelines were evaluated in the Shoreline Inventory and Analysis (2008). That evaluation included a description of ecosystem and watershed processes, the physical environment and water quality of each water body, biological resources, cultural resources, land use and public access.

SHORELINE MANAGEMENT PURPOSE AND INTENT

These policies briefly define the overall purpose and intent of Kenmore's Shoreline Master Program and reference the City's regulatory authority to manage shorelines of the state. The language in this ~~new~~ section is entirely based on WAC 173-26 and RCW 90.58.020.

Authority

Authority for enactment and administration of this Program is the Shoreline Management Act of 1971, Chapter 90.58, Revised Code of Washington (RCW), also referred to herein as "the Act."

EXHIBIT 1

City of Kenmore
Comprehensive Plan

Purpose and Intent

The purpose of this Program is: (A) to promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of City of Kenmore shorelines; (B) to manage shorelines in a positive, effective, and equitable manner; and (3C) to further assume and carry out the responsibilities established by the Act for the City of Kenmore, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the State:

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including, but not limited to, parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State.

Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

Governing Principles

The following principles along with the policy statements of RCW 90.58.020 establish basic concepts that underpin the goals, policies and regulations of this Shoreline Master Program.

- A. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.

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- B. The policies of this Program may be achieved by diverse means, one of which is regulation. Other means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or non-structural programs.
- C. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development; actions taken prior to the Act's adoption; and/or unregulated activities can impair shoreline ecological processes and functions. This Program protects shoreline ecology from such impairments in the following ways:
 - 1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
 - 2. By including policies and regulations that require mitigation of adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in KMC 18.55.210. This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of this Program.
 - 3. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
 - 4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the City of Kenmore Shoreline Restoration Plan.
- D. Regulation of private property – to implement Program goals such as public access and protection of ecological functions and processes – must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and State constitutions, recent federal and state case law, and state statutes.
- E. Regulatory or administrative actions contained herein must be implemented consistent with the Public Trust Doctrine and other applicable legal principles as appropriate and must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- F. The regulatory provisions of this Program are limited to shorelines of the state, whereas the Shoreline Restoration Plan may extend beyond the designated shoreline boundaries.
- G. The policies and regulations established by the Program must be integrated and coordinated with those policies and rules of the City of Kenmore Comprehensive Plan and development regulations adopted under the Growth Management Act (GMA).

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- H. Consistent with the policy and use preferences of RCW 90.58.020, the City of Kenmore should balance the various policy goals of this Program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

SHORELINE JURISDICTION

This section provides an overview of Kenmore's shoreline jurisdiction, the area where the Shoreline Management Act applies. "Shorelines" means lakes greater than 20 acres and rivers and streams with a minimum of twenty cubic feet per second mean annual flow, including the entire water body waterward from the ordinary high-water mark (OHWM) from its centerline or point, all water below the surface, and associated shorelands (RCW 90.58.030(2)(d)). Under the SMA, the shoreline jurisdiction includes areas that are 200 feet landward of the ordinary high-water mark (OHWM) of shorelines and their adjacent shorelands, defined in Kenmore as the upland area within 200 feet of the OHWM, as well as any associated wetlands and floodplains. Three waterbodies in Kenmore (Lake Washington, the Sammamish River, and Swamp Creek) are regulated under the SMA and the City's Shoreline Master Program (SMP). Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA [RCW 90.58.030(2)e].

The Kenmore shoreline jurisdiction is shown on the Shoreline Environment Designations Map, **Figure LU-12**.

SHORELINES OF STATEWIDE SIGNIFICANCE

This section includes principles and policies for managing shorelines of statewide significance. In the City of Kenmore, shorelines of statewide significance include only the Lake Washington shoreline, as it is a lake with a surface acreage over 1,000 acres. The Shoreline Management Act sets specific use priorities for these shorelines and calls for a higher level of effort in implementing policy goals. The state legislature declared that the public interest shall be paramount in the management of shorelines of statewide significance.

- Policy LU-16.1.1 The public interest in the use and enjoyment of shorelines of statewide significance in the City of Kenmore shall be paramount.

Management goals for shorelines of statewide significance were ranked in order of preference by the State (i.e., the first goal must be given priority over all subsequent goals), as listed in the following policy.

- Policy LU-16.1.2 In developing and implementing its Shoreline Master Program for Lake Washington, the City of Kenmore shall give preference, in the following order, to uses that:
1. Recognize and protect the statewide interest over local interest;
 2. Preserve the natural character of the shoreline;
 3. Result in long-term over short-term benefit;
 4. Protect the resources and ecology of the shoreline;

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5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline; and
7. Provide for any other element as defined in RCW 90.58.100.

SHORELINE ENVIRONMENT DESIGNATIONS

The Kenmore shoreline environment designations are shown on the Shoreline Environment Designations Map, **Figure LU-12**.

GOAL 17. IMPLEMENT THE OBJECTIVES, PURPOSE, DESIGNATION CRITERIA AND POLICIES FOR EACH SHORELINE ENVIRONMENT.

17.1 Downtown Waterfront Environment

Purpose: The purpose of the Downtown Waterfront Environment is to provide for mixed urban water-enjoyment-oriented uses, public access and recreation while protecting existing ecological functions.

Designation Criteria: The shoreline along the contiguous downtown waterfront that is zoned regional business and waterfront commercial in KMC Title 18 and does not meet the requirement for other designations is to be assigned the Downtown Waterfront Environment designation.

Management Policies

- | | |
|------------------|---|
| Policy LU-17.1.1 | Emphasis should be given to developing visual and physical public access to the shoreline in the Downtown Waterfront Environment. |
| Policy LU-17.1.2 | Multiple uses of the shoreline should be encouraged. |
| Policy LU-17.1.3 | Redevelopment and renewal should be encouraged in order to accommodate future users and capitalize on the shoreline resource. |
| Policy LU-17.1.4 | Aesthetic improvement should be actively promoted by means of sign control regulations, architectural design standards, appropriate development siting, landscaping requirements (such as encouraging shoreline revegetation), and other development standards. |
| Policy LU-17.1.5 | Development should not cause adverse impacts to existing ecological functions. Any adverse impacts shall be mitigated. Where applicable, new development shall include environmental cleanup of the shoreline in accordance with relevant state and federal laws. |
| Policy LU-17.1.6 | Water-dependent, water-related and water-enjoyment uses should be a priority over other uses in this environment. Non-water-oriented uses should not be allowed except as part of mixed-use developments that include water-dependent and water-related uses. A non-water-oriented development can be |

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considered water-oriented if public access for a significant number of persons is provided.

- Policy LU-17.1.7 Encourage redevelopment of industrial sites into mixed urban uses, including public access, recreation, residential ~~uses~~, and commercial uses.
- Policy LU-17.1.8 Identify strategic shoreline public access points and pursue linkages between public spaces along the waterfront, ~~including trails, boardwalks, and waterfront transportation~~. The Downtown ~~Circulation Map~~Sub-Element, Transportation Element and the ~~Kenmore Trails Map~~Parks, Recreation and Open Space Plan ~~shall~~ provide guidance for strategic shoreline public access points and linkages and should be used in regulating the location of public access improvements.

17.2 Swamp Creek Commercial Environment

Purpose: The purpose of the Swamp Creek Commercial Environment is to recognize existing and planned high-intensity commercial and high-density residential uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

Designation criteria: A Swamp Creek Commercial Environment designation should be assigned to shoreline areas adjacent to Swamp Creek if any of the following characteristics apply:

- (A) The shoreline currently supports high-intensity commercial or high-density residential uses, and is designated in the Comprehensive Plan and zoned to remain high-intensity, and
- (B) The shoreline does not meet the requirement for Urban Conservancy Environment or Shoreline Residential Environment designations.

Management Policies

- Policy LU-17.2.1 In regulating uses in the "Swamp Creek Commercial" environment, water-oriented uses are a priority over non-water-oriented uses.
- Policy LU-17.2.2 Non-water-oriented uses should be allowed in the following circumstances:
- A. As part of mixed use developments with water-dependent, water-related, or water-enjoyment uses;
 - B. When they provide substantial improvements to the degraded buffer along Swamp Creek;
 - C. When they do not conflict with or limit opportunities for water-oriented uses; or
 - D. Where there is no direct access to the shoreline.
- Policy LU-17.2.3 Development proposals should be designed or mitigated to assure no net loss of shoreline ecological functions.

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- Policy LU-17.2.4 Full utilization of the Swamp Creek Commercial designated land should be achieved before further expansion of intensive development is allowed.
- Policy LU-17.2.5 Where applicable, new development should include environmental cleanup of the shoreline, with restoration of the shoreline, in accordance with relevant state and federal laws governing sites that are contaminated by hazardous substances.
- Policy LU-17.2.6 Where feasible, visual and physical public access should be required consistent with the policies in Section 19, Public Access, Recreation and Views and Aesthetics, and SMP regulations.
- Policy LU-17.2.7 Development in the Swamp Creek Commercial designation should conform to sign control regulations, site plan requirements, landscaping standards, and commercial and multifamily design standards.
- Policy LU-17.2.8 Development should meet shoreline buffer standards and maintain natural vegetation.

17.23 Shoreline Residential Environment

Purpose: The purpose of the Shoreline Residential Environment is to accommodate residential development and appurtenant structures that are consistent with ~~this chapter~~ the Shoreline Sub-Element. An additional purpose is to provide appropriate public access and recreational uses within new multifamily developments or on public property.

Designation Criteria: The Shoreline Residential Environment designation should be assigned to shoreline areas if they are predominantly developed with single-family or multifamily residential development or are planned and platted for residential development, and the shoreline areas do not meet the criteria for other designations.

Management Policies

- Policy LU-17.23.1 Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available.
- Policy LU-17.23.2 Multifamily and multi-lot residential and recreational developments should provide public access and community recreational facilities.
- Policy LU-17.23.3 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development.

17.34 Urban Conservancy Environment

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Purpose: The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, streams, wetlands, and floodplains and other sensitive lands where they exist in urban and developed settings, including areas below the ordinary high-water mark in Swamp Creek, while allowing a variety of compatible uses.

Designation Criteria: An Urban Conservancy Environment designation is assigned to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring ecological functions of the area and that are not generally suitable for water-dependent uses if any of the following characteristics apply. This designation should be applied when:

- (A) The shoreline includes wetlands or exceptional riparian corridor that should not be more intensively developed is suitable for water-related or water-enjoyment uses and public access and recreation-related water-dependent uses;
- (B) The shoreline is in public ownership and has been altered or in public ownership that is small in size and not adjacent to other publicly owned properties includes open space, floodplain or other sensitive areas that should not be more intensively developed;
- (C) The shoreline has been altered but retains important ecological functions;
- (D) The shoreline has potential for ecological restoration or is a restoration priority; or
- (E) The shoreline has potential for development that is compatible with ecological restoration.

Management Policies

- Policy LU-17.34.1 Uses that preserve the natural character of the area or promote preservation of open space, floodplain or critical areas either directly or over the long term should be the primary allowed uses in the Urban Conservancy Environment. Uses that result in the restoration of ecological functions are allowed if the use is otherwise compatible with the purpose of the eEnvironment.
- Policy LU-17.34.2 New development should be restricted to those which are compatible with the natural and biophysical limitations of the land and water.
- Policy LU-17.34.3 Commercial and industrial uses are generally discouraged, but commercial uses consistent with underlying zoning may be allowed if accompanied by ecological restoration and public access enhancement.
- Policy LU-17.34.4 Diverse public access and recreational activities which are compatible with the Urban Conservancy Environment should be encouraged when adverse ecological impacts can be mitigated.
- Policy LU-17.34.5 Development which would be a hazard to public health and safety or would materially interfere with existing ecological processes and functions should not be allowed.

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- Policy LU-17.34.6 Water-oriented uses should be given priority over non-water-oriented uses. For shoreline areas in the Urban Conservancy Environment adjacent to Lake Washington and the Sammamish River, water-dependent uses should be given highest priority.
- Policy LU-17.34.7 Standards for residential density and development shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available
- Policy LU-17.34.8 New structural flood control devices should be strongly discouraged in the Urban Conservancy Environment.
- Policy LU-17.34.9 Developments should not be allowed unless connected to a sewer line.
- Policy LU-17.34.10 Developments should be regulated so as to minimize the following: erosion or sedimentation, the adverse impact on aquatic habitats and substantial degradation of the existing character of the Urban Conservancy Environment.
- Policy LU-17.34.11 Standards should be established for shoreline stabilization measures, vegetation conservation, water quality and shoreline modifications within the Urban Conservancy Environment.
- Policy LU-17.34.12 The protection and restoration of stream 0056 where it flows into Lake Washington should be prioritized.
- ~~Policy LU-17.3.13 Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.~~

17.45 Natural Environment

Purpose: The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered shorelines. Only low intensity uses are to be allowed in this eEnvironment to maintain existing ecological processes and functions.

Designation Criteria: A Natural Environment designation is assigned to shoreline areas if any of the following characteristics apply:

- (A) A relatively large, contiguous area of the shoreline is in public ownership and ecologically intact or minimally altered;
- (B) The shoreline represents ecological processes or functions that provide educational or scientific opportunities; or
- (C) The shoreline is unable to support active uses or development without adverse impacts to ecological functions.

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Management Policies

- Policy LU-17.45.1 The Natural Environment should remain free from development or uses that would degrade the ecological functions or adversely affect their natural character.
- Policy LU-17.45.2 The intensity and type of uses permitted should be restricted in the Natural Environment to maintain the natural systems and resources in their natural condition. The following new uses should not be allowed in the Natural Environment: commercial uses, industrial uses, non-water-oriented recreation, and roads, utility corridors, and parking areas that can be located outside of the Natural Environment.
- Policy LU-17.45.3 Limited access should be allowed to areas in the Natural Environment.
- Policy LU-17.45.4 Uses that are consumptive of the physical and biological resources or that may degrade the actual or potential value of the Natural Environment should be prohibited.
- Policy LU-17.45.5 Uses and activities in locations adjacent to the Natural Environment should be strictly regulated to ensure that the integrity of the shoreline ecology is not compromised.
- Policy LU-17.45.6 Scientific, historical, cultural and educational research uses and low-intensity water-oriented recreational access uses may be allowed provided that no adverse impact on the area will result.
- Policy LU-17.45.7 New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. The subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely affects ecological functions should not be allowed.

17.56 Aquatic Environment

Purpose: The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of navigable areas waterward of the ordinary high-water mark on the Sammamish River and Lake Washington.

Designation Criteria: Lake Washington and the Sammamish River below (waterward of) the ordinary high-water mark are to be designated as Aquatic Environment. In Lake Washington, the Aquatic Environment extends to the centerline of the lake.

Management Policies

- Policy LU-17.56.1 New over-water structures should be limited, with priority given to water-dependent uses, public access and ecological restoration.

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- Policy LU-17.56.2 The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
- Policy LU-17.56.3 To reduce the adverse impacts of shoreline development and increase effective use of water resources, multi-purpose use of over-water facilities should be encouraged.
- Policy LU-17.56.4 All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider any adverse impacts to public views, and to allow for the safe unobstructed passage of fish and wildlife, particularly those species dependent on migration.
- Policy LU-17.56.5 Uses that adversely affect the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020 and impacts shall be mitigated.
- Policy LU-17.56.6 Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrologic conditions.

GENERAL SHORELINE MANAGEMENT POLICIES

General shoreline management policies apply regardless of environment designation unless specifically stated within the policy, and are intended to provide general guidance in the management of shorelines. These general policies are organized by shoreline element.

18. Economic Development

GOAL 18.1. SHORELINE DEPENDENT DEVELOPMENT SHOULD PROVIDE LONG RANGE ECONOMIC BENEFITS WHILE ENSURING COMPATIBILITY WITH ENVIRONMENTAL AND LAND USE GOALS.

- Policy LU-18.1.1 Kenmore should plan for the location and design of ~~industries, industrial projects of statewide significance,~~ transportation facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state.
- Policy LU-18.1.2 New economic development in the shoreline should be encouraged to ~~cluster/locate~~ in ~~areas of~~ the Downtown Waterfront ~~e~~Environment ~~that can be upgraded and redeveloped.~~
- Policy LU-18.1.3 Economic development should be designed to minimize actual shoreline space occupied.
- Policy LU-18.1.4 Economic development in the shoreline involving high-intensity commercial land use should be confined to the Downtown Waterfront.
- Policy LU-18.1.5 Cooperative use of docks, parking and storage facilities should be encouraged among commercial uses along the shoreline.

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GOAL 18.2. SHORELINE ECONOMIC DEVELOPMENT SHOULD PROVIDE PUBLIC PHYSICAL AND VISUAL AVAILABILITY TO THE WATER, CONSISTENT WITH PUBLIC HEALTH AND SAFETY.

- Policy LU-18.2.1 Overlook points, historic areas and points of public access to the shoreline should be considered in commercial site planning.
- Policy LU-18.2.2 Economic development in the shoreline that utilizes public land should be designed to include public viewpoints, waterfront restaurants, and similar public facilities.
- Policy LU-18.2.3 Structures placed in the water for economic purposes should be designed to prevent adverse impacts to shoreline ecological processes and functions.
- Policy LU-18.2.4 Economic development in the shoreline should be prohibited in identified environmentally critical areas.

GOAL 18.3. WHENEVER FEASIBLE, WATERFRONT ECONOMIC DEVELOPMENT SITES SHOULD BE LOCATED IN AREAS THAT ARE ALREADY DEVELOPED WITH SIMILAR USES AND PLANNED SO AS TO PROVIDE MULTIPLE USES OF THE SHORELINES OF THE STATE.

- Policy LU-18.3.1 Consistent with public safety, waterfront ~~industrial~~ developments should be encouraged to provide ~~fishing piers, boat ramps and other facilities~~ public access and water-oriented recreation.
- Policy LU-18.3.2 In siting economic development in the shoreline, water-dependent uses should be given priority over water-oriented uses.
- Policy LU-18.3.4 To support the long-range economic base in Kenmore, shoreline economic development should include mixed urban uses, and shoreline public access and recreation should be encouraged.

GOAL 18.4. PRIORITY SHOULD BE GIVEN TO THOSE SHORELINE ECONOMIC DEVELOPMENTS WHICH MAINTAIN OPTIONS FOR FUTURE USERS OF THE WATER.

- Policy LU-18.4.1 Development of commercial and recreational fisheries should be encouraged through measures to protect and restore fish habitat and provision for boating facilities.
- Policy LU-18.4.2 Mining, dredging, channelizing or filling of shoreline should be discouraged.
- Policy LU-18.4.3 Priority should be given shoreline economic development of renewable over non-renewable resources.

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- Policy LU-18.4.4 In order to ensure that treaty rights are respected, public notice of application should be provided to affected tribes on all projects requiring general public notice.

19. Public Access, Recreation and Views and Aesthetics

Public Access

GOAL 19.1. INCREASE THE ABILITY OF THE GENERAL PUBLIC TO REACH, TOUCH AND ENJOY THE WATER'S EDGE, TO TRAVEL ON THE WATERS OF THE STATE, AND TO VIEW THE WATER AND THE SHORELINE FROM ADJACENT LOCATIONS, PROVIDED THAT PRIVATE PROPERTY RIGHTS, PUBLIC SAFETY AND SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS ARE PROTECTED CONSISTENT WITH THE U.S. AND STATE CONSTITUTIONS, STATE CASE LAW, AND STATE STATUTES.

- Policy LU-19.1.1 Development for the purpose of public access should respect and protect the enjoyment of private property rights along shorelines.
- Policy LU-19.1.2 Shoreline public access areas should be planned to provide for ancillary facilities such as parking and sanitation when appropriate.
- Policy LU-19.1.3 Shoreline public access and ancillary facilities should be designed and developed to provide adequate protection for adjacent private properties.
- Policy LU-19.1.4 Appropriate signs should be used to designate publicly-owned shorelines and designated public access on public shorelines.
- Policy LU-19.1.5 Public access to and along the water's edge should be available in publicly owned shorelines that are tolerant of human activity.

GOAL 19.2. PUBLIC ACCESS AND RECREATION SITES AND FACILITIES SHOULD BE WELL-MAINTAINED AND OPERATED.

- Policy LU-19.2.1 Public access should be policed and improved consistent with the planned intensity of recreational use.
- Policy LU-19.2.2 Shoreline public access should be limited to low-intensity, passive recreation in the Natural and Urban Conservancy eEnvironments.

GOAL 19.3. PRIORITY FOR ACCESS ACQUISITION SHOULD CONSIDER RESOURCE DESIRABILITY, AVAILABILITY AND PROXIMITY OF POPULATION.

- Policy LU-19.3.1 Where appropriate, improve, pursue or develop shoreline access, including, but not limited to, open space, boat launches, fishing facilities, trails, and

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streetscaping on publicly owned shorelands consistent with the Parks, and Recreation and Open Space Master Plan, Downtown Sub-Element and Transportation Element.

GOAL 19.4. PHYSICAL OR VISUAL ACCESS TO SHORELINES SHOULD BE REQUIRED AS A CONDITION OF APPROVAL FOR SHORELINE DEVELOPMENT ACTIVITIES COMMENSURATE WITH THE ADVERSE IMPACTS OF NEW MULTI-FAMILY AND COMMERCIAL SHORELINE DEVELOPMENT AND THE CORRESPONDING BENEFIT TO THE PUBLIC OF SUCH DEVELOPMENT, CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

- Policy LU-19.4.1 The City should provide incentives to encourage multi-family and commercial private property owners to provide public shoreline access.
- Policy LU-19.4.2 Public pedestrian easements should be required in future shoreline land use actions whenever shoreline features are appropriate for public use.
- Policy LU-19.4.3 Shorelines of the state that include but are not limited to any of the following conditions should be considered for pedestrian easements:
- a. Where a proposed trail in the Kenmore Trail System Parks, Recreation and Open Space Plan, or Downtown Plan Circulation improvement Sub-Element or Transportation Element is planned along the shoreline.
 - b. Areas presently being legally used or historically having been legally used by the public along the shoreline for access.
- Policy LU-19.4.4 Public access opportunities identified in the Shoreline Inventory and Characterization should be pursued as feasible over time to increase and improve public access to the shoreline.

GOAL 19.5. PUBLIC ACCESS TO SHORELINES OF THE STATE SHOULD BE DEVELOPED IN A WIDE RANGE OF LOCATIONS AND SHOULD BE OPEN TO ALL PEOPLE.

- Policy LU-19.5.1 Viewpoints, lookouts, and vistas of shorelines of the state and wetlands should be publicly accessible.
- Policy LU-19.5.2 Where appropriate, utility and transportation rights-of-way on the shoreline should be made available for public access and use.
- Policy LU-19.5.3 Publicly-owned street ends that abut the shoreline should be retained or reclaimed for public access.
- Policy LU-19.5.4 Shoreline recreational facilities and other public access points should be connected by trails, bicycle pathways and other access links where appropriate,

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as consistent with the Parks, and Recreation Master and Open Space Plan (2003), and Downtown Plan Sub-Element and Transportation Element.

- Policy LU-19.5.5 Public access points should be of a nature and scale that would be compatible with adjacent land uses, water-dependent uses, navigation and protection of natural features, including aquatic habitat.
- Policy LU-19.5.6 Public access should respect and protect ecological processes and functions and aesthetic values in the shorelines of the state.
- Policy LU-19.5.7 Environmentally critical areas in shoreline areas should be retained as open space. Public Access and use should be ~~restricted or prohibited such that there allowed where there~~ is no net loss of shoreline ecological processes and functions.

GOAL 19.6. PROVIDE FOR THE PRESERVATION AND EXPANSION OF SHORELINE-DEPENDENT AND WATER-ORIENTED RECREATION OPPORTUNITIES THAT FACILITATE THE PUBLIC'S ABILITY TO ENJOY THE PHYSICAL AND AESTHETIC QUALITIES OF THE SHORELINE THROUGH PARKS, PUBLIC ACCESS TO BEACHES, BICYCLE AND PEDESTRIAN TRAILS, VIEWPOINTS, AND OTHER RECREATIONAL AMENITIES.

GOAL 19.7. AREAS CONTAINING SPECIAL SHORELINE RECREATION QUALITIES NOT EASILY DUPLICATED SHOULD BE AVAILABLE FOR PUBLIC USE AND ENJOYMENT.

- Policy LU-19.7.1 Opportunities should be provided for the public to understand natural shoreline processes and experience natural resource features in diverse forms of water-oriented recreation.

Recreation

GOAL 19.8. SHORELINE RECREATIONAL MANAGEMENT AND DEVELOPMENT SHOULD PROTECT SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

- Policy LU-19.8.1 Low-intensity recreational uses should be allowed along intact shorelines; service facilities such as ~~footpaths, periphery car parks~~ parking lots and adequate sanitary facilities should only be allowed where appropriate.
- Policy LU-19.8.2 Already popular beaches and other predominantly undeveloped shorelines should be available and designated as medium-intensity recreational use areas to be free from expansive development; intensity of use should be consistent with the protection of shoreline ecological processes and functions.

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- Policy LU-19.8.3 Small or linear portions of the shoreline in public ownership that are suitable for recreational purposes should be made available for variable intensities of use, which may include vista points, pedestrian walkways, water entry points, street-ends, and shoreline areas adjacent to waterfront roads.
- Policy LU-19.8.4 Overall design and development in shoreline recreational areas should be responsive to the site characteristics of those areas and be consistent with the level of use in the area concerned.
- Policy LU-19.8.5 Non-water-oriented recreational facility development should be located inland away from the water's edge except where appropriate in the Downtown Waterfront eEnvironment. In the Downtown Waterfront environment, non-water dependent recreation facilities such as a children's play area or picnic tables may be appropriate near the water on the inner harbor area and may be allowed as part of an overall development providing substantial public access and other shoreline improvements.

GOAL 19.9. THE PROVISION OF ADEQUATE PUBLIC SHORELINE RECREATION LANDS SHOULD BE BASED ON AN ACQUISITION PLAN WITH CLEAR PUBLIC INTENT.

GOAL 19.10. A BALANCED VARIETY OF RECREATIONAL OPPORTUNITIES SHOULD BE PROVIDED REGIONALLY FOR PEOPLE OF DIFFERENT AGES, HEALTH, FAMILY STATUS, AND FINANCIAL ABILITY.

- Policy LU-19.10.1 Appropriate specialized recreation facilities should be provided for the handicappedthose with disabilities or others who might need them.
- Policy LU-19.10.2 Shoreline recreation areas should provide opportunities for different use intensities ranging from low (solitude) to high (many people).
- Policy LU-19.10.3 Opportunities for shoreline recreational experiences should include a wide range of accessibility and duration of use.
- Policy LU-19.10.3.5 Shoreline recreational experiences should include a wide range of different areas from remote-outdoor undeveloped areas to highly developed indoor-outdoor areas.
- Policy LU-19.10.4 Recreational development should meet the demands of population growth consistent with the protection of shoreline ecological processes and functions.
- Policy LU-19.10.5 Encourage private and public investment in recreation facilities.
- Policy LU-19.10.6 Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.

Views and Aesthetics

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GOAL 19.11. SCENIC, AESTHETIC AND ECOLOGICAL QUALITIES OF NATURAL AND DEVELOPED SHORELINES SHOULD BE PRESERVED AS VALUABLE RESOURCES.

- Policy LU-19.11.1 In shoreline areas, the natural topography should not be substantially altered.
- Policy LU-19.11.2 Setbacks should be established for new development and redevelopment in the shoreline jurisdiction to minimize adverse impacts to views of the water by the public and adjacent uses and to protect the visual quality of views of the shoreline.
- Policy LU-19.11.3 Shoreline structures should be sited and designed to minimize view obstruction and should be visually compatible with the shoreline character.
- Policy LU-19.11.4 Public viewing and interpretation should be encouraged at or near industrial, commercial, and governmental shoreline development when consistent with security and public safety.

20. Circulation

GOAL 20.1. CIRCULATION SYSTEMS IN SHORELINE AREAS SHOULD BE LIMITED TO THOSE THAT ARE SHORELINE DEPENDENT, THOSE THAT WOULD SERVE SHORELINE-DEPENDENT USES, AND THOSE THAT WOULD PROTECT SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

GOAL 20.2 NEW SURFACE TRANSPORTATION DEVELOPMENT SHOULD BE DESIGNED TO PROVIDE THE BEST POSSIBLE SERVICE WITH THE LEAST POSSIBLE INFRINGEMENT UPON THE SHORELINE ENVIRONMENT. ANY ADVERSE IMPACTS TO SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS SHOULD BE MINIMIZED AND MITIGATED.

- Policy LU- 20.2.1 New transportation facilities and improvements to existing facilities that substantially increase levels of air, noise, odor, visual or water pollution should be discouraged.
- Policy LU- 20.2.2 Transportation corridors should be designed to harmonize with the topography and other natural characteristics of the shoreline through which they traverse.
- Policy LU- 20.2.3 Surface transportation facilities in shoreline areas should be set back from the ordinary high-water mark far enough to make unnecessary such protective measures as bank stabilization, landfill, bulkheads, groins, jetties or substantial site regrade.

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- Policy LU- 20.2.4 New transportation developments in shoreline areas should provide turnout areas for scenic stops and off-road rest areas where the topography, view and natural features warrant.
- Policy LU- 20.2.5 Shoreline roadway corridors with historic significance or great aesthetic quality should be retained and maintained for those characteristics.
- Policy LU- 20.2.6 The City should encourage new transportation facilities crossing lakes, streams, rivers or wetlands to locate in existing corridors except where any adverse impact can be minimized by selecting an alternate corridor.

GOAL 20.3. SHORELINE CIRCULATION SYSTEMS SHOULD ENCOURAGE ALTERNATIVE ROUTES AND MODES OF TRAVEL.

- Policy LU- 20.3.1 Future development and maintenance of ferry services on Lake Washington should be encouraged in the Downtown Waterfront eEnvironment, and integrated with the overall transportation system.
- Policy LU- 20.3.2 Circulation routes should provide for non-motorized means of travel.
- Policy LU- 20.3.3 The City should develop a public trail system along the north shore of the Sammamish River and through the Downtown Waterfront shoreline eEnvironment on Lake Washington, as consistent with the Downtown PlanSub-Element, the Transportation Element (2003) and the Parks, Recreation and Open Space Plan.

GOAL 20.4. CIRCULATION SYSTEMS SHOULD BE LOCATED AND ATTRACTIVELY DESIGNED SO AS NOT TO UNNECESSARILY OR UNREASONABLY REDUCE THE BENEFITS DERIVED FROM PRIVATE PROPERTY.

- Policy LU- 20.4.1 Motorized vehicular traffic on beaches and other natural shoreline areas should be prohibited.
- Policy LU- 20.4.2 Transportation facilities providing access to shoreline development should be planned and designated in scale and character with the use proposed and should consider the future economic and social needs of the community consistent with the policies of the Kenmore SMP.

GOAL 20.5. CIRCULATION SYSTEMS DISRUPTIVE TO PUBLIC SHORELINE ACCESS AND OTHER SHORELINE USES SHOULD BE RELOCATED WHERE FEASIBLE.

- Policy LU- 20.5.1 Transportation elements disruptive to the shoreline character that cannot feasibly be relocated should be conditioned or landscaped to minimize visual and noise pollution.

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- Policy LU- 20.5.2 Kenmore should promote and encourage modes of transportation that consume the least amount of energy and produce the least pollution while providing the best efficiency.

21. Conservation and Protection

GOAL 21.1. PRESERVE OR DEVELOP SHORELINES, ADJACENT UPLANDS, AND ADJACENT WATER AREAS IN A MANNER THAT ENSURES NO NET LOSS OF SHORELINE ECOLOGICAL PROCESSES AND FUNCTIONS.

- Policy LU-21.1.1 Kenmore should support efforts to improve stream conditions and fish habitat, including re-establishing access to spawning and rearing areas.
- Policy LU-21.1.2 Buffers or setbacks should be established for new development and redevelopment in the shoreline jurisdiction to protect **existing** shoreline ecological processes and functions and to provide space for shoreline vegetation preservation and enhancement.
- Policy LU-21.1.3 Where appropriate, land and water uses should be located so that they do not interfere with the restoration or enhancement of shoreline ecological processes and functions.
- Policy LU-21.1.4 Environmentally critical areas in the shoreline, including critical freshwater habitats, should be protected from uses or activities that will have adverse effects.
- Policy LU-21.1.5 Kenmore should seek and use any available monitoring data on shoreline conditions in regulating development and making decisions that affect shoreline use, including, but not limited to, water quality monitoring by King County and the Department of Ecology, and monitoring data from hazardous material cleanup sites. The most recent data regarding a cleanup site should be obtained prior to issuing any permits for development on such sites.

GOAL 21.2. ENSURE PRESERVATION OF UNIQUE AND NON-RENEWABLE NATURAL RESOURCES AND ENSURE CONSERVATION OF RENEWABLE NATURAL RESOURCES FOR THE BENEFIT OF EXISTING AND FUTURE GENERATIONS AND THE PUBLIC INTEREST.

- Policy LU-21.2.1 Shorelines and shorelands that are of unique or valuable natural character should be acquired and preserved wherever feasible.
- Policy LU-21.2.2 Kenmore should encourage the conservation of fish, wildlife, and other renewable resources.
- Policy LU-21.2.3 All future shoreline development should be designed and sited to prevent adverse impacts on the natural shoreline environment. Adverse impacts shall be mitigated to ensure no net loss of shoreline ecological functions.

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- Policy LU-21.2.4 Shoreline activities, and developments should be planned, constructed and operated to maintain or enhance the quality of air, soil, and water on the shorelines.
- ~~Policy LU 21.2.5 Consumptive and extractive industries should allow the natural shoreline systems to function with a minimum of disruption during their operations and should return the shoreline to as near natural a state as possible upon their completion.~~
- Policy LU-21.2.65 Any structure or activity in or near the water should be constructed in such a way that it will prevent adverse physical or chemical effects on water quality, vegetation, fish, or wildlife.
- Policy LU-21.2.76 Uses or activities that degrade the natural resources of the shoreline should not be allowed.
- Policy LU-21.2.87 Some uses or activities may be allowed only when compensatory habitat enhancement is provided as mitigation. When considering compensatory habitat enhancement as mitigation for impacts from new structures, such as when a reduced buffer or a non-water-dependent use is requested, the enhancement should be proportional to the degree of impact of the new structure, and take into account the degree to which the existing buffer has already been compromised. Enhancement should focus on restoring shoreline ecological functions that are most critical and that have been most diminished in the Kenmore shoreline. ~~In approving any compensatory habitat enhancement plan, the Director shall consider the changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise, or activities) that the project would cause. Enhancements should generally focus on reducing or offsetting project impacts but may focus on restoring other critical ecological functions in the shoreline that have been lost or diminished (such as placement of large woody debris in water or restoring shallow water habitat). The Director may determine whether an enhancement that provides a broader benefit may be substituted for one that would offset the impacts of an individual project. The Director may deny a request to allow intrusion into a buffer or for development of a non-water-dependent use if the enhancement proposed does not fully mitigate the impacts of the project and provide a sufficient broader benefit.~~

Critical Areas

GOAL 21.3. THE KENMORE SHORELINE MASTER PROGRAM AND IMPLEMENTING REGULATIONS SHALL PROVIDE A LEVEL OF PROTECTION FOR CRITICAL AREAS AT LEAST EQUAL TO THAT PROVIDED BY KENMORE'S CRITICAL AREA POLICIES AND IMPLEMENTING REGULATIONS.

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- Policy LU-21.3.1 Kenmore shall protect shorelines and, where possible, should restore degraded habitat and critical area functions and values as consistent with the Comprehensive Plan Natural Environment Sub-Element.
- Policy LU-21.3.2 Kenmore shall apply the following sequence of steps listed in order of priority in evaluating and mitigating the adverse impacts of development and redevelopment on critical areas within the shoreline jurisdiction, as consistent with WAC 173-26-201(2)(e):
1. Avoid the impacts altogether;
 2. Minimize impacts;
 3. Rectify impacts by repairing, rehabilitating or restoring the affected environment;
 4. Reduce or eliminate the impacts over time;
 5. Compensate for impacts by replacing, enhancing or providing substitute resources; and
 6. Monitor the impact and take appropriate corrective measures.

Wetlands

GOAL 21.4. KENMORE SHOULD ALLOW ALTERATIONS TO WETLANDS ONLY IF THERE IS NO NET LOSS OF WETLAND FUNCTIONS AND VALUES.

- Policy LU-21.4.1 Kenmore regulations for wetlands in shorelines shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions:
1. Removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 2. Dumping, discharging, or filling with any material, including discharges of stormwater and domestic, commercial, or industrial wastewater;
 3. Draining, flooding, or disturbing of the open water level, duration of inundation, or groundwater table;
 4. Driving of pilings;
 5. Placing of obstructions;
 6. Construction, reconstruction, demolition, or expansion of any structure;
 7. Significant vegetation removal;

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8. Other uses or development that results in an adverse ecological impact to the physical, chemical or biological characteristics of wetlands; and
 9. Activities reducing the functions of buffers.
- Policy LU-21.4.2 Kenmore shall delineate buffers around wetlands to protect and maintain wetland functions. Buffer widths shall be based on ecological function, characteristics and setting, any potential conflicts with adjacent land use, and other relevant factors.
- Policy LU-21.4.3 Kenmore may allow compensatory mitigation only after a mitigation sequence is applied consistent with Policy LU-21.3.2. Lower priority mitigation measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Critical Freshwater Habitat

GOAL 21.5 KENMORE SHALL ENSURE PROTECTION OF CRITICAL FRESHWATER HABITAT CONSISTENT WITH KENMORE CRITICAL AREA REGULATIONS FOR FISH AND WILDLIFE HABITAT OF IMPORTANCE (KMC 18.55.520 AND 18.55.530).

- Policy LU-21.5.1 Kenmore should establish priorities for protection and restoration, where appropriate, along river corridors and lake shorelines.
- Policy LU-21.5.2 Uses and development within and along stream channels, associated channel migration zones, wetlands, lake shorelines, and floodplains within the shoreline jurisdiction should be regulated to ensure that no net loss of ecological processes and functions results from new development near freshwaters of the state, including associated hyporheic zones.
- Policy LU-21.5.3 Kenmore shall protect ecological functions associated with critical freshwater habitat as necessary to ensure no net loss from shoreline activities and associated changes.
- Policy LU-21.5.4 Kenmore should facilitate appropriate restoration projects.

Flood Hazard Areas

GOAL 21.6. THE KENMORE SHORELINE MASTER PROGRAM SHALL UTILIZE THE POLICIES AND PROGRAMS ESTABLISHED IN THE KENMORE ~~FLOOD HAZARD MANAGEMENT PLAN AND FLOOD HAZARD AREA~~ REGULATIONS TO MEET THE REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT AND THE DEPARTMENT OF ECOLOGY'S GUIDELINES FOR FLOOD HAZARD REDUCTION.

Water Quality, Stormwater and Nonpoint Pollution

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GOAL 21.7. PREVENT ADVERSE IMPACTS TO WATER QUALITY AND STORM WATER QUANTITY THAT WOULD RESULT IN A NET LOSS OF SHORELINE ECOLOGICAL FUNCTIONS OR ADVERSE IMPACTS TO AESTHETIC QUALITIES OR RECREATIONAL OPPORTUNITIES.

- Policy LU- 21.7.1 Ensure consistency between shoreline management provisions and other regulations that address water quality and stormwater quantity. The regulations that are most protective of ecological functions and public safety shall apply.

Geologically Hazardous Areas

GOAL 21.8. PREVENT ADVERSE IMPACTS TO THE SHORELINE AND PUBLIC SAFETY AS A RESULT OF INAPPROPRIATE DEVELOPMENT IN GEOLOGICALLY HAZARDOUS AREAS, INCLUDING AREAS SUSCEPTIBLE TO EROSION, LANDSLIDING, EARTHQUAKE, OR OTHER GEOLOGICAL EVENTS.

- Policy LU- 21.8.1 Ensure consistency between shoreline management provisions and other regulations that address geologically hazardous areas by incorporating Kenmore critical areas regulations into the SMP.
- Policy LU- 21.8.2 Prohibit development or the creation of new lots that would cause foreseeable risk ~~from geological conditions~~ to people or improvements ~~due to geologic conditions~~, or would require structural stabilization of the shoreline to protect the development, over the life of the development.
- Policy LU- 21.8.3 If shoreline stabilization is required to protect existing development from geologic hazards, it shall be developed consistent with Section 24.2 of these policies.

22. Archaeological, Historic and Cultural Resources

GOAL 22.1. HISTORIC PROPERTIES IN THE SHORELINE JURISDICTION SHOULD BE PROTECTED TO PREVENT THE DESTRUCTION OF, OR DAMAGE TO, ANY SITE HAVING ARCHAEOLOGICAL, HISTORIC, CULTURAL, OR SCIENTIFIC VALUE THROUGH COORDINATION AND CONSULTATION WITH THE APPROPRIATE LOCAL, STATE AND FEDERAL AUTHORITIES, INCLUDING AFFECTED TRIBES.

1. Sites should be protected in collaboration with appropriate tribal, state, federal, and other local governments. Cooperation among public and private parties is to be encouraged in the identification, protection, and management of cultural resources.
2. Where appropriate, access to such sites should be made available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

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3. Opportunities for education related to archaeological, historical and cultural features should be provided where appropriate and incorporated into public and private programs and development.

- Policy LU-22.1.1 Kenmore should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known historic properties within the City in observance of applicable state and federal laws protecting such information from public disclosure. As appropriate, such sites should be preserved and/or restored for study, education and/or public enjoyment.
- Policy LU-22.1.2 Provisions for historic property preservation, restoration and education should be incorporated with open space or recreation areas in site development plans whenever compatible and feasible.
- Policy LU-22.1.3 Cooperation among involved private and public parties should be encouraged to achieve these historic, cultural, scientific and educational objectives.
- Policy LU-22.1.4 Private and public owners of historic properties should be encouraged to provide public access and educational opportunities at levels consistent with long-term protection of both historic values and shoreline ecological processes and functions. Site-specific conditions may require public site access to be restricted at times, but educational means should be provided whenever possible.
- Policy LU- 22.1.5 Historic property development should be planned and carried out so as to prevent adverse impacts to the resource. Adverse impacts to neighboring properties and other shoreline uses should be limited to temporary or reasonable levels.
- Policy LU- 22.1.6 Owners of historic properties are encouraged to make substantial development plans known well in advance of application so that appropriate agencies, such as the Washington State Department of Archaeology and Historic Preservation, Tribes and others may have ample time to assess the site and make arrangements to preserve historic, cultural, scientific and educational values as applicable.
- Policy LU- 22.1.7 If development is proposed adjacent to an historic property, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.

SHORELINE USE AND MODIFICATION POLICIES

23. Shoreline Use

General Use Policies

GOAL 23.1. DEVELOPMENT WITHIN THE SHORELINE JURISDICTION SHALL PROTECT THE PUBLIC'S HEALTH AND SAFETY, AND PRIVATE

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***PROPERTY RIGHTS, WHILE IMPLEMENTING THE POLICIES OF THE
SHORELINE MANAGEMENT ACT.***

***GOAL 23.2 PRESERVE OR DEVELOP SHORELINES, ADJACENT UPLANDS AND
ADJACENT WATER AREAS IN A MANNER THAT ENSURES AN
ORDERLY BALANCE OF SHORELINE USES.***

- Policy LU-23.2.1 Where there is a conflict between the uses permitted by zoning and the Shoreline Master Program, preference shall be given first to water-dependent uses, then to water-related uses, and finally to water-enjoyment uses.
- Policy LU-23.2.2 Kenmore shall adopt use policies and development regulations to achieve consistency between shorelands and adjacent lands as directed in RCW 90.58.340.
- Policy LU-23.2.3 Shoreline land and water areas particularly suited for specific and appropriate uses should be designated and reserved for such uses.
- Policy LU-23.2.4 Like or compatible shoreline uses should be clustered or distributed in a rational manner rather than be allowed to develop haphazardly.
- Policy LU-23.2.5 Multiple uses of the shoreline should be encouraged where location and integration of compatible uses are feasible.
- Policy LU-23.2.6 The City shall consider the goals and policies within the Shoreline Master Program in all land use management actions regarding the use or development of adjacent uplands or the water areas, adjacent uplands and associated wetlands or streams with less than 20 cubic feet per second mean annual flow within its jurisdiction where such use or development will have an adverse effect on designated shorelines.
- Policy LU-23.2.7 Adverse impacts associated with new development in the shoreline should be minimized and mitigated such that there is no net adverse impact to shoreline ecological processes and functions.
- Policy LU-23.2.8 Incentives should be provided to substantially reduce the impacts of existing nonconforming uses on ecological functions. Nonconforming uses should be allowed to expand or be reconfigured if it is demonstrated that the expanded or reconfigured use would reduce the impacts of the existing use on ecological functions.

23.3 Aquaculture

- Policy LU-23.3.1 Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological processes and functions. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species;

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adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.

- Policy LU-23.3.2 Aquaculture facilities should be designed, operated and located so as not to cause harm to humans, spread disease to native aquatic life, or establish new non-native species. Aquaculture facilities shall not cause adverse impacts to shoreline ecological processes and functions, aesthetic qualities or public access.
- Policy LU-23.3.3 Preference should be given to those forms of aquaculture that involve the least adverse environmental, visual and native plant and animal species impacts. In general, submerged aquaculture structures are preferred over those that involve substantial floating structures. Projects involving little or no substrate modification are preferred over those that involve substantial modification, recognizing that in some circumstances that importing sand or **pea** gravel on rocky or cobble substrates may result in more diverse habitat. Projects involving little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.
- Policy LU-23.3.4 Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of non-native species, or other adverse effects on native species or threatened or endangered species and their habitats should not be permitted.
- Policy LU-23.3.5 Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; or on the aesthetic qualities of a project area.
- Policy LU-23.3.6 Legally established aquaculture uses, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Uses or developments that have a high probability of damaging or destroying a legally established existing aquaculture use may be denied.
- Policy LU-23.3.7 Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.
- Policy LU-23.3.8 Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the State of Washington.
- Policy LU-23.3.9 Kenmore should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate Federal, State and local agencies; the Muckleshoot Tribe, the Tulalip Tribes and other tribes with treaty fishing rights; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by an

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aquaculture proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

Policy LU-23.3.10 The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed during the permit review process. Direct and early coordination between the applicant or proponent and the affected tribe should be encouraged.

Policy LU-23.3.11 Kenmore support should be given to **State** **Washington** Departments of Fisheries and **Game** **Wildlife** to improve stream conditions, open new spawning areas, and establish new fish runs.

23.4 Boating facilities

Policy LU-23.4.1 Boating facilities shall be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses, and:

1. Meet health, safety and welfare requirements;
2. Mitigate adverse aesthetic impacts;
3. Provide public access in new marinas, unless there is a safety or security concern;
4. Limit adverse impacts to shoreline resources from boaters living in their vessels;
5. Ensure no net loss of shoreline ecological processes and functions or other adverse impacts; and
6. Protect the rights of navigation.

Policy LU-23.4.2 The need for additional marinas should be balanced against other shoreline-dependent uses.

Policy LU-23.4.3 Local governments should coordinate in the planning and development of regional marina facilities for multi-jurisdictional use.

Policy LU-23.4.4 Marinas should be located only within the Downtown Waterfront and **adjacent** Aquatic **shoreline** **e** **Environments** **designations**.

Policy LU-23.4.5 Marina development and ancillary facilities should be designed to use minimal shoreline.

Policy LU-23.4.6 Parking areas that serve marinas shall conform to the parking regulations of the Kenmore Comprehensive Plan Transportation Element and Shoreline Master Program transportation and parking policies.

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| Policy LU-23.4.7 | Marinas should be planned to minimize traffic congestion and pedestrian/vehicle conflicts. |
| Policy LU-23.4.8 | Dry storage of boats should be encouraged in order to retain shoreline for other shoreline dependent uses or so that the greatest number of boats per foot of shoreline frontage can be accommodated. |
| Policy LU-23.4.9 | Viewpoints, walkways, picnic facilities, benches, telephones, restrooms, drinking fountains and other public use facilities should be encouraged at marinas. |
| Policy LU-23.4.10 | Covered moorage should be discouraged except for vessel repair or construction activity. |
| Policy LU-23.4.11 | Setbacks should be established for upland boating facilities to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent residents, and protect the visual quality of views of the shoreline. |
| Policy LU-23.4.12 | Marinas should be allowed to have live-aboard tenants provided they are limited to 10 percent of the boat slips in the marina, are occupied by single-family tenants, and the marina has adequate on-land and pump-out facilities. Where underlying zoning restrictions would otherwise prohibit live-aboards, such as through a P-suffix condition, those conditions should be removed if it has been demonstrated that compliance with the Shoreline Code will adequately address adverse impacts from live-aboards. |

23.5 Commercial

Preference should be given to water-dependent commercial uses over non-water-dependent commercial uses, then water-related and water-enjoyment commercial uses over non-water-oriented commercial uses. Some commercial uses within the shoreline jurisdiction may be required to incorporate appropriate design and operational elements to qualify as water-related or water-enjoyment.

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| Policy LU-23.5.1 | Kenmore shall require all commercial development on public land to provide public access, unless the use is incompatible or there are public safety concerns. |
| Policy LU-23.5.2 | Kenmore shall prohibit non-water-oriented commercial uses in the shoreline jurisdiction unless they meet the following criteria: <ol style="list-style-type: none"> 1. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration; or |

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2. Navigability is severely limited at the proposed site and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and/or ecological restoration.

- Policy LU-23.5.3 Kenmore may allow non-water-oriented commercial development in the shoreline jurisdiction if the site is physically separated from the shoreline by another property or public right-of-way, provided that a property should not be allowed to be subdivided in a manner that would thwart the purposes of this policy.
- Policy LU-23.5.4 Kenmore shall allow over-water non-water-dependent commercial uses only in existing structures or if the use is auxiliary to and necessary to support a water-dependent use. The area of any over-water structure shall be the minimum possible.
- Policy LU-23.5.5 Kenmore shall prohibit commercial development that will have adverse impacts on other shoreline uses, resources and values such as navigation, recreation and public access, and views. Kenmore shall require mitigation for all commercial development to ensure that it does not cause a net loss of ecological processes and functions.
- Policy LU-23.5.6 Setbacks should be established for commercial development in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, protect the visual quality of views of the shoreline, and allow for public access.
- Policy LU-23.5.7 Boat moorage, launching facilities and other services should be located where existing vehicular access and parking are available or can be made available.
- Policy LU-23.5.8 The use of porous materials should be encouraged for paved areas to allow water to infiltrate into the soil. Use of holding systems should be encouraged to control the runoff rate from parking lots and roof tops where the runoff would flow to Swamp Creek or any stream that is prone to flooding.

23.6 ~~Industrial~~ Heavy manufacturing

Kenmore has not identified any shoreline areas where heavy manufacturing or industrial uses would be appropriate.

- Policy LU-23.6.1 Kenmore ~~will give preference to all other uses~~ shall prohibit new heavy manufacturing or industrial uses in the shoreline jurisdiction ~~before industrial uses. Kenmore shall give preference to industrial uses in the following order: first, water-dependent industrial uses; second, water-related industrial uses; and third, nonwater-oriented industrial uses.~~

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- Policy LU-23.6.2 Kenmore should encourage public access on existing industrial sites in the shoreline jurisdiction, unless Kenmore determines that public access is infeasible or inappropriate.
- Policy LU-23.6.3 Kenmore should encourage redevelopment, environmental clean up and shoreline restoration on existing industrial sites.
- ~~Policy LU 23.6.4 Kenmore should prohibit new nonwater-oriented industrial development in the shoreline jurisdiction, except when the use is part of a mixed-use project that includes water-dependent uses or the use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and/or ecological restoration.~~
- ~~Policy LU 23.6.5 Kenmore may allow nonwater-oriented industrial uses in the shoreline jurisdiction if the site is physically separated from the shoreline by another property or public right-of-way.~~
- ~~Policy LU 23.6.6 Setbacks should be established for industrial development in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline cleanup if necessary, provide space for vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and improve the visual quality of views of the shoreline.~~
- ~~Policy LU 23.6.7 Industrial docks and piers should be designed to minimize adverse impact of such facilities upon other water-dependent uses and resources.~~
- ~~Policy LU 23.6.8 Industrial and commercial activities should be encouraged to share overwater structures and shoreline facilities.~~
- ~~Policy LU 23.6.9 Water reclamation plants, power plants, and sewage treatment facilities should be located where they are compatible with adjacent uses and do not interfere with recreational, residential, or other public uses of the shoreline.~~

23.7. In-Water Structures

In-water structure means a structure placed by humans within a stream, river, or lake waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish collection, or other purposes.

- Policy LU-23.7.1 In-water structures shall provide for the protection and preservation of shoreline ecological processes and functions, and cultural resources including, but not limited to, fish and fish passage, wildlife and water resources, critical areas, hydro-geological processes, and natural scenic vistas.

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- Policy LU-23.7.2 Planning for in-water structures shall give due consideration to the full range of public interests and ecological processes and functions, with special emphasis on protecting and restoring habitat for threatened or endangered species.

23.8. Mining

Kenmore has not identified any shoreline areas where mining ~~may~~would be appropriate.

- Policy LU-23.8.1 Mining shall be prohibited in the shoreline jurisdiction.

23.9. Recreation

Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Recreational development should be given priority and is to be primarily related to access to and enjoyment and use of the water and shorelines of the state.

- Policy LU-23.9.1 Recreational development is allowed in the shoreline jurisdiction and must be consistent with the purposes of the shoreline environment designation in which the property is located.
- Policy LU-23.9.2 Kenmore shall plan to provide public recreational uses on city-owned shoreline, consistent with the goals of this chapter.
- Policy LU-23.9.3 Recreational improvements and new facilities should be constructed so that they preserve the natural character of the shoreline.
- Policy LU-23.9.4 All recreational developments should be sited to enhance and protect ~~existing~~ shoreline ecological processes and functions.
- ~~Policy LU 23.9.5 New recreational buildings should be made sympathetic to the scale, form, and proportion of older development, to promote harmony in the visual relationships and transitions between new and older buildings.~~
- Policy LU-23.9.65 The use of conventional fertilizers and pesticides in public recreation areas should be minimized or replaced with ecologically friendly landscape management methods.
- Policy LU-23.9.76 Public recreational shoreline areas should serve as emergency refuge areas for boaters.
- Policy LU-23.9.87 Visual access to the water should be pursued on steep slopes, at view points from bluffs and stream valleys, and in general where it is consistent with public safety and where extensive flood or erosion protection would not be necessary.
- Policy LU-23.9.98 The acquisition of public easements to the shoreline should be encouraged.
- Policy LU-23.9.109 Setbacks should be established for recreational development in the shoreline jurisdiction to protect ~~existing~~ shoreline ecological processes and functions,

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provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and protect the visual quality of views of the shoreline.

Policy LU-23.9.11 ~~Existing public recreation shorelines should be restored and, where possible during park master plan development or redevelopment, Kenmore should~~ consideration should be given to revegetating the shoreline, re-siting roads and parking areas further away from the shoreline, and removing stream channelization and shoreline protection devices.

Policy LU-23.9.120 Prime fishing areas should be given priority and protected for recreational use.

Policy LU-23.9.131 Boating activities that increase shore erosion should be discouraged.

Policy LU-23.9.142 Effective interpretation should be provided to raise the quality of visitor experiences and to provide an understanding of the resource.

23.10. Residential

The term “residential development” includes single-family detached dwellings, attached and multifamily dwelling units, and subdivision of shoreline land into new residential lots. The Shoreline Management Act recognizes single-family residential development as a priority use within shorelines of the state.

Policy LU-23.10.1 Single-family residential development is a priority use in the shoreline jurisdiction in Kenmore.

Policy LU-23.10.2 Setbacks should be established for residential development in the shoreline jurisdiction to protect existing shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent residents, and protect the visual quality of views of the shoreline.

Policy LU-23.10.3 New shoreline residential development, including accessory structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that shoreline stabilization is not required to protect these structures and uses.

Policy LU-23.10.4 New over-water residences, including floating homes, are prohibited in the shoreline jurisdiction.

Policy LU-23.10.5 Kenmore should require multi-family residential development and subdivisions within the shoreline jurisdiction to provide community or public access.

Policy LU-23.10.6 Kenmore shall require subdivisions to:

1. Be designed, configured and developed in a manner that ensures no net loss of ecological processes and functions at full build-out of all lots;

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2. Be designed, configured and developed in a manner that prevents the need for new shoreline stabilization or flood risk reduction measures; and
3. Be consistent with the provisions and policies for shoreline environment designations and the general policy goals of this Plan.

~~Policy LU-23.10.7 Residential development in flood hazard areas and channel migration areas shall be consistent with KMC 18.55.700-750.~~

~~Policy LU-23.10.8 Residential development in geologically hazardous areas shall be consistent with KMC 18.55.600-650.~~

Policy LU-23.10.97 In residential developments, the water's edge should be kept free of fences.

Policy LU-23.10.108 Every reasonable effort should be made to ensure the retention of native shoreline vegetation and other natural features of the landscape during site development and construction.

~~Policy LU-23.10.11 The City should explore creation of a planned unit development (PUD) process to be employed within redeveloping areas of the shoreline area so that all facets of the development can be examined.~~

Policy LU-23.10.129 Residential developments should be designed to enhance the appearance of the shoreline and not substantially interfere with the public's view and access to the water.

Policy LU-23.10.130 Residential developments should be permitted only where there are adequate provisions for utilities, circulation, access, site layout and building design.

Policy LU-23.10.141 Residential development plans submitted for approval should contain provisions for protection of groundwater, erosion control, water quality, aesthetic characteristics and landscaping.

Policy LU-23.10.152 Subdivisions should provide public pedestrian access to the shorelines within the development in accordance with this Master Program.

Policy LU-23.10.163 Streets, roadways and roadway easements, whether publicly or privately owned, within the boundaries of any waterfront parcel, should not be used to compute lot area, lot dimensions, yards, open space or other required conditions of land subdivision or development.

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23.11. Transportation and Parking

Transportation and parking facilities may be necessary to support shoreline uses, to support the regional economy, and for access to privately owned property in the shoreline. Transportation planning in shorelines should not be focused only on automobiles, but should consider a wide range of options, including buses, light rail, commuter rail, bicycle, passenger-only ferries, and pedestrian facilities. Transportation planning can be a tool for finding opportunities to provide public access to the shorelines.

- Policy LU-23.11.1 Kenmore shall require transportation and parking plans and projects to be consistent with the public access policies in this Plan, the Comprehensive Plan Transportation Element, and shoreline and critical area protection provisions.
- Policy LU-23.11.2 Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the Kenmore Shoreline Master Program. Where appropriate, circulation system planning should include systems for pedestrian, bicycle and public transportation and combining transportation uses to minimize the footprint of transportation facilities.
- Policy LU-23.11.3 Transportation and parking facilities shall be planned, located and designed to have the least possible adverse impact on environmentally critical areas in the shoreline, not result in a net loss of shoreline ecological processes and functions or adversely affect existing or planned water-dependent uses. Where other options are available and feasible, new transportation facilities or transportation facility expansions should not be constructed within the shoreline jurisdiction.
- Policy LU-23.11.4 Parking facilities shall be prohibited in the Aquatic shoreline environment unless necessary to support a water-dependent use, and then should be only allowed if no alternative exists, and should be the minimum needed to support the use.
- ~~Policy LU-23.11.5 Existing public recreation shorelines should be restored and, where possible, Kenmore should revegetate the shoreline, re-site roads and parking areas further away from the shoreline, and remove stream channelization and shoreline protection devices.~~
- Policy LU-23.11.65 Setbacks should be established for new transportation and parking facilities in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, and protect the visual quality of views of the shoreline. New parking facilities shall not impede the provision of new shoreline public access facilities and opportunities.
- Policy LU-23.11.76 Shoreline transportation facilities should be designed, located and maintained to fit the topography, minimize cuts and fills, and minimize erosion.

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- Policy LU-23.11.87 Transportation and utility facilities should be encouraged to coordinate joint use of rights-of-way and to consolidate crossings of water bodies when adverse impacts to the shoreline can be minimized by doing so.
- Policy LU-23.11.98 Shoreline roadways should have a high priority for arterial beautification funds.
- Policy LU-23.11.109 Transportation facilities crossing 100-year floodplains should be constructed on low profile designs so as not to function as dikes or levees to flood waters.
- Policy LU-23.11.110 Passenger only ferry facilities should be encouraged.
- Policy LU-23.11.121 Abandoned road or railroad rights-of-way that contain unique shoreline amenities should be acquired for public benefit.
- Policy LU-23.11.132 Kenmore should extend its pedestrian and bicycle trail system along the Sammamish River shoreline.

23.12 Utilities

Utilities include services and facilities that produce, convey, store, or process power, gas, water, sewage, stormwater, communications, oil, or waste. Utilities that are classified as on-site utilities serving only one primary use are considered “accessory utilities” and are considered part of the primary use.

- Policy LU-23.12.1 Utility facilities shall be designed and located to ensure no net loss of shoreline ecological processes and functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses, while meeting the needs of the projected future population in Kenmore.
- Policy LU-23.12.2 Kenmore shall allow modification of existing utility facilities and the location of new water-oriented portions of utility facilities in the shoreline jurisdiction provided that a mitigation sequence is applied per KMC 18.55.210 and there is no net loss of ecological processes and functions. As feasible, those parts of utility production and processing facilities that are not water-oriented, such as power plants and sewage treatment plants, shall be located outside of the shoreline jurisdiction.
- Policy LU-23.12.3 Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline jurisdiction where feasible. Transmission facilities located within the shoreline jurisdiction shall ensure no net loss of shoreline ecological processes and functions.
- Policy LU-23.12.4 Utilities should be located in existing developed rights-of-way and corridors whenever possible.
- Policy LU-23.12.5 Unless no other feasible alternative location exists, Kenmore should discourage the development of facilities that may require periodic maintenance that adversely affects shoreline ecological processes and functions.

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- Policy LU-23.12.6 Setbacks should be established for new utility facilities in the shoreline jurisdiction to protect shoreline ecological processes and functions, provide space for shoreline vegetation preservation and enhancement, minimize adverse impacts to views of the water by the public and adjacent uses, and protect the visual quality of views of the shoreline.
- Policy LU-24.12.2 Utilities located in wetlands and floodplains inappropriate for development should not make service available to those areas.
- Policy LU-23.12.7 Public access consistent with public safety and security should be encouraged where rights-of-way for utility facilities are located in shorelines of the state.
- Policy LU-23.12.8 New utility routes should be designed to minimize adverse impacts on views from the water and adjacent uplands.

Policy LU-23.6-912.9 Water reclamation plants, power plants, and sewage treatment facilities should be located where they are compatible with adjacent uses and do not interfere with recreational, residential, or other public uses of the shoreline.

23.13 Outdoor Advertising Signs and Billboards

- Policy LU-23.13.1 Vistas and viewpoints should be free from unnecessary signs.
- Policy LU-23.13.2 Signs, when permitted, should be placed so as not to impair views of the water or impair views upland from the water except where hazardous shoreline conditions require warning signs.
- Policy LU-23.13.3 Warning signs should be installed by Kenmore or by other appropriate entities where hazardous shoreline conditions may exist.
- Policy LU-23.13.4 Advertising signs, when permitted, should be limited to shoreline areas of high-intensity use.
- Policy LU-23.13.5 Signs in shoreline areas should be maintained in a state of security, safety and repair.
- Policy LU-23.13.6 Any new sign codes for Kenmore should recognize the unique aesthetic character and ecological qualities of shoreline areas.

23.14 Conditional Uses

For the purposes of the Kenmore Shoreline Master Program, a shoreline conditional use may be appropriate in order to:

1. Effectively address unanticipated uses that are not classified in the Shoreline Master Program;
2. Address cumulative impacts; or

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3. Provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific designation within the Shoreline Master Program or with the Shoreline Management Act policies.

Policy LU-23.14.1 The following types of uses and development should require a shoreline conditional use permit:

1. Uses and development that may significantly impair or alter the public's use of the water areas of the state; and
2. Uses and development which, by their intrinsic nature, may have an adverse impact on shoreline ecological processes and functions depending on location, design, and site conditions.

24. Shoreline Modification

General Modification Policies

- Policy LU-24.1.1 Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- Policy LU-24.1.2 Reduce the effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
- Policy LU-24.1.3 Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
- Policy LU-24.1.4 Ensure that shoreline modifications individually and cumulatively do not result in a net loss of ecological processes or functions.
- Policy LU-24.1.5 Shoreline modifications that have the least adverse impact on ecological processes and functions should be prioritized and mitigation should be required for any impacts resulting from shoreline modifications.
- Policy LU-24.1.6 Incentives should be provided to substantially reduce the impacts of existing nonconforming structures on ecological functions. Nonconforming docks should be allowed to expand or be reconfigured only when the structure would reduce the impacts on critical fish habitat. Nonconforming bulkheads should be allowed to be reconstructed if they provide a pocket cove or beach and substantially reduce impacts on ecological functions.

24.2. Shoreline Stabilization

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Shoreline stabilization includes actions taken to address adverse erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as current, flood, wind or wave action. Shoreline stabilization includes structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of structures to be protected, groundwater management, planning and regulatory measures to avoid the need for structural stabilization. When structural stabilization is needed, “soft” methods can be used instead of “hard” methods (such as bulkheads, rip rap and groins) in some cases. Soft methods of shoreline stabilization include, but are not limited to, vegetation enhancement; upland drainage control; biotechnical measures; beach enhancement; and anchor trees.

- Policy LU-24.2.1 Kenmore shall require shoreline stabilization to be consistent with WAC 173-26-221(5) for vegetation retention and WAC 173-26-221(2) for protection of critical areas.
- Policy LU-24.2.2 Kenmore shall adopt standards to first avoid then mitigate adverse impacts to shoreline ecological processes and functions when alteration of the shoreline is allowed for the construction of single detached dwelling units and accessory structures. These standards shall address the design and type of protective measures and devices that are allowed.
- Policy LU-24.2.3 Kenmore shall require new development on steep slopes to be set back sufficiently to ensure that the need for shoreline stabilization is unlikely during the life of the structure, as demonstrated by a geotechnical analysis.
- Policy LU-24.2.4 Shoreline stabilization decisions should consider available scientific information and current shoreline conditions.
- Policy LU-24.2.5 Avoid and reduce adverse impacts from shoreline stabilization according to the mitigation sequence in General Shoreline Management Policies for Conservation – Critical Areas (Policy LU-21.3.2) and WAC 173-26-201(2)(e). Shoreline planning should consider off-site erosion, accretion or flood damage that might occur as a result of shoreline stabilization structures or activities.
- Policy LU-24.2.6 Shoreline stabilization on Lake Washington, the Sammamish River or Swamp Creek shorelines should not be used as the reason for creating new or newly usable land.
- Policy LU-24.2.7 Shoreline stabilization structures should allow passage of ground and surface waters into shorelines of the state.
- Policy LU-24.2.8 Shoreline stabilization should not reduce the volume and storage capacity of the Sammamish River, Swamp Creek, and adjacent wetlands or floodplains.
- Policy LU-24.2.9 Sammamish River and Swamp Creek shoreline stabilization should be planned, designed, and constructed to allow for channel relocation or stream meander whenever possible.
- Policy LU-24.2.10 Appropriate soft shore armoring methods, as determined by a qualified specialistprofessional, should be used for shoreline stabilization when

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necessary to protect existing property or, when for new development, no options exist to locate in such a manner as to avoid shoreline stabilization.

- Policy LU-24.2.11 Kenmore shall allow new hard structural stabilization measures only as follows:
1. The proposal is the minimum necessary to protect existing legally established primary structures, new non-water-dependent development, and existing or proposed water-dependent development and structures, and:
 - a. The erosion is not the result of upland conditions, such as the loss of vegetation and drainage;
 - b. Nonstructural measures, such as locating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;
 - c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report submitted by a qualified specialist. The damage must be caused by natural processes; and
 - d. Mitigation is provided such that the erosion control structure will not result in a net loss of shoreline ecological processes and functions.
 2. The proposal would protect shoreline restoration projects or hazardous substance remediation projects, and:
 - a. Nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient; and
 - b. The erosion control structure will not result in a net loss of shoreline ecological processes and functions.
- Policy LU-24.2.12 The burden of proof for the need for shoreline stabilization to protect existing or proposed developments rests on the applicant(s).
- Policy LU-24.2.13 Shoreline stabilization activities which may necessitate new or increased shoreline stabilization on the same or other affected properties where there has been no previous need for protection, should be discouraged.
- Policy LU-24.2.14 New development should be located and designed to avoid the need for future shoreline stabilization.
- Policy LU-24.2.15 Areas of significance in the spawning, nesting, rearing or residency of aquatic and terrestrial biota should be given special consideration when reviewing shoreline stabilization actions.
- Policy LU-24.2.16 Multiple use of shoreline stabilization structures or non-structural solutions should be encouraged.

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- Policy LU-24.2.17 An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.
- Policy LU-24.2.18 Kenmore shall require replacement of shoreline stabilization structures to be designed, located, sized, and constructed to ensure no net loss of ecological processes and functions or, if infeasible to provide such protection, to use the approach with the least adverse impacts and provide mitigation for unavoidable impacts.
- ~~Policy LU-24.2.19 Replacement walls or bulkheads protecting a residence shall not encroach waterward of the ordinary high water mark, unless the residence was occupied prior to January 21, 1992, and there are overriding safety and environmental concerns. In cases where there are overriding safety and environmental concerns, the replacement wall or bulkhead structure shall abut the existing shoreline stabilization structure and may be located on the waterward side of the existing wall or bulkhead structure.~~
- Policy LU-24.2.2019 When shoreline stabilization is proposed, Kenmore shall require a geotechnical report to address the need to prevent potential damage to a primary structure. The report shall estimate time frames and rates of erosion and the urgency associated with the specific situation. Kenmore should not allow hard armoring solutions, unless a geotechnical report confirms that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is immediate would foreclose the opportunity to use measures that avoid adverse impacts to ecological processes and functions. If the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- Policy LU-24.2.210 If structural shoreline stabilization measures are demonstrated to be necessary, Kenmore shall limit the size of stabilization measures to the minimum necessary.
- Policy LU-24.2.221 Kenmore shall ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline, except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological processes and functions. Where feasible, Kenmore shall require ecological restoration and public access improvements to be incorporated into the project.
- Policy LU-24.2.232 Adverse impacts of erosion and mass wasting should be mitigated through protection of geologically hazardous areas.

24.3 ~~Piers and Docks~~ Water Access Structures

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- Policy LU-24.3.1 Kenmore shall allow new ~~piers and docks~~water access structures only for water-dependent uses or public access. If it is designed and intended solely as a facility for access to watercraft, a dock ~~or pier~~ associated with a single-family residence is considered a water-dependent use.
- Policy LU-24.3.2 Kenmore shall require ~~pier and dock~~water access structure construction to be limited to the minimum size necessary to meet the needs of the proposed water-dependent use.
- Policy LU-24.3.3 Kenmore may allow water-related and water-enjoyment uses as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the structure is the minimum size required to serve the water-dependent use.
- Policy LU-24.3.4 Kenmore shall allow new ~~pier or dock construction~~water access structures; ~~excluding docks accessory to single-family residences;~~ only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. ~~Applicants for new piers and docks accessory to single-family residences are not required to demonstrate need.~~
- Policy LU-24.3.5 Kenmore shall require new residential development of two or more dwelling units to provide community ~~pier or~~ dock facilities, when feasible, rather than individual ~~piers or~~ docks for each dwelling unit. Kenmore shall allow only one pier or dock associated with residential development on a parcel.
- Policy LU-24.3.6 Kenmore shall require ~~piers and docks~~water access structures, including those accessory to single-family residences, to be designed and constructed to avoid and then minimize and mitigate the adverse impacts to ecological processes and functions. ~~Piers and docks~~Water access structures should be constructed of non-toxic materials. Where toxic materials, such as treated wood, are proposed, the proponent must show that no non-toxic alternative exists.
- Policy LU-24.3.7 Open pile pier construction should be preferred ~~on Lake Washington~~ where scenic values will not be impaired and where there will be no net loss of ecological processes and functions.
- Policy LU-24.3.8 ~~Floating pier~~Dock construction should be preferred in those areas where scenic values are high ~~and on the Sammamish River~~.
- Policy LU-24.3.9 ~~Piers and docks~~Water access structures should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by ~~pier~~water access structure construction.
- Policy LU-24.3.10 Preference should be given to shared use of ~~piers~~water access structures in all shoreline areas.
- Policy LU-24.3.11 Temporary moorages should be permitted for vessels used in the construction of shoreline facilities. The design and construction of such moorages shall be such that upon termination of the project the aquatic life can be returned to

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their original condition within one year at no cost to the environment or the public.

- Policy LU-24.3.12 Shoreline structures that are abandoned or structurally unsafe should be abated.
- Policy LU-24.3.13 Substantial additions or alterations, including, but not limited to, substantial developments, should be in conformance with the policies and regulations set forth in the Shoreline Master Program.
- Policy LU-24.3.14 ~~Piers and docks~~Water access structures should not interfere with navigation.

24.4 Fill

Fill means the addition of soil, sand, rock, gravel, sediment, earth retaining structures, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. ~~Fill is not permitted within the 100-year floodplain without providing compensatory flood storage to prevent a rise in the base flood, which is a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood."~~ Fill can adversely affect ecological processes and functions, including channel relocation or stream meander.

- Policy LU-24.4.1 Kenmore shall require fill to be located, designed, and constructed to protect shoreline ecological processes and functions and ecosystem-wide processes, including channel migration, stream meander and side channels. Mitigation shall be required consistent with Policy LU 21.3.2.
- Policy LU-24.4.2 Kenmore shall allow fill waterward of the ordinary high-water mark allowed only when necessary to support:
1. Water-dependent use;
 2. Public access;
 3. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
 4. Disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
 5. Expansion or alteration of SR 522 in the shoreline and then only upon a demonstration that alternatives to fill are not feasible; or
 6. Mitigation actions, environmental restoration, beach nourishment, enhancement projects and flood risk reduction projects.
- Policy LU-24.4.3 Kenmore shall require a shoreline conditional use permit for fill waterward of the ordinary high-water mark for any use except ecological restoration and maintenance, repair and replacement of flood protection facilities.

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| Policy LU-24.4.4 | Fill should be deposited so as to minimize disruption of normal surface and ground water passage. |
| Policy LU-24.4.5 | Fill should allow surface water penetration into the ground water supply where such conditions existed prior to fill. |
| Policy LU-24.4.6 | Fill within the 100-year floodplain should not reduce the river channel or floodplain water storage capacity, reduce the channel migration zone, or in any way increase flood hazard so as to endanger public safety. |
| Policy LU-24.4.7 | Land should be filled only after some ultimate use of the property is approved by Kenmore in accordance with the Comprehensive Plan and this Shoreline Master Program. |
| Policy LU-24.4.8 | Fill should be done at such time as to minimize damage to ecological processes and functions. |
| Policy LU-24.4.9 | Beach nourishment areas may be established by Kenmore on Lake Washington. |

24.5 Breakwaters, Groins and Weirs

Breakwaters, groins, and weirs are all structural elements that are constructed to absorb or deflect wave action or to control excess sediment. A breakwater is an off-shore structure, either floating or not, which may or may not be connected to the shore and is designed to absorb and reflect back into the water body the energy of the waves. A groin is a barrier-type structure extending from the backshore into the water across the beach, which is constructed to interrupt sediment movement along the shore. A weir is a small dam in a stream or river to control the flow of water. These structural elements should be allowed only under limited circumstances as they can have adverse effects on ecological processes and functions.

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| Policy LU-24.5.1 | Kenmore shall allow breakwaters and weirs located waterward of the ordinary high-water mark only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purposes. |
| Policy LU-24.5.2 | Groins are prohibited except as a component of a publicly-sponsored project to protect or restore shoreline ecological processes and functions. |
| Policy LU-24.5.3 | Kenmore shall require a shoreline conditional use permit for the construction of breakwaters, groins, weirs, and similar structures, except for those structures installed to protect or restore ecological processes and functions, such as woody debris installed in streams. |
| Policy LU-24.5.4 | Breakwaters, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in General Shoreline Management Policies for Conservation – Critical Areas (Policy LU-21.3.2) and WAC 173-26-201(2)(e). |

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| Policy LU-24.5.5 | Reduction of the opportunity to use surface water area which may result from breakwater construction should be weighed against the benefits of reduced wave action. |
| Policy LU-24.5.6 | Applicants for breakwaters, groins or weirs should consider structural alternatives and the related effects on ecological processes and functions. |
| Policy LU-24.5.7 | Breakwater, groin and weir design should include provisions for compatible public access or recreational uses when consistent with navigation and when public safety can be ensured. |
| Policy LU-24.5.8 | Care should be exercised in location, design, construction and expansion of breakwaters, groins and weirs relative to the shoreline environments and other shoreline dependent uses. |
| Policy LU-24.5.9 | Beach nourishment should be considered where breakwaters or groins affect shorelines. |

24.6 Dredging

Dredging is the removal, displacement, or disposal of unconsolidated earth material such as sand, silt, gravel, or other submerged materials, from the bottom of water bodies, ditches, or natural wetlands. Long-term maintenance and support activities are also considered dredging. Dredging can cause significant ecological damage. Mitigation measures should be required to ensure no net loss of ecological processes and functions.

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| Policy LU-24.6.1 | Kenmore shall require that new development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. |
| Policy LU-24.6.2 | Kenmore shall allow dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigational uses. Adverse ecological impacts shall be minimized and mitigation shall be provided such that there is no net loss of ecological processes and functions. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged or existing authorized location, depth, and width. |

~~Policy LU 24.6.3 — Kenmore shall not allow dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill material, except when the material is necessary for the restoration of ecological processes and functions. When allowed, the site where the fill is to be placed shall be located waterward of the ordinary high water mark. The project must be either associated with a habitat restoration project under the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act, or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.~~

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- Policy LU-24.6.43 Kenmore shall not allow disposal of dredge material on shorelands, **in wetlands and/or** in side channels within a channel relocation or stream meander area. ~~Kenmore shall not allow disposal of dredge material in wetlands located within the shoreline jurisdiction. In the limited instances where it is allowed, such disposal shall require a shoreline conditional use permit.~~
- Policy LU-24.6.54 Dredging and excavation in environmentally critical areas within the shoreline should not be allowed.
- Policy LU-24.6.65 Dredging operations should be scheduled so as to not materially interfere with the migration of native fish.
- Policy LU-24.6.76 When dredged spoil has suitable organic and physical properties, dredging operators should be encouraged to recycle dredged material for reuse.
- Policy LU-24.6.87 Dredging should be allowed only in the Aquatic **shoreline** ~~e~~Environment and to support water dependent uses.
- Policy LU-24.6.98 Disposal of dredge and excavation spoils within shorelines should be prohibited except when the material is necessary for the restoration of ecological processes and functions.

24.7 Restoration and Enhancement

Shoreline habitat and natural systems enhancement projects should be supported and coordinated with other plans and regulations, such as salmon conservation plans, the King County Flood Hazard Reduction Plan and Flood Control Zone District, and flood hazard management policies in the Kenmore Comprehensive Plan Natural Environment Sub-Element and Surface Water Element.

- Policy LU-24.7.1 Kenmore should allow for habitat and natural systems enhancement projects that include, but are not limited to:
1. Modification of vegetation;
 2. Removal of non-native or invasive plants;
 3. Shoreline stabilization using soft or non-structural techniques; and
 4. Dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological processes and functions of the shoreline.
- Policy LU-24.7.2 Habitat and natural systems enhancement projects should ensure that the projects address legitimate restoration needs and priorities and facilitate implementation of Kenmore's Shoreline Restoration Plan.

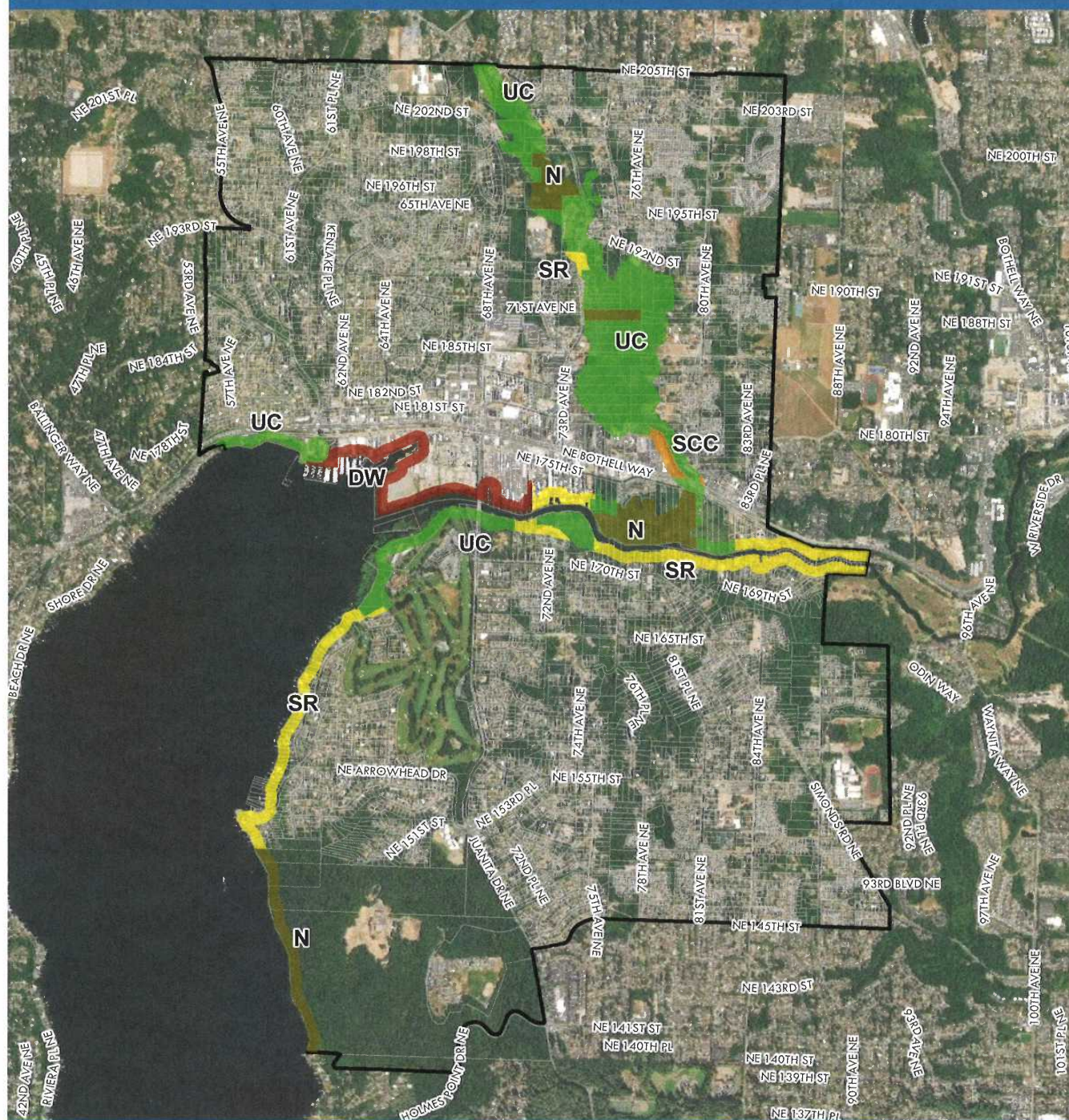
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(Insert Revised Shoreline Map)

Figure LU-12

Shoreline Master Program Environment Designations

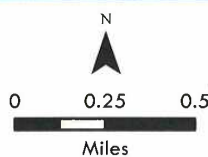


EMP Environment Designations

- Downtown Waterfront (DW)
- Swamp Creek Commercial (SCC)
- Natural (N)
- Shoreline Residential (SR)
- Urban Conservancy (UC)

 Kenmore City Boundary
 Kenmore Parcels

*All areas waterward of the Ordinary High Water Mark on the Sammamish River and Lake Washington have an Aquatic environment designation.



Sources: City of Kenmore, 2018.

The information included on this map has been compiled by City of Kenmore staff from a variety of sources and is subject to change without notice. City of Kenmore makes no representation or warranties, expressed or implied, as to the accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. City of Kenmore shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of City of Kenmore.

Map Date: March 2019

ATTACHMENT 3

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 19-0490**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON; REVISING DIVISION 1 OF TITLE 16 OF
THE KENMORE MUNICIPAL CODE ENTITLED
SHORELINE MANAGEMENT; REVISING THE
SHORELINE ENVIRONMENT DESIGNATIONS MAP;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, the SMA's legislative findings identify that: 1) the shorelines of the state are among the most valuable and fragile of its natural resources; 2) there is great concern throughout the state relating to their utilization, protection, restoration, and preservation; and 3) that unrestricted construction on private or publicly owned shorelines is not in the best interest of the public; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines in the following order of preference which: 1) recognize and protect the State-wide interest over local interest; 2) preserve the natural character of the shoreline; 3) result in long-term over short-term benefit; 4) protect the resources and ecology of the shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, three bodies of water within the City are regulated under the City's Shoreline Master Program (SMP), including Lake Washington, the Sammamish River and Swamp Creek. Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the summer of 2018, the City began its update of the Shoreline Sub-Element of the Comprehensive Plan and shoreline regulations (SMP Update) with the assistance of grant funding from Ecology; and

WHEREAS, the City prepared a gap analysis to identify portions of the Shoreline Master Program needing amendment; and

ATTACHMENT 3

WHEREAS, the results of this analysis are contained in the document entitled, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations, August 30, 2018 (Gap Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted a supplemental analysis of potential cumulative impacts of the updated Shoreline Master Program. The supplemental cumulative impact analysis is contained in the document entitled, City of Kenmore, Cumulative Impacts Analysis Addendum, May 2019; and

WHEREAS, to satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1) and WAC 173-26-201(2)(a), the City has utilized best available science to draft the proposed SMP Update; and

WHEREAS, over the past year, the City's Planning Commission has reviewed and revised a number of documents, including: the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; and proposed revisions to critical area regulations; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding a public open house and two public forums; creating a comprehensive and regularly-updated web page devoted to the SMP update; and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City, and the City has reviewed and acted upon said comments; and

WHEREAS, the Planning Commission held a public hearing on the SMP Update on March 26, 2019, and two interested parties testified, and three additional written comments were received; and

WHEREAS, on May 13, 2019, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and the Council considered those recommendations on May 13, 2019, May 20, 2019, and June 10, 2019; and

WHEREAS, on May 23, 2019, the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

WHEREAS, on March 14, 2019, the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on the proposed SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, staff and consultant input, Ecology's comments, and certain documents and information, including: 1) The

ATTACHMENT 3

Gap Analysis; 2) the Cumulative Impacts Analysis Addendum; 3) the Shoreline Sub-Element of the City of Kenmore Comprehensive Plan; 4) the City of Kenmore Shoreline Master Program draft shoreline regulations; 5) Ecology's Shoreline Master Program Periodic Review Checklist; 6) SEPA Determination of Nonsignificance; and 7) Docket Criteria Analysis; and

WHEREAS, consistent with WAC 173-26-186(d), the SMP Update evaluates and considers cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA; and

WHEREAS, to ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, the SMP Update contains policies, programs and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including use regulations, are considered a part of the City's development regulations; and

WHEREAS, the City Council desires to amend Division 1 of Title 16 of the KMC; now therefore

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings Adopted. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Amendment of Title 16 KMC; Adoption of Shoreline Master Program Development Regulations. The City Council amends Title 16 of the Kenmore Municipal Code and adopts the City of Kenmore Shoreline Master Program Shoreline Regulations, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 3. Map Adopted. The City Council adopts revised Map 1, Shoreline Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

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Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen (14) days from the date of the Washington State Department of Ecology's written notice of final action approving the shoreline master program amendments.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
__TH DAY OF ____, 2019.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Dawn Reitan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:

EXHIBIT 1

Title 16
ENVIRONMENT SHORELINE MANAGEMENT

Chapters:

Division I. Shoreline Management

16.05 Shoreline Management Code – Purpose and Scope

16.10 Definitions

16.15 Shoreline Environment Designations

16.20 Downtown Waterfront Environment

16.23 Swamp Creek Commercial Environment

16.25 Shoreline Residential Environment

16.30 Urban Conservancy Environment

16.35 Natural Environment

16.40 Aquatic Environment

16.45 General Shoreline Development Standards

16.50 Shoreline Uses

16.55 Shoreline Modifications

16.60 Vegetation Conservation

16.65 Shoreline Density and Dimensions

16.68 Signs

16.70 Subdivisions

16.75 Procedures

Division I. Shoreline Management

EXHIBIT 1

Chapter 16.05

SHORELINE MANAGEMENT CODE – PURPOSE AND SCOPE

Sections:

- 16.05.010 Purpose.**
- 16.05.020 Citation.**
- 16.05.030 Scope.**
- 16.05.050 Liberal construction.**
- 16.05.060 Relationship to other Kenmore programs.**
- 16.05.070 Severability.**

16.05.010 Purpose.

~~A. This title contains the regulations of the City of Kenmore Shoreline Master Program and the procedures to implement those regulations.~~ The purpose of this title is to implement the Shoreline Management Act of 1971 and to provide for the regulation of *development* which impacts those areas of the City of Kenmore under the jurisdiction of the Shoreline Management Act consistent with Chapter 173-26 WAC and the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

~~B. This title contains the regulations of the City of Kenmore Shoreline Master Program and the procedures to implement those regulations. These regulations and procedures are consistent with and implement the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.~~

16.05.020 Citation.

This title shall be known as “the shoreline management code.”

16.05.030 Scope.

A. No *development* shall be undertaken by any person on the *shorelines of the State* unless such *development* is consistent with the provisions of this title and the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

B. *Development* prohibited by this title but otherwise permitted by the City of Kenmore land use controls is prohibited only within the *shorelines of the State*.

EXHIBIT 1

C. *Development* proposed on property in or adjacent to water bodies or *wetlands* under the jurisdiction of the Shoreline Management Act shall be evaluated in terms of the goals and policies of the City of Kenmore comprehensive plan shoreline subelement.

D. For purposes of this title, "shall" means a mandate; the action must be done. "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on the policies of Chapter 90.58 RCW and Chapter 173-26 WAC, against taking the action.

16.05.050 Liberal construction.

This title is exempted from the rule of strict construction and shall be liberally construed to give full effect to the purposes for which it was enacted.

16.05.060 Relationship to other Kenmore programs.

A. Kenmore shall issue no permit or approval ~~prior to approval pursuant to this title and shall take no action~~ contrary to the goals, policies, and regulations of the City of Kenmore *Shoreline Master Program* when property under the jurisdiction of the Shoreline Management Act is involved in a request for a decision in any of the following programs:

1. Building permit;
2. Right-of-way construction permit;
3. Short subdivision approval;
4. Grading permit;
5. Site plan approval;
6. Access permit;
7. Trail permit;
8. State flood control zone permit;
9. Zoning variance;
10. Conditional use permit;
11. Comprehensive plan amendment or addition;

EXHIBIT 1

- 12. Zone reclassification;
- 13. Special use permit;
- 14. Subdivision approval;
- 15. Mobile home park permit;
- 16. Mobile home permit;
- 17. Recreational vehicle park permit; and
- 18. Site plan review permit.

B. The following sections of the Kenmore Municipal Code are adopted and incorporated by reference as part of the *Shoreline Master Program*¹:

- 1. Chapter 1.20 KMC – Code Enforcement.
- 2. Chapter 18.55 KMC – Critical Areas, except for the following sections:
 - a. KMC 18.55.150 - Exemptions
 - b. KMC 18.55.160 – Exception – Public Agency and Utility
 - c. KMC 18.55.170 – Variances
 - d. KMC 18.55.180 – Exception – Reasonable Use
 - e. KMC 18.55.230 – Unauthorized critical area alterations and enforcement.

KMC 18.55.090 – Jurisdiction – Critical areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

3. KMC 18.55.130 – Mapping (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

4. KMC 18.55.140 – Signs and fencing of critical areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

5. KMC 18.55.150 – Exemptions (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

EXHIBIT 1

6. KMC 18.55.190 — Critical areas reports — Requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
7. KMC 18.55.200 — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
8. KMC 18.55.210 — Mitigation sequencing (as adopted in Ordinance No. 12-0334).
9. KMC 18.55.220 — Mitigation plan requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
10. KMC 18.55.230 — Unauthorized alterations and enforcement (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
11. KMC 18.55.250 — Notice on title (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
12. KMC 18.55.260 — Critical area tracts (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
13. KMC 18.55.270 — Building setbacks (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
14. KMC 18.55.280 — Bonds to ensure mitigation, maintenance, and monitoring (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
15. KMC 18.55.290 — Critical area inspections (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
16. KMC 18.55.300 — Designation and rating of wetlands (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
17. KMC 18.55.320 — Wetland performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).
18. KMC 18.55.330 — Wetland performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).

EXHIBIT 1

19. KMC 18.55.400 — Designation and rating of streams (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
20. KMC 18.55.420 — Streams performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
21. KMC 18.55.430 — Streams performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
22. KMC 18.55.500 — Designation of fish and wildlife habitats of importance (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
23. KMC 18.55.520 — Fish and wildlife habitat performance standards — General (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
24. KMC 18.55.530 — Fish and wildlife habitat performance standards — Mitigation requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334, and as further amended through Ordinance 12-0334).
25. KMC 18.55.600 — Geologically hazardous areas — Purpose (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
26. KMC 18.55.610 — Designation of geologically hazardous areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
27. KMC 18.55.620 — Designation of specific hazard areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
28. KMC 18.55.640 — Geologically hazardous areas performance standards — General requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
29. KMC 18.55.650 — Geologically hazardous areas performance standards — Specific areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).
30. KMC 18.55.700 — Flood hazard areas (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

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31. KMC 18.55.710 – Flood fringe – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

32. KMC 18.55.720 – Zero-rise floodway – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

33. KMC 18.55.730 – FEMA floodway – Development standards and permitted alterations (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

34. KMC 18.55.740 – Flood hazard areas – Certification by engineer or surveyor (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

35. KMC 18.55.750 – Channel relocation and stream meander areas requirements (as codified from Ordinance No. 06-0244 and set forth in Appendix 1 to Exhibit 1 of Ordinance 12-0334).

Other sections of the Kenmore Municipal Code cross-referenced in this chapter are provided for reference purposes. Unless specifically stated, the *Shoreline Master Program* does not eliminate or reduce the requirements of any other portion of the Kenmore Municipal Code.

16.05.070 Severability.

If any provision of this title or the master program regulations and procedures hereby adopted or its application to any person or circumstance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this title or the master program.

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~~Certain c~~Critical area code sections from Chapter 18.55 KMC – as they existed at the time of *Shoreline Master Program* approval by the Washington Department of Ecology in 20122019 and are described in KMC 16.05.060(B) – have been adopted into the shoreline regulations as part of the *Shoreline Master Program*. Future amendments to these sections of Chapter 18.55 KMC will not be in effect in the shoreline jurisdiction unless and until the *Shoreline Master Program* also is amended.

EXHIBIT 1

Chapter 16.10

DEFINITIONS

Sections:

- 16.10.010 Applicability of RCW and WAC definitions.
- 16.10.030 Access, public.
- 16.10.032 Accessory structure.
- 16.10.035 Accessory use.
- 16.10.02038 Applicant.
- 16.10.040 Aquaculture.
- 16.10.050 Associated wetlands.
- 16.10.060 Average grade level.
- ~~16.10.070 Backfill.~~
- 16.10.080 Berm.
- 16.10.083 Boat launch
- 16.10.085 Boating facility.
- 16.10.090 Breakwater.
- 16.10.100 Bulkhead.
- 16.10.105 Channel migration zone.
- 16.10.106 City manager.
- ~~16.10.107 Commercial development.~~
- 16.10.110 Critical areas.
- ~~16.10.115 Critical freshwater habitat.~~
- 16.10.120 Department.
- 16.10.130 Development.
- ~~16.10.140 Director.~~
- 16.10.150 Dock.
- 16.10.160 Dredging.
- 16.10.170 Ecological functions.
- 16.10.173 Ecosystem-wide processes.
- 16.10.175 EIL.
- 16.10.178 Feasible.
- 16.10.180 Fill.
- 16.10.185 Fish and wildlife habitats area of importance.
- 16.10.190 Float.

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- 16.10.200 Floating home.
- 16.10.210 Floodplain.
- 16.10.220 Floodway.
- 16.20.225 Geotechnical report or geotechnical analysis.
- 16.10.230 Grading.
- 16.10.235 Government services.
- 16.10.240 Groin.
- 16.10.250 Hatchery.
- 16.10.260 Height.
- 16.10.270 Jetty.
- 16.10.275 Live-aboard.
- 16.10.280 Marina.
- 16.10.285 Manufacturing uses.
- 16.10.~~310~~285 No net loss.
- 16.10.290 Nonconforming structure.
- 16.10.300 Nonconforming use.
- 16.10.320 Non-water-oriented uses.
- 16.10.330 Normal protective bulkhead common to single-family residences.
- 16.10.340 Open space, required.
- 16.10.350 Ordinary high water mark.
- 16.10.355 Park/recreation recreational/cultural uses.
- 16.10.360 Pier.
- 16.10.370 Port.
- 16.10.375 Ramp
- 16.10.380 Recreational development.
- 16.10.390 Redesignation.
- 16.10.395 Residential development.
- 16.10.400 Restoration.
- 16.10.410 Riprap.
- 16.10.420 Sediment.
- 16.10.430 Shall.
- 16.10.440 Should.
- 16.10.~~450~~40 Shorelands.
- 16.10.445 Shoreline buffer.
- 16.10.460 Shoreline environment.
- 16.10.470 Shoreline Master Program.

EXHIBIT 1

- 16.10.480 Shoreline modifications.
- 16.10.500 Shoreline stabilization.
- 16.10.510 Shorelines.
- 16.10.520 Shorelines of statewide significance.
- 16.10.530 Shorelines of the State.
- 16.10.540 Sign.
- ~~16.10.550 Significant vegetation removal.~~
- 16.10.560 Solid waste.
- 16.10.570 Substantial development.
- ~~16.10.580 Utilities and utility facilities.~~
- ~~16.10.575 Water access structure.~~
- 16.10.590 Water-dependent use.
- 16.10.6100 Water-enjoyment use.
- 16.10.6210 Water-oriented use.
- 16.10.6020 Water-related use.
- ~~16.10.630 Water transmission pipeline.~~
- 16.10.640 Wetlands.

16.10.010 Applicability of RCW and WAC definitions.

The definitions contained in this chapter, KMC Title 18 (zoning code), Chapter 90.58 RCW and Chapter 173-26 WAC shall apply within the shoreline jurisdiction. The definitions in Chapter 90.58 RCW and Chapter 173-26 WAC shall apply in *shorelines* if there is a conflict with the definitions contained in this title and KMC Title 18.

16.10.030 Access, public.

"Public access" means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on waters of the State, and to view the water and the shoreline from adjacent locations.

16.10.032 Accessory structure.

"Accessory structure" means a structure that is incidental to the principal structure.

16.10.035 Accessory use.

~~"Accessory use" means a use that is incidental to a principal use. "Accessory use" means a use typically subordinate in size to the principal use; that would not contribute significantly to traffic generation, noise, or nuisance; and that supports the primary use operation without displacing it. An accessory use may~~

EXHIBIT 1

appear as an otherwise permitted, conditional or prohibited use in the use allowances for a given designation. Accessory uses are typically located upon the same lot occupied by a principal use. Examples of accessory uses include: equipment rental (bikes or skis) at a retail bike and ski shop, a secure facility required at an airport, and boat parking at a marina.

16.10.02038 Applicant.

"Applicant" means a person who files an application for a development proposal, permit or approval under this title and who is either the owner of the land on which that proposed activity would be located or the primary proponent of the project. A primary proponent shall have the permission of the landowner before proceeding with an application a property owner or a public agency or public or private utility which owns a right-of-way or other easement or has been adjudicated the right to such an easement pursuant to RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval.

16.10.040 Aquaculture.

"Aquaculture" means the culture or farming of fin fish, shellfish, algae or other plants or animals in fresh or marine waters. Excluded from the definition of aquaculture are related commercial or industrial uses such as wholesale or retail sales, or final processing, packing, or freezing.

16.10.050 Associated wetlands.

"Associated wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geohydraulic processes, presence of a surface connection, including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

16.10.060 Average grade level.

"Average grade level" is defined in WAC 173-27-030(3) and (11) as now or hereafter amended; as of insert effective date of ordinance, "average grade level" means "the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high-water mark. The "natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading.

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including excavation or filling. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure."

16.10.070 Backfill.

"Backfill" means the placement of earth material behind a retaining wall or structure.

16.10.080 Berm.

"Berm" means one or several linear mounds of sand and gravel at or landward of the *ordinary high-water mark* which are normally stable because of material size or vegetation.

16.10.083 Boat launch.

"Boat launch" means an inclined slab, set of pads, rails, planks, or graded slope which extends waterward of the *ordinary high-water mark*, and is used for transferring watercraft between uplands and the water by means of a trailer, hand, or mechanical device.

16.10.085 Boating facility.

"Boating facility" means developments and uses that support access to shoreline waters for purposes of boating, including *marinas*; community *docks* or *piers* serving more than four single-family residences or multifamily units; public *piers* and *docks*; and community, commercial or public *boat launch* facilities.

16.10.090 Breakwater.

"Breakwater" means an offshore structure, either floating or not, which may or may not be connected to the shore, such structure being designated to absorb and/or reflect back into the water body the energy of the waves.

16.10.100 Bulkhead.

"Bulkhead" means a solid or open pile wall of rock, concrete, steel or timber or other materials or a combination of these materials erected generally parallel to and near the *ordinary high-water mark* for the purpose of protecting adjacent *wetlands* and uplands from waves or currents.

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16.10.105 Channel migration zone.

"Channel migration zone" means the area within which a river channel ~~is likely~~ can be reasonably predicted to move over a period of time as a result of natural and normally-occurring hydrological and related processes when considered with the characteristics of the river and its surroundings., and The channel migration zone is therefore subject to risk due to stream bank destabilization, rapid stream incision, stream bank erosion, and shifts in the location of stream channels. Channel relocation and stream meander areas as defined at KMC 18.55.750 are channel migration zones.

16.10.106 City manager.

"City manager" means the City of Kenmore city manager or his or her designee(s).

16.10.107 Commercial development.

"Commercial development" includes general services, business services, and retail, defined as follows:

A. General services includes general personal services, funeral home/crematory, cemetery/columbarium/mausoleum, day care facilities, veterinary clinic, automotive repair, automotive services, vessel construction and outfitting, miscellaneous repair, churches/synagogues/temples, social services, stable, kennel/cattery, theatrical production services, artist studios, interim recycling facility, office/outpatient clinic, nursing and personal care facilities, hospital, medical/dental lab, miscellaneous health, and school district support facility.

B. Business services includes construction and trade, individual transportation and taxi, trucking and courier service, self-service storage, dry boat storage, commercial moorage, transportation service, freight or cargo service, passenger transportation service, communication offices, telegraph and other communications facilities, general business service, professional office, outdoor advertising service, miscellaneous equipment rental, automotive rental and leasing, professional sport teams/promoters, research development and testing, and commercial/industrial accessory uses.

C. Retail includes building/hardware/garden materials, forest products sales, department and variety stores, food stores, agricultural product sales, motor vehicle and boat dealers, auto supply stores, gasoline service stations, apparel and accessory stores, furniture and home furnishings stores, eating and drinking places, drug stores, liquor stores, used goods shops, sporting goods and related stores, book/stationery/video/art supply stores, jewelry stores, monuments/tombstones/gravestones, hobby/toy/game shops, photographic and electronic shops, fabric shops, fuel dealers, florist shops, personal medical supply stores, pet shops, bulk retail, auction houses, livestock sales, and food vendors.

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16.10.110 Critical areas.

"Critical areas" means any of the following areas or ecosystems: aquifer recharge areas, *fish and wildlife habitats* ~~areas of importance~~, frequently flooded areas, geologically hazardous areas, streams, and *wetlands*, as defined in Chapter 36.70A RCW and this chapter.

16.10.115 Critical freshwater habitat.

"Critical freshwater habitat" shall refer to ~~shorelines~~ meeting the definition of "fish and wildlife habitat of importance" in KMC ~~18.55.520~~.

16.10.120 Department.

"Department" means the ~~department of community development~~ city department or outside agency assigned by the city manager to administer a portion of the City code.

16.10.130 Development.

"Development" is defined in Chapter 90.58 RCW and WAC 173-27-030 as now or hereafter amended; as of insert effective date of ordinance, "development" means " a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any state of water level. Development does not include dismantling or removing structures if there is no other associated development or redevelopment."

16.10.140 Director.

"Director" means the ~~director of the department of community development or an authorized designee~~.

16.10.150 Dock.

"Dock" means ~~all platform structures or anchored devices in or~~ an anchored walkway or other surface that abuts the shoreline and floats floating upon the water bodies to provide moorage for ~~pleasure craft~~ watercraft or landing for water-dependent recreation ~~including, but not limited to, floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps. Dock is the term which collectively applies to a ramp and float, or it may be comprised of a float only that abuts the shoreline.~~

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16.10.160 Dredging.

"Dredging" means the removal, displacement, and/or disposal of unconsolidated earth material such as sand, silt, gravel, or other submerged materials from the bottom of water bodies, ditches, or *wetlands*; maintenance dredging and/or support activities are included in this definition.

16.10.170 Ecological functions.

"Ecological functions" or shoreline functions means the work performed or role played by the physical, chemical and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

16.10.173 Ecosystem-wide processes.

"Ecosystem-wide processes" is defined in WAC 173-26-020(14) as now or hereafter amended; as of insert effective date of ordinance, "ecosystem-wide processes" means "the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions."

16.10.175 Ell.

"Ell" means a terminal *pier* section oriented perpendicular to the *pier* walkway.

16.10.178 Feasible.

"Feasible" is defined in WAC 173-26-020(15) as now or hereafter amended; as of insert effective date of ordinance, "feasible" means, for the purpose of this title, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

B. The action provides a reasonable likelihood of achieving its intended purpose; and

C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where this title requires certain actions unless they are infeasible, the burden of proving infeasibility is on the *applicant*.

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In determining an action's infeasibility, the *department* may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames."

16.10.180 Fill.

"Fill" means the addition of soil, sand, rock, gravel, *sediment*, earth retaining structure or other material to an area waterward of the *ordinary high-water mark*, in *wetlands*, or on *shorelands* in a manner that raises the elevation or creates dry land.

16.10.185 Fish and wildlife habitats area of importance.

"Fish and wildlife habitats area of importance" means those habitat areas defined in KMC 18.55.500 that meet any of the following criteria:

A. Documented presence of species listed by the federal government or the State of Washington as endangered or threatened; or

B. Heron rookeries or active nesting trees; or

C. Class 1 Category I *wetlands* as defined in KMC 18.55.300; or

D. Type 1 streams *S-waters* as defined in KMC 18.55.400; or

E. Bald eagle habitat protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292) federal Bald and Golden Eagle Protection Act.

Swamp Creek, the Sammamish River, and Lake Washington are all fish and wildlife habitats areas of importance.

16.10.190 Float.

"Float" means a structure or device which is not a breakwater floats on the surface of the water and which is moored, anchored, or otherwise secured in the waters of the City of Kenmore and which is not directly connected to or abutting the shoreline. A float which is directly connected to or abutting the shoreline is considered a dock.

16.10.200 Floating home.

"Floating home" means a houseboat, boat or building constructed on a float, used in whole or in part for human habitation as a dwelling unit, and which is moored, anchored, or otherwise secured in waters

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within the City of Kenmore single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

16.10.210 Floodplain.

"Floodplain" is defined in WAC 173-26-020(19) as now or hereafter amended; as of insert effective date of ordinance, "floodplain" is synonymous with "100-year floodplain" and means ~~thethat~~ land area that may be inundated by the base flood of a river or stream susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps, or a reasonable method which meets the objectives of the Shoreline Management Act."

16.10.220 Floodway.

"Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which floodwaters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation ground cover condition. The floodway shall not include lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the State, or the county.

16.20.225 Geotechnical report or geotechnical analysis.

"Geotechnical report" or "geotechnical analysis" is defined in WAC 173-26-020(21) as now or hereafter amended; as of insert effective date of ordinance, "geotechnical report" or "geotechnical analysis" means "a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes."

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16.10.230 Grading.

"Grading" means the addition, excavation, movement, or redistribution of soil, sand, rock, gravel, *sediment* or other material on a site in a manner that alters the natural contour of the land.

16.10.235 Government services.

"Government services" means a public agency or utility office, public agency or utility yard, public agency archives, court, police facility, fire facility, caretaker residence/accessory, City government offices, elementary school, middle/junior high school, secondary/high school, specialized instruction school, K-12 educational institutions (public or private), and colleges/universities.

16.10.240 Groin.

"Groin" means a barrier-type structure extending from the backshore into the water across the beach. The purpose of a groin is to interrupt *sediment* movement along the shore.

16.10.250 Hatchery.

"Hatchery" means a facility for the rearing and/or holding of fish, the design of which is compatible with the natural environment and contains minimal development necessary for fish propagation.

16.10.260 Height.

"Height" is defined in WAC 173-27-030(9) as now or hereafter amended; as of insert effective date of ordinance, "height" shall be measured from the average finished grade to the highest point of the roof. The average finished grade shall be determined by first delineating the smallest square or rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the square or rectangle; provided, that the measured elevations do not include berms" is measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial numbers of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation."

16.10.270 Jetty.

"Jetty" means an artificial barrier used to change the natural littoral drift to protect inlet entrances from clogging by excess *sediment*.

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16.10.275 Live-aboard.

"Live-aboard" means a licensed vessel that is used as a primary residence.

16.10.280 Marina.

"Marina" means a marine retail sales and service use, in which a system of *piers*, buoys, docks or *floats* is used to provide moorage, primarily for pleasure craft, for sale or rent, usually on a monthly or yearly basis.

16.10.285 Manufacturing uses.

"Manufacturing uses" means production of food and kindred products, winery/brewery, apparel and other textile products, wood products, furniture and fixtures, leather and leather goods, stone/clay/glass/concrete products, computer and office equipment, electronic and other electric equipment, measuring and controlling instruments, printing and publishing, miscellaneous light manufacturing, tire retreading, movie production and distribution, and commercial barge loading and unloading facility.

16.10.310285 No net loss.

Per WAC 173-26-201(2)(c), the concept of "no net loss" of shoreline *ecological functions* means that the Kenmore *Shoreline Master Program* provisions shall, to the greatest extent *feasible*, protect existing shoreline ecological processes and functions and avoid new adverse impacts to ecological processes and functions. The term "net," as used herein, recognizes that any *development* has potential or actual for short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, avoidance of impacts and use of mitigation measures, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist.

16.10.290 Nonconforming structure.

"Nonconforming structure" means a structure that was lawfully constructed prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

16.10.300 Nonconforming use.

"Nonconforming use" means a use that was lawfully established prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

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16.10.320 Non-water-oriented uses.

"Non-water-oriented uses" means those uses that are not *water-dependent*, *water-related* or *water-enjoyment*.

16.10.330 Normal protective bulkhead common to single-family residences.

"Normal protective bulkhead common to single-family residences" means a *bulkhead* constructed on a building site zoned to permit one single-family residence and containing one single-family residence.

16.10.340 Open space, required.

"Required open space" means a portion of the area of a building site, which is required by this title, as set forth in different designations contained in this title, to be maintained as open area to be available for use by the persons specified in a development. Open spaces are required to be free and clear of buildings and structures and to remain open and unobstructed from the ground to the sky.

16.10.350 Ordinary high-water mark.

"Ordinary high-water mark" means the ordinary high-water mark as defined in Chapter 90.58 RCW as now or hereafter amended; as of insert effective date of ordinance, "ordinary high-water mark" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark shall be the line of mean high water."

16.10.355 Park/recreation recreational/cultural uses.

"Park/recreation recreational/cultural uses" means destination resorts, recreational vehicle park, theater, drive-in theater, bowling center, amusement and recreation services, amusement arcades, amusement park, library, museum, conference center, arboretum, cultural facilities, indoor recreational facilities (including sports clubs), open space, outdoor recreational facilities, parks, trails, wildlife shelter, and outdoor performance center.

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16.10.360 Pier.

"Pier" means any platform structure, fill, or anchored device in or floating upon water bodies to provide moorage for watercraft engaged in commerce an over-water, stationary, pile-supported structure that does not float on the water's surface and provides a location for boat moorage or other *water-oriented* or *water-dependent use*.

16.10.370 Port.

"Port" means public or private facilities for transfer of cargo or passengers from waterborne craft to land and vice versa; including, but not limited to: piers, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses.

16.10.375 Ramp.

"Ramp" means a walkway connecting a *pier*, or other shoreward structure or the shoreline to a *float* and providing access between the two.

16.10.380 Recreational development.

"Recreational development" means a private or public development operated and devoted to facilities and equipment for recreational purposes, including but not limited to swimming pools, tennis courts, playgrounds, picnic areas, campgrounds, resorts and other similar uses whether the use of such area is limited to those paying a fee or free to the public. Also see definition for "park/recreation recreational/cultural uses."

16.10.390 Redesignation.

"Redesignation" means a change in the *shoreline environment designation* by the procedures provided in Chapter [16.75](#) KMC.

16.10.395 Residential development.

"Residential development" includes single-family and multiple-family dwellings, group residences, temporary lodging, and uses that are accessory to residential development.

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A. "Dwelling, single-family" means a detached residence for one family.

B. "Dwelling, multiple-family" means a townhouse, apartment, and mobile home parks.

C. "Group residences" means community residential facilities, dormitory, and senior assisted housing.

D. "Temporary lodging" means hotel/motel, bed and breakfast guesthouse, and organization hotel/lodging houses.

E. "Accessory uses" means residential accessory uses, home occupation, and home industry.

16.10.400 Restoration.

"Restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

16.10.410 Riprap.

"Riprap" means hard angular quarry rock used for revetments or other bank stabilization projects.

16.10.420 Sediment.

"Sediment" means material settled from suspension in a liquid medium.

16.10.430 Shall.

"Shall" means a mandate; the action must be done.

16.10.440 Should.

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of Chapter 90.58 RCW and Chapter 173-26 WAC, against taking the action.

16.10.450 Shorelands.

"Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high-water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all associated wetlands and river deltas associated with the streams and lakes that are subject to the provisions of Chapter 90.58 RCW.

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16.10.445 Shoreline buffer.

"Shoreline buffer" means a required vegetation conservation area measured horizontally upland from and perpendicular to the *ordinary high-water mark*, as described in KMC 16.65.020.

16.10.460 Shoreline environment.

"Shoreline environment" or "shoreline environment designation" means the categories of *shorelines of the State* established by the City of Kenmore shoreline management master program to differentiate between areas whose features imply differing objectives regarding their use and future development.

16.10.470 Shoreline Master Program.

A. "Shoreline Master Program" consists of the following two elements:

1. Shoreline management goals and policies contained in the shoreline subelement of the Kenmore comprehensive plan. The shoreline management goals and policies constitute the official policy of Kenmore regarding areas of the City subject to shoreline management jurisdiction under Chapter 90.58 RCW;
2. The shoreline regulations specified in this chapter.

B. The following technical and planning information provides a foundation for shoreline policies and regulations, and is intended to aid in implementing and evaluating the Shoreline Master Program:

1. The shoreline protection and *restoration* plan;
2. The cumulative impacts analysis, which provides a mechanism for examining the success of meeting the requirement for *no net loss of ecological functions*;
3. The Shoreline Master Program checklist and public involvement process, which shows how Kenmore meets the procedural requirements for updating the Shoreline Master Program; and
4. The shoreline inventory and characterization, which includes data and analytic methods used to develop Kenmore's shoreline inventory and shoreline characterization.

16.10.480 Shoreline modifications.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, *breakwater*, *pier*,

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fill, bulkhead, or other shoreline structure. Shoreline modifications can include other actions, such as clearing, grading, or application of chemicals.

16.10.500 Shoreline stabilization.

"Shoreline stabilization" means actions taken to address erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as current, flood, *tides*, wind or wave action. These actions include installation or expansion of structures, such as *bulkheads, jetties, groins* or vegetation, and nonstructural methods, such as relocation of the structure to be protected, or groundwater management.

16.10.510 Shorelines.

"Shorelines" means lakes greater than 20 acres and rivers and streams with a minimum of 20 cubic feet per second mean annual flow, including the entire water body waterward from the *ordinary high-water mark* from its centerline or point, all water below the surface and associated *shorelands*. Kenmore shorelines are shown on the adopted map entitled Kenmore Shoreline Environment Designations (attached to Ord. [12-033419-0490](#) as Exhibit 2, and incorporated by reference). If there is a discrepancy between the map and the criteria established in this section, the criteria shall constitute the official Kenmore shoreline jurisdiction.

16.10.520 Shorelines of statewide significance.

"Shorelines of statewide significance" means those *shorelines* described in RCW [90.58.030\(2\)\(e\)](#) which are within the City of Kenmore. *The Lake Washington shoreline is Kenmore's only "shoreline of statewide significance."*

16.10.530 Shorelines of the State.

"Shorelines of the State" means the total of all *shorelines* and *shorelines of statewide significance* within the City of Kenmore.

16.10.540 Sign.

"Sign" means any letters, figures, design, symbol, light, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine, merchandise or thing. Excluded from definition and regulation by this title are official traffic signs or signals, official public notices, signs required by law, warning signs, the flag of a government or noncommercial institution such as schools and temporary signs worn or carried by people.

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16.10.550 Significant vegetation removal.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, burning, chemical means, or other activity that causes significant adverse ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

16.10.560 Solid waste.

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including but not limited to garbage, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof and discarded commodities.

16.10.570 Substantial development.

"Substantial development" means any *development* which requires a shoreline management substantial development permit, as defined in RCW [90.58.030\(3\)\(e\)](#) as now or hereafter amended.

16.10.580 Utilities and utility facilities.

"Utilities" means all lines and facilities related to the distribution, collection, transmission or disposal of water, storm and sanitary sewage, oil, gas, power or refuse. Utility facilities include telephone exchanges, water pumping or treatment stations or distribution systems, electrical substations, water storage reservoirs or tanks, municipal groundwater well fields, natural gas gate stations and limiting stations, propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users, electrical wires and associated structural supports, private and public stormwater management facilities, nonregional stormwater management facility, and vector waste receiving facility.

16.10.575 Water access structure.

"Water access structure" means a pier, dock, buoy, float, boat launch, watercraft lift, or other improvement that facilitates physical access to the water.

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16.10.590 Water-dependent use.

"Water-dependent use" or "water-dependent development" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

16.10.6100 Water-enjoyment use.

"Water-enjoyment use" means a recreation use or other use that facilitates *public access* to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. The use must be open to the general public.

16.10.62010 Water-oriented use.

"Water-oriented use" means a use that is *water-dependent*, *water-related*, or *water-enjoyment*, or a combination of such uses.

16.10.6020 Water-related use.

"Water-related use" or "water-related development" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent on a waterfront location because:

- A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- B. The use provides a necessary service supportive of the *water-dependent uses*, and the proximity of the use to its customers makes its services less expensive and/or more convenient.

16.10.630 Water transmission pipeline.

"Water transmission pipeline" means a facility having as its primary purpose the transmission of water by a municipal purveyor for sale for domestic, commercial, and industrial use.

16.10.640 Wetlands.

"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 adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes,

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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 may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Chapter 16.15

SHORELINE ENVIRONMENT DESIGNATIONS

Sections:

16.15.010 Purpose.**16.15.020 Names of shoreline environment designations.****16.15.030 Limits of shoreline environment designations.****16.15.010 Purpose.**

A. The purpose of *shoreline environment designations* is to differentiate between areas whose geographical, hydrological, topographical or other features imply differing objectives regarding the use and future *development* of the *shorelines of the State*.

B. Each *shoreline environment designation* represents a particular emphasis in the type of uses, type of modifications, and the density and dimensions of *development* which should occur within it. The environment designation system is designed to encourage uses in each environment which enhance or are compatible with the character of the environment while at the same time requiring reasonable standards and restrictions on *development* so that the character of the environment is not adversely impacted.

6.15.020 Names of shoreline environment designations.

In order to accomplish the goals, policies, and regulations of the Kenmore *Shoreline Master Program*, the following *shoreline environment designations* have been established:

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A. Downtown Waterfront Environment.

B. Swamp Creek Commercial Environment.

C. Shoreline Residential Environment.

CD. Urban Conservancy Environment.

DE. Natural Environment.

EF. Aquatic Environment.

16.15.030 Limits of shoreline environment designations.

The *shoreline environment designations* are included on Map 1, entitled Shoreline Environment Designations Map. If there is a discrepancy between Map 1 and the criteria established in the Kenmore comprehensive plan for *shoreline environment designations*, the criteria shall constitute the official Kenmore *shoreline environment designation*. Any parcel of land included within the shoreline jurisdiction without a *shoreline environment designation* shall be considered Urban Conservancy Environment.

(INSERT NEW MAP)

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Chapter 16.20

DOWNTOWN WATERFRONT ENVIRONMENT

Sections:

16.20.010 Purpose.

16.20.020 Designation criteria.

16.20.010 Purpose.

The purpose of the Downtown Waterfront Environment is to provide for mixed urban *water-oriented uses*, *public access* and recreation while protecting existing *ecological functions*.

16.20.020 Designation criteria.

The shoreline along the contiguous downtown waterfront that is zoned regional business and waterfront commercial in KMC Title 18 and does not meet the requirement for Urban Conservancy or Shoreline Residential other designations is to be assigned the Downtown Waterfront Environment designation.

Chapter 16.23

SWAMP CREEK COMMERCIAL ENVIRONMENT

Sections:

16.23.010 Purpose.

16.23.020 Designation criteria.

16.23.010 Purpose.

The purpose of the Swamp Creek Commercial Environment is to recognize existing and planned high-intensity commercial and residential uses while protecting existing *ecological functions* and restoring *ecological functions* in areas that have been previously degraded.

16.23.020 Designation criteria.

A Swamp Creek Commercial Environment designation is to be assigned to shoreline areas adjacent to the west side of Swamp Creek if any of the following characteristics apply:

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A. The shoreline currently supports high-intensity commercial or high-density residential uses, and is designated in the Comprehensive Plan and zoned to remain high-intensity, and

B. The shoreline does not meet the requirement for Urban Conservancy Environment or Shoreline Residential Environment designations.

Chapter 16.25

SHORELINE RESIDENTIAL ENVIRONMENT

Sections:

16.25.010 Purpose.

16.25.020 Designation criteria.

16.25.010 Purpose.

The purpose of the Shoreline Residential Environment is to accommodate residential development and appurtenant structures. An additional purpose is to provide appropriate *public access* and recreational uses within new multifamily developments or on public property.

16.25.020 Designation criteria.

The Shoreline Residential Environment designation should be assigned to shoreline areas if they are predominantly developed forwith single-family or multifamily residential uses or are planned and platted for residential development, and the shoreline areas do not meet the criteria for other designations.

Chapter 16.30

URBAN CONSERVANCY ENVIRONMENT

Sections:

16.30.010 Purpose.

16.30.020 Designation criteria.

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16.30.010 Purpose.

The purpose of the Urban Conservancy Environment is to protect and restore *ecological functions* of open space, streams, *wetlands*, and *floodplains*; where they exist in urban and developed settings, including areas below the *ordinary high-water mark* in Swamp Creek, while allowing a variety of compatible uses.

16.30.020 Designation criteria.

An Urban Conservancy Environment designation is assigned to shoreline areas appropriate and planned for *development* that is compatible with maintaining or restoring *ecological functions* and areas that are not generally suitable for water-dependent uses, if any of the following characteristics apply: Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated. This designation should be applied when:

A. The shoreline includes wetlands or exceptional riparian corridor that should not be more intensively developed is suitable for water-related or water-enjoyment uses;

B. The shoreline includes open space, floodplain or other sensitive areas that should not be more intensively developed;

B. The shoreline is in public ownership and has been altered or in public ownership that is small in size and not adjacent to other publicly owned properties;

C. The shoreline has been altered but retains important *ecological functions*;

D. The shoreline has potential for *ecological restoration* or is a *restoration* priority; or

E. The shoreline has potential for *development* that is compatible with *ecological restoration*.

Chapter 16.35

NATURAL ENVIRONMENT

Sections:

16.35.010 Purpose.

16.35.020 Designation criteria.

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16.35.010 Purpose.

The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered *shorelines*. Only low intensity uses are to be allowed in this **eE**nvironment to maintain existing ecological processes and functions.

16.35.020 Designation criteria.

A Natural Environment designation is assigned to shoreline areas if any of the following characteristics apply:

- A. A relatively large, contiguous area of the shoreline is in public ownership and ecologically intact or minimally altered;
- B. The shoreline represents ecological processes or functions that provide educational or scientific opportunities; or
- C. The shoreline is unable to support active uses or *development* without significant adverse impacts to *ecological functions*.

Chapter 16.40

AQUATIC ENVIRONMENT

Sections:

16.40.010 Purpose.

16.40.020 Designation criteria.

16.40.010 Purpose.

The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of navigable areas waterward of the *ordinary high-water mark* on the Sammamish River and Lake Washington.

16.40.020 Designation criteria.

Lake Washington and the Sammamish River below the *ordinary high-water mark* are to be designated as Aquatic Environment. In Lake Washington, the Aquatic Environment extends to the centerline of the lake.

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Chapter 16.45

GENERAL SHORELINE DEVELOPMENT STANDARDS

Sections:

16.45.010 General shoreline development requirements.

16.45.010 General shoreline development requirements.

A. Kenmore shall ensure that uses and modifications within the shoreline jurisdiction do not cause a net loss of shoreline *ecological functions* and processes. Mitigation for impacts resulting in uses and modifications shall follow the mitigation sequencing requirements of KMC [18.55.210](#) and consider the priorities specified in the shoreline ~~protection and~~ restoration plan.

B. All shoreline uses and developments shall be subject to the following general development standards:

1. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and groundwater on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
2. *Solid* and liquid *wastes* and untreated effluents shall not enter any bodies of water or be discharged onto the land.
3. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational *marinas*, commercial moorage, and vessel repair facilities.
4. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected. The use of chemicals to control invasive aquatic weeds ~~is prohibited, except that milfoil may be removed~~

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using chemicals shall be limited to herbicides; provided, that the chemicals are applied by a licensed pesticide applicator and approved for aquatic use.

5. All shoreline developments and uses shall manage increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shoreline properties and features are not adversely affected. Control measures may include, but are not limited to, permeable surfacing, dikes, catch basins, settling ponds, interceptor drains and planted buffers.

6. All shoreline developments and uses shall control erosion during project construction and operation.

7. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance of or minimize adverse impacts to protect *fish and wildlife habitats* conservation areas of importance, including, but not limited to, spawning, nesting, rearing and habitat areas, and migratory routes. Where avoidance of adverse impacts is not practicable, the director/city manager may require that mitigation measures to protect species and habitat functions be developed in consultation with State resource management agencies and federally recognized tribes.

8. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, erosion and accretion.

9. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

10. Land clearing, *grading*, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for *development*. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

11. All shoreline *development* shall be located, constructed and operated so as to protect public health, safety and welfare.

12. All *development* activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as *bulkheads*, other bank stabilization, landfills, levees, dikes, *groins*, *jetties* or substantial site regrades.

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13. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry ~~by erosion from drainage, high water or other means~~ into any water body.

14. Navigation channels shall be kept free of hazardous or obstructing *development* or uses.

15. Historic properties, including historic buildings, sites, objects, districts and landscapes, prehistoric and historic archaeological resources, and traditional cultural places, shall be protected within *shoreline environments* as follows:

a. Known Historic Properties.

(1) Known historic properties inventoried by King County and Washington Department of Archaeology and Historic Preservation are subject to the procedures delineated in Chapter [2.20](#) KMC. Disturbance of known archaeological sites is also subject to State regulations, including Chapters [27.44](#), [27.53](#) and [68.80](#) RCW;

(2) If a known archaeological site or traditional cultural place is affected by a *development* proposal, the ~~director~~*city manager* shall require a site inspection or evaluation by a professional archaeologist and inform and consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes. To the extent feasible, the ~~director~~*city manager* shall coordinate county and State required permitting and compliance procedures and requirements to avoid substantial duplication of effort by permit *applicants*; and

(3) In considering shoreline permits or shoreline exemptions, the *department* may attach conditions to provide sufficient time for the ~~director~~*city manager* to consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes, and to ensure that historic properties are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term stewardship and protection arrangements. Provision for the protection and preservation of historic properties shall be incorporated in permits and exemptions to the maximum extent practical.

b. Inadvertent Discovery.

(1) Consistent with the definitions and requirements contained in Chapters [27.44](#), [27.53](#) and [68.80](#) RCW, whenever potentially significant historic properties or archaeological

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artifacts are discovered in the process of *development* on *shorelines*, work on that portion of the *development* site shall be stopped immediately and the find reported as soon as possible to the **directorcity manager** and, if an archaeological site or artifacts have been discovered, the Washington State Department of Archaeology and Historic Preservation, any concerned Native American tribes and other appropriate agencies;

(2) The **directorcity manager** shall require that a historic property assessment be conducted immediately by a professional archaeologist, ethnographer or historic preservation professional, as applicable, in consultation with State and tribal officials as appropriate, to determine the significance of the discovery and the extent of damage that may have occurred to the resource. The historic property assessment shall be provided to the **directorcity manager** and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of Archaeology and Historic Preservation, and any concerned Native American tribes to determine the significance of the discovery in accordance with Chapter 27.53 RCW and Chapter 25-48 WAC; and

(3) Upon receipt of a positive determination of a property's significance, or if available information suggests that a negative determination is erroneous, the **directorcity manager** may require that a historic property management plan be prepared by a qualified professional archaeologist or other appropriate professional if such action is reasonable and necessary to implement related program objectives.

c. Public Access to Historic Properties.

(1) If a private or publicly owned historic property is identified, *public access* shall be encouraged as appropriate for purposes of public education; provided, that:

(a) The type or level of *public access* is consistent with the long-term protection of both historic resource values and shoreline *ecological functions*; and

(b) An access management plan is developed in accordance with *development* site- and resource-specific conditions to address physical protection of the resource, hours of operation, interpretive or directional signage, lighting, pedestrian access, traffic, and parking, as appropriate, in consultation with the **directorcity manager** and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of

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Archaeology and Historic Preservation, any concerned Native American tribes, or other agencies, as appropriate; and

(2) For archaeological sites and traditional cultural places, approval of proposed access measures by the Washington State Department of Archaeology and Historic Preservation, any concerned Native tribes or other agencies, as appropriate, shall be required prior to provision of *public access* to a site.

16. All projects within the shoreline jurisdiction that are either publicly funded or on public land shall include improvements to shoreline *public access*.

17. Heating and cooling equipment may not be placed in waters of the State.

Chapter 16.50

SHORELINE USES

Sections:

- 16.50.010 General shoreline uses.
- 16.50.020 Interpretation of shoreline use table.
- 16.50.030 Shoreline use table and conditions.
- 16.50.040 Aquaculture.
- 16.50.050 ~~Public boat launching facilities and marinas~~Boating facilities.
- 16.50.060 Public access.
- 16.50.070 Parks and Recreation.
- 16.50.075 Commercial and light manufacturing uses.
- 16.50.080 Utility facilities.
- 16.50.085 Transportation uses and facilities.
- 16.50.087 Parking
- 16.50.090 Residential uses.
- 16.50.100 Channel migration zone on Swamp Creek.

16.50.010 General shoreline uses.

A. All uses in the shoreline jurisdiction must comply with all City code provisions and with the Kenmore Shoreline Master Program. For a principal use to be permitted in the shoreline, it must be a permitted use

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in the underlying zone, and must be listed as a permitted or conditional use in KMC [16.50.030](#). This section may not authorize a land use that is not allowed by the underlying zoning, but may add restrictions or conditions or prohibit specific land uses within the shoreline jurisdiction.

B. Uses not specifically addressed in this table may be permitted as conditional uses in the shoreline jurisdiction, provided the use meets the criteria for a shoreline conditional use permit **and is compatible with the underlying zoning**.

C. When there is a conflict between permitted land uses, preference for shoreline uses shall first be given to *water-dependent uses*, then to *water-related uses*, then to *water-enjoyment uses*, and finally to *non-water-oriented uses*.

D. Uses existing as of March 30, 2012, that do not conform to these regulations may be continued subject to the provisions of this chapter.

16.50.020 Interpretation of shoreline use table.

A. The shoreline use table in KMC [16.50.030](#) indicates whether a specific use is allowed within each of the *shoreline environments* **designations** and whether it is permitted outright or allowed only as a shoreline conditional use. The process through which a use or development may be permitted is defined under procedures in Chapter [16.75](#) KMC.

B. In the table, *shoreline environments* **designations** are listed at the top of each column and the specific uses are listed along the left-hand side of each horizontal row. The cell at the intersection of a column and a row indicates whether a use may be allowed in a specific *shoreline environment* **designation** and whether additional use criteria apply. The table should be interpreted as follows:

1. If the letter "P" appears in the box at the intersection of the column and the row, the use may be permitted within the *shoreline environment* **designation** if the underlying zoning also allows the use.
2. If the letter "C" appears in the box at the intersection of the column and the row, the use may be allowed within the *shoreline environment* **designation** subject to the shoreline conditional use review procedures specified in Chapter [16.75](#) KMC, and only if the underlying zoning allows the use.

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3. If the letter "X" appears in the box at the intersection of the column and the row, the use is prohibited in that *shoreline environment designation*. These uses may not be authorized through a conditional use, shoreline exemption, or shoreline variance.

4. If the letter "U" appears in the box at the intersection of the column and the row, the use is subject to the same review process and standards as the immediately adjacent upland *shoreline environment designation*.

45. If a number appears after the letter "P₁" or "C" or "U" in the box at the intersection of the column and the row, additional use criteria apply. The use may be permitted subject to the appropriate review process in this section only if the specific use criteria indicated with the corresponding number immediately following the table are satisfied, and only if the underlying zoning allows the use. If more than one number appears at the intersection of the column and row, both numbers apply.

5. If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed within that *shoreline environment* subject to different sets of limitations or criteria depending on the review process indicated by the letter, the specific development criteria indicated in the development condition with the corresponding number immediately following the table, and only if KMC Title 18 allows the use.

6. Definitions of italicized uses in the table may be found in Chapter 18.20 KMC.

16.50.030 Shoreline use table and conditions.

A. Shoreline Use Table.

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
<u>Adult entertainment business</u>	P2	P2	X	X	X	X
<u>Air transportation service</u>	X	X	X	X	X	C14
<u>Ambulatory surgery center</u>	X	X	X	X	X	X
<u>Animal kennel/shelter</u>	X	X	X	X	X	X
<u>Recreational/cultural Arts, entertainment, indoor</u>	P25	P2	P6X	P62,18	P7X	C5X
<u>Arts, entertainment, outdoor</u>	P2	P2	X	P2	P6	X
<u>Auction house</u>	X	X	X	X	X	X
<u>Automotive sales and service, marine</u>	P2	P2	X	X	X	U3
<u>Automotive sales and service, non-marine</u>	X	X	X	X	X	X
<u>Business service, intensive</u>	X	X	X	X	X	X
<u>Business services, standard</u>	P2, X2	P2	X	P2, 3, X2	X	C2X
<u>Cemetery, columbarium or mausoleum</u>	X	X	X	X	X	X
<u>College/university</u>	P3	P3	P3	P3	X	U
<u>Community residential facility</u>	P2	P2	P	X	X	X
<u>Construction and trade</u>	X	X	X	X	X	X
<u>Day-care</u>	P2	P2	X	X	X	X
<u>Eating and drinking place</u>	P2	P2	X	P2,18	X	X

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
<u>Educational service</u>	P2	P2	P2	P2	X	X
<u>Family child-care home</u>	X	X	P	X	C	X
<u>Golf course</u>	X		X	C	X	X
<u>Government services</u> <u>Fire or police facility</u>	P43	P3	P43	PC43	P4X	C4U
<u>Funeral home/crematory</u>	X	X	X	X	X	X
<u>Health care and social assistance</u>	P2,15	P2,15	X	P2,15	X	X
<u>Hospital</u>	X	X	X	X	X	X
<u>Laboratory</u>	P2	P2	X	X	X	X
<u>Manufacturing, uses heavy</u>	P2X	X	X	X	X	X
<u>Manufacturing, light</u>	P2	P2	X	X	X	X
<u>Marijuana business</u>	P2	P2	X	X	X	X
<u>Marijuana cooperative</u>	X	X	X	X	X	X
<u>Marina (recreational-boat moorage)</u>	P8		X	P	X	P
<u>Mobile food service</u>	P2	P2	X	P2	X	P43
<u>Mobile home park</u> <u>Manufactured housing community</u>	X	X	C16	X	X	X
<u>Multiple-family dwelling, multiple-family. See also KMC Section 16.50.090.</u>	P2	P2	P	P2	X	X

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Office	P2	P2	X	P2	X	X
Park. See also KMC Section 16.50.070.	P4	P4	P5	P5	P6	P3
General services	P2, X2		X	P2, 3, X2	X	C2
Personal service	P2	P2	X	P2	X	X
Principal use parking	X		X	X	X	X
Public boat launch	P		X	P, C9	X	P
Recreational facility, indoor	P2	P2	X	P2	X	X
Recreational facility, outdoor. See also KMC Sections 16.50.050, 16.50.070, and 16.55.050.	P4, 17	P4, 17	P5, 17	P5, 17	P6	P3, 4
Regional land use, except for airport, ferry terminal, and highway and street, which are described below. See also KMC Section 16.50.085.	C7	C7	X	X	X	C3
Airport/heliport or helistop	C, X17, 14	X	X	X	X	C, X17, 14
Ferry terminal	C	X	X	X	X	C
Highway and street, except for in-water uses	C11, 10	C10	C11, 10	C11, 10, 12	C11, 10, 12	C11, 12
In-water and overwater highway and street facilities	X		C11, 14	C11, 14	C11, 14	C11, 14

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Shoreline Use Table

KEY P – Permitted Use C – Shoreline Conditional Use X – Prohibited Use U – Same use allowances as in adjacent upland Environment	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Expanded highway and street	P18		P18	P18	C18	C18
Wastewater treatment facility and municipal water production, except for in-water uses	C8, 12		C8, 12	X	X	X
In-water wastewater treatment facility, in-water municipal water production facility	X		C12	C12	C12	C12
Regional stormwater management facilities	P13		P13	P13	P13	X
Religious institution	P2	P2	X	X	X	X
Mining Resource land use, except for aquaculture, which is described below:	X	X	X	X	X	X
Aquaculture uses. See also KMC Section 16.50.040.	X	X	X	X	X	C1
In-water fish and wildlife management, except aquaculture	X		C	C	C	C
Retail sales	P2, X2	P2	X	P2, 3, X218	X	C2X
Retail sales, bulk	X	P2	X	X	X	X
Secure facility	X	X	X	X	X	X
Signs	P15		P15	P15	P15	P15

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Shoreline Use Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Use						
C – Shoreline Conditional Use						
X – Prohibited Use						
U – Same use allowances as in adjacent upland Environment						
Single detached dwelling units, single detached. See also KMC 16.50.090.	X	X	P	P	C	P940
Commuter Standalone parking. See also KMC Section 16.50.087.	C4613	X	X	X	X	X
Group residences Supportive living facility	P2	P2	P	PX	CX	X
Temporary lodging	P2	P2	X	X	X	X
Transportation. See also KMC Section 16.50.085.	C2	C2	X	X	X	X
Utility facility, except for in-water uses. See also KMC Section 16.50.080.	P4311	P11	P4311	P4311	P4311	XP3,11
In-water utility facilities	X		C13	C13	C13	C13
Vehicle or equipment rental	P3,18	X	X	P3,18	X	P3,18
Vehicle refueling station	P2	P2	X	X	X	C3
Warehousing	X	X	X	X	X	X
Wholesale trade	P2	P2	X	X	X	X
	Aquaculture					
	Commercial Development					
	Government Services					

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Shoreline Use Table

KEY		DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Use							
C – Shoreline Conditional Use							
X – Prohibited Use							
U – Same use allowances as in adjacent upland Environment							
	Manufacturing						
	Park/Recreation						
	Residential Development						
Accessory uses		P		P	P	C	X
	Regional Land Uses						
	Utilities						
	In-Water Structural Uses						
	Signs						

B. Shoreline Use Criteria (Footnotes to Shoreline Use Table in Subsection A of This Section).

1. *Aquaculture* may be allowed only in Lake Washington and only under the following conditions:

- a. *Aquaculture* operations are located at least 500 feet from the Shoreline Residential and Downtown Waterfront Environments.
- b. *Aquaculture* operations waterward of the Natural Environment and Urban Conservancy Environment are limited to activities that do not require structures, facilities or mechanized harvest practices.

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2. *Water-dependent* and *water-related* commercial and manufacturing uses shall be permitted. Public access improvements consistent with this chapter are required for all commercial and manufacturing uses, unless precluded by public safety considerations. Non-*water-dependent* and non-*water-related* residential, commercial, and manufacturing uses shall be permitted only if the use meets the standards of subsections (a), (b), (c) and (d) below:

a. The development is:

(1) Part of a mixed use development that includes a *water-dependent use* and in which at least 50 percent of the land area within the shoreline jurisdiction on the project site is in a *water-dependent use* or *water-related use* (including uses accessory to a *water-dependent use* that are fully incidental and subordinate to the *water-dependent use*), dedicated *public access*, or substantial shoreline habitat enhancement consistent with KMC 16.60.010; or

(2) A new or expanding development in a commercial zone along the Swamp Creek shoreline north of Northeast Bothell Way, where the existing development does not conform with current stream buffer provisions of the Kenmore SMPKMC Chapter 18.55 and where the proposed development would substantially increase the width and enhance the habitat quality of the buffer along Swamp Creek; or

(3) on a site physically separated from the shoreline by another property or public right of way; or

(4) at a shoreline location where navigability is severely limited and the use provides a significant public benefit per "c" below.

b. The *non-water-oriented uses* are located on land unless otherwise authorized in 16.50.075; and

c. The development provides a significant public benefit to help achieve any of the following shoreline element goals:

(1) Economic development for uses that are *water-dependent*;

(2) *Public access*;

(3) *Water-oriented* recreation;

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(4) Multimodal, *water-dependent* transportation circulation;

(5) Conservation or *restoration of critical areas*, scenic vistas, or fish and wildlife habitat;
or

(6) Preservation of historic properties;

d. The development does not include the following uses, which are prohibited in the shoreline:
funeral home/crematory; veterinary clinic; cemetery/columbarium/mausoleum; automotive
repair; automotive services; stable/kennel/cattery; hospital; outdoor advertising service;
miscellaneous equipment rental; automotive rental and leasing; gasoline service stations; fuel
dealers; auction houses; livestock sales; amusement park; drive-in theater; public agency or
utility yard; and propane/compressed natural gas/liquefied natural gas storage tanks serving
multiple lots or uses from which fuel is distributed directly to individual users.

3. New commercial uses may be permitted only if allowed in the underlying zoning, and if *public
access* is provided and the project includes ecological enhancement consistent with KMC
16.60.010. Existing non-*water-dependent* commercial uses may be expanded, provided the
expansion complies with all development standards and the project includes ecological
enhancement consistent with KMC 16.60.010.

43. Only the *water-dependent* portion of the use shall be allowed in the *shoreline environment*,
except as provided in this section for utility uses.

54. In the Downtown Waterfront and AquaticSwamp Creek Commercial Environments, *water-
oriented* recreational uses including parks and *public access* trails and facilities may be allowed
together with accessory recreation facilities that provide water enjoyment for substantial numbers of
persons.; provided, that in the Downtown Waterfront minor non-water-oriented accessory uses
such as children's play equipment, picnic tables, or outdoor exercise course equipment may also
be allowed if they meet the other requirements of this chapter. All other recreational uses shall be
prohibited.

65. In Urban Conservancy and Shoreline Residential Environments, parks, and trails and boating
facilities shall be allowed. Golf course shall be a conditional use in the Urban Conservancy
Environment. All other recreational uses shall be prohibited.

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~~76.~~ In the Natural Environment, *water-oriented* passive and low-impact *recreational uses, including public access trails,* shall be allowed. All other *outdoor arts, entertainment or* recreational uses shall be prohibited.

~~87.~~ Wastewater treatment facilities, and municipal water production uses, except for in-water uses, shall be allowed only on Lake Washington *shorelines.* *The listed wastewater treatment facilities, municipal water production facilities, and marinas and* are prohibited on *shorelines* of the Sammamish River and Swamp Creek.

~~98.~~ A boat launch that accommodates motorized vehicles for launching vessels is a conditional use in the Urban Conservancy Environment. Facilities for hand launching of nonmotorized vessels may be allowed as permitted uses.

~~109.~~ New overwater residences, *including floating homes,* are prohibited except for *live-aboards.* They may be allowed; provided, that:

- a. They are for single-family use only;
- b. They are located in a *marina* that provides shower and toilet facilities on land and there are no sewage discharges to the water;
- c. *Live-aboards* do not exceed 10 percent of the total slips in the *marina*;
- d. They are owner-occupied vessels; and
- e. There are on-shore support services in proximity to the *live-aboards.*

~~110.~~ New highway and street construction is allowed only if:

- a. There is no *feasible* alternate location;
- b. Pedestrian, bicycle and public transport needs are addressed; and
- c. When located in the Natural Environment, the use is low-intensity transportation infrastructure; *parking facilities are prohibited in the Natural Environment unless supporting a water-dependent use.*

~~12.~~ The *water-dependent and in-water portions of wastewater treatment and municipal water production facilities may be allowed as a conditional use.*

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4311. Utility facilities may be located within the shoreline jurisdiction if there is no *feasible* alternate location, the alternative would result in unreasonable and disproportionate cost, or the facility is necessary to serve adjacent shoreline uses. In no case are propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users permitted.

4412. Highway and street infrastructure that must be located in water or over water, such as bridges and bridge supports, may be permitted; provided, that the priorities of the Kenmore shoreline *restoration* plan are considered in designing mitigation for impacts from the project.

15. Signs may be permitted subject to the provisions of the underlying zoning and provided:

- a. Signs shall not be erected nor painted on trees, rocks or other natural features.
- b. Glare from artificial lighting of signs shall be shielded or directed away from adjacent properties and the water.
- c. Signs waterward of the ordinary high water mark adjacent to the Downtown Waterfront Environment shall be permitted only to the extent necessary for the operation of a permitted water-dependent use, provided no such sign shall be larger than five square feet.
- d. In the Shoreline Residential, Urban Conservancy and Natural Environments, signs are not allowed except for signs of not more than five square feet within public parks or trails.
- e. Signs to protect public safety or prevent trespass may be allowed and should be limited in size and number to the maximum extent practical.

4613. Commuter parking may only, and only be allowed if it is designed to serve a passenger ferry system.

4714. Helistops and heliports are prohibited in all environments.

15. Veterinary clinics are prohibited in the *shoreline environment*.

16. Except for manufactured housing communities existing as of insert effective date of ordinance, which are permitted outright.

17. *Marinas* are prohibited on *shorelines* of the Sammamish River and Swamp Creek.

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18. Only when accessory to a park or recreational facility and related to water access for the public.

C. Accessory Uses.

1. Any principal use permitted in a specific shoreline environment either outright or as a special use or conditional use shall also be permitted as an accessory use outright or as a conditional use.

21. Uses Conditional or prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses. Examples of accessory uses include parking, offices, and outdoor storage areas. For purposes of this section, landfill, water-based airports, air transportation service, heliports and helistops shall not be considered to be accessory to a principal use and shall only be permitted as provided in the applicable shoreline environment.

32. Unless specifically stated otherwise in the regulations for the applicable environment, accessory uses that are non-water-dependent and non-water-related, even if accessory to water-dependent or water-related uses, shall not be permitted over water according to subsection A of this section only if unless either:

- a. The over-water location is necessary for the operation of the water-dependent or water-related use; or
- b. The lot has a depth of less than 50 feet of dry land.

43. Accessory Parking shall not be permitted over water unless it is accessory to a water-dependent or water-related use located on a lot with a depth of less than 50 feet of dry land and the director/city manager determines that adequate on-site or off-site dry land parking within 800 feet is not reasonably available.

54. Piers, floats, pilings, breakwaters, drydocks and similar accessory structures for moorage shall be permitted as accessory to permitted uses subject to the development standards unless specifically prohibited in the applicable shoreline environment.

65. Accessory uses shall be located on the same lot as the principal use; provided, that when the accessory use is also permitted as a principal use in the shoreline environment applicable to an adjacent lot, the accessory use may be located on that adjacent lot.

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6. KMC Section 16.50.090 contains additional standards for residential *accessory uses*.

D. Outdoor Storage.

Outdoor storage is allowed only in the Downtown Waterfront Environment and is prohibited in all other environments. Such use shall be accessory to a permitted *water-dependent use*, shall be at least 20 feet from the *ordinary high-water mark* and shall meet the following standards:

1. Storage shall not be permitted in required setbacks and shall not be located between the building(s) and the primary street.
2. Storage shall be screened from view from the public right-of-way and adjacent residential zones using a minimum six-foot-high solid wood fence, masonry wall, or vegetation approved by the *city manager*.
3. Storage shall be maintained in a neat, orderly and safe manner and shall not include the exterior accumulation of broken, abandoned or discarded materials, junk, trash, rubbish, or debris.
4. Outdoor storage areas shall be graded and shall meet the requirements of the City's Stormwater Pollution Prevention Manual. Outdoor storage areas may be surfaced with permeable materials if adequate drainage and erosion and dust control are provided.
5. Lighting shall be directed away from adjacent residential zones and shall be shielded as necessary to reduce impacts.

16.50.040 Aquaculture.

A. Any structure used for *aquaculture* that is placed waterward of the *ordinary high-water mark* shall be placed so as not to:

1. Be a significant hazard to navigation;
2. Cause significant damage to neighboring properties;
3. Be a significant hazard to divers and boaters who may frequent the area.

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B. Any byproducts of the aquatic resources facility which are discharged into the water shall not degrade the quality of the recipient water body.

C. *Aquaculture* shall be installed with minimum disturbance to banks and channels and shall not cause extensive erosion or accretion along adjacent *shorelines*.

D. *Aquaculture* facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

16.50.050 Public boat launching facilities and marinas Boating facilities.

Public boat launching *Boating* facilities and marinas, including docks serving more than four single-family residences, shall meet the following standards:

A. The facility shall be designed and operated so that there is *no net loss of ecological function* in the shoreline. ~~Where the facility is developed in conjunction with restoration of like habitat areas, improvements in one area may be applied to mitigate impacts that would result from new facilities;~~

B. The streets serving the proposed facility must be adequate to accommodate traffic generated by such a facility safely and conveniently;

C. The facility shall provide adequate parking in accordance with underlying zoning requirements. Long-term parking areas shall be located away from the water. Short-term loading areas, however, may be located near berthing areas;

D. ~~The marina~~ All boating facilities shall be sited and designed to protect rights of navigation;

E. ~~The~~ A marina must have provisions available for cleanup of accidental spills of contaminants;

F. Lavatory facilities connected to a sanitary sewer and adequate to serve the marina shall be provided;

G. Self-service sewage pumpout facilities or the best available method of disposing of sewage wastes and appropriate disposal facilities for bilge wastes shall be provided at marinas having in excess of 3,500 lineal feet of moorage or slips large enough to accommodate boats larger than 20 feet in length, and shall be located so as to be conveniently available to all boats. An appropriate disposal facility for removal of bilge wastes shall be either a vacuum apparatus, or oil-absorbent materials and waste receptacles;

H. Untreated sewage shall not be discharged into the water at any time. Treated sewage shall not be discharged while boats are moored;

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- I. *Public access* shall be provided in accordance with KMC [16.50.060](#);
- J. The design shall be compatible with adjacent development;
- K. Covered moorage may only be permitted for vessel repair facilities; and
- L. Extended moorage on waters of the State without a lease or permission is prohibited.

16.50.060 Public access.

Public access shall be required for public projects and *development* on public lands (KMC [16.45.010](#)(B)(16)), commercial and *light* manufacturing uses (KMC [16.50.030](#)(B)(2)), *boating facilities and marinas* (KMC [16.50.050](#)), multifamily development (KMC [16.50.090](#)(A)(1)), and land divisions of more than four lots (KMC [16.50.090](#)(A)(2)). For *development* on private property, *public access* shall be required when such *development* would either generate or increase demand for *public access* and/or would impair existing legal access opportunities or rights.

A. The City adopts the following policies and plans as collectively constituting a shoreline *public access* plan for Kenmore:

- 1. Comprehensive Plan Downtown Sub-Element
- 2. Comprehensive Plan Transportation Element
- 3. Kenmore Parks, Recreation, and Open Space Plan
- 4. Other plans meeting the requirements of WAC 173-26-221(4) and developed through an open public process as provided in WAC 173-26-201(3)(b)(i).

B. Where *public access* is required, an *applicant* shall:

- 1. Seek to provide physical *public access* consistent with the shoreline *public access* plan;

AC. Where *public access* is required, it shall:

- 1. Connect to other public and private *public access* and recreation facilities on adjacent parcels along Lake Washington and the Sammamish River *shorelines* whenever *feasible*;
- 2. Be sited to ensure public safety;

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3. Be open to the general public and accessible directly from a public right-of-way or by an easement granted to the City for *public access*;

4. Enhance access and enjoyment of the shoreline and provide features in scale with the development such as, but not limited to:

- a. View points;
- b. Places to congregate in proportion to the scale of the development;
- c. Benches and picnic tables;
- d. Beach or water access for boats; and
- e. Pathways for pedestrians and bicycles.

BD. Where *public access* is required, the area dedicated and improved for *public access* shall be roughly proportional to the scale and character of the proposed development and its impacts.

CE. Where public access is required, the director/city manager shall prepare written findings demonstrating that the conditions imposed are consistent with the first consider the principles of nexus and rough proportionality, the Act and all relevant constitutional and other legal limits on regulation of private property.

DE. *Public access* improvements shall be designed to be compatible with the purpose and intent of the *shoreline environment* in which they are constructed.

E. Trails and other *public access* improvements are subject to the standards for recreational uses in KMC 16.65.020 and the vegetation management standards in KMC 16.60.020(B).

FG. The provisions of this section do not apply to the following:

1. Short plats of four or fewer lots; or
2. Where *public access* is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the *shoreline environment*; or Where physical public access is not feasible, opportunities for visual access or other approaches to enhance public access to the shoreline, shall be considered by the applicant. Alternative public access proposals shall be reviewed and approved by the city manager.

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3. Where constitutional or other legal limitations apply.

16.50.070 Parks and Recreation.

A. *Recreational development* in all environments must meet the following standards:

1. The construction of ~~swimming facilities, docks, piers, moorages, buoys, floats, and launching facilities~~water access structures waterward of the *ordinary high-water mark* shall be governed by the regulations relating to ~~docks, piers, moorage, buoys, floats, or launching facility~~water access structure construction in KMC [16.55.050](#).
2. Swimming areas shall be separated from *boat launch* areas and *marinas*, to the maximum extent practical, consistent with KMC 16.55.050.C.
3. New or expanded swimming facilities shall only be permitted if there is an ongoing water quality testing program guided by a monitoring plan approved by the ~~director~~city manager to ensure public safety.
4. *Public access* trails within the shoreline shall be regulated by the provisions of KMC [16.50.060](#) and Chapter 18.55 KMC.

B. In the Natural Environment, recreational uses shall meet the following standards:

1. Vehicular access, parking and restrooms should be located outside the shoreline jurisdiction; if infeasible to locate outside of the shoreline jurisdiction, such facilities shall be located as far from the shoreline as is *feasible*;
2. Trails should be designed primarily for pedestrian access, including access by wheelchair where appropriate, and should be no ~~larger~~wider than is necessary to accommodate expected pedestrian traffic;
3. Removal of native vegetation for recreational uses shall be the minimum necessary to provide pedestrian access and limited visual access to the shoreline;
4. Public contact with unique and fragile areas shall be permitted where possible without destroying the natural character of the area; and

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5. Viewing, studying, and recording water and nature may be accommodated by platforms, benches or shelters, consistent with public safety and security.

16.50.075 Commercial and light manufacturing uses.

A. *Water-dependent and water-related commercial and light manufacturing uses* are permitted subject to the applicable requirements and conditions of KMC 16.50.030.A and B.

B. *Non-water-dependent and non-water-related uses* may be allowed if incorporated with *water-dependent uses*, if the site is separated from the shoreline, in areas of limited navigability, or if the proposed development provides *public access*, a significant ecological benefit, or another specified public benefit. (See KMC 16.50.030.B.2.)

C. Commercial or light manufacturing development proposals shall be designed or conditioned to ensure *no net loss* of shoreline *ecological functions*, and no significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and *public access*.

D. *Non-water-dependent commercial or light manufacturing uses* should not be allowed over water except in existing structures or in the limited instances where they are accessory to and necessary in support of *water-dependent uses*.

16.50.080 Utility facilities.

The following standards apply to utility uses within the *shoreline environment*:

A. Stormwater and sewage outfalls may be permitted in *shoreline environments* if upland treatment and infiltration to groundwater, streams or *wetlands* is not *feasible* per WAC 173-26-020 and there is *no long-term adverse* impact on salmon *spawning, rearing or migratory* habitat;

B. Water intakes shall not be permitted near fish spawning, *migratory*, or rearing areas;

C. Water intakes shall comply with Washington Department of Fish and Wildlife fish screening criteria, and to the maximum extent practical, intakes shall be placed at least 30 feet waterward of the *ordinary high-water mark*;

D. Cable crossings for telecommunications and power lines and pipelines for oil, gas, water and other utilities shall:

1. Use the best available technology to protect health, safety, and the environment;

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2. Be routed through sites that are already free of vegetation, such as existing roadways, or attached to existing bridges, to the greatest extent *feasible*;
3. Avoid critical aquatic habitat to the greatest extent *feasible*;
4. If crossing beneath a streambed, utilities shall be designed to avoid streambed mobilization and adverse impacts on groundwater flow, be placed in a sleeve or conduit that allows replacement without need for additional excavation, and return grades to existing or better condition that provides for normal floodwater flow; and
5. Provide mitigation for impacts to shoreline *ecological functions*.

16.50.085 Transportation uses and facilities.

A. Non-water-dependent transportation uses shall be located as far landward as possible.

EB. Transportation uses facilities shall employ mitigation sequencing specified in Chapter 18.55 KMC to avoid and mitigate for impacts to *critical areas*.

BC. Bridges, when necessary, should span open water and *floodways*.

CD. Roadways and bridges should be designed to avoid placement of *fill* or structures that would restrict *floodplain* capacity or limit channel migration. If transportation facilities are anticipated to impact floodplains or channel migration zones, mitigation sequencing as specified in Chapter 18.55 KMC shall be employed to avoid and mitigate for impacts.

DE. Construction of private bridges should be minimized, and shared access should be required whenever *feasible*, including when subdivision would create new lots requiring access by bridge.

F. Expansion of existing highways and streets in the shoreline jurisdiction shall be permitted only if the following criteria are met:

1. The expansion is included in the Transportation Element of the Comprehensive Plan, Neighborhood Transportation Plan, Transportation Improvement Program, ADA Compliance Plan, or Target Zero strategy implementation.
2. The expansion does not require acquisition of private property that was unanticipated in the plans under a., above.

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3. The expansion is located within existing rights-of-way or other City-managed land.

4. Alteration and/or fill is the minimum necessary to construct such facilities to meet established safety standards and all applicable SMP standards can be met.

5. Disturbed areas are restored immediately after the use of construction equipment.

If these criteria cannot be satisfied, expansion may only be permitted after approval of a conditional use permit.

F. Lighting from parking areas shall be screened from illuminating fish and wildlife habitat areas and their buffers; provided, that lighting necessary for safe operation of a permitted *water-dependent use* may be allowed, but should be screened to the extent possible from illuminating fish and wildlife habitat areas and their buffers.

16.50.087 Parking

A. Parking facilities in shoreline jurisdiction are not a preferred use and shall be allowed only as necessary to support an authorized use. Parking is prohibited in the Natural Environment unless it supports a *water-dependent use* and complies with subsections B, C and D of this section.

B. In all *shoreline environment designations*, parking should be located outside the shoreline jurisdiction; if infeasible to locate outside of the shoreline jurisdiction, such facilities shall be located as far from the shoreline as is *feasible* unless there are overriding needs for safe ADA (Americans with Disabilities Act) access.

C. Plan, locate and design proposed parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features and will not result in a net loss of shoreline *ecological functions* or adversely impact existing or planned *water-dependent uses*.

D. Lighting from parking areas shall be screened from illuminating fish and wildlife habitat areas and their buffers; provided, that lighting necessary for safe operation of a permitted *water-dependent use* may be allowed, but should be screened to the extent possible from illuminating fish and wildlife habitat areas and their buffers.

16.50.090 Residential uses.

A. *Public access* to the shoreline shall be required for the following residential developments:

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1. Multiple-family dwelling unit developments, including mixed use developments that contain multiple-family dwelling units; and
2. New subdivisions of more than four lots.

B. Residential *accessory uses* must meet the following standards:

1. Non-water-dependent *accessory structures* other than below-grade swimming pools shall be limited to a 150-square-foot footprint.
2. Below-grade swimming pools shall be sited and designed so that they do not adversely affect the flow of groundwater or endanger unstable slopes.
3. *Accessory structures* shall be sited to preserve visual access to the shoreline from adjacent properties and public rights-of-way to the maximum extent practical.
4. Non-water-dependent *accessory structures* and facilities such as sheds, gazebos, swimming pools, and driveways shall not be located in vegetation conservation areas described in Chapter 16.60 KMC.
5. Foot ramps, stairs, and paths to provide pedestrian access to a dock, pier, boat launch, or beach may be allowed in the vegetation conservation areas described in Chapter 16.60 KMC, but shall be limited to the minimum necessary a maximum width of 5' and shall avoid native vegetation removal to the maximum extent practicable to provide pedestrian access.
6. Private boat ramps serving a single residence shall not be located in vegetation conservation areas described in Chapter 16.60 KMC.

16.50.100 Channel migration zone on Swamp Creek.

A. Unless a site-specific study by a qualified professional concludes otherwise, Tthe channel migration zone shall include:

1. The 500-year *floodplain* of Swamp Creek within shoreline jurisdiction; and
2. All area within 112.5 feet of Swamp Creek.

B. Within the *channel migration zone*:

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1. There shall be no subdivision of land **within the channel migration zone** except for the purpose of creating permanent, nonbuildable open space tracts.
2. *Fill* shall not be allowed that impairs channel migration within the *channel migration zone*.
3. No new *development* is allowed where future stabilization, including bank stabilization as well as structural flood hazard reduction, would be necessary.
4. Existing structures can be protected but must use natural stabilization unless proven by a scientifically and technically valid study that the natural stabilization measures will not work.
5. Existing legal uses in the Swamp Creek *floodplain* can be repaired and maintained; provided, that such actions do not cause significant ecological impacts, increase flood hazards to other uses, and are consistent with other relevant laws.
6. Before new structural flood hazard reduction measures in shoreline jurisdiction can be approved, it must be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not *feasible*, that impacts on *ecological functions* and priority species and habitats can be successfully mitigated so as to assure *no net loss of ecological function*, and that appropriate vegetation conservation actions are undertaken.

C. A project proponent may have a *channel migration zone* study completed by a qualified professional hydrogeologist to be reviewed by the City. If the study demonstrates that the entirety of the development property is outside of the *channel migration zone*, then this section will not further apply to the project.

Chapter 16.55

SHORELINE MODIFICATIONS

Sections:

- 16.55.010 General shoreline modifications.**
- 16.55.020 Interpretation of shoreline modifications table.**
- 16.55.030 Shoreline modifications table and conditions.**
- 16.55.040 Shoreline stabilization.**
- 16.55.050 Water access structuresDocks, piers, moorage, buoys, floats or launching facilities.**
- 16.55.060 Grading, dredging, dredge material disposal and filling.**

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16.55.010 General shoreline modifications.

The *shoreline modifications* chapter shall not be used to authorize a *shoreline modification* that is not allowed by the underlying zoning, but may add additional restrictions or conditions or prohibit specific modifications within the shoreline jurisdiction. All *shoreline modifications* in the shoreline jurisdiction must comply with all relevant City code provisions and with the Kenmore *Shoreline Master Program*.

16.55.020 Interpretation of shoreline modifications table.

The *shoreline modification* table in KMC [16.55.030](#) determines whether a specific *shoreline modification* is allowed within each of the *shoreline environments*. The *shoreline environment* is located on the vertical column and the specific *use/modification* is located on the horizontal row of the table. The specific modifications *generally* are grouped by the *shoreline modification* categories in WAC [173-26-231](#). The table should be interpreted as follows:

A. If the letter "P" appears in the box at the intersection of the column and the row, the modification may be allowed within the *shoreline environment* only if the underlying zoning allows the modification.

B. If the letter "C" appears in the box at the intersection of the column and the row, the modification may be allowed within the *shoreline environment* subject to the shoreline conditional use review procedures specified in Chapter [16.75](#) KMC, and only if the underlying zoning allows the modification.

C. If the letter "U" appears in the box at the intersection of the column and the row, the modification is subject to the same review process and standards as in the immediately adjacent upland *shoreline environment designation*.

CD. If a number appears in the box at the intersection of the column and the row, the modification may be allowed subject to the appropriate review process indicated in this section, the specific development conditions indicated with the corresponding number immediately following the table, and only if the underlying zoning allows the modification. If more than one number appears at the intersection of the column and row, both numbers apply.

D. If more than one letter-number combination appears in the box at the intersection of the column and the row, the modification is allowed within that *shoreline environment* subject to different sets of limitations or conditions depending on the review process indicated by the letter, the specific development conditions indicated in the development condition with the corresponding number in KMC [16.55.030\(B\)](#), and only if the underlying zoning allows the modification.

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E. If the letter "X" appears in the box at the intersection of the column and the row, the modification is prohibited in that *shoreline environment*.

F. If "NA" appears in the box at the intersection of the column and the row, the modification is not applicable in that *shoreline environment*.

G. For purposes of interpreting the modifications table, "upland" means that the use or activity is landward of the shoreline waterbody's *ordinary high-water mark*.

16.55.030 Shoreline modifications table and conditions.

A. Shoreline Modifications Table.

Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
Shoreline stabilization. See also KMC Section 16.55.040.						
Shoreline stabilization, not including flood protection facilities	P1	P1	P1	C1	C1	C1, P1
Repair or maintenance of shoreline stabilization facilities	P2	P2	P2	P2	P2	P2
Flood protection facilities	P3	P3	P3	P3	C3	P3
Piers and docks Water access structures ⁴ . See also KMC Section 16.55.050.						
Docks, piers, moorage, buoys, floats or launching facilities	P4		P4	C4	C4	C4, P4
Boat launch – Soft-surface	P	X	X	C	X	U
Boat launch – Residential (including community), Hard-surface	C	X	X	X	X	U
Boat launch, Public or Commercial, Hard-surface	P	X	X	P	X	U
Dock or pier – Residential (including community)	P	X	P	C	X	U

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Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland						
Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
Dock or pier – Public	P	X	P	P	C	U
Dock or pier– Commercial	P	X	X	X	X	U
Floatplane lifts	C9	X	C	C	X	U
Watercraft lifts (including jet ski lifts)	P	X	P	X	X	U
Other floats and moorage buoys	P	X	P	P	P8	U
Repair or replacement of existing water access structures	P	P	P	P	P	P
Fill. See also KMC Section 16.55.060.						
Filling Upland outside of floodplain	P5, C5	P	P5, C5	P5, C5	C5	C5NA
Upland inside of floodplain	P	C	C	C	C	NA
Waterward of the ordinary high-water mark, restoration	NA	P	P	P	P	P
Waterward of the ordinary high-water mark, non-restoration	NA	C	C	C	C	C
Breakwaters, jetties, groins, and weirs						
Breakwaters, jetties, groins and weirs	C65	C5	C65	C65	C65	C65
Grading and dredging. See also KMC Section 16.55.060.						
Grading, dredging, dredge material disposal	P5, C5		P5, C5	P5, C5	C5	C5
Dredging	NA	P	P	P	P	P
Grading	P	P	P	P7	C	NA

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Shoreline Modifications Table

KEY	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
P – Permitted Modification						
C – Shoreline Conditional Use Required						
X – Prohibited Modification						
U – Same modification allowances as in adjacent upland						
Environment						
NA – Not applicable						
Shoreline modifications are allowed only if the underlying zoning allows the modification						
Disposal waterward of the <i>ordinary high-water mark</i>	NA	X	X	X	X	P
Upland disposal outside of <i>floodplain or channel migration zone</i>	P	P	P	P	C	NA
Upland disposal inside of <i>floodplain or channel migration zone</i>	C	C	C	C	C	NA
Shoreline habitat and natural systems enhancement projects						
Habitat and natural systems enhancement projects	P76	P6	P76	P76	P76	P76

B. Development Conditions (Footnotes for the Shoreline Modifications Table in Subsection A of this Section).

1. *Shoreline stabilization*, including *bulkheads*, shall be permitted only when it has been demonstrated that stabilization is necessary to protect existing legally established primary structures, public improvements, proposed or existing *water-dependent* development, or projects for the *restoration of ecological functions* or hazardous substance remediation, and must meet the standards in KMC [16.55.040](#). In the Aquatic Environment, stabilization requires conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential Environment.
2. An existing *shoreline stabilization* structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, *tidal action*, or waves. Normal maintenance and repair is allowed; provided, that all work is conducted in a manner that does not cause a net loss of *ecological functions*.

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3. Flood protection facilities must be consistent with the standards in Chapter 16.90 KMC, Flood Damage Prevention, Chapter 18.55 KMC, and the Integrated Stream Protection Guidelines (Washington Departments of Fish and Wildlife, Ecology, and Transportation, 2003).
4. Water access structures ~~Docks, piers, moorage, buoys, floats or launching facilities~~ shall meet the standards in KMC 16.55.050 and are allowed only for:
 - a. *Water-dependent uses*;
 - b. *Public access*;
 - c. Single detached residential units;
 - d. Joint use facilities for multiple-family dwelling unit developments; or
 - e. *Water-related or water-enjoyment uses* only as part of a mixed use development and only if auxiliary to and in support of a *water-dependent use*.

In the Aquatic Environment, docks, piers, moorage, buoys, floats and/or launching facilities require conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential Environment. Water access structures are not allowed in Swamp Creek.

5. Excavation, dredging and filling must meet the standards in KMC 16.55.060. Fill placed waterward of the ordinary high water mark for any use except ecological restoration or for the maintenance and repair of flood protection facilities requires a conditional use permit. Disposal of dredged material within shorelands or wetlands within the shoreline jurisdiction requires a conditional use permit.

65. *Breakwaters, jetties, groins* and weirs are only allowed where necessary to support *water-dependent uses*, *public access*, *approved shoreline stabilization*, or other public uses, as determined by the director/city manager. *Groins* are only allowed as part of a *restoration* project sponsored or cosponsored by a public agency that has natural resource management as a primary function.

76. Shoreline habitat and natural systems enhancement projects may include *shoreline modifications* of vegetation, removal of nonnative or invasive plants, and *shoreline stabilization*, including the installation of large woody debris, *dredging* and filling, provided the primary purpose is clearly *restoration* of the natural character and *ecological functions* of the shoreline. Mitigation actions identified through biological assessments required by the NOAA Fisheries Service and applied to

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flood hazard mitigation projects may include *shoreline modifications* of vegetation, removal of nonnative or invasive plants, and *shoreline stabilization*, including the installation of large woody debris, *dredging* and filling.

7. *Grading in the Urban Conservancy Environment is only permitted to support public access, restoration, or water-oriented uses. Otherwise, a conditional use permit shall be required.*

8. *Floats and moorage buoys are only permitted waterward of the Natural Environment designation in Lake Washington.*

9. *Except floatplane lifts associated with a regional land use such as Kenmore Air Harbor which are permitted outright.*

16.55.040 Shoreline stabilization.

Shoreline stabilization may be permitted subject to the standards in this chapter, provided:

A. The *applicant* has demonstrated the following in order to construct new *shoreline stabilization*, including additions to, or increases in size of, existing *shoreline stabilization measures*:

1. A *geotechnical analysis* demonstrates that erosion from waves or currents is imminently threatening a primary structure, including residences and that damage is expected to occur within three years if the *shoreline stabilization* is not constructed;
2. The erosion rate exceeds that which would normally occur in a natural condition;
3. The erosion is not caused by upland conditions, such as the loss of vegetation and drainage, on the project site;
4. The proposed *shoreline stabilization* is the least hardened solution that is *feasible* to protect the structures or improvements, including consideration of nonstructural alternatives such as slope drainage systems, vegetative growth stabilization, and gravel *berms*;
5. The proposal is the minimum necessary to protect existing legally established primary structures, new non-water-dependent development, existing water-dependent development or projects for the restoration of ecological functions or hazardous substance remediation;
6. The proposed *shoreline stabilization* does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions; and

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7. Adequate mitigation measures that maintain existing shoreline processes and critical fish and wildlife habitat will be provided that ensure *no net loss* or function of riparian habitat.
- B. *Shoreline stabilization* to replace existing *shoreline stabilization* shall be placed landward of any existing *shoreline stabilization*, except that it may be placed waterward directly abutting the old structure only in cases where the existing *bulkhead* is protecting a residence that was installed occupied prior to January 1, 1992, and removal of the old structure would result in greater impact on ecological functions there are overriding safety or environmental concerns.
- C. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for *shoreline stabilization* by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- The maximum height of the proposed shoreline stabilization shall be no more than four feet in height on Lake Washington.
- D. *Shoreline stabilization* shall minimize the adverse impact on the property of others to the maximum extent practical.
- E. *Shoreline stabilization* shall not be used to create new lands. However, soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
- F. *Shoreline stabilization* shall not interfere with surface or subsurface drainage into the water body.
- G. Automobile bodies, tires or other junk or waste material which may release hazardous substances shall not be used for *shoreline stabilization*.
- H. *Shoreline stabilization* shall be designed so as not to constitute a hazard to navigation and shall not substantially interfere with visual access to the water.

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I. *Shoreline stabilization* shall be designed so as not to create a need for *shoreline stabilization* elsewhere.

J. *Shoreline stabilization* shall comply with the Integrated Stream Protection Guidelines (Washington Departments of Fish and Wildlife, Ecology, and Transportation, 2003) and shall be designed to allow for appropriate *public access* to the shoreline.

16.55.050 Docks, piers, moorage, buoys, floats or launching facilities
Water access structures.

A. ~~Any~~All *water access structures*, including *docks*, *piers*, *moorage*, *buoys*, *floats* or *launching facilities* authorized by this chapter shall ~~not interfere with navigation~~ comply with the following general standards:

B1. Any *dock*, *pier*, *moorage*, *buoy*, *float* or *launching facility* *water access structure* authorized by this chapter shall ~~not interfere with navigation~~ be subject to the following requirements:

1. *Docks*, *piers*, *moorage*, *buoys*, *floats* or *launching facilities* shall not exceed the minimum size necessary to serve the use for which they are designed (see KMC ~~16.55.030(B)(4)~~).
2. *Docks*, *piers*, *moorage*, *buoys*, *floats* or *launching facilities* serving more than four single-family residences must also meet the standards in KMC ~~16.50.050~~.
3. Only joint use boat lift, *dock*, *pier*, *moorage*, *buoys*, *float* or *launching facilities* may be permitted for multiple-family dwelling unit development proposals.
4. Only one boat lift, *dock*, *pier*, *moorage*, *buoy*, *float* and *launching facility* may be permitted for each parcel developed with a single detached residential unit and only if the applicant demonstrates there is no other feasible option for shared use facilities. However, installation or retention of additional watercraft lifts beyond one, without a canopy, at a single residential use waterfront structure is allowed. A maximum of three lifts are allowed at a single residential use overwater structure. However, only two lifts can be ground-based; all other lift(s) must be floating or suspended lift(s).
5. Only joint use *docks* or *piers* are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a *dock* or *pier*.
6. The only structures permitted in the first 30 feet waterward of the ordinary high water mark are *piers* and *ramps*. All *floats* and *ells* must be at least 30 feet waterward of the ordinary high water mark.

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7. No skirting is allowed on any structure.

8. Surface coverage (includes all overwater portions of the floats, ramps, and ells) shall be limited as follows:

a. Moorage facilities serving only one residential waterfront lot shall not exceed 480 square feet;

b. Moorage facilities serving two residential waterfront lots shall not exceed 700 square feet; and

c. Moorage facilities serving three or more residential waterfront lots shall not exceed 1,000 square feet.

9. To protect anadromous salmon habitat, the following shall apply:

a. Docks with configurations that do not include any or all of the following elements shall be subject to the overall length and square footage limitations of this section and no portion of the dock shall exceed four feet in width, unless allowed in this subsection;

b. Piers shall not exceed four feet wide and shall be fully grated;

c. Ramps shall not exceed three feet wide and shall be fully grated;

d. Ells are allowed only over water with depths of nine feet or greater at the landward end of the ell; ell may be up to six feet wide by 20 feet long with a two-foot-wide strip of grating down the center; or ell may be up to six feet wide by 26 feet long with grating over the entire ell;

e. Floats are allowed only over water with depths of 10 feet or greater at the landward end of the float; and floats may be up to six feet wide by 20 feet long with a two-foot-wide strip of grating down the center;

f. In no case may any moorage facility extend more than 150 feet waterward of the ordinary high water mark;

g. The first (nearest shore) piling shall be steel, four-inch piling and at least 18 feet waterward of the ordinary high water mark. Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter;

h. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds. If ammoniacal copper zinc arsenate pilings are proposed, the

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applicant will meet all of the best management practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers; and

i. When steel piles are installed, approved sound attenuation measures must be used.

142. Existing habitat features (e.g., large and small woody debris, substrate materials spawning gravel, etc.) shall be retained to the maximum extent practicable and new or expanded moorage facilities water access structures placed to avoid disturbance of such features. Mitigation is required where habitat features cannot be avoided or when habitat features are removed to address navigation or access requirements.

143. Invasive aquatic weeds may be removed by mechanical or manual methods, or controlled with herbicides nonchemical means only, except that milfoil may be removed using chemicals, provided, that the chemicals are applied by a licensed applicator and approved for aquatic use.

124. In order to mitigate the impacts of new or expanded commercial moorage facilities water access structures, the applicant shall develop a mitigation plan that contains one or more of the following measures as necessary to demonstrate no net loss of ecological functions: plant emergent vegetation (if site-appropriate) and a buffer of vegetation a minimum of 10 feet wide along the entire length of the lot immediately landward of the ordinary high water mark. Planting shall consist of native shrubs and trees and, when possible, emergent vegetation. At least five native trees will be included in a planting plan containing one or more evergreen trees and two or more trees that like wet roots (e.g., willow species) per every 100 lineal feet of shoreline. Such planting shall be monitored for a period of five years according to an approved monitoring plan. This subsection is not intended to prevent reasonable access through the shoreline critical area buffer to the shoreline, or to prevent recreational use of the shoreline critical area. This requirement may be waived or reduced for water-dependent transportation uses where it is demonstrated that vegetation could result in safety or navigation hazards.

a. Removal of any additional existing over-water and/or in-water structures that are not the subject of the application or are not otherwise required to be removed.

b. Planting of native vegetation along the shoreline immediately landward of the ordinary high-water mark consisting of trees and/or shrubs native to Puget Sound lowlands.

c. Removal or ecological improvement of hardened shoreline, including existing launch ramps or hard structural shoreline stabilization. Improvements may consist of softening the face and

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toe of the stabilization with soil, gravel and/or cobbles and incorporating vegetation or large woody debris.

d. Removal of man-made debris or other material waterward of the *ordinary high-water mark* that is detrimental to *ecological functions and ecosystem-wide processes*.

e. Participation in an approved mitigation banking or in-lieu-fee program.

135. No ~~private moorage or other~~ *water access* structure waterward of the *ordinary high-water mark*, including structures attached thereto, shall be closer than 12 feet to any adjacent property line except when there is a mutual agreement of adjoining property owners. Excepted from the requirements of this section are boat lifts or portions of boat lifts that do not exceed 30 inches in height measured from the *ordinary high-water mark*.

156. No covered ~~boat lift, dock, pier, covered moorage, covered float, or other covered~~ *water access* structure is permitted waterward of the *ordinary high-water mark*, except as provided below:

a. Submerged, free-standing mechanical boat lifts associated with single detached residential docks or piers and recreational watercraft may be covered with a canopy, provided:

- (1) No canopy shall be more than 25 feet in length or wider than 15 feet;
- (2) No portion of the canopy shall exceed a height of 12 feet above the *ordinary high-water mark*;
- (3) The canopy shall at no time have any side partly or wholly enclosed;
- (4) The highest portion of the canopy shall be located below the lowest grade point on the waterward side of the existing homes on surrounding properties;
- (5) Canopies shall be made out of ~~canvas or other such~~ nontoxic materials *that allow light transmission*;
- (6) ~~Canopies shall be of a translucent material to allow light transmission;~~
- (7) The total overwater coverage of the piers, floats, ramps, ells, and canopy for a single-family residence with a single-use moorage shall not exceed 600 square feet; and
- (8) Only one boat lift canopy per single detached residence shall be allowed.

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b. Covered moorage may be provided for commercial boat repair facilities. Applicants shall submit information demonstrating that the covered area is the minimum necessary to serve the proposed use.

447. Proposals to repair or replace existing legally established moorage facilities water access structures in the existing configuration and footprint are allowed, provided the following requirements are met, as applicable:

a. Materials used for pier and dock repairs shall meet the requirements established in subsection B of this section:

b. Any decking that is replaced shall be grated with material that has at least 40 percent open space to allow for light transmission, except on sections of floats where the decking overlays a float tub:

c. Any piles that are replaced shall be the minimum diameter and at the maximum spacing feasible to support the pier or dock configuration; and

d. Pier projects which replace 75 percent or more of the pier support piles shall be reviewed as new piers which must comply with all standards in this chapter.

where the nature of the repair is not described in KMC 16.55.030 shall be considered minor repairs and are permitted, consistent with any applicable standards of this title, KMC Title 18 and any other applicable codes or regulations.

168. No dwelling unit may be constructed on a dock or pier.

B. Any pier, dock, watercraft lift, or mooring buoy authorized by this chapter shall be subject to the following requirements:

Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
General	- No skirting is allowed on any structure. - When steel piles are installed, approved sound attenuation measures must be used. - Only one <u>dock</u> or <u>pier</u> may be permitted for each parcel developed with a single detached residential unit and only if the <u>applicant</u> demonstrates there is no other <u>feasible</u> option for shared use facilities. - Only joint-use <u>docks</u> or <u>piers</u> are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a <u>dock</u> or <u>pier</u>.	

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	- Only joint use boat lifts, docks, piers, moorage buoys, floats or launching facilities may be permitted for multiple-family dwelling unit development proposals. - Docks, or piers serving boating facilities must also meet the standards in KMC 16.50.050. - All float tubs shall be fully encapsulated. - If the standards in KMC 16.55.050.B cannot be met due to a public or private navigational or ecological concern, then an alternative design in lieu of meeting these requirements may be allowed without a shoreline variance if approved by other state and federal agencies, provided any impacts are appropriately mitigated and the facility does not interfere with public use of the shoreline.	
Maximum Area: surface coverage of over-water structures, including any ramps and floats	- Docks or piers shall not exceed the minimum size necessary to serve the use for which they are designed 480 sq. ft. for single residential unit 700 sq. ft. for joint-use facility used by 2 residential units 1,000 sq. ft. for joint-use facility used by 3 or more residential units	- Docks or piers shall not exceed the minimum size necessary to serve the use for which they are designed 120 sq. ft. for single residential unit 240 sq. ft. for joint-use facility used by 2 residential units 360 sq. ft. for joint-use facility used by 3 residential units 480 sq. ft. for joint-use facility used by 4 residential units
Maximum Width	Residential 4 ft. for pier or dock 4 ft. for ramp 6 ft. for ell and float Public or Commercial 4 ft. for main walkway. If project-specific justification of need is provided, the width may be increased to 6 ft. without a variance. 5 ft. for perpendicular fingers or ells 5 ft. for ramp, including railings (travel width is effectively 4 ft.) 8 ft. for ell and float.	Residential 4 ft. for ramp 6 ft. for float Public or Commercial 5 ft. for ramp 6 ft. for float
Maximum Length	26 ft. for ells 20 ft. for floats	20 ft. per float per residential unit, and laid end-to-end. The maximum length is

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	In no case may any moorage facility extend more than 150 feet waterward of the ordinary high-water mark.	thus 20 ft., 40 ft., 60 ft., and 80 ft. for facilities serving 1, 2, 3 and 4 residential units, respectively. Floats may be perpendicular to shore only within existing embayments off of the main river channel. - Public or commercial docks should be no longer than 80 feet unless project-specific justification of need is provided. - Ramps shall be the minimum length necessary to provide safe access to the float and to position the float so that the float and a moored boat would not ground on the substrate or disturb the substrate by boat propeller action.
Decking and Material Standards	- Ramps and piers, including ells and perpendicular fingers, shall be fully grated. - Floats shall be fully grated on all deck surfaces not underlain by float tubs, with a maximum area of float tub of 70 percent of the total float area. The number and area of float tubs shall be minimized to the amount necessary based on design and engineering considerations.	- Floats shall be fully grated on all deck surfaces not underlain by float tubs, with a maximum area of float tub of 70 percent of the total float area. The number and area of float tubs shall be minimized to the amount necessary based on design and engineering considerations. - Ramps shall be fully grated.
	The grating must be either multi-directional grating with a minimum of 40% open space or rectangular grating with a minimum of 60% open space. Provide documentation to show percent of open area.	
Location	The only structures permitted in the first 30 feet waterward of the ordinary high-water mark are piers and ramps.	Floats shall be located no less than 5 feet and no more than 10 feet from the ordinary high-water mark measured from the landward edge of the float. To avoid interfering with river navigation and public use of the water, private moorage

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	All floats and <i>ells</i> must be at least 30 feet waterward of the <i>ordinary high-water mark</i>.	facilities may extend no farther waterward than one-third the width of the river in the location of the proposed structure. - The <i>city manager</i> may allow floats to be positioned up to an additional 10 feet waterward from the <i>ordinary high-water mark</i> as needed to reach a sufficient boat moorage depth (greater than 3 feet). - Floats shall be located as far as <i>feasible</i> from the mouth of any named or numbered tributary entering the Sammamish River to reduce potential conflict with migrating salmon.
Piles	- The first (nearest shore) piling shall be steel, 4-inch-diameter or the smallest diameter necessary to serve the specific structure as demonstrated by an engineer, and at least 18 feet waterward of the <i>ordinary high-water mark</i>. - Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter unless required per project-specific engineering analysis.	- No more than two anchor piles shall be allowed per private moorage facility (joint-use, public or commercial facilities may have two piles per 20 feet of <i>float</i> length, but the number of piling for such facilities shall be the minimum number given site-specific engineering and design considerations). - Anchor piles shall be the minimum size <i>feasible</i> given site-specific engineering and design considerations and shall not exceed 12 inches in diameter unless a larger size allows for a reduced number of piles.
Materials	- Any paint, stain or preservative applied to components of the overwater structure must be leach-resistant, completely dried or cured prior to installation. - Materials shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds as outlined in the latest edition of the Western Wood Preservers Institute Best Management Practices for the Use of Treated Wood in Aquatic and Sensitive Areas.	

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Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	If ACZA-treated pilings are proposed, the <i>applicant</i> will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers Institute.	
Floatplane lifts	- The deck of the lift shall be fully grated and shall be the minimum size necessary. The following two standards do not apply to a regional land use such as Kenmore Air Harbor, but do apply to lifts associated with all other uses: - One platform lift serving a floatplane is allowed per lot. - Floatplanes may not be stored in the shoreline buffer.	Prohibited
Watercraft lifts	- One free-standing or floating boatlift with a canopy is allowed per detached dwelling unit. - Additional watercraft lifts, without a canopy, at a single residential use waterfront structure are allowed, not to exceed three and only two can be ground-based; all other lift(s) must be floating or suspended lift(s).	- One free-standing or floating boatlift with a canopy is allowed per detached dwelling unit OR 2 jet ski lifts or 1 fully grated platform lift is allowed, per detached dwelling unit - Boatlifts shall be located on the waterward, upstream or downstream sides of the dock, not on the landward side of the dock.
Mooring Buoys	- No more than one (1) mooring buoy is permitted per detached dwelling unit, in lieu of a dock or pier. - Mooring buoys shall not interfere with navigation. b. The use of buoys for moorage of recreational and commercial vessels is preferred over pilings or float structures. e. Buoys shall be located and managed in a manner that minimizes impacts to aquatic habitat. d. No more than four buoys per acre of surface water are allowed. - Use of helical anchors with a midline float to prevent dragging on the river or lake bottom is the preferred method to secure buoys.	

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17. Buoys shall meet the following conditions:

a. Buoys shall not impede navigation;

C. Any *boat launch* authorized by this chapter shall be subject to the following requirements:

1. Location Standards

a. *Boat launches* shall be sited so that they do not significantly damage fish and wildlife habitats and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent *feasible*.

b. *Boat launches* shall not be approved in cases when it can be reasonably foreseen that the development or use would require maintenance *dredging* during the life of the development or use.

c. *Boat launches* anticipated to be used by motorized boats shall be separated from existing designated swimming areas and other *water access structures* on adjacent properties by a minimum of 25 feet.

d. Public and commercial *boat launches* shall be located only at sites with suitable transportation access. The *applicant* must demonstrate that the streets serving the *boat launch* can safely handle traffic generated by such a facility, and that parking for vehicles and attached trailers is sufficient.

e. Public and commercial *boat launches* shall be located farther than 50 feet from the outlet of a stream, including piped streams, when *feasible*.

2. Size – The *applicant* shall demonstrate that the proposed size of the *boat launch* is the minimum width and length below the *ordinary high-water mark* necessary to safely launch the intended craft.

3. Design Standards

a. Soft-surface *boat launches* shall be constructed of gravel, vegetation-stabilized earth, or other similar natural material. When only vegetation, and not the ground surface or lake and river substrates, is modified to allow for hand-launch of nonmotorized watercraft, that modification is not considered a *boat launch* subject to these regulations.

b. Hard-surface *boat launch* designs, in order of preference, are:

(1) Open grid with minimum coverage of substrate.

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(2) Seasonal ramps that can be removed and stored upland.

(3) Structures with segmented pads and flexible connections that leave space for natural substrate and can adapt to changes in shoreline profile.

4. Public or commercial *boat launches* shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.

CD. Proposals that do not meet the requirements of subsection B (B)(6), (B)(8), (B)(9) or (B)(15) of this section and that are designed to support a commercial or light manufacturing *water-dependent* use, or to provide *public access*, or to serve residential uses, may be considered by the *director/city manager*. For any alternative proposal, the *applicant* must demonstrate that the proposed deviation is the minimum necessary to meet the needs of the specific use proposed, and provides an equal or greater degree of protection of *ecological functions* and anadromous species habitat than would strict adherence to the standards. For purposes of meeting this requirement, the *director/city manager* will review the required habitat management plan to determine whether the project is adequately protective.

16.55.060 Grading, dredging, dredge material disposal and filling.

Grading, dredging, dredge material disposal and filling must be consistent with Chapter 16.90 KMC and may be permitted in *shorelines* only as follows:

A. *Fill* may be permitted below the *ordinary high water mark* only:

1. When necessary to support a *water-dependent* use;
2. To provide for *public access*;
3. When necessary to mitigate conditions that endanger public safety, including flood risk reduction projects;
4. To allow for cleanup and disposal of contaminated *sediments* as part of an interagency environmental cleanup plan;
5. To allow for the disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
6. For expansion or alteration of transportation or utility facilities currently located on the shoreline and then only upon demonstration that alternatives to *fill* are not *feasible*; or

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7. As part of mitigation actions, environmental *restoration* projects and habitat enhancement projects.
- B. *Grading, dredging*, and filling shall be located, designed, and constructed to protect shoreline *ecological functions* and *ecosystem-wide processes*, including channel migration, and mitigation shall employ the mitigation sequence in KMC 18.55.210.
- C. *Dredging* and dredged material disposal below the *ordinary high-water mark* shall be permitted only:
1. When necessary for the operation of a *water-dependent use*;
 2. When necessary to mitigate conditions that endanger public safety or fisheries resources;
 3. For establishing, maintaining, expanding, relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigation uses when:
 - a. Significant ecological impacts are minimized;
 - b. Mitigation is provided, employing the mitigation sequence in KMC 18.55.210; and
 - c. *Dredging* is maintained to the existing authorized location, depth and width;
 4. For *restoration* projects associated with implementation of the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or any enhancement or *restoration* project; or
 5. For flood risk reduction projects conducted in accordance with Chapter 16.90 KMC.
- D. *Dredging* is not allowed waterward of the *ordinary high-water mark* for the primary purpose of obtaining fill material.
- E. Disposal of dredged material shall be done only in approved upland disposal sites and is not allowed within *critical areas* or their buffers.
- F. Stockpiling of dredged material in or under water is prohibited.
- G. In order to ensure that operations involving dredged material disposal and maintenance *dredging* are consistent with the *Shoreline Master Program* as required by RCW 90.58.140(1), no *dredging* may commence in any *shoreline environment* without the responsible person having first obtained either a *substantial development* permit or a statement of exemption. A statement of exemption or shoreline

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permit is not required prior to emergency *dredging* needed to protect property from imminent damage by the elements if a statement of exemption or *substantial development* permit is subsequently obtained following the procedures in Chapter 16.75 KMC.

H. The removal of gravel for flood management is allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of *ecological functions*, and is part of a comprehensive flood management solution.

Chapter 16.60

VEGETATION CONSERVATION IN BUFFERS

Sections:

16.60.010 Vegetation conservation areas.

16.60.020 Vegetation management within critical areas.

16.60.030 Vegetation management within Lake Washington shoreline buffers.

16.60.010 Vegetation conservation areas.

A. *Shoreline buffers* shall be considered vegetation conservation areas in which existing native vegetation is retained, except in the following circumstances:

1. The activity is part of a permitted shoreline *restoration* or enhancement project;
2. The activity is an allowed *water-dependent* or *water-enjoyment use* or modification;
3. The activity implements a *public access* or recreation maintenance plan; or
4. The vegetation removal is otherwise specifically allowed under Chapter 16.50, 16.55, or 18.55 KMC.

Vegetation clearing shall occur only in the minimum shoreline area that is necessary to support the permitted use and shall be mitigated. unless removal is specifically allowed in this chapter or it can be demonstrated that another management approach would provide equal or better protection for shoreline ecological processes and functions. Nonnative vegetation may be retained unless otherwise required to be replaced as part of an enhancement associated with *development* or expansion of *development* on the property.

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B. The vegetation management standards established in KMC Chapter 18.55 for *critical areas* and their buffers shall apply within all *shorelines*.

CB. Retention of forest communities along stream and river channels provides shade and a source of woody debris to the aquatic habitat. ~~Only Native and nonnative~~ trees determined by the City to be hazardous or diseased may be removed, ~~unless authorized under subsection A of this section~~. Selective pruning for safety and view protection is allowed, provided pruning is conducted in a manner that minimizes harm to the health of the trees being pruned.

DC. Nonnative vegetation may be removed as part of a *restoration* or enhancement project if replacement plantings will provide greater benefit to shoreline ecological processes than would be provided by strict application of this chapter.

ED. Landscaping plans for *shoreline buffers* associated with shoreline *development* regulated under the shoreline code must be prepared by a ~~landscape architect or certified professional wetland~~ ~~scientist~~ ~~qualified professional with experience developing native lake- or riverfront landscaping plans~~. Landscaping plans are not required for normal maintenance, including maintenance of existing nonconforming landscaping that complies with KMC 16.75.050.

FE. Landscaping plans for *shoreline buffers* should avoid adverse impacts on existing public views of the shoreline.

GF. Vegetation management in *shorelines* shall be consistent with the requirements for *grading* permits under Chapter 15.25 KMC. If there is a conflict between this chapter and Chapter 15.25 KMC, the more restrictive standards shall apply.

HG. When considering compensatory habitat enhancement as mitigation for impacts from new structures, such as when a reduced buffer ~~or shoreline setback~~ or a non-~~water-dependent use~~ is requested, the enhancement should:

1. ~~B~~be proportional to the degree of impact of the new structure ~~and associated alterations~~ on shoreline *ecological functions*; ~~For example, an approved buffer or setback reduction should be compensated with an equivalent area of native vegetation enhancement, including trees along the water's edge, when feasible;~~
2. ~~and it~~ take into account the degree to which the existing buffer has already been compromised;

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3. Offset changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise or activities) that are a result of the project; and
4. Enhancement should focus on restoring *ecological functions* that are most critical and that have been most diminished in the Kenmore shoreline.

In approving any compensatory habitat enhancement plan, the director shall consider the changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise, or activities) that the project would cause. Enhancements should generally focus on offsetting these impacts but may also focus on restoring other critical *ecological functions* in the shoreline that have been lost or diminished over time (such as placement of large woody debris in water or restoring shallow water habitat) at a sub-basin or watershed scale. The director/city manager may determine whether an enhancement that provides a broader *ecological* benefit may be substituted for one that would offset the impacts of an individual project.

The director/city manager may deny a request to allow intrusion into a buffer or for *development* of a non-water-dependent use if the enhancement proposed does not fully mitigate the impacts of the project or provide a sufficient broader *ecological* benefit.

16.60.020 Vegetation management within critical areas.

A. Vegetation management standards established in KMC ~~18.55.150(A)(5)~~, ~~18.55.320(F)(5)~~ and (6), ~~18.55.520(A)(2)(d)~~ and (G), ~~18.55.530~~ and ~~18.55.650(A)(5)~~ for *critical areas* and their buffers shall apply within all shorelines.

B. Vegetation management standards established in KMC ~~18.55.420~~ for streams and their buffers shall apply within Sammamish River and Swamp Creek shorelines. In addition to provisions for recreational uses in KMC ~~16.65.020~~ allowing limited modifications to critical area buffers for the purposes of public access improvements, the following standards shall apply in shorelines:

1. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the *ecological functions* of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if necessary to reduce impacts on critical areas or adjacent properties, or

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access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer and wetlands.

2. When public access is being provided as a part of mixed use development allowed in the Urban Conservancy Environment under KMC 16.50.030(B)(2)(a)(2), the director may allow public access trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. [Ord. 12-0334 § 3 (Exh. 1).]

16.60.030 Vegetation management within Lake Washington shoreline buffers.

A. Vegetation removal within lake *shoreline buffers* is prohibited in the Shoreline Residential, Urban Conservancy, and Natural Shoreline Environments along Lake Washington unless the activity is part of a shoreline *restoration* or enhancement project or the vegetation removal is otherwise specifically allowed under Chapter 16.50 or 16.55 KMC.

B. Vegetation clearing for permitted water dependent uses is allowed in the Downtown Waterfront Environment. Such vegetation clearing must occur only in the minimum shoreline area that is necessary to support the permitted water dependent use.

Chapter 16.65

SHORELINE DENSITY AND DIMENSIONS

Sections:

16.65.010 Interpretation of shoreline density and dimensions table.

16.65.020 Shoreline density and dimensions table and development conditions.

16.65.010 Interpretation of shoreline density and dimensions table.

A. The shoreline density and dimensions table in KMC 16.65.020.A establishes the shoreline standards within each of the *shoreline environments*. The *shoreline environment* is located on the vertical column and the density and dimensions standard is located on the horizontal row of the table. The table should be interpreted as follows:

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1. If the cell is marked with a "Z" in the box at the intersection of the column and the row, the shoreline does not impose a specific buffer requirement on that use, although the standards for the underlying zoning apply. In some cases, no standard is provided because the use is prohibited under Chapter 16.50 KMC.

21. If the cell has a number in the box at the intersection of the column and the row, that number is the density or dimension standard for that *shoreline environment*.

32. If the cell has a parenthetical number in the box at the intersection of the column and the row, that parenthetical number identifies specific conditions listed in KMC 16.65.020(B) that are related to the density and dimension standard for that environment.

B. The density and dimensions enumerated in this section apply to any lot within the shoreline jurisdiction. If there is a conflict between the density and dimension standards in this section and the underlying zoning regulations, the more restrictive standard shall apply.

C. For development in critical areas and critical area buffers, the applicable provisions of Chapter 18.55 KMC apply unless a specific exception is provided in the shoreline code.

1. Because Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.

2. Within the shoreline jurisdiction, the required acreage replacement ratios for wetlands shall be as follows:

Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment (C/R)	Creation (C) or Reestablishment (R) plus Enhancement (E)	Enhancement (E) Only
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

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16.65.020 Shoreline density and dimensions table and development conditions.

A. Shoreline Density and Dimensions Table.

Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Standards						
Shoreline Buffers from OHWM on Lake Washington						
Residential development ¹						
Single-family	NA	NA	25 ft	115 ft	150 ft	--
Other	50 ft	NA	75 ft	115 ft	NA	
Water-oriented parks and outdoor recreational facilities	20 ft (3)	NA	25 ft (3)	75 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	50 ft (1)	NA	75 ft	100 ft	150 ft	--
Other water-oriented uses	20 ft	NA	100 ft	150 ft	150 ft	--
All other non-water-oriented uses	50 ft (1)	NA	150 ft	150 ft	150 ft	--
Water-dependent commercial development	20 ft (1)		Z	115 ft (1)	Z	0
Water-related commercial development	20 ft (1)		Z	115 ft (1)	Z	0
Non-water-dependent and non-water-related commercial development	50 ft (1)		Z	150 ft	Z	Z
Government services	20 ft (6)		20 ft (6)	20 ft (6)	20 ft (6)	0
Single-family residential development	Z		25 ft (2)	115 ft (2)	150 ft (2)	Z
Multifamily residential development	50 ft		75 ft	115 ft	Z	Z
Water-dependent and water-related manufacturing and industrial use	20 ft (1) (3)		Z	115 ft (1) (3)	Z	0
Non-water-related manufacturing and industrial use	50 ft		Z	Z	Z	Z

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Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Parks and recreation	50 ft (4)		75 ft (4)	115 ft (4)	115 ft (4)	0
Accessory surface parking	100 ft		100 ft	115 ft	150 ft	0
Utilities and regional land uses	50 ft (5)		75 ft (5)	115 ft (5)	115 ft (5)	Z
Shoreline Buffers from OHWM on the Sammamish River						
Residential development ¹	75 ft	NA	Reach ² : B1 - 150 ft B2 - 100 ft B3 - (4) B4 - 15 (6)	150 ft	150 ft	--
Water-oriented parks and outdoor recreational facilities	50 ft (3)	NA	50 ft (3)	100 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	100 ft	NA	75 ft	100 ft	150 ft	--
Other water-oriented uses	75 ft	NA	50 ft	100 ft	150 ft	--
All other non-water-oriented uses	100 ft	NA	150 ft	150 ft	150 ft	--
Shoreline Buffers from OHWM on Swamp Creek						
Residential development ¹	NA	60 ft	50 ft	150 ft	150 ft	--
Water-oriented parks and outdoor recreational facilities	NA	50 ft (3)	50 ft (3)	100 ft (3)	150 ft (3)	--
Non-water-oriented parks and outdoor recreational facilities	NA	60 ft	75 ft	100 ft	150 ft	--
Other water-oriented uses	NA	50 ft	50 ft	100 ft	150 ft	--
All other non-water-oriented uses	NA	60 ft	150 ft	150 ft	150 ft	--
Building Setback from the Shoreline Buffer						
Single-family usesAll uses	15 ft (2)	15 ft (2)	2515 ft (2)	15 ft (2)	15 ft (2)	Z--

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Shoreline Density and Dimensions Table

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
All uses except single-family uses	15 ft		15 ft	15 ft	15 ft	Z
Building Height						
Base height	35 ft	35 ft	35 ft	35 ft	30 ft	35 ft
Additional height allowed when permitted in underlying zoning	Yes (57)	Yes (5)	Yes (57)	Yes (7) No	No	No

¹Residential development means community residential facility, family child-care home, manufactured housing community, multiple-family dwelling, single detached dwelling unit, supportive living facility, and temporary lodging.

²Sammamish River reaches are shown on Map 1, Shoreline Environment Designations.

B. Development Conditions (Footnotes to Shoreline Density and Dimensions Table in Subsection A of This Section).

1. New water-dependent uses may be allowed within a shoreline buffer only if impacts are mitigated consistent with the requirements in KMC 18.55.190 through 18.55.220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions.

1. The buffer associated with water-oriented uses may be applied to non-water-oriented uses director may allow non-water-dependent uses within the shoreline buffer along the inner harbor portion of the Downtown Waterfront area at the northeast end of Lake Washington, only if:

- a. The uses are developed in conjunction with a public access promenade adjacent to the water; and
- b. The uses do not interfere with public access or preclude the use of the shoreline for water-dependent uses; and

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c. Mitigation is provided consistent with the requirements in KMC 18.55.190 through 18.55.220, 18.55.330 and 18.55.430 such that there is *no net loss* of shoreline ecological processes or functions.

2. Single-family residential development shall provide buffers and ~~b~~Building setbacks as follows:

a. On Lake Washington in Shoreline Residential areas:

(1) A minimum *shoreline buffer* of 25 feet from the *ordinary high water mark* shall be provided as a vegetation conservation area.

(2) ~~T~~he minimum building setback of 25 feet from the *shoreline buffer* ~~may be~~ reduced to five feet if vegetation in the required buffer is reestablished or enhanced, according to the standards in KMC 16.60.010(GH).

b. On Lake Washington in Urban Conservancy areas:

(1) A minimum buffer of 115 feet from the *ordinary high water mark* shall be provided as a vegetation conservation area.

(2) A minimum building setback of 15 feet from the *shoreline buffer* shall be provided.

c. On Lake Washington in Natural areas:

(1) A minimum buffer of 150 feet from the *ordinary high water mark* shall be provided as a vegetation conservation area.

(2) A minimum building setback of 15 feet from the *shoreline buffer* shall be provided.

d. On all other *shorelines*, single-family development shall provide a buffer as required by the provisions of Chapter 18.55 KMC. Buffers may be reduced to the specified minimum setbacks in this table only if the reduced buffers are allowed by the provisions of Chapter 18.55 KMC.

3. Outdoor storage for *water-dependent* manufacturing and industrial uses must be at least 20 feet from the *ordinary high water mark* in the Downtown Waterfront Environment and is prohibited in all other environments.

3. Public trails in *critical areas* and shoreline and *critical area* buffers are specifically addressed in Chapter 18.55 KMC. In recognition of the existing conditions of current and planned City shoreline parks and public or private outdoor recreational facilities, the following standards shall guide new

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development and redevelopment of *water-oriented* park and outdoor recreational facilities in buffers. For any allowed development or modification within a buffer, *applicants* shall submit a plan that addresses compliance with each of the following applicable standards and principles. The City may review and condition the project to more fully implement the principles below: *New public access* improvements shall comply with the requirements of Chapter ~~18.55~~ KMC; provided,

a. In addition to trails and *water-dependent* developments, such as *water access structures*, the following list of uses and modifications may be allowed within buffers if they support *water-oriented* parks and outdoor recreation facilities and demonstrate consistency with b through f below. This list will serve as a guide, and is not exclusive. The *city manager* has the discretion to decide if a proposed use or modification supports *water-oriented public access* and outdoor recreation, and shall consult the City's *public access* plan as identified in KMC 16.50.060.

(1) Benches, picnic tables and picnic shelters.

(2) Play and exercise equipment.

(3) Boating support improvements (e.g., boat storage, staging areas, temporary seating for events).

(4) Observation platforms.

(5) Visual and auditory art installations.

(6) Safety improvements (e.g., cameras, fencing, fire prevention).

b. that *new public access* improvements may be allowed within *critical areas*, or shoreline or *critical area* buffers, if *New or expanded water-oriented* development shall follow mitigation sequencing to protect existing riparian areas and other *critical areas*. Unavoidable impacts ~~are~~ shall be mitigated consistent with the requirements in KMC ~~18.55.190~~ through ~~18.55.220~~, ~~18.55.330~~ and ~~18.55.430~~ such that there is *no net loss* of shoreline ecological processes or functions, ~~and the public access~~ improvements meet the following standards:

a. In order to encourage public access improvements and improved shoreline habitat in the Downtown Waterfront shoreline, a public access trail may be located within the stream buffer required in KMC ~~18.55.420~~, when accompanied by a plan demonstrating that the ecological

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functions of the overall required buffer area on a project site would be substantially improved. Trails paralleling the shoreline of the Sammamish River in the Downtown Waterfront Environment shall be located at least 50 feet from the ordinary high water mark. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the buffer.

c. To the extent *feasible*, non-water-oriented park and outdoor recreational uses and modifications should be upland of *water-oriented uses* and modifications.

d. If parking improvements supporting *water-oriented parks* and outdoor recreation facilities cannot comply with KMC 16.50.087, parking within buffers shall be limited to that necessary to provide vehicle access to *boat launches*, to improve existing informal parking areas, to expand existing parking, or to provide ADA parking when there are no *feasible* locations outside of shoreline jurisdiction and outside of *shoreline buffers*. New or improved pollution-generating impervious surfaces shall provide water quality treatment consistent with the City's adopted Surface Water Design Manual. All parking should be located as far from the *ordinary high-water mark* as *feasible* and any expansions should not extend closer to the shoreline waterbody.

e. New and expanded *public access* and recreation uses in shoreline jurisdiction shall be located to avoid and minimize intrusion into riparian areas, as well as avoid tree and shrub removal. Necessary tree removal shall be mitigated at a 3:1 ratio, with an emphasis on use of native conifers placed to maximize ecological benefits to the shoreline waterbody, and the public access improvements meet the following standards:

f. A vegetation management strategy for any allowed uses in shoreline jurisdiction shall be developed that incorporates a site-specific plan for use of integrated pest management techniques, if applicable, identifying anticipated use of fertilizers, herbicides and pesticides. The strategy shall include methods of application that ensure that these materials will not enter the water.

b. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront Environment, *public access* improvements may extend to the water's edge when accompanied by a plan demonstrating that the *ecological functions* of the overall required buffer area on a project site would be substantially improved.

4. The *shoreline buffer* for residential development in the area designated on Map 1, Shoreline Environment Designations, as Reach B-3 shall be as follows:

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a. On lots with an average depth of less than 100 feet measured upland from the *ordinary high-water mark*, the buffer shall be 25 feet.

b. On lots with an average depth of greater than 100 feet measured upland from the *ordinary high-water mark*, the buffer shall be the lesser of 50 feet or 30 percent of the average lot depth.

5. Underground utilities are allowed in the *shoreline buffer*.

6. Only water-dependent government service uses are allowed and such uses may require *development* in the buffer. If, through mitigation sequencing per KMC 18.55.210, impacts to the buffer are found to be unavoidable, the buffer may be reduced, provided there is *no net loss of ecological functions*.

75. Additional *height* may be permitted in the Downtown Waterfront, Shoreline Residential and Swamp Creek Commercial environments under the following conditions:

- a. The structures would not obstruct the view of a substantial number of residences; and
- b. The structures are located in an area designated on Map 1, Shoreline Environment Designations (attached to Ord. 42-033419-0490 as Exhibit 2, and incorporated by reference), as allowing these additional *heights*; and
- c. The structure *height* complies with the allowable *height* of the underlying zone and the following additional *height* limits within the shoreline; and
- d. The additional *height* of the structures would not impair the *ecological functions* of the stream, lake, *wetland*, or the required buffer. In particular, the effects of shading and light impacts on the viability of vegetation in the buffer shall be considered when making this determination; and
- e. BeThe structures are outside of the *floodway* in effect at the time of permit application; and
- f. The structures would Not be within a *wetland* or *wetland* buffer as regulated by Chapter 18.55 KMC.

6. The *shoreline buffer* of 15 feet applies to the existing manufactured housing communities. A *shoreline buffer* of 75 feet shall apply to any proposed change of use, but may be reduced to 50 feet without a shoreline variance with implementation of (1) a buffer enhancement plan, consistent with

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KMC 16.60.010.H and applicable provisions of Chapter 18.55 KMC, and (2) a public access plan, consistent with KMC 16.50.060.

Additional Height Allowances

Distance from Structure to Ordinary High-Water Mark	Maximum Height Allowed Area H-1	Maximum Height Allowed Area H-2	Maximum Height Allowed Areas H-3 and H-4
Less than 50 feet	35 feet	35 feet	35 feet
50 to 100 feet	50 feet	45 feet	35 feet
100 to 112.5 feet	50 feet	75 feet	35 feet
112.5 to 200 feet	50 feet	75 feet	65 feet

The burden to demonstrate that the proposal meets the criteria of this section is on the *applicant*.

The ~~director~~*city manager* may require technical studies as necessary to demonstrate compliance.

C. Additional Shoreline Buffer Standards.

1. New *water-dependent uses* may be allowed within a *shoreline buffer* only if *the use is allowed per KMC 16.50.020 and if* impacts are mitigated consistent with the requirements in KMC ~~18.55.190 through 18.55.220, 18.55.330 and 18.55.430~~Chapter 18.55 such that there is *no net loss* of shoreline ecological processes or functions.

2. Underground utilities are allowed in the *shoreline buffer*.

Chapter 16.68

SIGNS

Sections:

16.65.010 Signs in the shoreline.

16.65.010 Signs in the shoreline.

Signs may be permitted subject to the provisions of the underlying zoning and provided:

A. *Signs shall not be erected nor painted on trees, rocks or other natural features.*

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B. Glare from artificial lighting of *signs* shall be shielded or directed away from adjacent properties and the water.

C. *Signs* waterward of the *ordinary high-water mark* adjacent to the Downtown Waterfront Environment shall be permitted only to the extent necessary for the operation of a permitted *water-dependent use*, provided no such *sign* shall be larger than five square feet.

D. In the Shoreline Residential, Urban Conservancy and Natural Environments, *signs* are not allowed except for *signs* of not more than nine square feet within public parks or trails.

E. *Signs* to protect public safety or prevent trespass may be allowed and should be limited in size and number to the maximum extent practical.

Chapter 16.70

SUBDIVISIONS

Sections:

16.70.010 Subdivisions.

16.70.010 Subdivisions.

A. Any legally created, existing lot that does not comply with the density and dimensions standards of Chapter 16.65 KMC and KMC Title 18 and that is located wholly or partially within the *shorelines of the State* shall be subject to the following provisions:

1. If the adjoining property is not under the same ownership as such lot, then the lot shall be considered a separate building site; and
2. If the adjoining property is under the same ownership as such lot, then the lot shall not be considered a separate building site until the lot is combined with adjoining property under the same ownership in such a way as to comply with the density and dimensions standards of Chapter 16.65 KMC and KMC Title 18.

B. Submerged land within the boundaries of any waterfront parcel shall not be used to compute lot area, lot dimensions, yards, recreation space or other similar required conditions of land subdivision or

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development, except, where specifically authorized by ordinance, such lands may be used in area computations as an incentive to encourage common open space waterfront areas.

C. All newly created lots wholly or partially within the shoreline shall be of uniform size and dimension, whenever possible.

D. Subdivision of more than four lots shall provide an improved and maintained pedestrian easement to the shoreline that is of sufficient width to ensure usable *public access*. The *public access* to the shoreline shall be in conformance with the standards in KMC [16.50.060](#).

E. Subdivisions should be designed to locate structures outside the shoreline jurisdiction whenever *feasible*. When lots are located within the shoreline jurisdiction, the size and shape of the lots should allow for the construction of residential units that are outside of required buffers and setbacks and that do not require *shoreline stabilization*.

F. Subdivision of a waterfront lot for the purposes of creating a lot for a non-*water-dependent use* that would not otherwise be allowed is prohibited.

Chapter 16.75

PROCEDURES

Sections:

16.75.003 Interpretation

16.75.005 Additional administrative procedures.

16.75.010 Substantial development – Permit required – Exemption.

16.75.015 Developments not requiring shoreline permits or local reviews

16.75.020 Permits – Prerequisite to other permits.

16.75.025 Permits – Reasonable accommodation.

16.75.030 Permits – Variance.

16.75.040 Permits – Conditional use.

16.75.045 Public agency or utility maintenance plans.

16.75.050 Alteration or reconstruction of nonconforming use or development.

16.75.055 Relief from shoreline master program development standards and use regulations.

16.75.060 Permits – Combined hearing authority.

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16.75.070 Permits – Approval or disapproval – Notification – Additional conditions – Limitations.

16.75.080 Appeals.

16.75.090 Rules of ~~director~~city manager.

16.75.100 Enforcement.

16.75.110 Shoreline environment redesignation.

16.75.120 Redesignation applications.

16.75.130 Redesignation initiated by motion.

16.75.140 Frequency of consideration of shoreline redesignations.

16.75.150 Shoreline redesignation and site-specific land use map amendment or zone reclassification.

16.75.160 Criteria for hearing examiner review.

16.75.003 Interpretation.

The *city manager* shall make administrative interpretations of this *Shoreline Master Program* and the Shoreline Management Act in accordance with Chapter 18.10 KMC. The *city manager* shall consult with the Washington State Department of Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of RCW Chapter 90.58 and WAC 173-26.

16.75.005 Additional administrative procedures.

In addition to the requirements of Chapter 19.25 KMC, the following administrative procedures apply to *development* in the shoreline jurisdiction.

16.75.010 Substantial development – Permit required – Exemption.

A. No *development* shall be undertaken by any person within the shoreline jurisdiction unless such *development* is consistent with the policies of RCW 90.58.020 and the *Shoreline Master Program*. *Development* within the shoreline jurisdiction shall conform to the *Shoreline Master Program* whether or not the *development* requires a permit from the City of Kenmore.

B. A *substantial development* permit shall be required for all proposed uses and modifications unless the proposal is specifically exempt from the definition of *substantial development* in RCW 90.58.030 and WAC 173-27-040 or is exempted by RCW 90.58.140, WAC 173-27-044 or WAC 173-27-045.

C. Any person claiming exception from the permit requirements of this chapter as a result of the exemptions described in subsection B of this section may be required to submit an application to the ~~director~~city manager for such an exemption in the manner prescribed by the ~~director~~city manager. A

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person requesting an exemption shall provide a written statement of exemption for activities that are exempt from the *substantial development* permit requirement in subsection B of this section when:

1. WAC 173-27-0540 applies; or
2. The activity will occur waterward of the *ordinary high-water mark*.

D. Whether or not a written statement of exemption under WAC 173-27-050 is required, all permits and approvals issued for *development* activities within the shoreline jurisdiction shall include a record of review indicating compliance with the City of Kenmore *Shoreline Master Program*.

E. Conditions of approval may be attached to the approval of *substantial development* permits, statements of exemptions, or exempted developments as necessary to ensure consistency of the project with the City of Kenmore *Shoreline Master Program*.

16.75.015 - Developments not requiring shoreline permits or local reviews

A. Requirements to obtain a *substantial development* permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a *substantial development* permit, conditional use permit, variance, letter of exemption, or other local review.
4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

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16.75.020 Permits – Prerequisite to other permits.

In the case of *development* subject to the permit requirements of this title, Kenmore shall not issue any other permit for such *development* until such time as approval has been granted pursuant to this title. Any *development* subsequently authorized by Kenmore shall be subject to the same terms and conditions which apply to the *development* authorized pursuant to this title, in addition to any other terms or conditions required for the subsequent authorization.

16.75.025 Permits – Reasonable accommodation.

The Federal Fair Housing Act and the Americans With Disabilities Act (ADA) requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped people equal opportunity to use and enjoy a dwelling or structure. The *director/city manager* is therefore authorized to make accommodations in the provisions of this title as applied to dwellings occupied or to be occupied by handicapped persons as defined in the Federal Fair Housing Act, when the *director/city manager* determines that such accommodations reasonably may be necessary in order to comply with such Acts.

16.75.030 Permits – Variance.

A. The *director/city manager* is authorized to grant a variance from the performance standards of the City of Kenmore *Shoreline Master Program* only under the conditions enumerated in WAC 173-27-170 (Review Criteria for Variance Permits) and using the procedures outlined in KMC 19.25. Shoreline variance permits are also subject to review and approval by the Washington Department of Ecology (RCW 90.58.140(10)). The purpose of a variance permit is limited to granting relief from development standards set forth in the City of Kenmore *Shoreline Master Program* where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the City of Kenmore *Shoreline Master Program* will impose unnecessary hardships on the *applicant* or thwart the policies set forth in RCW 90.58.020.

B. A variance from City zoning code requirements shall not be construed to mean a variance from the City of Kenmore *Shoreline Master Program* use or development regulations and vice versa.

C. Shoreline variances may not be used to permit a use that is specifically prohibited in Chapter 16.50 KMC.

D. The burden of proving that a proposed variance meets the requirements of subsections A through C of this section shall be on the *applicant*; absence of such proof shall be grounds for denial of the application.

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E. The fee which shall accompany an application for a shoreline variance shall be as adopted by resolution.

16.75.040 Permits – Conditional use.

A. The director/city manager is authorized to issue shoreline conditional use permits only under the conditions enumerated in RCW 90.58.140 and 90.58.143 and WAC 173-27-160 and using the procedures outlined in KMC 19.25. Conditional use permits are also subject to review and approval by the Washington Department of Ecology (RCW 90.58.140(10)).

B. The burden of proving that a proposed shoreline conditional use meets the criteria enumerated in WAC 173-27-160 shall be on the *applicant*. Absence of such proof shall be grounds for denial of the application; provided, however, that the director/city manager is authorized to determine and impose, on a case-by-case basis, those conditions and standards which may be required to enable any proposed shoreline conditional use to satisfy the criteria established in WAC 173-27-160.

16.75.045 Public agency or utility maintenance plans.

A. To simplify the future review of maintenance activities that are or will be ongoing in association with new or existing public parks, utilities, streets, or other public agency or utility facilities, the *city manager* may approve a 5-year maintenance plan that establishes best management practices or protocols to assure *no net loss of shoreline ecological functions*.

The maintenance plan shall contain, as applicable:

1. A description of proposed maintenance activities, including the area of disturbance and type, methods and frequency of maintenance activities;
2. Best management practices for maintenance activities;
3. A description of in-stream or in-lake habitat protection measures;
4. A description of riparian and *wetland* protection measures;
5. A description of site-appropriate water use management activities, including using less water-dependent landscaping, maximizing the efficiency of the water application system, and reducing the area irrigated;
6. A description of stormwater management practices to treat stormwater runoff to reduce both water quantity and water quality impacts;

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7. A description of erosion and *sediment* control practices that prevent off-site movement of sediment from stored soils and potential surface erosion areas;
8. A description of re-vegetation or *restoration* activities following maintenance; and
9. A description of chemical and nutrient use and containment practices that demonstrate minimization of overall inputs of these contaminants, restrict the type of inputs, and develop an acceptable method of application through a comprehensive management program, such as Integrated Pest Management (IPM).
10. Specific performance standards for subsections 3 through 9 above, as applicable, and corrective actions that will be implemented if the performance standard(s) is not met.
11. Demonstration that the proposed work qualifies for a shoreline exemption and that the work complies with the City of Kenmore *Shoreline Master Program*.

16.75.050 Alteration or reconstruction of nonconforming use or development.

A. The review of applications for the modification of a *nonconforming use* or *development* shall be subject to the regulations enumerated in KMC [18.100.020](#) through [18.100.060](#), and [18.100.080](#) through [18.100.087](#), except that a nonconforming *bulkhead* may be replaced with a new *bulkhead*; provided, that:

1. The reconstructed *bulkhead* does not create new dry land; and
2. At least 40 percent of the *bulkhead* is replaced with a pocket cove or beach; and
3. The proposed reconstruction would substantially reduce the impacts of the existing structure on shoreline *ecological functions*; and
4. The project would not cause adverse impacts on adjacent shoreline uses.

B. Existing legal uses as defined under KMC [18.20.965](#) are considered existing legal uses within the shoreline jurisdiction.

C. Expansion of a *nonconforming use* or structure may be approved through the provisions of KMC [16.75.040](#) when the *applicant* demonstrates the following:

1. The project would substantially reduce the impacts of the existing use or structure on shoreline *ecological functions*; and
2. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.

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3. For a *nonconforming structure* located on land, any waterward expansion of the structure into the required setback would be offset by removal of another *nonconforming structure* of equal or greater footprint area in the shoreline setback, and the shoreline setback area would be restored with native riparian vegetation.

D. Expansion of a nonconforming *dock or pier* may be allowed by the *director/city manager* when the *applicant* demonstrates the following:

1. The existing nonconformance results from noncompliance with the standards in KMC 16.55.050(B)(6), (B)(8), (B)(9) or (B)(15); and
2. The proposed expansion meets all other applicable standards in KMC 16.55.050; and
3. The proposed expansion would not increase the existing overwater coverage of the *dock or pier* to more than the existing condition or by above the limits established in KMC 16.55.050(B)(8), whichever is greater; and
4. The project would reduce the impacts of the existing *dock or pier* on critical fish habitat as demonstrated through the habitat management plan for the *development*; and
5. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.

16.75.055 Relief from shoreline master program development standards and use regulations.

A. Purpose of section. This section incorporates statutory direction from RCW 90.58.580. In adopting RCW 90.58.580, the legislature found that *restoration* of degraded shoreline conditions is important to the *ecological function* of our waters. However, *restoration* projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline *restoration* project shifts shoreline jurisdiction into areas that had not previously been regulated under the act or shifts the location of required *shoreline buffers*. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline *restoration* projects.

B. Conditions and criteria for providing relief. The *city* may grant relief from standards and use regulations in this title when the following apply:

1. A shoreline *restoration* project causes or would cause a landward shift in the *ordinary high-water mark*, resulting in the following:
 - a. Land that had not been regulated under this title prior to construction of the *restoration* project is brought under shoreline jurisdiction; or

EXHIBIT 1

- b. Additional regulatory requirements apply due to a landward shift in required *shoreline buffers* or other regulations of the Kenmore SMP and this title; and
 - c. Application of this title would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
2. The proposed relief meets the following criteria:
- a. The proposed relief is the minimum necessary to relieve the hardship;
 - b. After granting the proposed relief, there is net environmental benefit from the *restoration project*;
 - c. Granting the proposed relief is consistent with the objectives of the *shoreline restoration project* and consistent with the Kenmore *Shoreline Master Program* and this title; and
 - d. Where a *shoreline restoration* project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
3. The application for relief must be submitted to the Washington State Department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a *shoreline substantial development* permit, conditional use permit, or variance. If no such permit is required, then Ecology shall conduct its review when the city provides a copy of a complete application and all supporting information necessary to conduct the review.
- a. Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its web site.
 - b. Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the city if additional public notice is not required.
 - c. A *substantial development* permit is not required on land that is brought under shoreline jurisdiction due to a *shoreline restoration* project creating a landward shift in the *ordinary high-water mark*.

16.75.060 Permits – Combined hearing authority.

- A. In those cases when proposed *development* under the jurisdiction of this title also requires a Type 3 or Type 4 decision and a public hearing before the hearing examiner is required, the *department* shall issue a recommendation on the proposal, and the examiner shall conduct a public hearing to receive evidence relating to the issuance of a *substantial development* permit or exemption therefrom, a shoreline management conditional use permit and/or a shoreline management variance, if applicable.
- B. The examiner shall conduct the hearing in accordance with the provisions of Chapter 19.30 KMC and shall exercise the powers therein.
- C. The decision of the examiner shall be the decision of the *director/city manager* and shall be the final decision of the City with regard to shoreline management.

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16.75.070 Permits – Approval or disapproval – Notification – Additional conditions

– Limitations.

A. In granting or extending a permit, the director/city manager may attach thereto conditions, modifications, or restrictions regarding the location, character and other features of the proposed *development* and related development and activity outside of the shoreline as necessary to make the permit compatible with the criteria set forth in KMC 16.05.030 and 16.75.010. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.

B. Issuance of a *substantial development* permit does not constitute approval pursuant to any other federal, State or City laws or regulations.

16.75.080 Appeals.

A. Appeals from the final decision of the City with regard to shoreline management shall be governed solely by the provisions of RCW 90.58.180, which shall prevail over any conflicting appeal procedures set forth in Chapter 19.25 KMC.

B. After all local permit decisions are complete and the permit documents are amended to incorporate any resulting changes, the city manager shall mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both conditional use permits and or variances shall be mailed simultaneously with any substantial development permits for the project.

1. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.

2. Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:

a. For projects that only require a substantial development permit (SDP): the date that Ecology receives the city decision.

b. For a conditional use permit (CUP) or variance: the date that Ecology's decision on the CUP or variance is transmitted to the applicant and city.

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c. For SDPs simultaneously mailed with a CUP or variance to Ecology: the date that Ecology's decision on the CUP or variance is transmitted to the *applicant* and the city.

BC. The effective date of the City's decision shall be the date of *receiptfiling* with the Department of Ecology as defined in RCW 90.58.140.

CD. When a hearing and decision have occurred pursuant to KMC 16.75.060 and the examiner's recommendation with regard to disposition of a proposed *development* pursuant to KMC Titles 18 and 19 requires city council action, the final decision of the City pursuant to this title shall be effective on the date of *receiptfiling* as defined in RCW 90.58.140 for the purposes of appeal as provided in RCW 90.50.140. However, no *development* may occur until the city council has taken final action on the examiner's recommendation required by KMC Titles 18 and/or 19.

16.75.090 Rules of *directorcity manager*.

The *directorcity manager* is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The *directorcity manager* may prepare and require the use of such forms as are necessary to its administration.

16.75.100 Enforcement.

A. The *directorcity manager* is authorized to enforce the provisions of this title, the ordinances and resolutions codified in it, and any rules and regulations promulgated thereunder pursuant to the enforcement and penalty provisions of Chapter 1.20 KMC.

B. Any person found to have willfully engaged in activities on the *shorelines of the State* in violation of this title or Chapter 90.58 RCW or in violation of the *Kenmore Shoreline Master Program*, or rules or regulations adopted pursuant thereto, is guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25.00 nor more than \$1,000, or by imprisonment for not more than 90 days, or by both fines and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000.

CB. The *directorcity manager* shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the *shorelines of the State* in conflict with the provisions of this title or Chapter 90.58 RCW or in conflict with the *Shoreline Master Program*, or rules or regulations adopted pursuant thereto, and to otherwise enforce the provisions of this chapter and Chapter 90.58 RCW.

DC. Any person subject to the regulatory provisions of this title who violates any provision of this title or the provisions of a permit issued pursuant thereto shall be liable for all damage to public or private

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property arising from such violation, including the cost of restoring the affected area, within a reasonable time, to its condition prior to such violation. The **director/city manager** shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. The court on its discretion may award attorney's fees and costs of the suit to the prevailing party.

16.75.110 Shoreline environment redesignation.

A. *Shoreline environments* designated by the *Shoreline Master Program* may be redesignated by the city council upon finding that such a *redesignation* will be consistent with the standards in KMC [16.75.160](#) and the requirements of WAC [173-26-100](#) and [173-26-110](#). A shoreline *redesignation* may be initiated by an *applicant* or by motion of the **city** council and requires Department of Ecology approval.

B. A *redesignation* initiated by an *applicant* shall be made on forms and processed in a manner prescribed in KMC [16.75.120](#). A *redesignation* initiated by the **city** council shall follow the process in KMC [16.75.130](#).

C. The fee which shall accompany an application for a shoreline *redesignation* shall be as adopted by resolution.

D. The departmental report and recommendation regarding an application for a site-specific *redesignation* initiated by council motion shall be forwarded to the hearing examiner for consideration together with all relevant testimony at a public hearing to be held consistent with the procedures for a zone reclassification as provided in Chapter [19.30](#) KMC.

16.75.120 Redesignation applications.

A. A *redesignation* initiated by an *applicant*, as described in KMC [16.75.110](#)(B), must follow the procedures in Chapters [19.25](#) and [19.30](#) KMC for *shorelines redesignations* and must include the following information in addition to the requirements in Chapter [19.25](#) KMC:

1. *Applicant* information, including signature, telephone number and address;
2. The *applicant's* interest in the property, such as owner, buyer or consultant;
3. Property owner concurrence, including signature, telephone number and address;
4. A property description, including parcel number, property street address and nearest cross street;
5. A county assessor's map outlining the subject property;

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6. Related or previous permit activity;
 7. A description of the proposed *shorelines redesignation*;
 8. A mitigation plan providing for significant enhancement of the first 100 feet adjacent to the shoreline and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent that the impacts of *development* can be determined at the time of the proposed shoreline *redesignation*; and
 9. A discussion of how the proposed shoreline *redesignation* meets the criteria in KMC [16.75.160](#).
- B. The **hearing** examiner shall make a recommendation to the **city** council based on the criteria for review in KMC [16.75.160](#).

16.75.130 Redesignation initiated by motion.

- A. A **city council** motion initiating a shoreline *redesignation*, as described in KMC [16.75.110](#)(B), must be accompanied by the following information:
1. A description of the shoreline and a property description, including parcel numbers, property street addresses and nearest cross streets, for all properties that the shoreline runs through or is adjacent to;
 2. A county assessor's map outlining the subject property or properties; and
 3. A description of the proposed *shorelines redesignation*.
- B. If the motion proposes site-specific *redesignation*, as "site" is defined in KMC Title [18](#), the *redesignation* shall be referred to the hearing examiner for consideration following the procedures of KMC [16.75.120](#) for consideration of *redesignation* applications. Any other *redesignation* proposal initiated by motion shall be referred to the *city manager* for consideration as part of the process for amendment of comprehensive plan or development regulations as outlined in Chapter [19.20](#) KMC.
- C. A motion initiating a site-specific *redesignation* must identify the resources and the work program required to provide the same level of review accorded to an *applicant*-generated shoreline *redesignation*. Before adoption of the motion, the *city manager* shall have the opportunity to provide an analysis of the motion's fiscal impact. If the *city manager* determines that additional funds are necessary to complete the work program, the *city manager* may transmit an ordinance requesting the appropriation of supplemental

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funds. The city council may consider the supplemental appropriation ordinance concurrently with the proposed motion referring the *shorelines redesignation* proposal to the hearing examiner.

D. The departmental report and recommendation regarding an application for a site-specific *redesignation* initiated by city council motion shall be forwarded to the hearing examiner for consideration.

DE. A site-specific *redesignation* initiated by motion shall follow the procedures in Chapters 19.25 and 19.30 KMC for *shorelines redesignations* with regard to the information to be provided and the notice and hearing processes, and shall meet the submittal requirements of KMC 16.75.120. The hearing examiner shall make a recommendation to the city council based on the criteria for review in KMC 16.75.160.

16.75.140 Frequency of consideration of shoreline redesignations.

A *shorelines redesignation* may not be initiated unless at least three years have elapsed since the city council's prior consideration of the current designation for the property. The *city manager* or the city council may waive this time limit if the proponent establishes that there exists either an obvious technical error or a change in circumstances justifying the need for earlier consideration of the *shorelines redesignation*.

16.75.150 Shoreline redesignation and site-specific land use map amendment or zone reclassification.

A site-specific *shorelines redesignation* may be accompanied by a related proposal for a site-specific land use map amendment or zone reclassification, or both, in which case City review of the two applications must be consolidated to the extent practical, consistent with this division and Chapter 19.25 KMC. The city council's consideration of a subarea or comprehensive plan *shorelines redesignation* is a legislative decision that must be determined before and separate from the city council's final consideration of a zone reclassification or site-specific *shorelines redesignation*, which is a quasi-judicial decision.

16.75.160 Criteria for hearing examiner review.

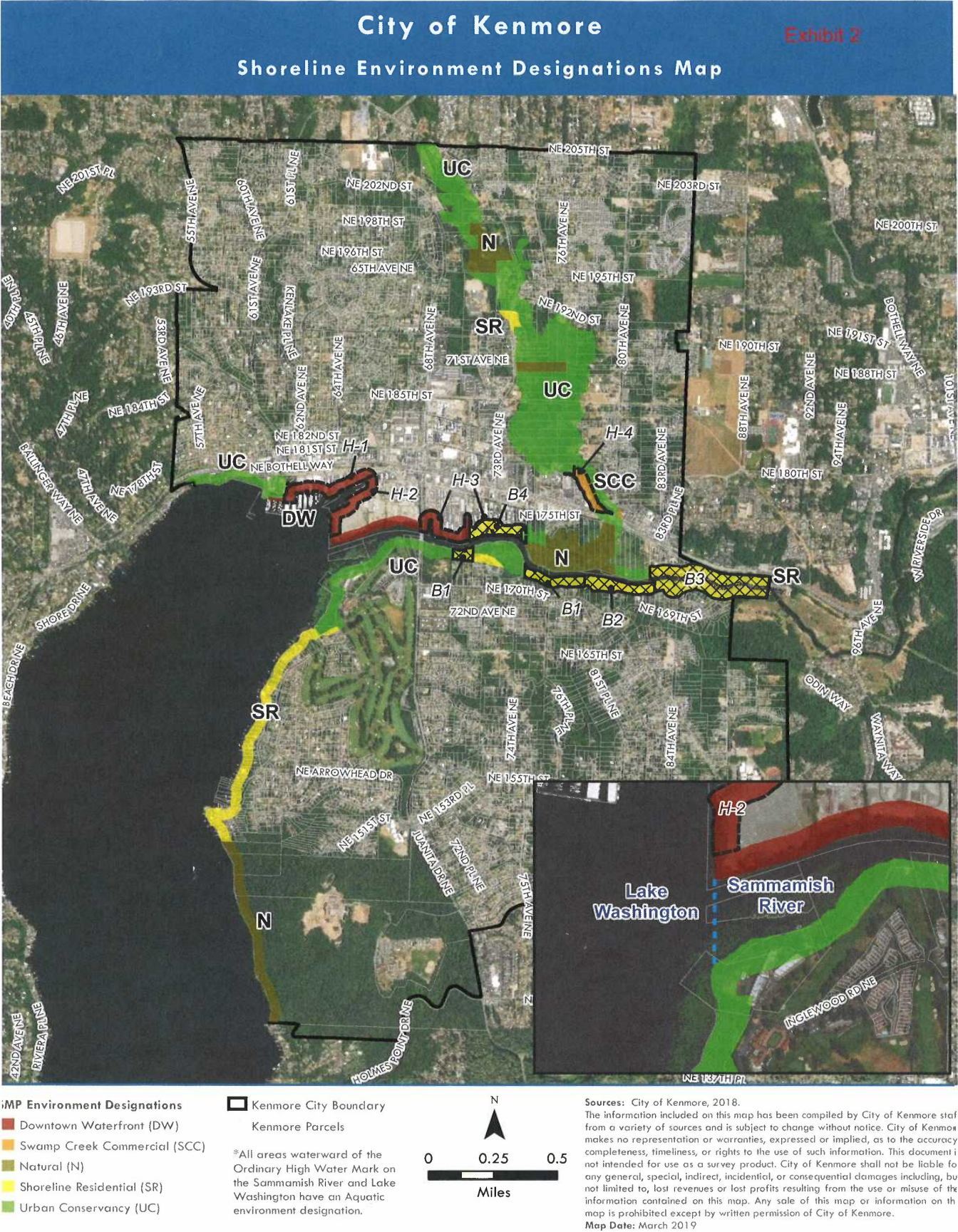
A *shorelines redesignation* referred to the hearing examiner for a public hearing shall be reviewed based upon the requirements of comprehensive plan policies and City *shorelines* management goals and objectives and the following additional standards:

A. The proposed change implements and supports the goals of the State Shorelines Management Act and City of Kenmore *Shoreline Master Program* requested;

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B. The impacts of *development* allowed by the proposed change will not permanently impair any habitat critical to endangered or threatened species; and

C. The impacts of *development* allowed by the proposed change are adequately addressed in a mitigation plan providing significant enhancement of the first 100 feet adjacent to the stream and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent those impacts may be determinable at the time of the *shorelines redesignation*. A full mitigation plan shall accompany each application, as provided in KMC 16.75.120 and 16.75.130.



ATTACHMENT 4

Critical Area Regulations and Shoreline Master Program Amendments

Docket Criteria Analysis

Proposed Comprehensive Plan and development regulation amendments must meet the criteria described in 19.20.090.A and C ("Amendment decision criteria"). Following is staff's analysis of these criteria:

A. Review Criteria Applicable to All Proposed Amendments. All proposed amendments must meet the following criteria:

- 1. The proposed amendment is consistent with the Growth Management Act and the countywide planning policies; and**

Staff response: The proposed amendments are consistent with the Growth Management Act (GMA) and the countywide planning policies. The GMA requires that cities adopt critical area regulations and that they be consistent with best available science. A GMA goal also is to ensure compliance with the shoreline management act (SMA). The SMA requires periodic updating of the City's Shoreline Master Program and that periodic review requirement is the purpose of the proposed amendments. The countywide planning policies support environmental protection within King County.

- 2. The proposed amendment eliminates an inconsistency or does not create an inconsistency within the comprehensive plan; and**

Staff response: The proposed critical area amendments are consistent with the Comprehensive Plan as it was amended in November 2018. The Shoreline Sub-Element of the Comprehensive Plan is being amended with this project to ensure consistency.

- 3. The proposed amendment meets at least one of the following criteria:**

- a. The proposed amendment is beneficial to the City as a whole and will not adversely affect public health, safety, and welfare; or**
- b. The proposed amendment addresses changed circumstances within the City as a whole; or**
- c. The proposed amendment accommodates new policy direction from the city council.**

Staff response: The proposed amendments are beneficial to the City as a whole and will not adversely affect public health, safety, and welfare. The purpose of the proposed critical area regulations is to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, as well as to protect lives and property from hazards. The shoreline regulations regulate development along the City's shorelines, consistent with statewide goals to protect the resources and ecology of the shoreline and increase public access to, and recreational opportunities for, the public in the shoreline.

ATTACHMENT 4

C. Additional Review Criteria for Development Regulations.

1. The proposed amendment is consistent with the policies, objectives, and goals of the comprehensive plan; and

Staff response: As described above, the proposed critical area amendments are consistent with the Comprehensive Plan, particularly the Natural Environment Element, as it was amended in November 2018. The Shoreline Sub-Element of the Comprehensive Plan is being amended with this project to ensure consistency between the goals, objectives and policies and the amended regulations.

2. The proposed amendment does not duplicate or conflict with other portions of the Kenmore Municipal Code.

Staff response: The amendments have been reviewed for duplication and conflict with other portions of the Kenmore Municipal Code. Changes have been made, as necessary. In particular, the conflicts between Title 16, Division II, Flood Damage Prevention and Chapter 18.55, Article XIX, Flood Hazard Areas, have been resolved and the two code sections consolidated.



City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic: Ordinance No. 19-0486 Approving a Non-Exclusive Dual Franchise Agreement with Puget Sound Energy, Inc. Contract No. 19-C2043: Memorandum of Understanding with Puget Sound Energy, Inc. on Performance and Reliability Reporting Proposed Council Action/Motion: Motion to Approve Ordinance No.19-0486 Approving a Non-Exclusive Dual Franchise Agreement with Puget Sound Energy, Inc. Motion to Approve Contract No. 19-C2043: Memorandum of Understanding with Puget Sound Energy, Inc. on Performance and Reliability Reporting	For Council Meeting Agenda of: June 10, 2019 Departments: Executive, Public Works, City Attorney Prepared by: Nancy Ousley, Assistant City Manager <u>Initial & Date</u> Approved by Department Head: <u>Niko 29 MAY 2019</u> Approved by City Attorney: <u>DFR/NKO</u> Approved by Finance Director: Approved by City Manager: <u>ROK</u> Exhibits/Attachments: 1) Proposed Ordinance and Franchise Agreement 2) Proposed Memorandum of Understanding 3) Ordinance No.05-0233: PSE Franchise Agreement (2005) 4) 2018 Proposed Franchise Agreement and Memorandum of Understanding 5) PSE Reliability Projects 2016-2018, 2019-2020 and Kenmore Circuit Map 6) Exponent Electric System Reliability Assessment (2016) 7) Exponent Reliability Goals Report (2018) 8) May 20, 2019 Presentations by the City of Kenmore and PSE
<u>INFORMATION/BACKGROUND:</u> The proposed agreements work in concert to: 1) permit and set the conditions for Puget Sound Energy (PSE) to locate its electrical and natural gas facilities in the public right of way and 2) require actions to report on and identify ways to improve electrical service reliability in Kenmore. The current Franchise Agreement between the City of Kenmore and Puget Sound Energy was approved in 2005. The proposed Agreement is for a five- year term, with the ability to extend an additional five years by mutual agreement. As a privately owned utility, PSE is regulated by the Washington Utilities and Transportation Commission. City staff and Puget Sound Energy staff briefed the City Council on May 20, 2019 on the proposed agreements. Following the meeting, City staff and PSE staff discussed a question raised by Councilmember Denuski regarding the term of the Memorandum of Understanding, and agreed on revised language that allows for consideration of extending the MOU at the end of the five year term. This revision is more consistent with the term of the Franchise Agreement, which is five years with an option to extend the Agreement for an additional five years. The proposed revised language is in Section 4 of the Franchise Agreement, and is shown here in underlined format:	

“Section 4. Term of Franchise/Acceptance

This Franchise is and shall remain in full force and effect for a period of five (5) years from the effective date of the Ordinance. This Franchise may be renewed, at the sole discretion of the Kenmore City Council for one additional five (5) year period upon the written request of PSE, such request to be submitted not less than one hundred eighty days (180) prior to the expiration of the initial five (5) year term. If PSE requests the Franchise to be renewed for an additional five (5) years, as authorized in this Section 4, then the Parties shall also review and determine if the Memorandum of Understanding described in Section 32 of this Franchise (“MOU”) shall also be renewed for an additional five (5) year period. This Franchise is granted upon the express condition that PSE, within sixty (60) days after the adoption of this Ordinance, shall (i) file with the clerk of the City a written acceptance of the same; and (ii) jointly with the City, execute and deliver the Memorandum of Understanding. Upon completion of each such step, this Franchise shall constitute a contract between the City and PSE for all the purposes herein set forth. If PSE fails to provide its written acceptance or jointly with the City execute and deliver the Memorandum of Understanding as provided above, this Ordinance and Franchise shall be null and void.”

The City Council discussed a proposed PSE Franchise and Memorandum of Understanding in January, 2018 and recommended additional attention to service reliability measures. The current proposal contains language updated since 2018 on: specific performance goals for Kenmore circuits performing in the lowest quartile of the PSE system (MOU Section 6); third parties that have facilities attached to PSE poles (Franchise Agreement Section 10 and Section 17); minor revisions to Vegetation Management (Franchise Agreement Section 18); and Electric Vehicle Charging Station partnership (MOU Section 10). Note also the recent revision to Section 4 on the term of the Franchise Agreement and MOU.

Right of Way provisions in the Franchise Agreement that have been updated and strengthened compared to the 2005 Agreement include: improved mapping of PSE facility locations; reporting on known third party users of PSE facilities; detailed procedures for relocating facilities that interfere with City public works projects; and accelerated vegetation patrols and trimming to reduce contact with electrical wires. Provisions for non-interference of facilities to safe passage of pedestrians and vehicles have been updated to include bicycles, and compliance with the Americans with Disabilities Act is now specifically mentioned. Procedures requiring disabling decommissioned natural gas facilities have also been added.

Declining electrical reliability and increasing incidences of outages caused widespread inconvenience, loss of business productivity and health concerns for Kenmore residents and businesses in recent years. The Administration and Council called for a turnaround in electrical service reliability, and PSE has made a number of investments in 2016 -2018 to improve electrical service in certain areas of the city. Kenmore residents and businesses have recently noted service improvements.

The proposed Memorandum of Understanding (MOU), which must be approved in order for the Franchise Agreement to take effect, requires annual detailed reports to the City Council and community on the frequency and duration of outages and how those metrics compare to the PSE system as a whole as well as neighboring jurisdictions served by other utilities. The MOU also covers identifying investments to improve reliability, improved ways of communicating with property owners who have utility easements that PSE needs to access for maintenance and repairs, and detailed procedures for emergency services and City long range planning cooperation.

The City commissioned an Electrical System Reliability Assessment in 2016 from Exponent Failure Analysis Associates, Inc., which confirmed the crisis in reliability in Kenmore in comparison to the overall PSE system and recommended actions that could improve power reliability in Kenmore. The report notes that seven of the ten electrical circuits in Kenmore performed in the lowest quartile of the entire PSE system. Exponent prepared a report on reliability goals in 2018 and concluded that given the reliability projects planned in 2016-2018, six of the circuits in the lowest quartile should see reliability improve. The City has retained Exponent to analyze future reliability metrics as outlined in the proposed MOU.

The WUTC approved a PSE proposal in December 2018 to initiate a pilot program relating to Electric Vehicle (EV) charging stations. The MOU language in Section 10 has been updated and states that Kenmore will be evaluated according the terms of the tariff along with other cities for installation of charging facilities.

FISCAL CONSIDERATION:

State law does not allow a Franchise Fee for electric utilities, but does authorize a Utility Tax of up to 6% of gross revenues that municipalities can enact. The current Kenmore Utility Tax rate for electrical and natural gas is 4% of gross revenues and the projected revenue for 2019-2020 is \$1,656,355.

COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:

Council Goals: Economic Development: attract new businesses and support existing businesses
 Emphasize multi modal transportation safety, specifically focus on pedestrian and bicycle safety
Budget Objective: Attractive, well-planned, enduring and desirable place to live and work

ORDINANCE NO. 19-0486

AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE NON-EXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY AND NATURAL GAS FOR POWER, HEAT, LIGHT AND OTHER PURPOSES FOR WHICH ELECTRICAL ENERGY AND NATURAL GAS MAY BE USED.

WHEREAS, RCW 35A.11.020 grants the City authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy,...for gas..."; and

WHEREAS, Puget Sound Energy, Inc. ("PSE") has requested a franchise for purposes of transmission, distribution, and sale of electrical energy and natural gas for power, heat, light, and any other purpose for which electrical energy and natural gas may be used; and

WHEREAS, on July 25, 2005, the City Council adopted Ordinance No. 05-0233, which granted a franchise to PSE for the construction, operation, maintenance and repair of natural gas and electric transmission and distribution facilities for a ten year period; and

WHEREAS, the original ten-year term of the franchise agreement with PSE ended in August of 2015, and the parties have continued to operate under the terms of such franchise since that time in conjunction with the negotiation of a new franchise; and

WHEREAS, the City of Kenmore and PSE have negotiated a new, mutually acceptable franchise agreement; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Kenmore to grant a non-exclusive franchise to PSE for the operation of electric distribution, electric transmission, and natural gas distribution systems within the City right-of-way;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Recitals Incorporated. The Recitals set forth above are herein incorporated by reference as if set forth in full.

Section 2. Finding of Public Interest. The City Council hereby finds that the non-exclusive franchise agreement with Puget Sound Energy, Inc. attached hereto as Exhibit A, and herein incorporated by reference as if set forth in full, is in the public interest.

Section 3. Franchise Authorized. The City Council hereby approves and authorizes the City Manager to enter into the non-exclusive franchise agreement attached hereto as Exhibit A (the "Franchise") with Puget Sound Energy, Inc., to construct, operate and maintain its utility facilities, as defined in the Franchise, in, across, under, upon, along and over public roads and rights-of-way of the City of Kenmore.

Section 4. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance or the Franchise, or its or their application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance or the Franchise be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or the Franchise, or its or their application to other persons or circumstances.

Section 5. Effective Date. This Ordinance, being in compliance with RCW 35A.47.040, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

APPROVED by the City Council this ____ day of _____, 2019.

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
Dawn F. Reitan, Acting City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. 19-0486

EXHIBIT A TO ORDINANCE NO. 19-0486

A NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN
THE CITY OF KENMORE AND PUGET SOUND ENERGY, INC.

Section 1. Definitions

Where used in this franchise (the "Franchise") the following terms shall mean:

1.1 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.

1.2 "City" means the City of Kenmore, a municipal corporation of the State of Washington, and its respective successors and assigns. Specifically, the City includes all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.

1.3 "City Manager" means the Kenmore City Manager, or his or her designee.

1.4 "Days" means calendar days.

1.5 "Environmental Laws" means any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.6 "Force Majeure Event" means any fire, explosion, pest damage, power failure, strike or labor dispute, act of God, the elements, war, civil disturbance, act of civil or military authorities or the public enemy, or fuel or energy shortage, or any other extraordinary circumstance or event beyond the reasonable control of the affected party.

1.7 "Franchise" means the grant of non-exclusive rights, privileges and authority embodied in this Ordinance.

1.8 "Franchise Area" means all public rights-of-way including the surface of and space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway and drive within the City as now and as may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended; and all City owned easements used for such rights-of-way and/or dedicated for the placement and location of utilities, provided such easements would allow PSE to fully exercise the rights granted under this Franchise within the area covered by such easements.

1.9 "Facilities" means collectively, any and all:

A. natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communications systems and all necessary facilities and appurtenances thereto, whether the

same be located over or under ground;

B. electrical transmission and distribution systems, including but not limited to poles (with or without cross arms), including Puget-owned street lighting poles and luminaires, wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, switches, transformers, ducts, vaults and all necessary facilities and appurtenances thereto, whether the same be located over or under ground.

1.10 "Decommissioned" means Facilities in the Franchise Area that are no longer used by or useful to a regulated service provider and may be removed from service consistent with prudent utility practices and applicable law.

1.11 "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.12 "Ordinance" means this Ordinance No. 19-0486, which sets forth the terms and conditions of this Franchise.

1.13 "Permitting Authority" means the head of the City department authorized to process and grant permits required to perform work in the Franchise Area, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.14 "Tariff" means "tariff" as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

1.15 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Grant of Franchise; Facilities within the Franchise Area

2.1 Pursuant to the laws of the state of Washington, including but not limited to RCW 35A.47.040 and 80.32.010, the City hereby grants to PSE the non-exclusive right, privilege, authority and franchise subject to the terms and conditions set forth herein. This Franchise grants PSE the non-exclusive right, privilege, authority and franchise to install, construct, operate, maintain, repair, replace, and use Facilities for electric distribution and transmission and natural gas distribution and transmission systems, in, under, on across, over, through, along or below the Franchise Area, for the transmission, distribution and sale of electrical energy and natural gas power, heat and light, and any other purposes for which electrical energy and natural gas may be used, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

2.2 This Franchise specifically does not authorize PSE to install or use Facilities to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside PSE's

organization. This section does not restrict PSE's ability to utilize wires, wireless technology or telemetric devices to monitor and operate its electric distribution, electric transmission and natural gas distribution systems, to monitor and control the usage of electrical energy and/or natural gas, and/or to operate communications systems supporting its electric and gas operations but which are not used by PSE or any third parties to provide commercial telecommunications services to the general public. The City acknowledges that PSE may have existing or future agreements with third parties regarding the use and sharing of Facilities, such as poles.

2.3 PSE acknowledges the City's desire and intent that City rights-of-way be free of encumbrance by rights held by others, including PSE, and that the City desires and intends that rights-of-way dedicated by property owners to the City be free of such encumbrances. All rights-of-way so dedicated during the term of this Franchise shall be Franchise Area and any new Facilities thereafter installed by PSE therein shall be subject to the terms and conditions of this Franchise except as set forth in Section 2.4.

2.4 In the event PSE has a prior existing easement or other property ownership or lease right not derived from this Franchise within any portion of the Franchise Area dedicated to the City during the term of this Franchise as described in Section 2.3, and PSE desires to install new Facilities within and using such prior easement or other property ownership or lease right, then PSE will provide notice of the same to the City prior to such installation. The City may request that PSE instead install such new Facilities within the Franchise Area pursuant to rights granted by this Franchise. PSE will consider the facts and conditions that bear upon such request and will respond to the City, including meeting with the City to discuss such request, prior to installation of PSE's new Facilities. When reasonably determined by PSE to be consistent with prudent utility practice, PSE will install its new Facilities within the Franchise Area pursuant to rights granted by this Franchise as requested by the City. In all other cases, PSE may install its new Facilities within and using such prior PSE easement or other property ownership or lease right, subject to compliance with any and all permit conditions and other requirements applicable to such work under City codes, ordinances and standards, including any such condition or requirement to repair and restore the Franchise Area consistent with adopted Public Works standards.

2.5 Without limiting PSE's obligation to consider requests made by the City pursuant to Section 2.4, this Franchise shall not govern or apply to Facilities located on and using PSE owned or leased properties or easements inside or outside of the Franchise Area (whether granted by a private or public entity and whether now existing or hereafter acquired), and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

Section 3. Nonexclusive Franchise

This non-exclusive Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any portion of the Franchise Area that do not unreasonably interfere with PSE's rights under this Franchise. PSE acknowledges that the City's grant of a non-exclusive electric or natural gas franchise to another party does not, in and of itself, constitute unreasonable interference so long as the terms of the other franchise do not purport to give the other party priority or preference rights that unreasonably interfere with PSE's rights under this Franchise. This Franchise shall in no way prevent or prohibit the City from using, or affect its jurisdiction over, any portion of the Franchise Area or other City property, and the City shall retain the authority to make necessary changes, relocations, repairs, maintenance, establishment, and improvement to any portion of the Franchise Area or other City property as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new rights-of-way or other public properties of every type

and description.

Section 4. Term of Franchise/Acceptance

This Franchise is and shall remain in full force and effect for a period of five (5) years from the effective date of the Ordinance. This Franchise may be renewed, at the sole discretion of the Kenmore City Council for one additional five (5) year period upon the written request of PSE, such request to be submitted not less than one hundred eighty days (180) prior to the expiration of the initial five (5) year term. If PSE requests the Franchise to be renewed for an additional five (5) years, as authorized in this Section 4, then the Parties shall also review and determine if the Memorandum of Understanding described in Section 32 of this Franchise ("MOU") shall also be renewed for an additional five (5) year period. This Franchise is granted upon the express condition that PSE, within sixty (60) days after the adoption of this Ordinance, shall (i) file with the clerk of the City a written acceptance of the same; and (ii) jointly with the City, execute and deliver the Memorandum of Understanding. Upon completion of each such step, this Franchise shall constitute a contract between the City and PSE for all the purposes herein set forth. If PSE fails to provide its written acceptance or jointly with the City execute and deliver the Memorandum of Understanding as provided above, this Ordinance and Franchise shall be null and void.

Section 5. Non-Franchise Area City Property

5.1 Except as expressly set forth in Section 5.2, below, nothing contained in this Ordinance shall be construed as granting permission or conveying any right to PSE to install Facilities, use or otherwise go upon any City-owned or leased properties or other public place other than the Franchise Area, and the City reserves the right to require compensation for the use of any such City-owned or leased properties or other public places not located in the Franchise Area, as may be required by the City Council by resolution. Permission to go upon any other property owned, leased or controlled by the City must be sought on a case by case basis from the City. Nothing in this Franchise shall be deemed to grant, convey, create or vest a real property interest in land to or in PSE, including any fee or leasehold interest or easement rights.

5.2 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements, but which are not within the Franchise Area as defined by this Franchise, may be maintained, operated, repaired and/or replaced in like kind by PSE under the terms of this Franchise. For normal maintenance and repair of such existing Facilities installed or maintained by PSE on public grounds and places, PSE shall notify the City prior to any activity undertaken by or on behalf of PSE that impacts or disrupts the public use of said public grounds or places. Such Facilities, however, may not be modified, enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures. Any request to modify, enlarge, improve or expand such Facilities described in this Section shall also include a detailed map and description of the requested change to said Facilities.

Section 6. Compliance with State and Local Regulations

6.1 PSE shall comply with all federal, state, and (subject to Section 28) local laws or regulations applicable to the exercise of PSE's rights and obligations under this Franchise. Upon written inquiry, PSE shall provide a specific reference to either the federal, state, or local law or the WUTC order or action

establishing a basis for PSE's actions related to the exercise of such rights and obligations.

6.2 In granting this Franchise the City hereby reserves all lawful powers *and* franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with the rights, privileges, authority and franchise conferred to PSE by this Franchise.

Section 7. Non-interference of Facilities

7.1 PSE's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free and safe passage of pedestrian, bicycle and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto, provided, that such ingress or egress (driveways) exists when such Facilities are first installed. The foregoing obligations include, but are not limited to, PSE's compliance with (subject to Section 28) applicable City ordinances, regulations and adopted Public Works Standards, and federal and state laws (such as the standards set forth in the American with Disabilities Act).

7.2 In the event that the City Manager or designee reasonably determines, after providing written notice to PSE and a reasonable opportunity for PSE to respond to the City Manager or designee's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto that exists when such Facilities are first installed, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with PSE, including, without limitation, allowing changes to or modifications of the Franchise Area, at PSE's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference.

7.3 In the event such interference requires relocation of PSE's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 13 below (any such interference resulting from new development ingress or egress to properties abutting the Franchise Area in proximity to PSE's Facilities existing within the Franchise Area prior to the development shall be subject to Section 13.5).

Section 8. Natural Gas System Integrity and Safety; Dangerous Conditions

8.1 Upon the City's reasonable request, PSE will make available for review and inspection on PSE's premises by the City or City representatives, PSE's annual maintenance, safety and inspection plans and records concerning or related to PSE's natural gas Facilities located in the City of Kenmore.

8.2 Upon the City's reasonable request, PSE will make available for review and inspection on PSE's premises by the City or City's representatives, copies of reports or notices filed with WUTC or Federal Office of Pipeline Safety concerning or related to the integrity or safety of PSE's natural gas Facilities located in the City.

8.3 PSE will provide concurrent notice to the City of any application by PSE for waiver of any state or federal gas safety rule applicable to the integrity or safety of PSE's natural gas Facilities located in the City.

8.4 In the event that any of PSE's Facilities or operations cause or contribute to a condition that

appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the City Manager or designee may direct PSE, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.

Section 9. Construction and Maintenance of Facilities in Franchise Area; Permit Required

9.1 Whenever PSE works in the Franchise Area for purposes of traffic control, installation, construction, repair, maintenance, relocation, or removal of its Facilities, it shall apply to the City for all necessary City permits to do such work, in accordance with all ordinances and regulations of the City. Subject to Section 28, PSE shall comply with all requirements and conditions of such permits, including but not limited to location restrictions, traffic control, restoration and repair work to restore the surface of the Franchise Area. In no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise. After the work is completed, PSE shall provide to the City upon request and at no cost, copies of PSE's drawings showing the approximate location of its Facilities affected by such work. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities is shown, such Facilities will be shown in their approximate location. The foregoing is not, however, intended to relieve PSE of its obligations arising under Section 17.3 of this Franchise or under applicable law with respect to determining and disclosing the location of its Facilities within the Franchise Area.

9.2 PSE shall at all times post and maintain proper barricades and traffic control and comply with all applicable safety regulations during any period of construction or maintenance activities within the right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.

9.3 In the event of any emergency where any Facilities located in the Franchise Area are broken or damaged, or if PSE's work area within the Franchise Area is in such a condition as to endanger any person or property, PSE may immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for *and* obtaining a permit as required by Section 9.1. This provision shall not relieve PSE from later obtaining any necessary permit for the emergency work. PSE shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

9.4 In the event PSE proposes to cut or disturb pavement within the Franchise Area for any purpose (except as provided in Section 9.3), PSE shall apply to the City for a permit to make such disturbance in accordance with Section 9. In its application PSE shall identify the specific paving proposed to be disturbed, describe the scope and extent of the proposed disturbance and explain the necessity for such disturbance. PSE shall minimize the extent of such pavement disturbance to that reasonably necessary to perform its work. PSE acknowledges the City's authority and discretion to approve (or not approve) disturbance of such pavement and to condition such approval and require compliance of the pavement restoration to the condition required in Section 10. PSE shall not cut or disturb any pavement within the Franchise Area (except as provided in Section 9.3) without written authorization from the City Manager or designee.

9.5 In the event PSE proposes to replace utility poles within the Franchise Area for any purpose other than a City Project as defined in Section 13.1, and except as provided in Section 9.3, PSE shall apply to the City for a

permit in accordance with Section 9. PSE shall identify the purpose and scope of said project. If the project results in decommissioned above-ground facilities in the Franchise Area, then PSE shall remove the decommissioned facilities in the manner set forth in Section 10.

Section 10. Restoration of Franchise Area and Decommissioning of Facilities

10.1 PSE shall promptly restore the Franchise Area, at its sole cost and expense, after any installation, construction, relocation, maintenance, repair or removal of its Facilities within the Franchise Area. PSE shall restore the Franchise Area to the same condition existing immediately prior to PSE's work in the Franchise Area in accordance with the City's adopted Public Works Standards and as may be determined by the City Manager or designee, in each case as reasonably necessary to restore the integrity of the paving disturbed by PSE's work. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and City standards and specifications. The City Manager or designee shall have final approval of the condition of the Franchise Area after restoration.

10.2 If it is determined that PSE has failed to restore the Franchise Area in accordance with Section 10, the City shall provide PSE with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for and pay all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this section. PSE shall pay said costs and expenses within thirty (30) days of receipt of the City's billing for such work, including City overhead (provided that in no event shall such overhead exceed 10% of the total costs, fees and expenses). The remedy granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

10.3 In the event PSE permanently ceases use of any above-ground Facilities within the Franchise Area, PSE shall remove said Facilities at no cost to the City. Removal shall occur within ninety (90) days after PSE's permanent cessation of use and all third party attachments have been removed from such Facilities, and when reasonably practicable, prior to the expiration of the required permit. Consistent with PSE's obligations under state law, PSE shall notify any third parties that are known by PSE to have any attachments located on PSE Facilities, that such third party attachments must be removed or relocated. Additional time for removal may be agreed to by the parties provided that if the parties agree upon such additional time, the City shall renew or extend the required permit. PSE may, with written notice to the City, transfer ownership of its permanently discontinued Facilities within the Franchise Area to any third party having attachments on PSE Facilities, for such third party's continued use, and in such event PSE shall not be required to remove such Facilities from the Franchise Area. PSE shall provide such written notice as soon as practicable to the City, but no later than thirty (30) days after the transfer has been completed. In the event the transferred pole(s) were previously designated in the permit application as poles to be removed or relocated, PSE shall include this information in the written notice of transfer of ownership.

10.4 In the event PSE permanently discontinues use of and decommissions any of its underground Facilities within the Franchise Area, PSE may leave such underground Facilities in place subject to the conditions set forth in Sections 10.4 – 10.7. PSE shall notify the City when it permanently discontinues use of and decommissions any of its underground Facilities within the Franchise Area. PSE's written notification to permanently decommission underground Facilities within the Franchise Area shall

include a mitigation plan for either removing or leaving in place the decommissioned underground Facilities. The mitigation plan shall address how and when the Facilities will be removed and shall include any mitigation measures PSE proposes to address impacts of the decommissioned underground Facilities to the Franchise Area. The mitigation plan shall require that any underground Facilities to be left in place shall be made inert by purging all natural gas from such underground Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such underground Facilities, in compliance with applicable regulation and industry standards. Unless otherwise approved by the City, removal and mitigation should be accomplished within one hundred and eighty (180) calendar days after the Facilities are permanently decommissioned.

10.5 Within thirty (30) calendar days of receiving a mitigation plan submitted by PSE pursuant to Section 10.4, the City will review the mitigation plan and either approve or require changes and resubmittal. The City will not unreasonably withhold approval of PSE's proposed plan, but may require changes if it determines, in its reasonable discretion, that said plan fails to adequately mitigate the impacts of PSE's permanently decommissioned underground Facilities. If PSE's mitigation plan proposes leaving permanently decommissioned underground Facilities in place and the City determines, after consultation with PSE, that the impacts of leaving the Facilities in place cannot be adequately mitigated to the City's reasonable satisfaction, the City may require removal of the underground Facilities. If the City approves leaving permanently decommissioned underground Facilities in place, it may condition such approval upon PSE's agreement to remove the underground Facilities at a later time, such as in conjunction with a subsequent City Project (as defined below) or other project that includes excavation in the area or as reasonably required to ensure the health and safety of the public. Following the City's approval of a mitigation plan, PSE shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area.

10.6 If the Parties fail to agree upon a mitigation plan, PSE fails to comply with an approved plan, or circumstances require City action prior to approval of a plan, the City may, but is not required to, take such steps as it deems necessary to remove and/or mitigate for the impacts of the permanently decommissioned underground Facilities. Any costs incurred by the City as a result of PSE's failure to comply with its obligations under this Section with respect to permanently decommissioned underground Facilities shall be reimbursed by PSE within thirty (30) calendar days of the City invoicing PSE for such costs.

10.7 All work by PSE pursuant to this Section 10 shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington and, subject to Section 28 Kenmore Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

10.8 The Parties expressly agree that the provisions of this section shall survive the termination, expiration, or revocation of this Franchise

Section 11. Bonding Requirement

11.1 Pursuant to RCW 35A.47.040, PSE shall, within thirty (30) days after its acceptance of this Franchise, file with the City, and at all times thereafter, maintain in full force and effect for the term of this Franchise, a bond executed by PSE and a corporate surety authorized to do surety business

in the State of Washington, with an AM Best rating of A XII. The amount shall be as provided in Section 11.3, and shall secure performance of PSE's obligations under Sections 7.1, 7.2, 8.4, 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4 and 13.1 (the "Bonded Obligations"). The bond shall be in a manner and form reasonably acceptable to the City and secure PSE's faithful performance of the Bonded Obligations and provide recovery on the bond in case of PSE's failure to perform the Bonded Obligations. PSE may meet the obligations of this section with one (1) or more bonds reasonably acceptable to the City. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.

11.2 In the event PSE shall fail to perform any Bonded Obligations in undertaking any work or other activities within the Franchise Area authorized by this Franchise, and further fails to cure its deficiency within the time period identified in the City's written notice of such deficiency (which may not be less than a reasonable period of time), then the City may recover jointly and severally from PSE and the surety of such bond to ensure performance of the Bonded Obligations. This section shall be a continuing obligation for the duration of this Franchise and thereafter until PSE has discharged all of its Bonded Obligations under this Franchise.

11.3 The bond filed in accordance with the requirements of this Section 11 shall be in the amount of Twenty Thousand Dollars and No/100 (\$20,000.00), but may be increased from time to time by mutual agreement of the parties if the volume of work being undertaken by PSE within the Franchise Area under this Franchise at any given point in time materially increases such that an increase in the bond amount is reasonably necessary to provide adequate protection to the City for the Bonded Obligations covered by such work.

11.4 In the event the City intends to execute on or seek recovery under any bond(s) furnished by PSE pursuant to this Section 11, the City shall promptly provide written notice of same to PSE. If the City successfully executes on any such bond, PSE shall promptly obtain a replacement bond in like amount and/or take such other action as is reasonably necessary to ensure that the bond(s) required by this Section 11 are maintained in full force and effect for the term of this Franchise.

11.5 The rights reserved to the City by this Section 11 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 11 shall constitute an election or waiver of any rights or other remedies the City may have.

Section 12. Underground Installation of Facilities

12.1 PSE acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area. The City acknowledges that PSE provides electrical and natural gas service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to such Tariffs, PSE agrees to cooperate with the City in the formulation of policy and development regulations concerning underground installation of PSE's Facilities within the Franchise Area.

12.2 New extensions of electric Facilities that operate at 15,000 volts (15kV) or less constructed by PSE within the Franchise Area during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC. Provided, however, that extensions

of existing overhead Facilities of up to five spans or 500 feet (whichever is less) may, subject to the City's prior written consent which shall not be unreasonably withheld, be installed overhead in locations having other existing overhead utilities.

12.3 If, during the term of this Franchise, the City shall direct PSE to replace (convert) its overhead electric distribution Facilities (15kV or less) then existing within the Franchise Area with underground Facilities, such underground conversion shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC. All requests by the City for conversion of overhead Facilities to underground shall comply with applicable law.

12.4 This Section 12 shall govern all matters related to underground installation of PSE Facilities within the Franchise Area.

Section 13. Relocation of Facilities

13.1 If the City undertakes any City-funded (either directly with its own funds or with other public monies obtained by the City) improvement, repair, maintenance or other work within the Franchise Area ("City Project"), or if PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic pursuant to Section 7 above, and such City Project or interference necessitates the relocation of PSE's Facilities then existing within the Franchise Area, then the City shall:

- A. request that PSE provide a list of all known third party occupants with attached facilities on PSE Facilities within a proposed City Project, and PSE shall provide such list to the City within 45 days of the request;
- B. provide written notice to PSE requesting such relocation; provided the City's relocation request is given at least 45 days after request for the list specified in Section 13.1.A and within a reasonable time prior to the commencement of such City Project; and
- C. provide PSE with copies of relevant portions of the City's plans and specifications for such City Project.

No later than one hundred and twenty (120) calendar days (or such shorter or longer period of time as the parties may mutually agree in writing for a given City Project) following receipt of such relocation notice and plans and specifications identified in Sections 13.1.B-C (the "Relocation Deadline"), PSE shall relocate its Facilities within the Franchise Area at no charge to the City. The Relocation Deadline may be extended as reasonably necessary for an additional one hundred twenty (120) calendar days, for a total of two hundred and forty (240) calendar days (or such shorter or longer period of time as the parties may mutually agree in writing for a given City Project), if it would be impossible or impracticable for PSE to complete the relocation work by the original Relocation Deadline due to factors and/or circumstances beyond PSE's reasonable control. Such factors may include PSE's actual inability (despite using best efforts) to obtain materials in a timely manner or PSE's relocation work being dependent on the performance of other work by the City or any third party. PSE shall notify the City of any need to extend the Relocation Deadline within thirty (30) calendar days after PSE's receipt of the City's notice to relocate referenced in Section 13.1.B and the plans and specifications referenced in Section 13.1.C (which are complete to at least 60% of final design as defined by the City) for the City Project. If PSE notifies the City of a need for such extension, the City may object to PSE's notice by

giving PSE prompt written notice of and reasons for the objection, in which event PSE and the City shall work together in good faith to resolve the dispute in an expeditious manner. PSE shall also notify any third parties that are known by PSE to have equipment located on the PSE Facilities being relocated that they need to remove or relocate the third party's equipment by the Relocation Deadline. If PSE or the City subsequently learn of any third parties having equipment located on the PSE Facilities being relocated that were not previously known to PSE, PSE and the City shall work together in good faith to identify the third parties, notify the third parties and resolve the issue in an expeditious manner.

If, during the construction of any City Project, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall relocate as soon as reasonably feasible the affected Facilities, at no charge to the City.

To accommodate a City Project, following permanent removal of all PSE Facilities and all third party attachments from PSE owned utility poles within the Franchise Area, PSE shall remove pole(s) from the Franchise Area, consistent with the Relocation Deadline. If any third party fails to timely remove its attachments causing PSE to fail to meet the Relocation Deadline, then as set forth in Section 13.8, PSE shall not be responsible for any costs associated with or arising from such third party delays. PSE may, with written notice to the City, transfer ownership of its permanently discontinued Facilities within the Franchise Area to any third party having attachments on PSE Facilities, for such third party's continued use, and in such event PSE shall not be required to relocate such Facilities from the Franchise Area. PSE shall provide such written notice as soon as practicable to the City, but no later than thirty (30) days after the transfer has been completed. In the event the transferred pole(s) were previously designated in the relocation process identified in Section 13.1 as poles to be removed or relocated, PSE shall include this information in the written notice of transfer of ownership.

13.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. PSE shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and PSE are unable to agree that there is or will be sufficient space for the relocated Facilities in the existing Franchise Area, or PSE reasonably determines that locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice, then the City and PSE will proceed in accordance with Section 13.3.

13.3 In order to accommodate a City Project undertaken by the City under this Section 13, PSE may install relocated Facilities on property outside of the Franchise Area, the rights for which shall be obtained by PSE at no expense to the City, if:

A. Notwithstanding the use of best efforts by the City and PSE as outlined above, the City and PSE are unable to agree that there is or will be sufficient space within the Franchise Area for the relocated Facilities, or

B. locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice.

Nothing in this Section 13 shall limit the rights of the City or PSE with respect to acquisition or use of property rights outside of the Franchise Area.

13.4 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of the same Facilities pursuant to this Section 13, the City shall reimburse PSE for all costs incurred by PSE in connection such subsequent relocation.

13.5 PSE shall have the right as a condition of any relocation described in this Section 13.5 to require such person or entity other than the City to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities whenever:

A any person or entity, other than the City, requires the relocation of PSE's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or

B the City requires any person or entity to undertake work (other than a City Project undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of PSE's Facilities within the Franchise Area.

13.6 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of PSE's Facilities within the Franchise Area shall be a condition or requirement causing relocation of PSE's Facilities to occur subject to the provisions of Section 13.5 above; provided, however:

A in the event the City reasonably determines and notifies PSE that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a City Project within a segment of the Franchise Area on the City's behalf, and

B such City Project is a funded project that is otherwise reflected in the City's adopted Six-Year Capital Improvement Program; Capital Facilities Plan; Transportation Improvement Program; Transportation Facilities Program or Budget;

Then only those costs and expenses incurred by PSE in connecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such person or entity, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 13.1 through 13.3.

13.7 As to any relocation of PSE's Facilities whereby the cost and expense thereof is to be borne by PSE in accordance with Sections 13.1 through 13.3, PSE may, after receipt of written notice requesting such relocation, submit in writing within thirty (30) days to the City, alternatives to relocation of its Facilities. Upon the City's receipt from PSE of such written alternatives, the City shall evaluate such alternatives and shall advise PSE in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of PSE's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by PSE full and fair consideration with due regard to all facts and

circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by PSE shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, PSE shall relocate its Facilities as otherwise provided in Sections 13.1 through 13.3. Nothing in this section shall be construed to be a waiver of any right of either PSE or the City to contest any claim or assertion by the other of responsibility to pay such costs or expense.

13.8 Subject to the exclusions and requirements set forth below in this Section 13.8, and to the maximum extent provided by law, if PSE breaches its obligations under Section 13.1 with respect to relocating its Facilities within the Franchise Area by the applicable Relocation Deadline in order to accommodate a City Project, and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) on a City Project that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

13.8.1 tender the Contractor Delay Claim to PSE for defense and indemnification in accordance with Section 20; or

13.8.2 require that PSE reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by PSE under this Section 13.8.2, the City shall first give PSE written notice of the Contractor Delay Claim and give PSE the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than thirty (30) days (or such shorter period of time as the City may have to respond to the Contractor Delay Claim without prejudicing its right to respond, but in no event less than twenty (20) days) prior to the City's payment of the Contractor Delay Claim.

Nothing in this Section 13.8 or otherwise will require PSE to bear or be responsible for any cost, expense or damage, or to defend or indemnify the City against any claim, that results from a delay in meeting the Relocation Deadline for a City Project, to the extent the delay is caused by the City, any third party that is not an agent, subcontractor or vendor of PSE, or any Force Majeure Event. Provided, however, if such a delay is caused by a third party that is not an agent, subcontractor or vendor of PSE, or any Force Majeure Event, then PSE's performance shall only be excused for the time period equal to such delay. Therefore, if this Franchise specifies a time period for performance of an obligation by PSE, the time period during which PSE is excused from performance shall only be for the period of any delay in such performance caused by said third party or Force Majeure Event. PSE shall immediately communicate the circumstance of the event to the City and take all commercially reasonable steps within its control to satisfy its duties and obligations under this Franchise and mitigate the effects of the delay.

13.9 Nothing in this Section 13 shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other property ownership or lease rights, regardless of whether such easement or other property ownership or lease rights is on public or private property and regardless of whether this Franchise co-exists with such easement or other property ownership or lease rights. Nothing in this Section 13.9 is intended to preclude the City from properly exercising its powers of eminent domain in accordance with applicable law.

13.10 The provisions of this Section 13 shall survive the expiration or termination of this Franchise during such time as PSE continues to operate and maintain Facilities in the Franchise Area. Additionally, the provisions of this Section 13 are applicable only so long as the Franchise Area is owned and/or controlled by the City.

Section 14. Coordination/Shared Excavations

14.1 PSE and the City shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to inform the other party and other utilities within the Franchise Area of its intent to undertake such construction work. PSE and the City shall further exercise best reasonable efforts to minimize delay or hindrance to construction work undertaken by themselves and other utilities within the Franchise Area.

14.2 PSE shall maintain adequate staffing levels and provide the City with one constant point of contact during construction of a City Project to provide responsive customer service. To initiate such construction coordination, the City shall contact PSE's customer construction services hotline department (as may be amended) to obtain a project number and be added to PSE's construction services system.

14.3 If, at any time or from time to time, either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

Section 15. City Use of Facilities

15.1 During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by PSE and (b) within the Franchise Area, the City, subject to PSE's prior written consent which shall not be unreasonably withheld, may install and maintain City-owned overhead cables, routers, antennas, wires and other PSE-approved equipment upon such poles for police, fire, traffic control, WiFi/Internet, weather and air quality monitoring and other noncommercial municipal communications purposes. The foregoing rights of the City to install and maintain such facilities are further subject to the following:

A Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as PSE may specify from time to time (including, without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities);

B PSE shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned wires or the installation or maintenance thereof; and the City shall indemnify, defend and hold harmless PSE in connection with the City's use of PSE's Facilities; and

C PSE shall not charge the City a fee for the use of such poles in accordance with this Section 15 as a mean of deriving revenue therefrom (such as a rental or lease fee); provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

Section 16. Moving Buildings Within the Franchise Area.

If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall endeavor, prior to granting such permission, to require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's wires to accommodate the moving or removal of such building or other object to allow PSE and other party to make necessary arrangements.

Section 17. Records of Installation and Planning

17.1 Upon the City's request, PSE shall promptly provide to the City copies of available maps and plans of imminent planned improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such maps or plans so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

17.2 Upon the City's reasonable request, PSE shall provide to the City copies of available drawings in use by PSE showing the approximate location of PSE's Facilities at specific locations within the Franchise Area. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area. Notwithstanding the foregoing, PSE does not warrant the accuracy or sufficiency of any such drawings, drawing file layers or other information provided by PSE, and PSE shall not be liable to the City or others for any errors or defects in the same.

17.3 PSE shall further provide, upon the City's reasonable request in connection with the design of a City Project, field marking of PSE's underground Facilities within the Franchise Area at the location of the City Project, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of PSE's underground Facilities. In addition, PSE shall, upon the reasonable request of the City in connection with the design of any City Project, verify the actual location of its underground Facilities within the Franchise Area at the location of a City Project by excavating, including pot holing, at no expense to the City.

17.4 The parties acknowledge that PSE is subject to and must comply with applicable federal and state laws and regulations that apply to attachments of wires, devices and other equipment ("Attachments") owned by third parties to PSE's poles within the Franchise Area. As of the date of this Franchise, PSE and third parties having attachments of wires, devices and other equipment to PSE's poles within the Franchise Area use the National Joint Utilities Notification System (NJUNS) as the means of providing official notice between them of actions required to be taken and reporting of actions taken by such third parties with respect to such Attachments. To the extent consistent with applicable federal and state laws and regulations and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS in place from time to time) include the City as an

interested party to any notification tickets submitted by PSE in NJUNS with respect to any of PSE's poles within the Franchise Area that are permanently no longer in use by PSE and which contain third party attachments. The City may monitor activity associated with such third party attachments through NJUNS and engage directly with such third party to compel completion of such third party transfers under any applicable City authority.

17.5 Notwithstanding the foregoing, nothing in this Section 17 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining and disclosing the location of utility facilities.

Section 18. Vegetation Management

18.1 PSE shall on an annual basis perform vegetation review throughout the City and identify areas that need vegetation management for the reliable and safe operation of PSE Facilities. PSE shall notify the City during the second annual quarter of planned or performed maintenance trimming. The City may accompany PSE or its consultants, in the review of vegetation in the Franchise Area, at its discretion. PSE shall on an annual basis identify those areas targeted for accelerated, or "hot spot," tree trimming and vegetation management and provide the City a written list and maps of locations within the Franchise Area at which PSE anticipates performing vegetation management activities for that year; provided that such list shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to PSE's facilities, pose an imminent threat to public safety or the reliable operation of PSE's facilities. On an annual basis, the City and PSE shall meet to review PSE's and the City's plans for vegetation management within the Franchise Area, and to the extent practicable, shall attempt to coordinate vegetation management work planned for the same or overlapping areas within the Franchise Area. PSE agrees to work with the City on PSE's trimming plans to review for overlap with the City's trimming plans and avoid unnecessary duplication and expenditure of funds in advance of PSE planned trimming. PSE shall perform general trimming and vegetation management in the Franchise Area at least every 4 years.

18.2 PSE shall, in coordination with the City, identify vegetation species appropriate for location in proximity to PSE's facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.

18.3 PSE shall apply for and obtain a franchise utility right-of-way permit, with traffic control plan, for all vegetation management within the City. PSE shall not commence non-emergency vegetation management work without notice to abutting private property owners or occupants at least ten (10) working days in advance of the work to be performed, including a general time frame and description of work, and a contact name and telephone number at PSE. In performing vegetation management work, PSE shall comply with ANSI 300 pruning standards. PSE shall notify the City at least ten (10) calendar days prior to any vegetation management work being conducted within City limits; except that emergency work can be done the same day providing the City is contacted either by phone or email as soon as feasible. A knowledgeable PSE representative will stay in close communication with the City while vegetation management work is performed within the City. PSE shall conduct periodic performance reviews at the request of the City.

18.4 At the request of an abutting private property owner, PSE shall employ or consult with a certified

arborist to assess the type of pruning proposed to be done and/or shall provide the abutting owner with alternatives to the type of pruning proposed to be done. PSE will reasonably consider alternatives proposed by the abutting property owner and any certified arborist hired by the property owner.

18.5 Nothing in this Franchise is intended to absolve PSE from any liability resulting from damage caused by trees that are severely pruned or topped by PSE and subsequently fall as a result of such pruning or topping.

18.6 PSE or its contractors should trim trees according to species growth habits. Crew foremen will be educated of different tree species and understand their corresponding growth habits.

18.7 In the event trees need to be trimmed within and/or adjacent to the Franchise Area, PSE shall notify the City in writing at least ten (10) days ahead of time. The City shall have final determination of whether a tree needs to be removed in the Franchise Area, and replacement trees shall be negotiated between the City and PSE of their contractor on a case by case basis.

18.8 All debris associated with line clearance tree trimming and/or removal work within or adjacent to the Franchise Area will be chipped and removed by PSE or its contractor from the site at no cost to the City. "Drop and Scatter" practices will require prior written approval from the City.

18.9 When trees are heavily trimmed or removed from or adjacent to the Franchise Area, PSE shall perform the work in such a way as to avoid damage to other trees within that area. If additional trees are accidentally damaged during such work, PSE, or its contractor, will use its best efforts to appropriately prune any such damaged trees. The City is to be contacted immediately in the event of any unplanned damage to City owned trees.

18.10 Climbing trees with gaffs or spikes is strongly discouraged on any deciduous, hardwood or thin bark tree species unless the tree is to be removed.

18.11 PSE shall commit to responding to all vegetation management inquiries:

- A. Within 24 hours of being contacted by a customer in response to planned vegetation management work on or near their residence; and
- B. Within 2 weeks of receipt of all general vegetation management inquiries.

18.12 The parties shall endeavor to resolve disputes arising under this section in good faith.

Section 19 Condemnation.

The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of PSE's Facilities within the Franchise Area.

Section 20 Indemnification

20.1 PSE shall indemnify, defend and hold harmless the City, its officials, officers, employees agents and representatives, from any and all third party claims or suits, and any damages, costs, judgments, awards

or liability resulting from such claims or suits, (a) for injury or death of any person or damage to property to the extent the same is caused by the actual or alleged negligent acts or omissions, or willful misconduct, of PSE, its agents, servants, officers or employees in the performance of this Franchise and any rights granted hereunder, or (b) to the extent such claim or demand is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of any Environmental Laws in its operation of the Facilities within the Franchise Area and exercise of any rights granted hereunder. The indemnity under Section 20.1(b) includes each of the following to the extent the same is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of applicable Environmental Laws: (i) liability for a governmental agency's costs of removal or remedial action for such release by PSE of Hazardous Substances; (ii) damages to natural resources caused by such release by PSE of Hazardous Substances, including the reasonable costs of assessing such damages; (iii) liability for any other person's costs of responding to such release by PSE of Hazardous Substances; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by such release by PSE of Hazardous Substances. Provided, however, such indemnification shall not extend to any portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the willfully tortious, or negligent acts or omissions of the City, its agents, employees, officials officers, contractors or subcontractors. The indemnity under Section 20.1(a) includes, but is not limited to any Contractor Delay Claim that the City properly elects to tender to PSE pursuant and in accordance with Section 13.8.1 of the Franchise.

20.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance by PSE of any of its obligations under this Section 20. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with PSE's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

20.3 Solely to the extent required to enforce the indemnification provisions of this Section 20, PSE waives its immunity under Title 51 RCW, Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. The foregoing waiver under this Section 20.3 has been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE's waiver thereof.

20.4 In the event any matter (for which the City intends to assert its rights under this Section 20) is presented to or filed with the City, the City shall promptly notify PSE thereof and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action be started against the City based upon any such matter, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

20.5 The provisions of this Section shall survive the expiration and termination of this Franchise.

Section 21. Insurance

21.1 PSE shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in

connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. Coverage shall include the City, its officers, elected officials, agents, employees, representatives, and volunteers as additional insureds. PSE shall provide a certificate of insurance and/or evidence of self-insurance to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:

- A. Commercial general liability insurance or excess liability insurance, including coverage for premises-operations, explosion, collapse and underground hazards (XCU), pollution liability, and products-completed operations, with limits not less than:
 - (i) \$5,000,000 per occurrence; and
 - (ii) \$5,000,000 in the aggregate.
- B. Automobile liability for owned, non-owned and hired vehicles with a \$2,000,000 combined single limit.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000.

If coverage is purchased on a "claims made" basis, then PSE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form.

PSE's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of PSE to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

21.2 PSE shall maintain the liability insurance policies required by this Section 21 throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section 21 shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

21.3 PSE's insurance shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers. Any insurance maintained by the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

21.4 Should any of the required insurance policies be cancelled or limits reduced below the limits described herein, PSE shall provide the City notice 30-days prior to such cancellation or reduction.

21.5 In the event any of the insurance required by this Section 21 is canceled or otherwise not renewed during the term of this Franchise, PSE shall promptly acquire replacement insurance or shall utilize

self-insurance to restore and maintain the amount of coverage required by this Section 21 and shall promptly provide to the City certificate(s) of insurance or evidence of self-insurance as provided in this Section 21 as may be applicable.

Section 22. Default

22.1 If PSE shall fail to materially comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon PSE a written order to so comply within thirty (30) days from the date such order is received by PSE. If PSE is not in material compliance with this Franchise after expiration of said thirty (30) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to materially comply with this Franchise by PSE cannot be corrected with due diligence within said thirty (30) day period then the time within which PSE may so comply may be extended for a period of time as may be reasonably necessary and as agreed upon by the parties, so long as PSE commences promptly and diligently to effect such material compliance.

22.2 Notwithstanding PSE's obligation to comply and to proceed with due diligence to correct any default, the City recognizes that unavoidable delays and events beyond PSE's control may occur. In such event the parties agree that PSE shall make a good faith effort to expeditiously remedy the default. In the event of a declaration of forfeiture, should either party commence litigation against the other to appeal (in the case of PSE) or enforce (in the case of the City) such declaration of forfeiture, each party in any such litigation shall be responsible for their own costs and attorneys' fees.

Section 23. Reimbursement of Administrative Costs

23.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE.

23.2 As provided in RCW 35.21.860, PSE shall reimburse and pay to the City's administrative expenses and costs incurred by the City that are directly related to: (a) receiving and approving a permit, license or this Franchise, (b) inspecting plans and construction, or (c) preparing a detailed statement, as may be required by Chapter 43.21C RCW. PSE acknowledges and agrees that it shall pay such actual administrative expenses incurred by the City, relating to the receipt, review and approval of this Franchise under Subsection 23.2(a).

23.3 As such expenses are incurred by the City, the City shall invoice PSE for all administrative expenses and costs to be reimbursed by PSE hereunder including an itemized statement showing such expenses and costs. PSE shall promptly remit payment to the City within thirty (30) days of receipt of such invoice. Notwithstanding any other provision of this Franchise, no acceptance by PSE of this Franchise shall be effective if PSE fails to pay the City's initial invoice for administrative expenses and costs properly reimbursable under Section 23.2(a) that are incurred by the City in receiving and approving this Franchise.

23.4 If PSE disputes any expense or cost included on the City's invoice, PSE shall promptly notify the City thereof and shall otherwise promptly remit payment for any and all undisputed expense and costs included on the City's invoice. As to any expense or cost disputed by PSE, PSE shall promptly provide written identification of such disputed amount(s) together with its written justification for such dispute to the City for the City's consideration. PSE and the City shall work together in good faith to resolve any disputed amount(s), including provision by either or both parties of such further information and documentation supporting or refuting

such disputed amount(s) as may reasonably and practically be provided. Until any such dispute is resolved by the Parties the City may, at its sole discretion, suspend work being performed by the City or Puget and/or withhold City issued permits or City approvals related to such disputed amount(s). Except as set forth in this Section 23, such dispute will not otherwise effect any other obligation of the parties under this Franchise.

Section 24. Utility Tax

PSE acknowledges that the City is authorized under the laws of Washington State to impose certain taxes upon PSE. Nothing in this Franchise shall exempt (nor shall be construed to exempt) PSE from payment of any and all such taxes lawfully imposed by Kenmore Municipal Code, as may hereafter be lawfully amended or superseded, and due from PSE; provided, nothing in this Section 25 shall be construed in any way as a waiver of PSE's rights to contest the validity of any such tax or the amount of any tax due. If payment of such taxes is not made by PSE in a timely manner, the City reserves the right, at its sole option, to inter alia suspend the rights granted to PSE by this Franchise until such time that PSE pays such taxes or PSE and the City otherwise resolve any matter concerning payment thereof.

Section 25. Emergency Management

Annually, upon the request of the City, PSE will meet with the City Fire/Emergency Preparedness personnel to coordinate emergency management operations and, at least twice a year, at the request of the City, PSE personnel will actively participate with either the Northshore Emergency Management Coalition or City Emergency Personnel in emergency preparedness drills or planning sessions.

Section 26. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon PSE and the City. PSE may not assign or otherwise transfer its rights, privileges, authority and franchise herein conferred without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. The City hereby authorizes and approves PSE to mortgage its rights, privileges, authority and franchise in and under this Franchise to the Trustee for its bondholders.

Section 27. Severability and Survival

27.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

27.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 6 above, the parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 28. Amendments to Franchise.

28.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both parties, which specifically states that it is an amendment to this Franchise. The Parties acknowledge and agree that City's adopted code, regulations and standards ("Regulations") are intended to complement and supplement this Franchise. In the event of any direct conflict or inconsistency between the provisions of this Franchise and Regulations of the City, whether now existing or hereafter adopted by the City, the provisions of this Franchise will govern and control. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

- A. references this Franchise; and
- B. states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of a direct conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

28.2 This Franchise is subject to the provisions of applicable Tariffs on file with and accepted by the WUTC. In the event of any conflict or any inconsistency between the provisions of this Franchise and any such Tariff, the provisions of such Tariff shall control. Nothing in this Franchise shall be deemed to waive, prejudice, or otherwise limit any right or authority of the City to challenge or contest the validity of the Tariff or its application to the City before a court or regulatory agency having subject matter jurisdiction, and nothing in this Franchise will be deemed or construed as a contractual commitment or agreement by the City to accept the application of a Tariff if the City is successful in such challenge or contest of the validity of the Tariff.

28.3 The parties agree to renegotiate the terms of this Franchise, if, during the term of this Franchise there becomes effective any change in federal or state law which:

- A. Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not, prior to such change, have been consistent with federal or state law; or
- B. Pre-empt or otherwise renders null and void any term or condition of this Franchise which has been negotiated in good faith;

Then, in such event, either party may, within one hundred eighty (180) days of the effective date of such change in federal or state law request in writing to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise.

Within thirty (30) days from and after receipt of such written request, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by PSE, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

Section 29. No Third Party Beneficiary

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

Section 30. Notice of Tariff Changes

PSE shall, when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide the City Manager with a copy of the submitted application within thirty (30) days of filing with the WUTC. PSE shall further provide the City Manager or designee with a copy of any approved Tariff change affecting the provisions of this Franchise.

Section 31. Force Majeure

Any prevention, delay or inability to perform the duties and obligations under this Franchise due to a Force Majeure Event shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Franchise specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure Event. Provided, however, that the party has communicated the circumstance of the Force Majeure Event to the other party and has taken all commercially reasonable steps within its control to satisfy its duties and obligations under this Franchise and mitigate the effects of the Force Majeure Event.

Section 32. Memorandum of Understanding

The parties have separately entered into, and shall maintain in effect for the term of this Franchise, a Memorandum of Understanding ("MOU") that details their respective expectations and obligations for the reporting of certain performance and reliability measures regarding electrical service to PSE customers within the City. The parties agree that the MOU is an integral part of this Franchise, and may be enforced under the terms and conditions set forth in this Franchise.

CITY OF KENMORE

PUGET SOUND ENERGY, INC.

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

ACCEPTANCE OF FRANCHISE

The provisions of this franchise ordinance are agreed to and hereby accepted. By accepting this franchise ordinance, PSE covenants and agrees to perform and be bound by each and every term and condition of this franchise ordinance. PSE agrees to send to the City PSE's written acceptance of this Franchise via certified mail, unless otherwise hand-delivered to an employee of the City at City Hall during regular working hours.

Dated: _____

PUGET SOUND ENERGY, INC.

By: _____

Printed Name: _____

Its: _____

ATTEST

PUGET SOUND ENERGY, INC.

By: _____

Printed Name: _____

Its: _____

**Memorandum of Understanding
Performance and Reliability Reporting**

Contract No.19-C2043

This Memorandum of Understanding (this "**MOU**") is entered into by and between the City of Kenmore (the "**City**") and Puget Sound Energy, Inc. ("**PSE**"), also referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, the City and PSE recognize the value of enhancing their working relationship through cooperation, planning, communication and coordination; and

WHEREAS, the reliability of electrical services provided by PSE in the City was presented as a serious concern by the community and City leadership in 2015; and

WHEREAS, a 2016 independent technical analysis commissioned by the City stated that nine of the of the ten electrical circuits serving the City were in the lowest 40% of electrical circuits within PSE's entire system with respect to reliability and seven of those nine performed in the lowest 25% of all circuits in the PSE system with respect to reliability; and

WHEREAS, the City and PSE have been working together to improve electrical reliability within the City as a whole, and PSE initiated improvements for certain electrical circuits serving the City in 2016 and 2017 that are designed to improve reliability; and

WHEREAS, the City and PSE desire to establish mutually agreed provisions for the reporting of certain performance and reliability measures for PSE's electric service;

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

1. This MOU may be amended from time to time only by mutual written agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this MOU.
2. This MOU, as from time to time amended, will remain in full force and effect for a period of five (5) years from the date of this MOU as set forth below, unless sooner terminated or extended by mutual agreement of the Parties.
3. The performance of the Parties under this MOU is subject to all applicable regulations of the Washington Utilities and Transportation Commission ("WUTC"), and any such regulation shall govern and control over any inconsistent provision of this MOU. As of the effective date of this MOU, the parties acknowledge that the provisions set forth in this MOU are consistent with existing WUTC regulations and tariffs.

4. PSE will use good faith efforts to maintain and improve the reliability of the electrical service provided by PSE to all of its electric customers in the City. In furtherance of this objective, PSE will undertake to do the following:

(a) On an annual basis, provide a written report to the City detailing the System Average Interruption Frequency Index ("**SAIFI**") and the System Average Interruption Duration Index ("**SAIDI**") for PSE's electric service within the City for a period that covers each of the previous five (5) years, including SAIFI and SAIDI information by individual PSE circuit serving the City that is calculated using the standard IEEE method; however, such reporting may use separate tables for transmission and substation outages and exclude outages without material customer impact (e.g., a substation being taken off-line for repair while maintaining electric service to customers within the City). PSE shall also provide an annual comparison of its service reliability within the City against its service reliability within cities that border the City and are within PSE's electric service territory, as well as a written comparison of its service reliability within the City against its service reliability across PSE's entire service area; and

(b) On an annual basis, identify and provide a written report to the City identifying any PSE circuits serving the City having a SAIFI and/or SAIDI, for the previous twelve (12) months, that is greater than the PSE system SAIFI and/or SAIDI for the same period and identify any corrective actions that may be taken by PSE to improve any such circuits. PSE shall include, in the report, annual outage data by circuit within the City, and each report shall be submitted by May 31st of each year with outage data for the immediately preceding calendar year; and

(c) On an annual basis, provide a written report to the City concerning all non-scheduled outages (and resulting service interruptions to customers) within the City during the previous twelve (12) months that involve electric service interruption to customers within the City (or such other threshold number of customers as the parties may agree upon from time to time), identifying the individual circuit, cause, equipment, duration and number of customers affected by the outage. Upon the City's reasonable request, PSE also will provide information regarding non-scheduled outages during the previous twelve (12) months that involved electric service interruption to any individual neighborhood within the City that lasted more than two (2) times the average community restoration time for other neighborhoods within the City.

(d) At a minimum annually, but more often as mutually agreed upon by the Parties, PSE shall present a report to the City Council at a public meeting, on a date mutually agreed upon by the Parties, summarizing the following:

(i) information contained in the written reports submitted by PSE pursuant to subsections (a) through (c) for the previous twelve (12) months;

(ii) PSE's processes and efforts for restoring electric service to its customers in the City during outages over the previous twelve (12) months, and identifying the steps necessary to expedite power restoration;

(iii) PSE's processes and methods for notifying and coordinating with the City during outage and storm, and emergency response, including designated PSE emergency contact information to report PSE equipment issues that compromise, or potentially could compromise, public safety or traffic movement in the right-of-way, and staff members designated by PSE to communicate with City leadership or designated staff when outages occur and to report on areas affected, remedies planned or underway and estimated restoration times;

(iv) system enhancements made by PSE over the previous twelve (12) months that show progress toward meeting system enhancement goals outlined by the City in its Kenmore Comprehensive Plan Utilities Element or other applicable system plans;

(v) projects that PSE anticipates undertaking during the next three (3) years to improve the reliability of its electric service in the City, including but not limited to smart grid alternatives or other innovative power measures; and

(vi) other matters mutually agreed upon by the Parties.

At the time PSE presents its report to the City, PSE also will give an update on PSE's plans and efforts for decreasing fossil fuel-generated electricity system wide, in addition to related information that is in PSE's reports to the WUTC or other government entities.

5. The information provided by PSE to the City under this MOU shall be provided to facilitate further inquiry by the City to PSE concerning the performance and reliability of PSE's electric service within the City. If the reports required by this MOU show that any individual circuit serving the City has a SAIFI and/or SAIDI for the preceding year that is greater than the PSE system SAIFI and/or SAIDI for the same period, then PSE will meet at the City's request and seek to resolve the issue in good faith. The provision of such information shall not otherwise create or imply any other commitment or obligation of PSE. The City will not provide such information to any third party without prior notice to PSE of the City's intention to do so.

6. The parties acknowledge that the City's goal is to have all circuits in the City operating at the PSE system average or better with respect to frequency and duration of outages, excluding major storm event related outages. Recognizing PSE project investments undertaken in 2016-2018 and presuming that comparable investments will continue throughout the Franchise term, the parties acknowledge that substantial progress toward that goal should be evident by Year 2 of the Franchise Agreement term, particularly for Circuits with 2016-2018 investments such as: Inglewood 17, Kenmore 25, Kenmore 26*, Kenmore 27*, Inglewood 13*, Kenmore 23*, Wayne 15* and Inglewood 15*.¹ Any of those circuits previously in the lowest reliability quartile (starred) should at minimum be operating at 40% or higher by Year 3. North Bothell 26 is expected to maintain or improve its performance (at 35% for rolling average for 2010-2014). The City

¹ *Circuits in lowest quartile rolling 5 year average (2010-2014) as reported in Exponent's 2016 report

will expect reliability investments during the Franchise Term to Inglewood 16* Circuit. The parties will rely on the yearly data on Frequency and Duration of outages as reported pursuant to Section 4b of the MOU.

7. As part of the parties' collaboration efforts under Sections 4 - 6 above, the City and PSE may give particular focus in their discussions to:

(a) measures for further improving the reliability of any individual electrical circuits serving the City that performed below PSE's system wide average reliability for the current and past three (3) years, such as accelerated vegetation management activities after a power outage, pole replacement, tree wire insulation, and/or sectionalizing switches at specific locations to minimize faulted regions and restore power to un-faulted regions of the electrical circuits serving the City; and

(b) measures to implement through PSE's improvement planning smart grid technology that provides smart, automated systems and switches to provide reliability, redundancy and resiliency in the electrical circuits serving the City, both as to existing circuits and those in new development areas.

8. Upon the City's reasonable request, but in no event more frequently than once each year, PSE will report to the City on the following:

(a) PSE's process and method (as made available) for providing its customers with information regarding filing claims for restitution for damages caused by power outages and/or obtaining available rebates relating to non-storm power outage events exceeding the duration of neighboring areas;

(b) PSE's efforts to establish a mechanism for communicating with property owners who have PSE Facilities located on or near their property that PSE may need to access for maintenance or service restoration of such PSE Facilities; and

(c) PSE's process and method (as made available) for allowing residential and commercial customers within the City to install grid-tie technology, which allows the customer to net meter their electricity based on power generated on site via solar, wind, or other renewable source.

9. PSE and the City will work together and collaborate in good faith on Comprehensive Plan Utilities Element updates and service planning to help facilitate meeting planned development projections.

10.

a) The parties acknowledge that PSE submitted a proposal in October, 2018 to the Washington Utilities and Transportation Commission (WUTC) for Expanded Education and Charging Stations for Electric Vehicles (EV) (Filing UE 180877) ("EV Charging Station Tariff"). The WUTC approved the tariff on December 13, 2018. The parties also acknowledge that discussions and drafts of the MOU and Franchise have consistently included concepts and language for partnership between the City and PSE in EV Charging Station installation /operation in Kenmore, which, until November 2018

had no public EV charging stations. In November, 2018, the City installed one EV Charging Station in downtown Kenmore; PSE has no involvement in this station's installation or operation.

b) Pursuant to the proposal in the EV Charging Station Tariff, PSE has established a two year pilot program for improving access to charging infrastructure by installing/operating EV charging stations in a mix of user categories, including Public Charging, Workplace, and Multi-Family. The pilot program will be conducted in accordance with the tariff. Pursuant to its obligations under the tariff, PSE will evaluate the City on the same set of criteria and an equal basis with other jurisdictions when selecting sites for the program, and the Parties agree that if a Kenmore site is selected for installation of an EV Charging Station, the Parties will collaborate in public education and awareness, and installation of the station.

11. The City acknowledges that it will consider proposing issues of mutual interest to be added to the state or federal legislative agenda.

Agreed and Accepted this ____ day of _____, 2019.

CITY OF KENMORE

PUGET SOUND ENERGY, INC.

City Manager

(Title)

Approved as to form:

City Attorney

ORDINANCE NO. 05-0233

AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE AND AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY AND NATURAL GAS FOR POWER, HEAT, LIGHT AND ANY OTHER PURPOSE FOR WHICH ELECTRICAL ENERGY AND NATURAL GAS MAY BE USED.

WHEREAS, RCW 35A.11.020 grants the City authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for...poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy,...for gas...", and

WHEREAS, Puget Sound Energy has requested a franchise for purposes of transmission, distribution, and sale of electrical energy and natural gas for power, heat, light, and any other purpose for which electrical energy and natural gas may be used, and

WHEREAS, the City Council adopted Ordinance No. 98-0030, granting an extension of the King County franchises under the same terms and conditions as Washington Natural Gas and Puget Power and Light Company, now collectively known as Puget Sound Energy, and

WHEREAS, the franchise agreements with Puget Sound Energy expired or will expire on October 13, 2004 for electrical light and power and August 31, 2005 for natural gas, and

WHEREAS, the City of Kenmore and Puget Sound Energy have negotiated a mutually acceptable franchise agreement, and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Kenmore to grant a non-exclusive franchise to Puget Sound Energy for the operation of electric distribution, electric transmission, and natural gas distribution systems within the City right-of-way; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions

Where used in this franchise (the "Franchise") the following terms shall mean:

- 1.1 "Puget" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.
- 1.2 "City" means the City of Kenmore, a municipal corporation of the State of Washington, and its respective successors and assigns. Specifically, the City includes all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.
- 1.3 "Days" means calendar days.
- 1.4 "Franchise" means the grant of rights, privileges and authority embodied in this Ordinance.
- 1.5 "Franchise Area" means all public rights-of-way including the surface of and space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway and drive within the City as now and as may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended; and all City owned easements used for such rights-of-way and/or dedicated for the placement and location of utilities, provided such easements would allow Puget to fully exercise the rights granted under this Franchise within the area covered by such easements.
- 1.6 "Facilities" means collectively, any and all:
 - 1.6.1 natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communications systems and all necessary facilities and appurtenances thereto, whether the same be located over or under ground;
 - 1.6.2 electrical transmission and distribution systems, including but not limited to poles (with or without cross arms), including Puget-owned street lighting poles and luminaires, wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, switches, transformers, ducts, vaults and all necessary facilities and appurtenances thereto, whether the same be located over or under ground.
- 1.7 "Ordinance" means this Ordinance No. 05-0233, which sets forth the terms and conditions of this Franchise.
- 1.8 "Permitting Authority" means the head of the City department authorized to process and grant permits required to perform work in the Franchise Area, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.9 "Public Works Director" means the head of the Public Works Department of his or her designee.
- 1.10 "Tariff" means "tariff" as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

- 1.11 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Facilities within the Franchise Area

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to Puget the right, privilege, authority and franchise subject to the terms and conditions hereinafter set forth, to install, construct, operate, maintain, repair, replace, and use Facilities for electric distribution, electric transmission and natural gas distribution systems, in, under, on across, over, through, along or below the Franchise Area, for the transmission, distribution and sale of electrical energy and natural gas power, heat and light, and any other purposes for which electrical energy and natural gas may be used, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.
- 2.2 This Franchise specifically does not authorize Puget to install or use Facilities to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside Puget's organization. This section does not restrict Puget's ability to utilize telemetric devices to monitor and operate its electric distribution, electric transmission and natural gas distribution systems or to monitor and control the usage of electrical energy and/or natural gas.
- 2.3 Puget acknowledges the City's desire and intent that City rights-of-way be free of encumbrance by rights held by others, including Puget, and that the City requires that rights-of-way dedicated by property owners to the City be free of such encumbrances. All rights-of-way so dedicated during the term of this Franchise shall be Franchise Area and Facilities thereafter installed by Puget therein shall be subject to the terms and conditions of this Franchise.
- 2.4 In the event Puget has within the Franchise Area an prior existing easement or other right not derived from this Franchise or from a prior franchise granted by the City, and Puget desires to install Facilities within and using such prior right, then Puget will provide notice of same to the City prior to such installation. The City may request that Puget instead install its Facilities within the Franchise Area pursuant to rights granted by this Franchise. Puget will consider the facts and conditions that bear upon such request and will respond to the City, including meeting with the City to discuss such request, prior to installation of Puget's Facilities. When reasonably determined by Puget to be consistent with prudent utility practice, Puget will install its Facilities as so requested by the City.

Section 3. Nonexclusive Franchise

This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any portion of the Franchise Area. Such Franchise shall in no way prevent or prohibit the City from using any portion of the Franchise Area or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make necessary changes, relocations, repairs, maintenance, establishment, and improvement of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new rights-of-way or other public properties of every type and description.

Section 4. Term of Franchise/Acceptance

- 4.1 This Franchise is and shall remain in full force and effect for a period of ten (10) years from the effective date of the Ordinance. This Franchise is granted upon the express condition that Puget, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same, and when so accepted by Puget, shall constitute a contract between the City and Puget for all the purposes herein set forth. If Puget fails to provide its written acceptance as provided above, this Ordinance and Franchise shall be null and void.

Section 5. Non-Franchise Area City Property

- 5.1 This Franchise shall not convey any right to Puget to install Facilities on or to otherwise use City-owned or leased properties outside the Franchise Area.
- 5.2 Existing Facilities installed or maintained by Puget on public grounds and places within the City in accordance with prior franchise agreements, but which are not within the Franchise Area as defined by this Franchise, may be maintained, operated, repaired and/or replaced in like kind by Puget at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures.

Section 6. Compliance with State and Local Regulations

- 6.1 Puget shall comply with all federal, state, and local laws or regulations applicable to the exercise of Puget's rights and obligations under this Franchise. Upon written inquiry, Puget shall provide a specific reference to either the federal, state, or local law or the WUTC order or action establishing a basis for Puget's actions related to the exercise of such rights and obligations.
- 6.2 In granting this Franchise the City hereby reserves all lawful powers and franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with and so as not to impair the rights, privileges, authority and franchise conferred to Puget by this Franchise.

Section 7. Noninterference of Facilities

- 7.1 Puget's Facilities shall be located and maintained, within the Franchise Area so as not to interfere with the free and safe passage of pedestrian and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto. Puget's

Facilities shall be maintained in accordance with the laws of the State of Washington, Kenmore Municipal Code, and applicable regulations and standards of the City.

- 7.2 In the event that the Public Works Director reasonably determines, after providing written notice to Puget and a reasonable opportunity for Puget to respond to the Public Works Director's concerns, that any one or more of Puget's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian and vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then Puget shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with Puget, including, without limitation, allowing changes to or modifications of the Franchise Area (and other City property), at Puget's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference.
- 7.3 In the event such interference requires relocation of Puget's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 13 below (any such interference resulting from new development ingress or egress to properties abutting the Franchise Area in proximity to Puget's Facilities existing within the Franchise Area prior to the development shall be subject to Section 13.6).

Section 8. Dangerous Conditions, Authority for the City to Abate

- 8.1 In the event that Puget's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the Public Works Director may direct Puget, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.
- 8.2 In the event PSE fails to promptly take action as directed by the City pursuant to Section 8.1, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take actions as it reasonably believes are necessary with respect to Puget's Facilities or operations to protect persons or property and in such event Puget shall be responsible to reimburse the City for its costs incurred in so doing. With respect to Puget's gas facilities, the City's authority to act upon Puget's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition by closing the natural gas supply valve at a meter or appliance.

Section 9. Permit Required

- 9.1 Whenever Puget excavates in the Franchise Area for purposes of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with all ordinances and regulations of the City. In no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.
- 9.2 Puget shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance

activities within the right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.

- 9.3 In the event of any emergency where any Facility located in the Franchise Area are broken or damaged, or if Puget's work area within the Franchise Area is in such a condition as to endanger any person or property, Puget shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for and obtaining a permit as required by Section 9.1. This provision shall not relieve Puget from later obtaining any necessary permit for the emergency work. Puget shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.
- 9.4 **Pavement Disturbance.** In the event Puget proposes to cut or disturb pavement within the Franchise Area for any purpose (except as provided in Section 9.3) within three years of the surfacing or resurfacing of such pavement, Puget shall apply to the City for a permit to make such disturbance in accordance with Section 9. In its application Puget shall identify the specific paving proposed to be disturbed, describe the scope and extent of the proposed disturbance and explain the necessity for such disturbance. Puget shall minimize the extent of such pavement disturbance to that reasonably necessary to perform its work. Puget acknowledges the City's authority and discretion to approve (or not approve) disturbance of such pavement and to condition such approval in accordance with Section 10 to include such pavement restoration requirements as may be determined by the Public Works Director to be reasonably necessary to restore the integrity of the paving disturbed by Puget's work. Puget shall not cut or disturb such pavement (except as provided in Section 9.3) without written authorization from the Public Works Director.

Section 10. Restoration

- 10.1 Puget shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise Area, promptly restore the Franchise Area to at least the same condition as existed immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and City standards and specifications. The Public Works Director shall have final approval of the condition of the Franchise Area after restoration.
- 10.2 If it is determined that Puget has failed to restore the Franchise Area in accordance with Section 10, the City shall provide Puget with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this section. The remedy granted to the City under this section shall be in addition to those otherwise provided by this Franchise.
- 10.3 All work by Puget pursuant to this Section 10 shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington, Kenmore Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

Section 11. Bonding Requirement

- 11.1 Before undertaking any of the work authorized by this Franchise, Puget shall furnish a bond executed by Puget and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Public Works Director as reasonably sufficient to ensure performance of Puget's obligations under this Franchise. The bond shall be conditioned so that Puget shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. Puget may meet the obligations of this section with one (1) or more bonds acceptable to the City. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Puget shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.
- 11.2 With respect to undertaking any of the work authorized by this Franchise, in the event Puget fails to perform its obligations under this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by Puget pursuant to Section 11.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from Puget of costs incurred by the City to cure such deficiency.
- 11.3 In the event the City makes use of such bond(s) furnished by Puget pursuant to Section 11.2, the City shall promptly provide written notice of same to Puget. Within thirty (30) days of receipt of such notice, Puget shall replenish or replace such bond(s) as provided in Section 11.1.
- 11.4 The rights reserved to the City by this Section 11 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 11 shall constitute an election or waiver of any rights or other remedies the City may have.

Section 12. Underground Installation of Facilities

- 12.1 Puget acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area. The City acknowledges that Puget provides electrical and gas service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to and in accordance with such Tariffs, Puget will cooperate with the City in the formulation of policy and development regulations concerning underground installation of Puget's Facilities within the Franchise Area.
- 12.2 New extensions of electric Facilities that operate at 15,000 volts (15kV) or less constructed by Puget within the Franchise Area during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC; provided that extensions of existing overhead Facilities of up to five spans or 500 feet (whichever is less) may, subject to the City's prior written consent which shall not be unreasonably withheld, be installed overhead in locations having other existing overhead utilities.

- 12.3 If, during the term of this Franchise, the City shall direct Puget to replace (convert) its overhead electric distribution Facilities (15kV or less) then existing within the Franchise Area with underground Facilities, such underground conversion shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.
- 12.4 This Section 12 shall govern all matters related to underground installation of Puget's Facilities within the Franchise Area.

Section 13. Relocation of Facilities

- 13.1 Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area, or the Public Works Director reasonably determines that Puget's Facilities interfere with the free and safe passage of pedestrian and/or vehicular traffic pursuant to Section 7 above, and such public works improvement or interference necessitates the relocation of Puget's Facilities then existing within the Franchise Area, the City shall:

- (i) provide Puget, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and
- (ii) provide Puget with copies of relevant portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area at no charge to the City. If, during the construction of any such public works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of Puget's Facilities within the Franchise Area, the City shall give Puget notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Puget shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities at no charge to the City.

- 13.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. Puget shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and Puget agree that there is not sufficient space for the relocated Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the City and Puget, the City shall provide sufficient space for the relocated Facilities by obtaining additional right-of-way or other equivalent rights mutually agreeable to the City and Puget, which shall be Franchise Area, title of which shall be in the City's name.
- 13.3 Puget may install relocated Facilities on property outside of the Franchise Area, the rights for which shall be obtained by Puget at no expense to the City, if:
 - (i) notwithstanding the use of best efforts by the City and Puget as outlined above, the City and Puget do not agree whether there is or will be sufficient space within the Franchise Area for the relocated Facilities, or
 - (ii) locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice.

The City and Puget shall each act in good faith and use their respective best efforts to mutually agree on the location of such relocated Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 13 shall limit the rights of the City or Puget with respect to acquisition or use of property rights outside of the Franchise Area.

- 13.4 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Sections 13.1-13.3, the City shall reimburse Puget for all costs incurred by Puget in connection such subsequent relocation.
- 13.5 Puget shall have the right as a condition of any relocation described in this Section 13.5 to require such person or entity other than the City to make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities whenever:
 - (i) any person or entity, other than the City, requires the relocation of Puget's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or
 - (ii) the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Puget's Facilities within the Franchise Area.
- 13.6 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Puget's Facilities within the Franchise Area shall be a condition or requirement causing relocation of Puget's Facilities to occur subject to the provisions of Section 13.5 above; provided, however:
 - (i) in the event the City reasonably determines and notifies Puget that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement within a segment of the Franchise Area on the City's behalf, and
 - (ii) such public works improvement is otherwise reflected in the City's adopted Six-Year Capital Improvement Program; Transportation Improvement Program; or Transportation Facilities Program;

Then only those costs and expenses incurred by Puget in connecting such relocated Facilities with Puget's other Facilities shall be paid to Puget by such person or entity, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 13.1-13.3.

- 13.7 As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget in accordance with Sections 13.1-13.3, Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Puget of such written alternatives, the City shall evaluate such alternatives and shall advise Puget in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of Puget's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Puget full and fair consideration with

due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by Puget shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in Sections 13.1-13.3.

- 13.8 Nothing in this Section 13 shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or, except for the rights described in Section 5.2, other prior rights.

Section 14. Coordination/ Shared Excavations

- 14.1 Puget and the City shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to inform the other party and other utilities within the Franchise Area of its intent to undertake such construction work. Puget and the City shall further exercise best reasonable efforts to minimize delay or hindrance to construction work undertaken by themselves and other utilities within the Franchise Area.
- 14.2 If, at any time or from time to time, either Puget or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:
- (i) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
 - (ii) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

Section 15. City Use of Facilities

- 15.1 During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by Puget and (b) within the Franchise Area, the City, subject to Puget's prior written consent which shall not be unreasonably withheld, may install and maintain City-owned overhead wires upon such poles for police, fire, traffic control and other noncommercial municipal communications purposes. The foregoing rights of the City to install and maintain such wires and cable are further subject to the following:
- (i) Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as Puget may specify from time to time (including, without limitation, requirements accommodating Puget's Facilities or the facilities of other parties having the right to use Puget's Facilities);
 - (ii) Puget shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned wires or the installation or maintenance thereof; and

- (iii) The City shall indemnify, defend and hold harmless Puget in connection with the City's use of Puget's Facilities; and
- (iv) Puget shall not charge the City a fee for the use of such poles in accordance with this Section 15 as a mean of deriving revenue therefrom (such as a rental or lease fee); provided, however, nothing herein shall require Puget to bear any cost or expense in connection with such installation and maintenance by the City.

Section 16. Moving Buildings Within the Franchise Area

- 16.1 If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Puget for the temporary adjustment of Puget's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with Puget shall be made, to Puget's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, Puget shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:
- (i) the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business; and
 - (ii) the person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold Puget harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

Section 17. Records of Installation and Planning

- 17.1 Upon the City's reasonable request, Puget shall promptly provide to the City copies of available plans of improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate Puget to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.
- 17.2 Upon the City's reasonable request, Puget shall provide to the City copies of available drawings in use by Puget showing the approximate location of Puget's Facilities at specified locations within the Franchise Area. Puget shall further provide, upon the City's reasonable request in connection with the City's design of new streets and intersections and major renovations of existing streets and intersections, field marking of Puget's underground Facilities within the Franchise Area, if such Facilities can be so

field marked with reasonable accuracy using devices designed to respond to the presence of Puget's underground Facilities. Notwithstanding the foregoing, however, Puget does not warrant the accuracy or sufficiency of any such drawings or field markings or other information provided by Puget, and Puget shall not be liable to the City or others for any errors or defects in the same.

- 17.3 In addition, whenever Puget and the City agree that it is mutually beneficial to both parties in connection with the design of new streets and intersections and major renovations of existing streets and intersections, Puget shall verify the actual location of its underground Facilities within the Franchise Area by excavating, including pot holing, at no expense to the City.
- 17.4 Notwithstanding the foregoing, nothing in this Section 17 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 18. Vegetation Management

- 18.1 Puget shall, on an annual basis, provide the City a list of locations within the Franchise Area at which Puget anticipates performing vegetation management activities; provided that such list shall not limit Puget's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to Puget's facilities, pose an imminent threat to public safety or the reliable operation of Puget's facilities.
- 18.2 Puget shall, in coordination with the City, identify vegetation species appropriate for location in proximity to Puget's facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.
- 18.3 Puget shall not commence non-emergency vegetation management work without notice to abutting private property owners or occupants at least ten (10) working days in advance of the work to be performed, including the location and description of the work to be performed, the date work is planned to commence, and a contact name and telephone number at Puget. In performing vegetation management work, Puget shall comply with ANSI 300 pruning standards.
- 18.4 At the request of an abutting private property owner, Puget shall employ or consult with a certified arborist to assess the type of pruning proposed to be done and/or shall provide the abutting owner with alternatives to the type of pruning proposed to be done. Puget will reasonably consider alternatives proposed by the abutting property owner and any arborist hired by the property owner.
- 18.5 Nothing in this Franchise is intended to absolve Puget from any liability resulting from damage caused by trees that are severely pruned or topped by Puget and subsequently fall as a result of such pruning or topping.

Section 19 Condemnation.

The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of Puget's Facilities within the Franchise Area.

Section 20 Indemnification

- 20.1 Puget shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part to the extent of, the willfully tortious, or negligent acts, or negligent omissions of Puget or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to Puget by this Franchise. Provided, however, such indemnification shall not extend to any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.
- 20.2 Puget's indemnification obligations pursuant to Subsection 20.1 shall include assuming potential liability for actions brought by Puget's own employees and the employees of Puget's agents, representatives, contractors, and subcontractors even though Puget might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Puget's exercise of the rights set forth in this Franchise. The obligations of Puget under this Subsection 20.2 have been mutually negotiated by the parties hereto, and Puget acknowledges that the City would not enter into this Franchise without Puget's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Puget waives its immunity under Title 51 RCW as provided in RCW 4.24.115.
- 20.3 In the event any matter (for which the City intends to assert its rights under this Section 20) is presented to or filed with the City, the City shall promptly notify Puget thereof and Puget shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to Puget's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action be started against the City based upon any such matter, the City shall likewise promptly notify Puget thereof, and Puget shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Puget's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

Section 21. Insurance

- 21.1 Puget shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Puget, its agents, representatives or employees. Puget shall provide certificate(s) of insurance (Form CG2010 ISO or equivalent) and/or evidence of self-insurance, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:

- (i) Commercial general liability insurance or excess liability insurance, including coverage for premises-operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:
 - A. \$2,000,000 for bodily injury or death to each person; and
 - B. \$2,000,000 for property damage resulting from any one accident.
 - (ii) Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident.
 - (iii) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000.
- 21.2 Puget shall maintain the liability insurance policies required by this Section 21 throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Puget.
- 21.3 Puget's insurance shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers. Any insurance maintained by the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers shall be in excess of Puget's insurance and shall not contribute with it.
- 21.4 The cancellation clause of any certificate(s) of insurance (ACORD Form 25 or equivalent) provided to the City pursuant to Section 21.1 shall include the following provision:
- "Should any of the policies described by this certificate be canceled before the expiration date thereof, the issuing company will provide at least thirty (30) days written notice thereof to the certificate holder."
- 21.5 In the event any of the insurance required by this Section 21 is canceled or otherwise not renewed during the term of this Franchise, Puget shall promptly acquire replacement insurance or shall utilize self insurance to restore and maintain the amount of coverage required by this Section 21 and shall promptly provide to the City certificate(s) of insurance or evidence of self insurance as provided in this Section 21 as may be applicable.

Section 22. Default

- 22.1 If Puget shall fail to materially comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon Puget a written order to so comply within thirty (30) days from the date such order is received by Puget. If Puget is not in material compliance with this Franchise after expiration of said thirty (30) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to materially comply with this Franchise by Puget cannot be corrected with due diligence within said thirty (30) day period then the time within which Puget may so comply may be extended for a period of time as may be reasonably necessary and as agreed upon by the parties, so long as Puget commences promptly and diligently to effect such material compliance.
- 22.2 Notwithstanding Puget's obligation to comply and to proceed with due diligence to correct any default, the City recognizes that unavoidable delays and events beyond

Puget's control may occur. In such event the parties agree that Puget shall make a good faith effort to expeditiously remedy the default. In the event of a declaration of forfeiture, should either party commence litigation against the other to appeal (in the case of Puget) or enforce (in the case of the City) such declaration of forfeiture, the prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorneys fees.

Section 23. Reimbursement of Administrative Costs

- 23.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Puget, except, as provided in RCW 35.21.860,
- 23.2 Puget shall reimburse the City for all actual administrative expenses and costs incurred by the City that are directly related to negotiating, reviewing and approving this Franchise, to reviewing and approving a permit or license pursuant to this Franchise, to inspecting plans and construction pursuant to this Franchise, and to preparing a detailed statement, as may be required by Chapter 43.21C RCW.
- 23.3 The City shall invoice Puget for all administrative expenses and costs to be reimbursed by Puget hereunder including an itemized statement showing such expenses and costs. Puget shall promptly remit payment therefore as provided in applicable adopted City codes, regulations and rules. Notwithstanding any other provision of this Franchise, no acceptance by Puget of this Franchise shall be effective in the absence of reimbursement for negotiating, reviewing and approving this Franchise.
- 23.4 If Puget disputes any expense or cost included on the City's invoice, Puget shall promptly notify the City thereof and shall otherwise promptly remit payment for any and all undisputed expense and costs included on the City's invoice. As to any expense or cost disputed by Puget, Puget shall promptly provide written identification of such disputed amount(s) together with its written justification for such dispute to the City for the City's consideration. Puget and the City shall work together in good faith to resolve any disputed amount(s), including provision by either or both parties of such further information and documentation supporting or refuting such disputed amount(s) as may reasonably and practically be provided. In the event such dispute is not resolved through discussion of the parties, the dispute shall be resolved as otherwise provided for or prescribed by adopted City codes, regulations and rules. Until any such dispute is resolved by the Parties the City may, at its sole discretion, suspend work being performed by the City or Puget and/or withhold City issued permits or City approvals related to such disputed amount(s). Such dispute will not otherwise effect any other obligation of the parties under this Franchise or under any applicable City code, regulation or rule.

Section 24. Utility Tax

Puget acknowledges that the City is authorized under the laws of Washington State to impose certain taxes upon Puget. Nothing in this Franchise shall exempt (nor shall be construed to exempt) Puget from payment of any and all such taxes lawfully imposed by Kenmore Municipal Code, as may hereafter be lawfully amended or superseded, and due from Puget; provided, nothing in this Section 24 shall be construed in any way as a waiver of Puget's rights to contest the validity of any such tax or the amount of any tax due. If payment of such taxes is not made by Puget in a timely manner, the City reserves the right, at its sole option, to

inter alia suspend the rights granted to Puget by this Franchise until such time that Puget pays such taxes or Puget and the City otherwise resolve any matter concerning payment thereof.

Section 25. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon Puget and the City. Puget may not assign or otherwise transfer its rights, privileges, authority and franchise herein conferred without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. The City hereby authorizes and approves Puget to mortgage its rights, privileges, authority and franchise in and under this Franchise to the Trustee for its bondholders.

Section 26. Severability and Survival

- 26.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- 26.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 6 above, the parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 27. Amendments to Franchise

- 27.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington and the City of Kenmore. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:
- (i) references this Franchise; and
 - (ii) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.
- 27.2 This Franchise is subject to the provisions of any applicable Tariff on file with and accepted by the WUTC. In the event of any conflict or any inconsistency between the provisions of this Franchise and such Tariff, the provisions of such Tariff shall control.

27.3 The parties agree to renegotiate the terms of this Franchise, if, during the term of this Franchise there becomes effective any change in federal or state law which:

(a) Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not, prior to such change, have been consistent with federal or state law; or

(b) Pre-empted or otherwise renders null and void any term or condition of this Franchise which has been negotiated in good faith;

then, in such event, either party may, within one hundred eighty (180) days of the effective date of such change in federal or state law request in writing to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after receipt of such written request, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by Puget, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

Section 28. No Third Party Beneficiary

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

Section 29. Notice of Tariff Changes

Puget shall, when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide the Public Works Director with a copy of the submitted application within five (5) days of filing with the WUTC. Puget shall further provide the Public Works Director with a copy of any approved Tariff change affecting the provisions of this Franchise.

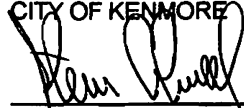
Section 30. Repealer

Upon the effective date of this Ordinance and acceptance of such Ordinance and Franchise by Puget, City ordinance 98-0030 shall be deemed repealed.

Section 31. Effective Date

This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 25th of July, 2005.

CITY OF KENMORE

Steven Colwell, Mayor

ATTEST/AUTHENTICATED:


Lynn Batchelor, City Clerk

Approved as to form:


Rod Kaseguma, City Attorney

Filed with the City Clerk:	July 15, 2005
Passed by the City Council:	July 25, 2005
Ordinance No.:	05-0233
Date of Publication:	July 29, 2005
Effective Date:	August 3, 2005

HONORABLE MAYOR AND CITY COUNCIL
CITY OF KENMORE, WASHINGTON

In the matter of the application :
of Puget Sound Energy, Inc., a : Franchise Ordinance No. 05-0233
Washington corporation, for a :
franchise to construct, operate :
and maintain facilities in, upon, :
over under, along, across and :
through the franchise area of the : ACCEPTANCE
City of Kenmore, Washington :

WHEREAS, the City Council of the City of Kenmore, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 05-0233, bearing the date of July 25, 2005; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on August 29, 2005, from said City of Kenmore, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Kenmore, King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Director of Community Services thereunto duly authorized on this 8th day of September, 2005.

ATTEST:

PUGET SOUND ENERGY, INC.

By: Jason VanTha

By: Mark Bowman

Copy received for City of Kenmore
on Sept. 14, 2005

By: Debra Batchelor

City Clerk

CITY OF KENMORE, WASHINGTON

ORDINANCE NO. 18-0456

AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE NON-EXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY AND NATURAL GAS FOR POWER, HEAT, LIGHT AND OTHER PURPOSES FOR WHICH ELECTRICAL ENERGY AND NATURAL GAS MAY BE USED.

WHEREAS, RCW 35A.11.020 grants the City authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy,...for gas..."; and

WHEREAS, Puget Sound Energy, Inc. ("PSE") has requested a franchise for purposes of transmission, distribution, and sale of electrical energy and natural gas for power, heat, light, and any other purpose for which electrical energy and natural gas may be used; and

WHEREAS, on July 25, 2005, the City Council adopted Ordinance No. 05-0233, which granted a franchise to PSE for the construction, operation, maintenance and repair of natural gas and electric transmission and distribution facilities for a ten year period; and

WHEREAS, the original ten-year term of the franchise agreement with PSE ended in August of 2015, and the parties have continued to operate under the terms of such franchise since that time in conjunction with the negotiation of a new franchise; and

WHEREAS, the City of Kenmore and PSE have negotiated a new, mutually acceptable franchise agreement; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Kenmore to grant a non-exclusive franchise to PSE for the operation of electric distribution, electric transmission, and natural gas distribution systems within the City right-of-way;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Recitals Incorporated. The Recitals set forth above are herein incorporated by reference as if set forth in full.

Section 2. Finding of Public Interest. The City Council hereby finds that the non-exclusive franchise agreement with Puget Sound Energy, Inc. attached hereto as Exhibit A, and herein incorporated by reference as if set forth in full, is in the public interest.

Section 3. Franchise Authorized. The City Council hereby approves and authorizes the City Manager to enter into the non-exclusive franchise agreement attached hereto as Exhibit A (the "Franchise") with Puget Sound Energy, Inc., to construct, operate and maintain its utility facilities, as defined in the Franchise, in, across, under, upon, along and over public roads and rights-of-way of the City of Kenmore.

Section 4. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance or the Franchise, or its or their application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance or the Franchise be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or the Franchise, or its or their application to other persons or circumstances.

Section 5. Effective Date. This Ordinance, being in compliance with RCW 35A.47.040, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

APPROVED by the City Council this ____ day of _____, 2018.

David Baker, Mayor

ATTEST/AUTHENTICATED:

Kelly Chelin, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
Rod Kaseguma, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. 18-0456

EXHIBIT A TO ORDINANCE NO. 18-0456

**A NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN
THE CITY OF KENMORE AND PUGET SOUND ENERGY, INC.**

Section 1. Definitions

Where used in this franchise (the "Franchise") the following terms shall mean:

1.1 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.

1.2 "City" means the City of Kenmore, a municipal corporation of the State of Washington, and its respective successors and assigns. Specifically, the City includes all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.

1.3 "City Manager" means the Kenmore City Manager, or his or her designee.

1.4 "Days" means calendar days.

1.5 "Environmental Laws" means any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.6 "Force Majeure Event" means any fire, explosion, pest damage, power failure, strike or labor dispute, act of God, the elements, war, civil disturbance, act of civil or military authorities or the public enemy, or fuel or energy shortage, or any other extraordinary circumstance or event beyond the reasonable control of the affected party.

1.7 "Franchise" means the grant of non-exclusive rights, privileges and authority embodied in this Ordinance.

1.8 "Franchise Area" means all public rights-of-way including the surface of and space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway and drive within the City as now and as may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended; and all City owned easements used for such rights-of-way and/or dedicated for the placement and location of utilities, provided such easements would allow PSE to fully exercise the rights granted under this Franchise within the area covered by such easements.

1.8 "Facilities" means collectively, any and all:

A. natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and

communications systems and all necessary facilities and appurtenances thereto, whether the same be located over or under ground;

B. electrical transmission and distribution systems, including but not limited to poles (with or without cross arms), including Puget-owned street lighting poles and luminaires, wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, switches, transformers, ducts, vaults and all necessary facilities and appurtenances thereto, whether the same be located over or under ground.

1.9 "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.10 "Ordinance" means this Ordinance No. 18-0456, which sets forth the terms and conditions of this Franchise.

1.11 "Permitting Authority" means the head of the City department authorized to process and grant permits required to perform work in the Franchise Area, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.12 "Tariff" means "tariff" as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

1.13 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Grant of Franchise; Facilities within the Franchise Area

2.1 Pursuant to the laws of the state of Washington, including but not limited to RCW 35A.47.040 and 80.32.010, the City hereby grants to PSE the non-exclusive right, privilege, authority and franchise subject to the terms and conditions set forth herein. This Franchise grants PSE the non-exclusive right, privilege, authority and franchise to install, construct, operate, maintain, repair, replace, and use Facilities for electric distribution and transmission and natural gas distribution and transmission systems, in, under, on across, over, through, along or below the Franchise Area, for the transmission, distribution and sale of electrical energy and natural gas power, heat and light, and any other purposes for which electrical energy and natural gas may be used, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

2.2 This Franchise specifically does not authorize PSE to install or use Facilities to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside PSE's organization. This section does not restrict PSE's ability to utilize wires, wireless technology or telemetric devices to monitor and operate its electric distribution, electric transmission and natural gas distribution systems, to monitor and control the usage of electrical energy and/or natural gas, and/or to operate communications

systems supporting its electric and gas operations but which are not used by PSE or any third parties to provide commercial telecommunications services to the general public. The City acknowledges that PSE may have existing or future agreements with third parties regarding the use and sharing of Facilities, such as poles.

2.3 PSE acknowledges the City's desire and intent that City rights-of-way be free of encumbrance by rights held by others, including PSE, and that the City desires and intends that rights-of-way dedicated by property owners to the City be free of such encumbrances. All rights-of-way so dedicated during the term of this Franchise shall be Franchise Area and any new Facilities thereafter installed by PSE therein shall be subject to the terms and conditions of this Franchise except as set forth in Section 2.4.

2.4 In the event PSE has a prior existing easement or other property ownership or lease right not derived from this Franchise within any portion of the Franchise Area dedicated to the City during the term of this Franchise as described in Section 2.3, and PSE desires to install new Facilities within and using such prior easement or other property ownership or lease right, then PSE will provide notice of the same to the City prior to such installation. The City may request that PSE instead install such new Facilities within the Franchise Area pursuant to rights granted by this Franchise. PSE will consider the facts and conditions that bear upon such request and will respond to the City, including meeting with the City to discuss such request, prior to installation of PSE's new Facilities. When reasonably determined by PSE to be consistent with prudent utility practice, PSE will install its new Facilities within the Franchise Area pursuant to rights granted by this Franchise as requested by the City. In all other cases, PSE may install its new Facilities within and using such prior PSE easement or other property ownership or lease right, subject to compliance with any and all permit conditions and other requirements applicable to such work under City codes, ordinances and standards, including any such condition or requirement to repair and restore the Franchise Area consistent with adopted Public Works standards.

2.5 Without limiting PSE's obligation to consider requests made by the City pursuant to Section 2.4, this Franchise shall not govern or apply to Facilities located on and using PSE owned or leased properties or easements inside or outside of the Franchise Area (whether granted by a private or public entity and whether now existing or hereafter acquired), and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

Section 3. Nonexclusive Franchise

This non-exclusive Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any portion of the Franchise Area that do not unreasonably interfere with PSE's rights under this Franchise. PSE acknowledges that the City's grant of a non-exclusive electric or natural gas franchise to another party does not, in and of itself, constitute unreasonable interference so long as the terms of the other franchise do not purport to give the other party priority or preference rights that unreasonably interfere with PSE's rights under this Franchise. This Franchise shall in no way prevent or prohibit the City from using, or affect its jurisdiction over, any portion of the Franchise Area or other City property, and the City shall retain the authority to make necessary changes, relocations, repairs, maintenance, establishment, and improvement to any portion of the Franchise Area or other City property as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new rights-of-way or other public properties of every type and description.

Section 4. Term of Franchise/Acceptance

This Franchise is and shall remain in full force and effect for a period of five (5) years from the effective date of the Ordinance. This Franchise may be renewed, at the sole discretion of the Kenmore City Council for one additional five (5) year period upon the written request of PSE, such request to be submitted not less than one hundred eighty days (180) prior to the expiration of the initial five (5) year term. This Franchise is granted upon the express condition that PSE, within sixty (60) days after the adoption of this Ordinance, shall (i) file with the clerk of the City a written acceptance of the same; and (ii) jointly with the City, execute and deliver the Memorandum of Understanding described in Section 31 of this Franchise. Upon completion of each such step, this Franchise shall constitute a contract between the City and PSE for all the purposes herein set forth. If PSE fails to provide its written acceptance or jointly with the City execute and deliver the Memorandum of Understanding as provided above, this Ordinance and Franchise shall be null and void.

Section 5. Non-Franchise Area City Property

5.1 Except as expressly set forth in Section 5.2, below, nothing contained in this Ordinance shall be construed as granting permission or conveying any right to PSE to install Facilities, use or otherwise go upon any City-owned or leased properties or other public place other than the Franchise Area, and the City reserves the right to require compensation for the use of any such City-owned or leased properties or other public places not located in the Franchise Area, as may be required by the City Council by resolution. Permission to go upon any other property owned, leased or controlled by the City must be sought on a case by case basis from the City. Nothing in this Franchise shall be deemed to grant, convey, create or vest a real property interest in land to or in PSE, including any fee or leasehold interest or easement rights.

5.2 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements, but which are not within the Franchise Area as defined by this Franchise, may be maintained, operated, repaired and/or replaced in like kind by PSE under the terms of this Franchise. For normal maintenance and repair of such existing Facilities installed or maintained by PSE on public grounds and places, PSE shall notify the City prior to any activity undertaken by or on behalf of PSE that impacts or disrupts the public use of said public grounds or places. Such Facilities, however, may not be modified, enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures. Any request to modify, enlarge, improve or expand such Facilities described in this Section shall also include a detailed map and description of the requested change to said Facilities.

Section 6. Compliance with State and Local Regulations

6.1 PSE shall comply with all federal, state, and (subject to Section 28) local laws or regulations applicable to the exercise of PSE's rights and obligations under this Franchise. Upon written inquiry, PSE shall provide a specific reference to either the federal, state, or local law or the WUTC order or action establishing a basis for PSE's actions related to the exercise of such rights and obligations.

6.2 In granting this Franchise the City hereby reserves all lawful powers *and* franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with the rights, privileges, authority and franchise conferred to PSE by this Franchise.

Section 7. Non-interference of Facilities

7.1 PSE's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free and safe passage of pedestrian, bicycle and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto, provided, that such ingress or egress (driveways) exists when such Facilities are first installed. The foregoing obligations include, but are not limited to, PSE's compliance with (subject to Section 28) applicable City ordinances, regulations and adopted Public Works Standards, and federal and state laws (such as the standards set forth in the American with Disabilities Act).

7.2 In the event that the City Manager or designee reasonably determines, after providing written notice to PSE and a reasonable opportunity for PSE to respond to the City Manager or designee's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto that exists when such Facilities are first installed, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with PSE, including, without limitation, allowing changes to or modifications of the Franchise Area, at PSE's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference.

7.3 In the event such interference requires relocation of PSE's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 13 below (any such interference resulting from new development ingress or egress to properties abutting the Franchise Area in proximity to PSE's Facilities existing within the Franchise Area prior to the development shall be subject to Section 13.5).

Section 8. Natural Gas System Integrity and Safety; Dangerous Conditions

8.1 Upon the City's reasonable request, PSE will make available for review and inspection on PSE's premises by the City or City representatives, PSE's annual maintenance, safety and inspection plans and records concerning or related to PSE's natural gas Facilities located in the City of Kenmore.

8.2 Upon the City's reasonable request, PSE will make available for review and inspection on PSE's premises by the City or City's representatives, copies of reports or notices filed with WUTC or Federal Office of Pipeline Safety concerning or related to the integrity or safety of PSE's natural gas Facilities located in the City.

8.3 PSE will provide concurrent notice to the City of any application by PSE for waiver of any state or federal gas safety rule applicable to the integrity or safety of PSE's natural gas Facilities located in the City.

8.4 In the event that any of PSE's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the City Manager or designee may direct PSE, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.

Section 9. Construction and Maintenance of Facilities in Franchise Area; Permit Required

9.1 Whenever PSE works in the Franchise Area for purposes of traffic control, installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for all necessary City permits to do such work, in accordance with all ordinances and regulations of the City. Subject to Section 28, PSE shall comply with all requirements and conditions of such permits, including but not limited to location restrictions, traffic control, restoration and repair work to restore the surface of the Franchise Area. In no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise. After the work is completed, PSE shall provide to the City upon request and at no cost, copies of PSE's drawings showing the approximate location of its Facilities affected by such work. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities is shown, such Facilities will be shown in their approximate location. The foregoing is not, however, intended to relieve PSE of its obligations arising under Section 17.3 of this Franchise or under applicable law with respect to determining and disclosing the location of its Facilities within the Franchise Area.

9.2 PSE shall at all times post and maintain proper barricades and traffic control and comply with all applicable safety regulations during any period of construction or maintenance activities within the right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.

9.3 In the event of any emergency where any Facilities located in the Franchise Area are broken or damaged, or if PSE's work area within the Franchise Area is in such a condition as to endanger any person or property, PSE may immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for *and* obtaining a permit as required by Section 9.1. This provision shall not relieve PSE from later obtaining any necessary permit for the emergency work. PSE shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

9.4 In the event PSE proposes to cut or disturb pavement within the Franchise Area for any purpose (except as provided in Section 9.3), PSE shall apply to the City for a permit to make such disturbance in accordance with Section 9. In its application PSE shall identify the specific paving proposed to be disturbed, describe the scope and extent of the proposed disturbance and explain the necessity for such disturbance. PSE shall minimize the extent of such pavement disturbance to that reasonably necessary to perform its work. PSE acknowledges the City's authority and discretion to approve (or not approve) disturbance of such pavement and to condition such approval and require compliance of the pavement restoration to the condition required in Section 10. PSE shall not cut or disturb any pavement within the Franchise Area (except as provided in Section 9.3) without written authorization from the City Manager or designee.

Section 10. Restoration of Franchise Area and Decommissioning of Facilities

10.1 PSE shall promptly restore the Franchise Area, at its sole cost and expense, after any installation, construction, relocation, maintenance, or repair of its Facilities within the Franchise Area. PSE shall restore the Franchise Area to the same condition existing immediately prior to PSE's work in the Franchise Area in accordance with the City's adopted Public Works Standards and as may be determined by the City Manager or designee, in each case as reasonably necessary to restore the integrity of the paving disturbed by PSE's work.

All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and City standards and specifications. The City Manager or designee shall have final approval of the condition of the Franchise Area after restoration.

10.2 If it is determined that PSE has failed to restore the Franchise Area in accordance with Section 10, the City shall provide PSE with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for and pay all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this section. PSE shall pay said costs and expenses within thirty (30) days of receipt of the City's billing for such work, including City overhead (provided that in no event shall such overhead exceed 10% of the total costs, fees and expenses). The remedy granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

10.3 In the event PSE permanently ceases use of any above-ground Facilities within the Franchise Area, PSE shall within ninety days (90) after such permanent cessation of use, or such additional time as is agreed to by the parties, remove such above-ground Facilities at no cost to the City.

10.4 In the event PSE permanently discontinues use of and decommissions any of its underground Facilities within the Franchise Area, PSE may leave such underground Facilities in place subject to the conditions set forth in Sections 10.4 – 10.7. PSE shall notify the City when it permanently discontinues use of and decommissions any of its underground Facilities within the Franchise Area. PSE's written notification to permanently decommission underground Facilities within the Franchise Area shall include a mitigation plan for either removing or leaving in place the decommissioned underground Facilities. The mitigation plan shall address how and when the Facilities will be removed and shall include any mitigation measures PSE proposes to address impacts of the decommissioned underground Facilities to the Franchise Area. The mitigation plan shall require that any underground Facilities to be left in place shall be made inert by purging all natural gas from such underground Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such underground Facilities, in compliance with applicable regulation and industry standards. Unless otherwise approved by the City, removal and mitigation should be accomplished within one hundred and eighty (180) calendar days after the Facilities are permanently decommissioned.

10.5 Within thirty (30) calendar days of receiving a mitigation plan submitted by PSE pursuant to Section 10.4, the City will review the mitigation plan and either approve or require changes and resubmittal. The City will not unreasonably withhold approval of PSE's proposed plan, but may require changes if it determines, in its reasonable discretion, that said plan fails to adequately mitigate the impacts of PSE's permanently decommissioned underground Facilities. If PSE's mitigation plan proposes leaving permanently decommissioned underground Facilities in place and the City determines, after consultation with PSE, that the impacts of leaving the Facilities in place cannot be adequately mitigated to the City's reasonable satisfaction, the City may require removal of the underground Facilities. If the City approves leaving permanently decommissioned underground Facilities in place, it may condition such approval upon PSE's agreement to remove the underground Facilities at a later time, such as in conjunction with a subsequent City Project (as defined below) or other project that includes excavation in the area or as reasonably required to

ensure the health and safety of the public. Following the City's approval of a mitigation plan, PSE shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area.

10.6 If the Parties fail to agree upon a mitigation plan, PSE fails to comply with an approved plan, or circumstances require City action prior to approval of a plan, the City may, but is not required to, take such steps as it deems necessary to remove and/or mitigate for the impacts of the permanently decommissioned underground Facilities. Any costs incurred by the City as a result of PSE's failure to comply with its obligations under this Section with respect to permanently decommissioned underground Facilities shall be reimbursed by PSE within thirty (30) calendar days of the City invoicing PSE for such costs.

10.7 All work by PSE pursuant to this Section 10 shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington and, subject to Section 28 Kenmore Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

10.8 The Parties expressly agree that the provisions of this section shall survive the termination, expiration, or revocation of this Franchise

Section 11. Bonding Requirement

11.1 Pursuant to RCW 35A.47.040, PSE shall, within thirty (30) days after its acceptance of this Franchise, file with the City, and at all times thereafter, maintain in full force and effect for the term of this Franchise, a bond executed by PSE and a corporate surety authorized to do surety business in the State of Washington, with an AM Best rating of A XII. The amount shall be as provided in Section 11.3, and shall secure performance of PSE's obligations under Sections 7.1, 7.2, 8.4, 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4 and 13.1 (the "Bonded Obligations"). The bond shall be in a manner and form reasonably acceptable to the City and secure PSE's faithful performance of the Bonded Obligations and provide recovery on the bond in case of PSE's failure to perform the Bonded Obligations. PSE may meet the obligations of this section with one (1) or more bonds reasonably acceptable to the City. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.

11.2 In the event PSE shall fail to perform any Bonded Obligations in undertaking any work or other activities within the Franchise Area authorized by this Franchise, and further fails to cure its deficiency within the time period identified in the City's written notice of such deficiency (which may not be less than a reasonable period of time), then the City may recover jointly and severally from PSE and the surety of such bond to ensure performance of the Bonded Obligations. This section shall be a continuing obligation for the duration of this Franchise and thereafter until PSE has discharged all of its Bonded Obligations under this Franchise.

11.3 The bond filed in accordance with the requirements of this Section 11 shall be in the amount of Twenty Thousand Dollars and No/100 (\$20,000.00), but may be increased from time to time by mutual agreement of the parties if the volume of work being undertaken by PSE within the Franchise Area under this Franchise at any given point in time materially increases such that an

increase in the bond amount is reasonably necessary to provide adequate protection to the City for the Bonded Obligations covered by such work.

11.4 In the event the City intends to execute on or seek recovery under any bond(s) furnished by PSE pursuant to this Section 11, the City shall promptly provide written notice of same to PSE. If the City successfully executes on any such bond, PSE shall promptly obtain a replacement bond in like amount and/or take such other action as is reasonably necessary to ensure that the bond(s) required by this Section 11 are maintained in full force and effect for the term of this Franchise.

11.5 The rights reserved to the City by this Section 11 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 11 shall constitute an election or waiver of any rights or other remedies the City may have.

Section 12. Underground Installation of Facilities

12.1 PSE acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area. The City acknowledges that PSE provides electrical and natural gas service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to such Tariffs, PSE agrees to cooperate with the City in the formulation of policy and development regulations concerning underground installation of PSE's Facilities within the Franchise Area.

12.2 New extensions of electric Facilities that operate at 15,000 volts (15kV) or less constructed by PSE within the Franchise Area during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC. Provided, however, that extensions of existing overhead Facilities of up to five spans or 500 feet (whichever is less) may, subject to the City's prior written consent which shall not be unreasonably withheld, be installed overhead in locations having other existing overhead utilities.

12.3 If, during the term of this Franchise, the City shall direct PSE to replace (convert) its overhead electric distribution Facilities (15kV or less) then existing within the Franchise Area with underground Facilities, such underground conversion shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC. All requests by the City for conversion of overhead Facilities to underground shall comply with applicable law.

12.4 This Section 12 shall govern all matters related to underground installation of PSE Facilities within the Franchise Area.

Section 13. Relocation of Facilities

13.1 Whenever the City undertakes any City-funded (either directly with its own funds or with other public monies obtained by the City) improvement, repair, maintenance or other work within the Franchise Area ("City Project"), or if PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic pursuant to Section 7 above, and such City Project or interference necessitates the relocation of PSE's Facilities then existing within the Franchise Area, the City shall:

- A. provide PSE, within a reasonable time prior to the commencement of such City Project, written notice requesting such relocation; and
- B. provide PSE with copies of relevant portions of the City's plans and specifications for such City Project.

No later than one hundred and twenty (120) calendar days (or such shorter or longer period of time as the parties may mutually agree in writing for a given City Project) following receipt of such notice and such plans and specifications (the "Relocation Deadline"), PSE shall relocate its Facilities within the Franchise Area at no charge to the City; provided, however, the Relocation Deadline may be extended as reasonably necessary for an additional one hundred twenty (120) calendar days, for a total of two hundred and forty (240) calendar days (or such shorter or longer period of time as the parties may mutually agree in writing for a given City Project), if it would be impossible or impracticable for PSE to complete the relocation work by the original Relocation Deadline due to factors and/or circumstances beyond PSE's reasonable control, including PSE's actual inability (despite using best efforts) to obtain materials in a timely manner or PSE's relocation work being dependent on the performance of other work by the City or any third party. PSE shall notify the City of any need to extend the Relocation Deadline within thirty (30) calendar days after PSE's receipt of the City's notice to relocate referenced in Section 13.1.A and the plans and specifications referenced in Section 13.1.B (which are complete to at least 60% of final design) for the City Project. If PSE notifies the City of a need for such extension, the City may object to PSE's notice by giving PSE prompt written notice of and reasons for the objection, in which event PSE and the City shall work together in good faith to resolve the dispute in an expeditious manner. PSE shall also notify any third parties that are known by PSE to have equipment located on the PSE Facilities being relocated that they need to remove or relocate the third party's equipment by the Relocation Deadline. If PSE or the City subsequently learn of any third parties having equipment located on the PSE Facilities being relocated that were not previously known to PSE, PSE and the City shall work together in good faith to identify the third parties, notify the third parties and resolve the issue in an expeditious manner. If, during the construction of any City Project, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall relocate as soon as reasonably feasible the affected Facilities, at no charge to the City.

13.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. PSE shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and PSE are unable to agree that there is or will be sufficient space for the relocated Facilities in the existing Franchise Area, or PSE reasonably determines that locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice, then the City and PSE will proceed in accordance with Section 13.3.

13.3 In order to accommodate a City Project undertaken by the City under this Section 13, PSE may install relocated Facilities on property outside of the Franchise Area, the rights for which shall be obtained by PSE at no expense to the City, if:

- A. Notwithstanding the use of best efforts by the City and PSE as outlined above, the City and PSE are unable to agree that there is or will be sufficient space within the Franchise Area for the relocated

Facilities, or

B. locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice.

Nothing in this Section 13 shall limit the rights of the City or PSE with respect to acquisition or use of property rights outside of the Franchise Area.

13.4 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of the same Facilities pursuant to this Section 13, the City shall reimburse PSE for all costs incurred by PSE in connection such subsequent relocation.

13.5 PSE shall have the right as a condition of any relocation described in this Section 13.5 to require such person or entity other than the City to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities whenever:

A. any person or entity, other than the City, requires the relocation of PSE's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or

B. the City requires any person or entity to undertake work (other than a City Project undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of PSE's Facilities within the Franchise Area.

13.6 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of PSE's Facilities within the Franchise Area shall be a condition or requirement causing relocation of PSE's Facilities to occur subject to the provisions of Section 13.5 above; provided, however:

A. in the event the City reasonably determines and notifies PSE that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a City Project within a segment of the Franchise Area on the City's behalf, and

B. such City Project is a funded project that is otherwise reflected in the City's adopted Six-Year Capital Improvement Program; Capital Facilities Plan; Transportation Improvement Program; Transportation Facilities Program or Budget;

Then only those costs and expenses incurred by PSE in connecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such person or entity, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 13.1 through 13.3.

13.7 As to any relocation of PSE's Facilities whereby the cost and expense thereof is to be borne by PSE in accordance with Sections 13.1 through 13.3, PSE may, after receipt of written notice requesting such

relocation, submit in writing within thirty (30) days to the City, alternatives to relocation of its Facilities. Upon the City's receipt from PSE of such written alternatives, the City shall evaluate such alternatives and shall advise PSE in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of PSE's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by PSE full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by PSE shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, PSE shall relocate its Facilities as otherwise provided in Sections 13.1 through 13.3. Nothing in this section shall be construed to be a waiver of any right of either PSE or the City to contest any claim or assertion by the other of responsibility to pay such costs or expense.

13.8 Subject to the exclusions and requirements set forth below in this Section 13.8, and to the maximum extent provided by law, if PSE breaches its obligations under Section 13.1 with respect to relocating its Facilities within the Franchise Area by the applicable Relocation Deadline in order to accommodate a City Project, and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) on a City Project that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

13.8.1 tender the Contractor Delay Claim to PSE for defense and indemnification in accordance with Section 20; or

13.8.2 require that PSE reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by PSE under this Section 13.8.2, the City shall first give PSE written notice of the Contractor Delay Claim and give PSE the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than thirty (30) days (or such shorter period of time as the City may have to respond to the Contractor Delay Claim without prejudicing its right to respond, but in no event less than twenty (20) days) prior to the City's payment of the Contractor Delay Claim.

Nothing in this Section 13.8 or otherwise will require PSE to bear or be responsible for any cost, expense or damage, or to defend or indemnify the City against any claim, that results from a delay in meeting the Relocation Deadline for a City Project, to the extent the delay is caused by the City, any third party that is not an agent, subcontractor or vendor of PSE, or any Force Majeure Event. Provided, however, if such a delay is caused by a third party that is not an agent, subcontractor or vendor of PSE, or any Force Majeure Event, then PSE's performance shall only be excused for the time period equal to such delay. Therefore, if this Franchise specifies a time period for performance of an obligation by PSE, the time period during which PSE is excused from performance shall only be for the period of any delay in such performance caused by said third party or Force Majeure Event. PSE shall immediately communicate the circumstance of the event to the City and take all commercially reasonable steps within its control to satisfy its duties and obligations under this Franchise and mitigate the effects of the delay.

13.9 Nothing in this Section 13 shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other property ownership or lease rights, regardless of whether such easement or other property ownership or lease rights is on public or private property and regardless of whether this Franchise co-exists with such easement or other property ownership or lease rights. Nothing in this Section 13.9 is intended to preclude the City from properly exercising its powers of eminent domain in accordance with applicable law.

13.10 The provisions of this Section 13 shall survive the expiration or termination of this Franchise during such time as PSE continues to operate and maintain Facilities in the Franchise Area. Additionally, the provisions of this Section 13 are applicable only so long as the Franchise Area is owned and/or controlled by the City.

Section 14. Coordination/Shared Excavations

14.1 PSE and the City shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to inform the other party and other utilities within the Franchise Area of its intent to undertake such construction work. PSE and the City shall further exercise best reasonable efforts to minimize delay or hindrance to construction work undertaken by themselves and other utilities within the Franchise Area.

14.2 PSE shall maintain adequate staffing levels and provide the City with one constant point of contact during construction of a City Project to provide responsive customer service. To initiate such construction coordination, the City shall contact PSE's customer construction services hotline department (as may be amended) to obtain a project number and be added to PSE's construction services system.

14.3 If, at any time or from time to time, either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

Section 15. City Use of Facilities

15.1 During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by PSE and (b) within the Franchise Area, the City, subject to PSE's prior written consent which shall not be unreasonably withheld, may install and maintain City-owned overhead cables, routers, antennas, wires and other PSE-approved equipment upon such poles for police, fire, traffic control, Wi-Fi/Internet, weather and air quality monitoring and other noncommercial municipal communications purposes. The foregoing rights of the City to install and maintain such facilities are further subject to the following:

A. Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as PSE may specify from time to time (including, without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities);

B. PSE shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned wires or the installation or maintenance thereof; and the City shall indemnify, defend and hold harmless PSE in connection with the City's use of PSE's Facilities; and

C. PSE shall not charge the City a fee for the use of such poles in accordance with this Section 15 as a mean of deriving revenue therefrom (such as a rental or lease fee); provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

Section 16. Moving Buildings Within the Franchise Area.

If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall endeavor, prior to granting such permission, to require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's wires to accommodate the moving or removal of such building or other object to allow PSE and other party to make necessary arrangements.

Section 17. Records of Installation and Planning

17.1 Upon the City's request, PSE shall promptly provide to the City copies of available maps and plans of imminent planned improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such maps or plans so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

17.2 Upon the City's reasonable request, PSE shall provide to the City copies of available drawings in use by PSE showing the approximate location of PSE's Facilities at specific locations within the Franchise Area. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area. Notwithstanding the foregoing, PSE does not warrant the accuracy or sufficiency of any such drawings, drawing file layers or other information provided by PSE, and PSE shall not be liable to the City or others for any errors or defects in the same.

17.3 PSE shall further provide, upon the City's reasonable request in connection with the design of a City Project, field marking of PSE's underground Facilities within the Franchise Area at the location of the City Project, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of PSE's underground Facilities. In addition, PSE shall, upon the reasonable request of the City in connection with the design of any City Project, verify the actual location of its underground Facilities within the Franchise Area at the location of a City Project by excavating, including pot holing, at no expense to the City.

17.4 Within sixty (60) days of the City's adoption of this Franchise, or such longer period of time as may be agreed upon by the parties, PSE shall provide to the City a list of all known third party occupants that have any facilities attached to PSE Facilities in the Franchise Area. Upon the City's request made between

thirty (30) days and sixty (60) days prior to January 1 of each year of the term of this Franchise, PSE shall update such list on an annual basis within sixty (60) days after the start of such year.

17.5 Notwithstanding the foregoing, nothing in this Section 17 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining and disclosing the location of utility facilities.

Section 18. Vegetation Management

18.1 PSE shall on an annual basis perform vegetation review throughout the City and identify areas that need vegetation management for the reliable and safe operation of PSE Facilities. PSE shall notify the City within ten (10) calendar days of when such review will occur, and the City may accompany PSE or its consultants, in the review of vegetation in the Franchise Area, at its discretion. PSE shall on an annual basis identify those areas targeted for accelerated, or "hot spot," tree trimming and vegetation management and provide the City a written list and maps of locations within the Franchise Area at which PSE anticipates performing vegetation management activities for that year; provided that such list shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to PSE's facilities, pose an imminent threat to public safety or the reliable operation of PSE's facilities. The City shall alert PSE of any trimming needs of the City that are within those portions of the Franchise Area designated by PSE for its vegetation management activities for that year and can be readily incorporated and combined with such vegetation management activities of PSE within the Franchise Area, and PSE shall endeavor to incorporate such trimming needs of the City into PSE's vegetation management activities for that year. PSE shall perform general trimming and vegetation management in the Franchise Area at least every 4 years.

18.2 PSE shall, in coordination with the City, identify vegetation species appropriate for location in proximity to PSE's facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.

18.3 PSE shall apply for and obtain a franchise utility right-of-way permit, with traffic control plan, for all vegetation management within the City. PSE shall not commence non-emergency vegetation management work without notice to abutting private property owners or occupants at least ten (10) working days in advance of the work to be performed, including the location and description of the work to be performed, the date work is planned to commence, and a contact name and telephone number at PSE. In performing vegetation management work, PSE shall comply with ANSI 300 pruning standards. PSE shall notify the City at least ten (10) calendar days prior to any vegetation management work being conducted within City limits; except that emergency work can be done the same day providing the City is contacted either by phone or email as soon as feasible. A knowledgeable PSE representative will stay in close communication with the City while vegetation management work is performed within the City. PSE shall conduct periodic performance reviews at the request of the City.

18.4 At the request of an abutting private property owner, PSE shall employ or consult with a certified arborist to assess the type of pruning proposed to be done and/or shall provide the abutting owner with alternatives to the type of pruning proposed to be done. PSE will reasonably consider alternatives proposed by the abutting property owner and any certified arborist hired by the property owner.

18.5 Nothing in this Franchise is intended to absolve PSE from any liability resulting from damage caused by trees that are severely pruned or topped by PSE and subsequently fall as a result of such pruning or topping.

18.6 PSE or its contractors should trim trees according to species growth habits. Crew foremen will be educated of different tree species and understand their corresponding growth habits.

18.7 In the event trees need to be trimmed within and/or adjacent to the Franchise Area, PSE shall notify the City in writing ten (10) days ahead of time. The City shall have final determination of whether a tree needs to be removed in the Franchise Area, and replacement trees shall be negotiated between the City and PSE of their contractor on a case by case basis.

18.8 All debris associated with line clearance tree trimming and/or removal work within or adjacent to the Franchise Area will be chipped and removed by PSE or its contractor from the site at no cost to the City. "Drop and Scatter" practices will require prior written approval from the City.

18.9 When trees are heavily trimmed or removed from or adjacent to the Franchise Area, PSE shall perform the work in such a way as to avoid damage to other trees within that area. If additional trees are accidentally damaged during such work, PSE, or its contractor, will use its best efforts to appropriately prune any such damaged trees. The City is to be contacted immediately in the event of any unplanned damage to City owned trees.

18.10 Climbing trees with gaffs or spikes is strongly discouraged on any deciduous, hardwood or thin bark tree species unless the tree is to be removed.

18.11 PSE shall commit to providing a 24 hour response time when a customer contacts PSE about vegetation management on or near their residence.

18.12 The parties shall endeavor to resolve disputes arising under this section in good faith.

Section 19. Condemnation.

The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of PSE's Facilities within the Franchise Area.

Section 20. Indemnification

20.1 PSE shall indemnify, defend and hold harmless the City, its officials, officers, employees agents and representatives, from any and all third party claims or suits, and any damages, costs, judgments, awards or liability resulting from such claims or suits, (a) for injury or death of any person or damage to property to the extent the same is caused by the actual or alleged negligent acts or omissions, or willful misconduct, of PSE, its agents, servants, officers or employees in the performance of this Franchise and any rights granted hereunder, or (b) to the extent such claim or demand is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of any Environmental Laws in its operation of the Facilities within the Franchise Area and exercise of any rights granted hereunder. The indemnity under Section 20.1(b) includes each of the following to the extent the same is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of applicable Environmental Laws: (i) liability for a governmental agency's costs of removal or remedial

action for such release by PSE of Hazardous Substances; (ii) damages to natural resources caused by such release by PSE of Hazardous Substances, including the reasonable costs of assessing such damages; (iii) liability for any other person's costs of responding to such release by PSE of Hazardous Substances; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by such release by PSE of Hazardous Substances. Provided, however, such indemnification shall not extend to any portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the willfully tortious, or negligent acts or omissions of the City, its agents, employees, officials officers, contractors or subcontractors. The indemnity under Section 20.1(a) includes, but is not limited to any Contractor Delay Claim that the City properly elects to tender to PSE pursuant and in accordance with Section 13.8.1 of the Franchise.

20.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance by PSE of any of its obligations under this Section 20. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with PSE's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

20.3 Solely to the extent required to enforce the indemnification provisions of this Section 20, PSE waives its immunity under Title 51 RCW, Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. The foregoing waiver under this Section 20.3 has been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE's waiver thereof.

20.4 In the event any matter (for which the City intends to assert its rights under this Section 20) is presented to or filed with the City, the City shall promptly notify PSE thereof and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action be started against the City based upon any such matter, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

20.5 The provisions of this Section shall survive the expiration and termination of this Franchise.

Section 21. Insurance

21.1 PSE shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. Coverage shall include the City, its officers, elected officials, agents, employees, representatives, and volunteers as additional insureds. PSE shall provide a certificate of insurance and/or evidence of self-insurance to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:

A. Commercial general liability insurance or excess liability insurance, including coverage for premises-operations, explosion, collapse and underground hazards (XCU), pollution liability, and products-completed operations, with limits not less than:

- (i) \$5,000,000 per occurrence; and
- (ii) \$5,000,000 in the aggregate.

B. Automobile liability for owned, non-owned and hired vehicles with a \$2,000,000 combined single limit.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000.

If coverage is purchased on a "claims made" basis, then PSE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form.

PSE's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of PSE to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

21.2 PSE shall maintain the liability insurance policies required by this Section 21 throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section 21 shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

21.3 PSE's insurance shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers. Any insurance maintained by the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

21.4 Should any of the required insurance policies be cancelled or limits reduced below the limits described herein, PSE shall provide the City notice 30-days prior to such cancellation or reduction.

21.5 In the event any of the insurance required by this Section 21 is canceled or otherwise not renewed during the term of this Franchise, PSE shall promptly acquire replacement insurance or shall utilize self-insurance to restore and maintain the amount of coverage required by this Section 21 and shall promptly provide to the City certificate(s) of insurance or evidence of self-insurance as provided in this Section 21 as may be applicable.

Section 22. Default

22.1 If PSE shall fail to materially comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon PSE a written order to so comply within thirty (30) days from

the date such order is received by PSE. If PSE is not in material compliance with this Franchise after expiration of said thirty (30) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to materially comply with this Franchise by PSE cannot be corrected with due diligence within said thirty (30) day period then the time within which PSE may so comply may be extended for a period of time as may be reasonably necessary and as agreed upon by the parties, so long as PSE commences promptly and diligently to effect such material compliance.

22.2 Notwithstanding PSE's obligation to comply and to proceed with due diligence to correct any default, the City recognizes that unavoidable delays and events beyond PSE's control may occur. In such event the parties agree that PSE shall make a good faith effort to expeditiously remedy the default. In the event of a declaration of forfeiture, should either party commence litigation against the other to appeal (in the case of PSE) or enforce (in the case of the City) such declaration of forfeiture, each party in any such litigation shall be responsible for their own costs and attorneys' fees.

Section 23. Reimbursement of Administrative Costs

23.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE.

23.2 As provided in RCW 35.21.860, PSE shall reimburse and pay to the City's administrative expenses and costs incurred by the City that are directly related to: (a) receiving and approving a permit, license or this Franchise, (b) inspecting plans and construction, or (c) preparing a detailed statement, as may be required by Chapter 43.21C RCW. PSE acknowledges and agrees that it shall pay \$37,139.75 in reimbursement for the City's administrative expenses relating to the receipt, review and approval of this Franchise under Subsection 23.2(a).

23.3 As such expenses are incurred by the City, the City shall invoice PSE for all administrative expenses and costs to be reimbursed by PSE hereunder including an itemized statement showing such expenses and costs. PSE shall promptly remit payment to the City within thirty (30) days of receipt of such invoice. Notwithstanding any other provision of this Franchise, no acceptance by PSE of this Franchise shall be effective if PSE fails to pay the City's initial invoice for administrative expenses and costs properly reimbursable under Section 23.2(a) that are incurred by the City in receiving and approving this Franchise.

23.4 If PSE disputes any expense or cost included on the City's invoice, PSE shall promptly notify the City thereof and shall otherwise promptly remit payment for any and all undisputed expense and costs included on the City's invoice. As to any expense or cost disputed by PSE, PSE shall promptly provide written identification of such disputed amount(s) together with its written justification for such dispute to the City for the City's consideration. PSE and the City shall work together in good faith to resolve any disputed amount(s), including provision by either or both parties of such further information and documentation supporting or refuting such disputed amount(s) as may reasonably and practically be provided. Until any such dispute is resolved by the Parties the City may, at its sole discretion, suspend work being performed by the City or Puget and/or withhold City issued permits or City approvals related to such disputed amount(s). Except as set forth in this Section 23, such dispute will not otherwise effect any other obligation of the parties under this Franchise.

Section 24. Utility Tax

PSE acknowledges that the City is authorized under the laws of Washington State to impose certain taxes upon PSE. Nothing in this Franchise shall exempt (nor shall be construed to exempt) PSE from payment of any and all such taxes lawfully imposed by Kenmore Municipal Code, as may hereafter be lawfully amended or superseded, and due from PSE; provided, nothing in this Section 25 shall be construed in any way as a waiver of PSE's rights to contest the validity of any such tax or the amount of any tax due. If payment of such taxes is not made by PSE in a timely manner, the City reserves the right, at its sole option, to inter alia suspend the rights granted to PSE by this Franchise until such time that PSE pays such taxes or PSE and the City otherwise resolve any matter concerning payment thereof.

Section 25. Emergency Management

Annually, upon the request of the City, PSE will meet with the City Fire/Emergency Preparedness personnel to coordinate emergency management operations and, at least twice a year, at the request of the City, PSE personnel will actively participate with either the Northshore Emergency Management Coalition or City Emergency Personnel in emergency preparedness drills or planning sessions.

Section 26. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon PSE and the City. PSE may not assign or otherwise transfer its rights, privileges, authority and franchise herein conferred without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. The City hereby authorizes and approves PSE to mortgage its rights, privileges, authority and franchise in and under this Franchise to the Trustee for its bondholders.

Section 27. Severability and Survival

27.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

27.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 6 above, the parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 28. Amendments to Franchise.

28.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both parties, which specifically states that it is an amendment to this Franchise. In the event of any direct conflict or inconsistency between the provisions of this Franchise and the provisions of any code, regulation or standard of the City, whether now existing or hereafter adopted by the City, the provisions of this Franchise will govern and control. Without limiting the generality of the

foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

- A. references this Franchise; and
- B. states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of a direct conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

28.2 This Franchise is subject to the provisions of applicable Tariffs on file with and accepted by the WUTC. In the event of any conflict or any inconsistency between the provisions of this Franchise and any such Tariff, the provisions of such Tariff shall control. Nothing in this Franchise shall be deemed to waive, prejudice, or otherwise limit any right or authority of the City to challenge or contest the validity of the Tariff or its application to the City before a court or regulatory agency having subject matter jurisdiction, and nothing in this Franchise will be deemed or construed as a contractual commitment or agreement by the City to accept the application of a Tariff if the City is successful in such challenge or contest of the validity of the Tariff.

28.3 The parties agree to renegotiate the terms of this Franchise, if, during the term of this Franchise there becomes effective any change in federal or state law which:

- A. Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not, prior to such change, have been consistent with federal or state law; or
- B. Pre-empts or otherwise renders null and void any term or condition of this Franchise which has been negotiated in good faith;

Then, in such event, either party may, within one hundred eighty (180) days of the effective date of such change in federal or state law request in writing to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after receipt of such written request, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by PSE, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

Section 29. No Third Party Beneficiary

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

Section 30. Notice of Tariff Changes

PSE shall, when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide the City Manager with a copy of the submitted application within thirty (30) days of filing with the WUTC. PSE shall further provide the City Manager or designee with a copy of any approved Tariff change affecting the provisions of this Franchise.

Section 31. Force Majeure

Any prevention, delay or inability to perform the duties and obligations under this Franchise due to a Force Majeure Event shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Franchise specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure Event. Provided, however, that the party has communicated the circumstance of the Force Majeure Event to the other party and has taken all commercially reasonable steps within its control to satisfy its duties and obligations under this Franchise and mitigate the effects of the Force Majeure Event.

Section 32. Memorandum of Understanding

The parties have separately entered into, and shall maintain in effect for the term of this Franchise, a Memorandum of Understanding ("MOU") that details their respective expectations and obligations for the reporting of certain performance and reliability measures regarding electrical service to PSE customers within the City. The parties agree that the MOU is an integral part of this Franchise, and may be enforced under the terms and conditions set forth in this Franchise.

CITY OF KENMORE

PUGET SOUND ENERGY, INC.

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

ACCEPTANCE OF FRANCHISE

The provisions of this franchise ordinance are agreed to and hereby accepted. By accepting this franchise ordinance, PSE covenants and agrees to perform and be bound by each and every term and condition of this franchise ordinance. PSE agrees to send to the City PSE's written acceptance of this Franchise via certified mail, unless otherwise hand-delivered to an employee of the City at City Hall during regular working hours.

Dated: _____

PUGET SOUND ENERGY, INC.

By: _____

Printed Name: _____

Its: _____

ATTEST

PUGET SOUND ENERGY, INC.

By: _____

Printed Name: _____

Its: _____

City of Kenmore Contract No. 18-C1820

**Memorandum of Understanding
Performance and Reliability Reporting**

This Memorandum of Understanding (this "**MOU**") is entered into by and between the City of Kenmore (the "**City**") and Puget Sound Energy, Inc. ("**PSE**"), also referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, the City and PSE recognize the value of enhancing their working relationship through cooperation, planning, communication and coordination; and

WHEREAS, the reliability of electrical services provided by PSE in the City was presented as a serious concern by the community and City leadership in 2015; and

WHEREAS, a 2016 independent technical analysis commissioned by the City stated that nine of the of the ten electrical circuits serving the City were in the lowest 40% of electrical circuits within PSE's entire system with respect to reliability and seven of those nine performed in the lowest 25% of all circuits in the PSE system with respect to reliability; and

WHEREAS, the City and PSE have been working together to improve electrical reliability within the City as a whole, and PSE initiated improvements for certain electrical circuits serving the City in 2016 and 2017 that are designed to improve reliability; and

WHEREAS, the City and PSE desire to establish mutually agreed provisions for the reporting of certain performance and reliability measures for PSE's electric service;

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

1. This MOU may be amended from time to time only by mutual written agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this MOU.

2. This MOU, as from time to time amended, will remain in full force and effect for a period of _____ (____) years from the date of this MOU as set forth below, unless sooner terminated or extended by mutual agreement of the Parties.

3. The performance of the Parties under this MOU is subject to all applicable regulations of the Washington Utilities and Transportation Commission ("WUTC"), and any such regulation shall govern and control over any inconsistent provision of this MOU. As of the effective date of this MOU, the parties acknowledge that the provisions set forth in this MOU are consistent with existing WUTC regulations and tariffs.

4. PSE will use good faith efforts to maintain and improve the reliability of the electrical service provided by PSE to all of its electric customers in the City. In furtherance of this objective, PSE will undertake to do the following:

(a) On an annual basis, provide a written report to the City detailing the System Average Interruption Frequency Index ("**SAIFI**") and the System Average Interruption Duration Index ("**SAIDI**") for PSE's electric service within the City for a period that covers each of the previous five (5) years, including SAIFI and SAIDI information by individual PSE circuit serving the City that is calculated using the standard IEEE method; however, such reporting may use separate tables for transmission and substation outages and exclude outages without material customer impact (e.g., a substation being taken off-line for repair while maintaining electric service to customers within the City). PSE shall also provide an annual comparison of its service reliability within the City against its service reliability within cities that border the City and are within PSE's electric service territory, as well as a written comparison of its service reliability within the City against its service reliability across PSE's entire service area; and

(b) On an annual basis, identify and provide a written report to the City identifying any PSE circuits serving the City having a SAIFI and/or SAIDI, for the previous twelve (12) months, that is greater than the PSE system SAIFI and/or SAIDI for the same period and identify any corrective actions that may be taken by PSE to improve any such circuits. PSE shall include, in the report, annual outage data by circuit within the City, and each report shall be submitted by May 31st of each year with outage data for the immediately preceding calendar year; and

(c) On an annual basis, provide a written report to the City concerning all non-scheduled outages (and resulting service interruptions to customers) within the City during the previous twelve (12) months that involve electric service interruption to customers within the City (or such other threshold number of customers as the parties may agree upon from time to time), identifying the individual circuit, cause, equipment, duration and number of customers affected by the outage. Upon the City's reasonable request, PSE also will provide information regarding non-scheduled outages during the previous twelve (12) months that involved electric service interruption to any individual neighborhood within the City that lasted more than two (2) times the average community restoration time for other neighborhoods within the City.

(d) At a minimum annually, but more often as mutually agreed upon by the Parties, PSE shall present a report to the City Council at a public meeting, on a date mutually agreed upon by the Parties, summarizing the following:

(i) information contained in the written reports submitted by PSE pursuant to subsections (a) through (c) for the previous twelve (12) months;

(ii) PSE's processes and efforts for restoring electric service to its customers in the City during outages over the previous twelve (12) months, and identifying the steps necessary to expedite power restoration;

(iii) PSE's processes and methods for notifying and coordinating with the City during outage and storm, and emergency response, including designated PSE emergency contact information to report PSE equipment issues that compromise, or potentially could compromise, public safety or traffic movement in the right-of-way, and staff members designated by PSE to communicate with City leadership or designated staff when outages occur and to report on areas affected, remedies planned or underway and estimated restoration times;

(iv) system enhancements made by PSE over the previous twelve (12) months that show progress toward meeting system enhancement goals outlined by the City in its Kenmore Comprehensive Plan Utilities Element or other applicable system plans;

(v) projects that PSE anticipates undertaking during the next three (3) years to improve the reliability of its electric service in the City, including but not limited to smart grid alternatives or other innovative power measures; and

(vi) other matters mutually agreed upon by the Parties.

At the time PSE presents its report to the City, PSE also will give an update on PSE's plans and efforts for decreasing fossil fuel-generated electricity system wide, in addition to related information that is in PSE's reports to the WUTC or other government entities.

5. The information provided by PSE to the City under this MOU shall be provided to facilitate further inquiry by the City to PSE concerning the performance and reliability of PSE's electric service within the City. If the reports required by this MOU show that any individual circuit serving the City has a SAIFI and/or SAIDI for the preceding year that is greater than the PSE system SAIFI and/or SAIDI for the same period, then PSE will meet at the City's request and seek to resolve the issue in good faith. The provision of such information shall not otherwise create or imply any other commitment or obligation of PSE. The City will not provide such information to any third party without prior notice to PSE of the City's intention to do so.

6. As part of the parties' collaboration efforts under Sections 4 and 5 above, the City and PSE may give particular focus in their discussions to:

(a) measures for further improving the reliability of any individual electrical circuits serving the City that performed below PSE's system wide average reliability for the current and past three (3) years, such as accelerated vegetation management activities after a power outage, pole replacement, tree wire insulation, and/or sectionalizing switches at specific locations to minimize faulted regions and restore power to un-faulted regions of the electrical circuits serving the City; and

(b) measures to implement through PSE's improvement planning smart grid technology that provides smart, automated systems and switches to provide reliability, redundancy and resiliency in the electrical circuits serving the City, both as to existing circuits and those in new development areas.

7. Upon the City's reasonable request, but in no event more frequently than once each year, PSE will report to the City on the following:

(a) PSE's process and method (as made available) for providing its customers with information regarding filing claims for restitution for damages caused by power outages and/or obtaining available rebates relating to non-storm power outage events exceeding the duration of neighboring areas;

(b) PSE's efforts to establish a mechanism for communicating with property owners who have PSE Facilities located on or near their property that PSE may need to access for maintenance or service restoration of such PSE Facilities; and

(c) PSE's process and method (as made available) for allowing residential and commercial customers within the City to install grid-tie technology, which allows the customer to net meter their electricity based on power generated on site via solar, wind, or other renewable source.

8. PSE and the City will work together and collaborate in good faith on Comprehensive Plan Utilities Element updates and service planning to help facilitate meeting planned development projections.

9. The parties will discuss in good faith the means and terms on which an electric charging station may be installed and operated at or near City Hall.

10. The City acknowledges that it will consider proposing issues of mutual interest to be added to the state or federal legislative agenda.

Agreed and Accepted this ____ day of _____, 2018.

CITY OF KENMORE

PUGET SOUND ENERGY, INC.

City Manager

(Title)

Approved as to form:

City Attorney

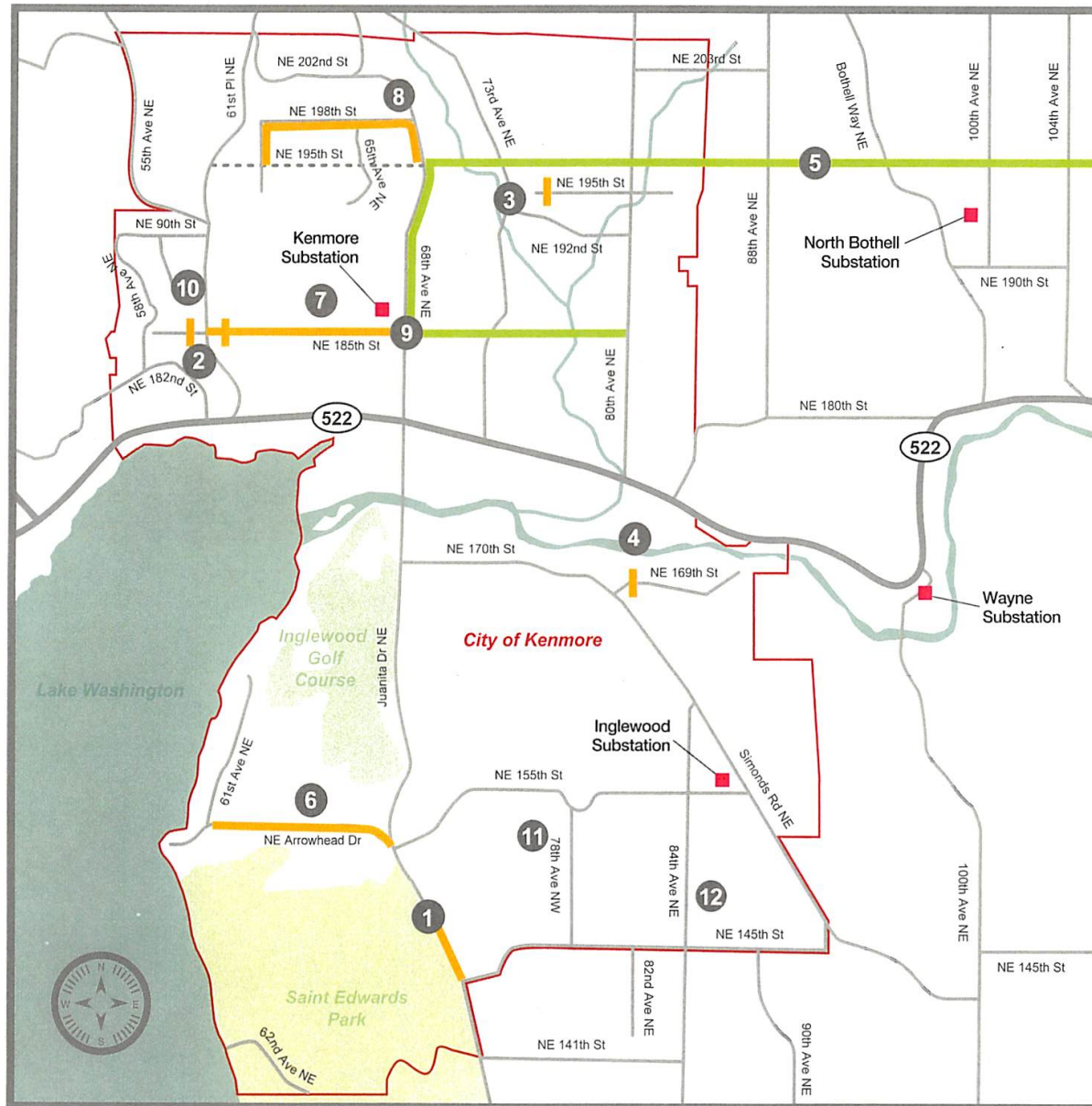
ATTACHMENT 5

PUGET SOUND ENERGY RELIABILITY PROJECTS

AND

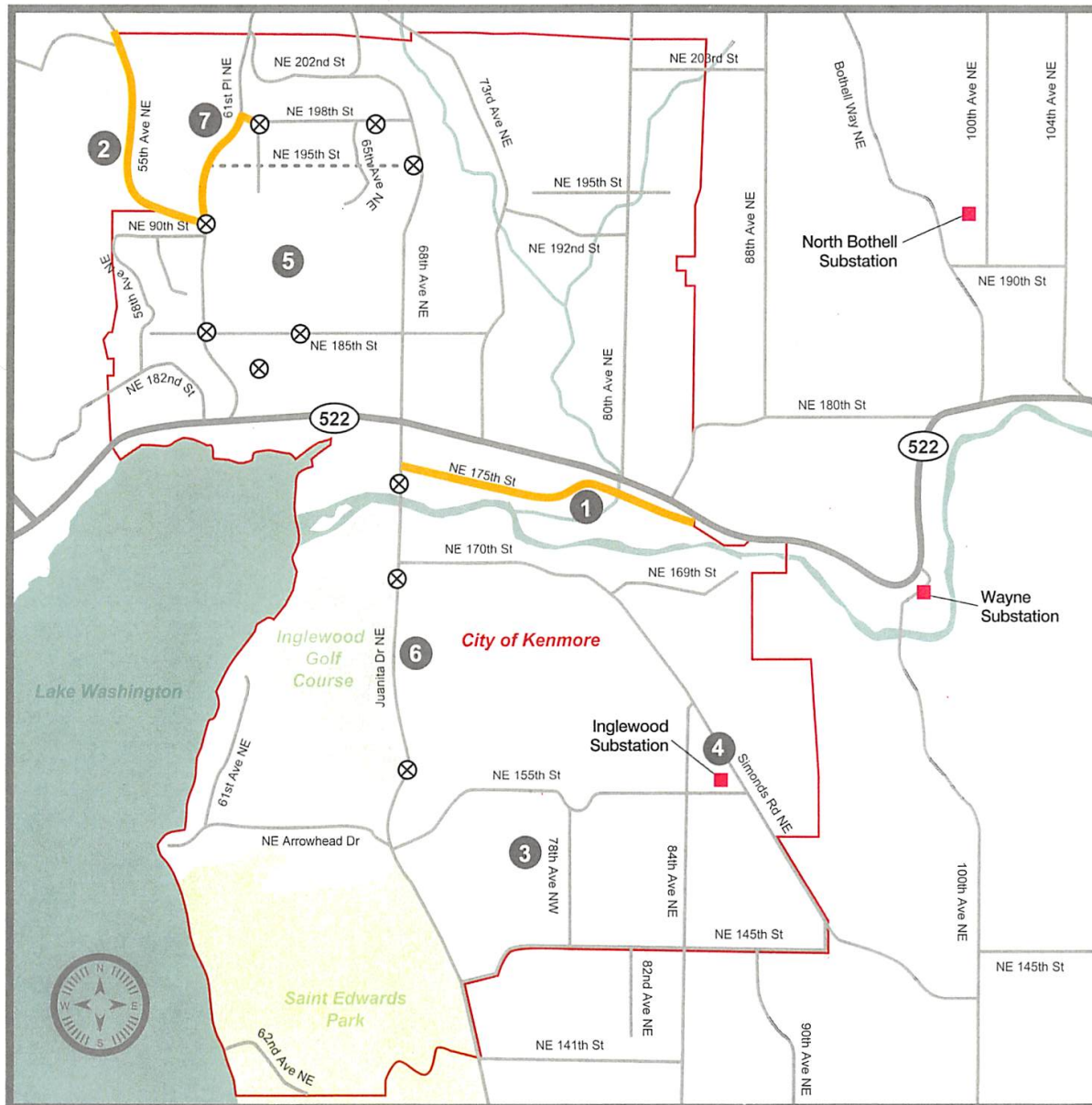
KENMORE CIRCUIT MAP

Reliability investments completed 2016, 2017 and 2018 Kenmore



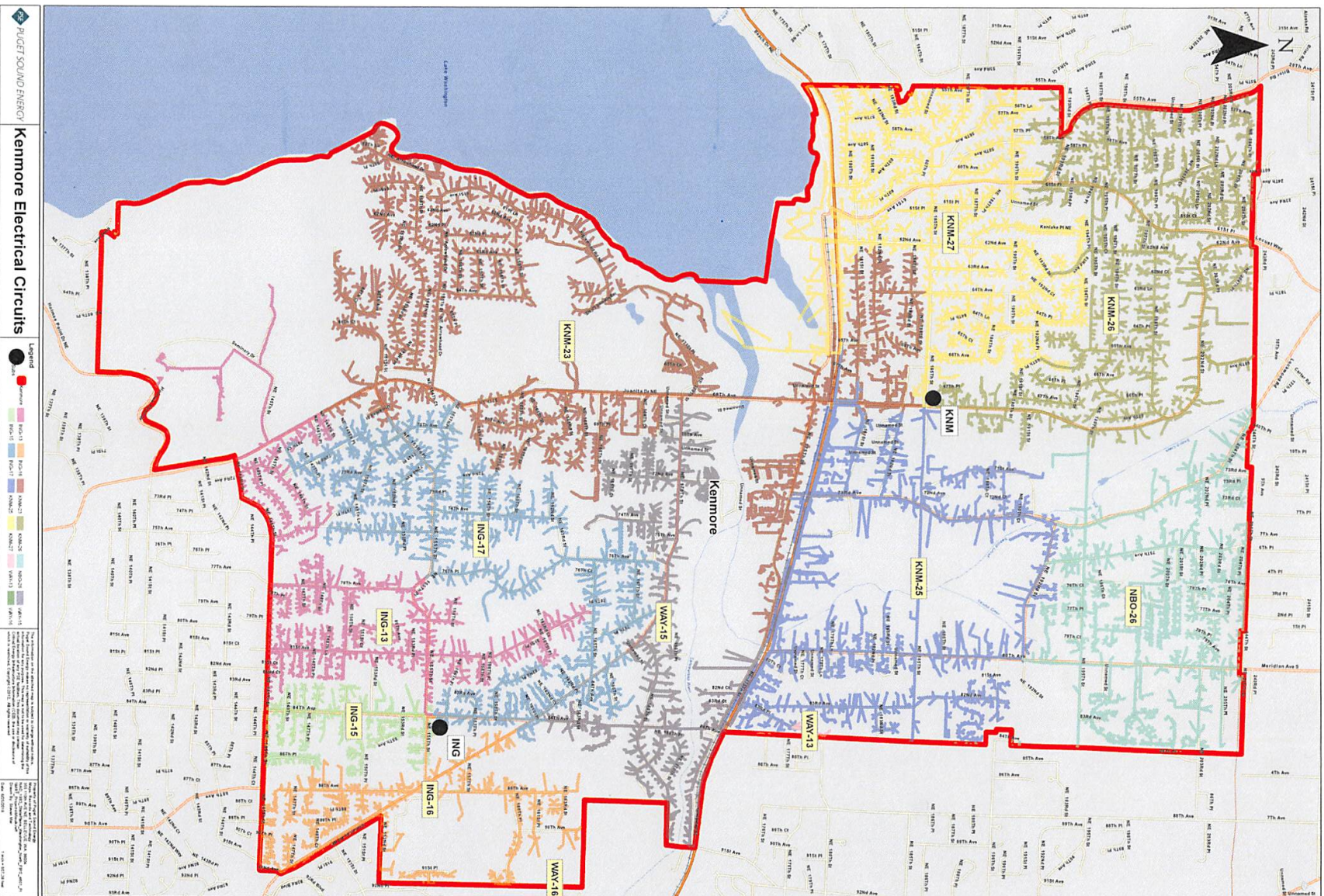
- 1 Distribution automation project (2016)**
 - PSE Test Project
 - Automatically detect damage and restore customers within seconds
- 2 New overhead switches on NE 185th St (2016)**
 - Allow servicemen to reconfigure a distribution circuit to restore customers faster
- 3 New Recloser on NE 195th St (2016)**
 - Prevents some customers from experiencing an outage
 - Tests circuit automatically to quickly restore power if there isn't permanent damage
 - Sectionalizes circuit to reduce restoration time
- 4 New Recloser on NE 169th St (2016)**
- 5 Moorlands-Vitulli transmission line upgrade (2016)**
 - Rebuild existing 5 mile line between Moorlands substation in Kenmore and Vitulli substation in Bothell
 - Provide more reliable electric service to Kenmore/Bothell area
- 6 Feeder reconductor with tree wire (2017)**
 - Tree wire is insulated conductor that is less likely to go out from tree branches
- 7 Feeder reroute and reconductor with tree wire (2017)**
 - Reroute due to access issues
 - Tree wire is insulated conductor that is less likely to go out from tree branches
- 9 Kenmore substation upgrades (2018)**
 - Upgraded four aging circuit breakers with new technology
 - The new equipment will improve how outages on the system are identified and managed remotely
 - Replaced aging underground cables to improve reliability
- 10 11 Replaced underground powerlines (2018)**
 - Replaced 14 poor performing underground cable runs in various locations to improve reliability.

Planned reliability projects in 2019 and 2020 Kenmore



- 1 Feeder reconductor (2019)**
 - Reconductor with larger wire to accommodate future load growth and reliability
- 2 Feeder reconductor with tree wire (2019)**
 - Tree wire is insulated conductor that is less likely to be impacted by fallen tree branches
- 3 Replace five poor performing cable runs with new underground cable (2019)**
- 4 Inglewood substation upgrades (2019)**
 - The project will upgrade four aging circuit breakers with new technology
 - The new equipment will improve how outages on the systems are identified and managed remotely
 - We'll also replace aging underground cables to improve reliability
- 5 Distribution automation project (2020)**
 - Installation of seven reclosers in various locations
 - Will automatically detect damage and restore customers within seconds
- 6 Distribution automation project (2020)**
 - Installation of three reclosers in various locations
 - Will automatically detect damage and restore customers within seconds
- 7 Feeder will be rerouted and rebuilt as an underground powerline (2020)**
 - Phase two of the larger NE 195th St reroute project designed to resolve the access issues with the existing overhead powerline that has previously impacted reliability.

⊗ = Recloser



ATTACHMENT
6

Failure Analysis Associates

The logo for Exponent, featuring the word "Exponent" in a white serif font with a registered trademark symbol, set against a dark green background. A large, faint, stylized "Ex" is visible in the background of the green area.

Exponent®

Revised

**Electric System Reliability
Assessment**

City of Kenmore



Revised

Electric System Reliability Assessment

City of Kenmore

Prepared for

Ms. Nancy Ousley
Assistant City Manager
18120 68th Ave NE
Kenmore, WA 98028

Prepared by

Exponent Failure Analysis Associates, Inc.
149 Commonwealth Drive
Menlo Park, CA 94025

November 17, 2016

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List of Abbreviations

A	amperes
ACSR	Aluminum conductor steel reinforced
aMW	annual megawatts (unit represents a constant load of one MW for a full year)
CCR	Coal combustion residuals
CO ₂	Carbon dioxide
EMS	Energy Management Systems
EUE	Expected unserved energy
IRP	Integrated resource plan
kV	kilo Volt
kVA	kilo volt-amperes
LOLP	Loss of load probability
mcm	thousand circular mils
MVA	Mega volt-amperes
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index
SCADA	supervisory control and data acquisition systems
WUTC	Washington utility transportation commission

Limitations

The scope of this report is intended for use by the City of Kenmore in reviewing their electric system reliability and capacity performance and may not be adequate for other purposes. Use of this report or the findings, conclusions, or recommendations presented herein for any other purpose is at the sole risk of the user.

The findings presented herein are made to a reasonable degree of scientific certainty based on information possessed by Exponent as of the end of date of this report. This report may be supplemented to expand or modify our findings based on additional work or review of additional information.

Executive Summary

Objectives and Scope of Work

Kenmore is undertaking a review of their electric system in preparation for renewal and renegotiation of their Franchise Agreement with Puget Sound Energy (PSE). Kenmore has requested an independent study of the electric system reliability, including infrastructure needs.

Exponent has performed the reliability assessment to address the following issues:

- Current power infrastructure, reliability and service levels in Kenmore.
- Complaints and actions related to service in Kenmore.
- PSE's recent and planned capital projects and programs to improve system reliability in Kenmore and recommended approaches that can result in reliability improvements.
- Current maintenance practices and vegetation management practices.
- Infrastructure and power supply improvements that are needed to meet future power needs.
- Smart-grid-related strategies or technology used in the US that could be adopted by PSE.

Exponent performed the reliability assessment by performing the following tasks:

- Review of pertinent reliability information obtained from PSE through public-availability submittals to Kenmore and the WUTC.
- Review of Integrated Resource Plan submitted by PSE to the WUTC which is publically available
- Drive and walk through observations of the electric system in Kenmore
- Interviews with selected members of the Kenmore Council and City Management
- Interviews with selected Kenmore residents and attendance at a PSE –Kenmore community meeting
- Interviews with General Manager of Bastyr University
- Interviews with members of PSE distribution and transmission planning
- Review of other industry available data through the public record

These tasks were performed to provide the current status of reliability issues in Kenmore and recommendations for potential improvements. The results of this assessment are included in this report.

Conclusions

Exponent found during its study that the electric power distribution circuits in the City of Kenmore are among the least reliable in Puget Sound Energy's (PSE) power distribution system. The reasons were readily apparent to Exponent after walk throughs and drive throughs of the City. The major reasons for low reliability are clearly that the distribution circuit are

generally older vintage and are placed in heavily forested right-of-ways. A secondary reason is the lack of animal guards placed on the distribution line poles.

Even though the distribution circuits are well placed in many of the newer parts of the City, portions of the circuits pass through narrow rights-of-ways with tree branches very close to the energized lines. In some line segments the right-of-ways are only five feet wide, which can easily be bridged by wind blowing tree branches into the line conductors. Any single, permanent tree branch contact will de-energize all or a substantial portion of the affected distribution circuit. Because in many instances, the tree induced line faults can be on a circuit routed through the backyards of homes, it is very difficult and time consuming to inspect the lines in order to find the fault location because such inspections have to be performed by walking the line. Furthermore, it will also be difficult if not impossible to bring equipment such as bucket trucks to the fault locations, which will make the repairs more labor intensive and time consuming. All of this leads to more frequent electric power system outages than in areas with less tree vegetation. These distribution system characteristics make the system highly susceptible to long duration outages in conjunction with severe storm events when tree branches might break, fall down and break the conductors.

The design of PSE's power distribution system in the City appears to be a legacy system with the basic configuration existing from a time before the City was incorporated. This means the system currently consists of older equipment that does not take advantage of modern technologies. It will be difficult to rebuild the system since:

- There may be a need to move lines from the back of properties to street locations. This effort will require the need for executing easements to enable the lines to be relocated.
- If lines are kept where they are that would require widening of the right-of-ways, clearing trees along the right-of-ways and removing easement encroachments to enable access by bucket trucks and truck mounted tree trimming equipment.
- Surface mounted service transformers and switches would have to be placed along the circuit if the overhead distribution lines were replaced by underground cables. .

Considering that one reason for the attractiveness of the City is the beautiful tree lined streets, it will not be easy to reach a consensus for major modifications of the power distribution circuits in the city. Therefore, the best remedy appears to be the completion of circuit rebuilds to modernize and improve reliability on circuits with aging equipment and limited accessibility; installation of tree wires that will reduce the probability for tree related faults; plus installation of modern so called reclosing switches that can be remotely controlled and interrogated to obtain fault information. If in addition, power can be fed into the circuits from the remote ends of the lines, it should be possible to minimize the areas affected by any distribution line fault and to relatively quickly identify the fault location, which will speed up the repair of the lines. Some of this is already imbedded in PSE's 2017 and future year budget plans. In addition, shortening the vegetation inspection patrols and reducing the tree trimming schedule (from the present 4 year schedule) would reduce the probability for tree rated faults.

Exponent also reviewed the cost of residential power available in the areas bordering Kenmore and found, based on publically available information that PSE presently appears to be competitive with the rates offered by Seattle City Light and only slightly higher than the rates offered by the Snohomish county PUD.

The presently PSE has the power supply resources to serve its customers. However, the region is experiencing growth so shortfalls might arise in the future. Therefore, as a part of Exponent's scope of work, PSE's integrated resource plan (IRP) was reviewed and evaluated to assess the probability that PSE will have the needed capacity to serve the region's expected growth, which is primarily expected to occur in the Interstate 405 corridor. One of the fundamental assumptions in the IRP is that the Northwestern states can be expected to have a significant electric power capacity shortfall during the 20 year planning horizon. However, there appears to be sufficient time to be prepared for this eventuality and to add power generation so that the expected future needs can be met.

Key Recommendations

Based on these observations, Exponent has identified several recommendations for potential improvement in electric reliability. These recommendations include:

1. Since the Kenmore circuits are looped radial circuits, the installation of reclosers and sectionalizing switches can make major improvements in outage restoration to reduce overall outage duration. It is recommended the installation of these devices be expedited for the Kenmore area.
2. PSE should implement its current plans for the rebuilding of Kenmore-26 (relocation of sections of the circuit), Kenmore-27 (feeder reconductoring) and Kenmore-23 circuits (feeder reconductoring). They should also implement improvements for other identified reliability issues on other circuits in Kenmore. [Note: there are on-going discussions between PSE and Kenmore regarding the scope of these upgrades.]
3. Kenmore is subject to significant storm impacts related to tree-related outages. The Kenmore area is on a four-year tree trimming cycle. It is recommended to perform more frequent patrols in Kenmore to identify potential emerging activities within the four-year period.
4. To further effect a turnaround in reliability, it is recommended that PSE install current modern technologies that it is utilizing in other parts of their system. It is recommended that Kenmore work with PSE to install other advanced technologies that are intended to improve electric reliability. These technologies may include various automation solutions, SCADA installations, and communications protocols for events and storm response.
5. Kenmore should request a reliability report from PSE that provides more details for evaluation of the Kenmore circuits. This report would highlight circuit outages, circuit projects, on-going maintenance activities, and performance related metrics. This report would provide for a better communication between Kenmore and PSE relative to

reliability and capacity issues. This reliability report can also form the basis for an annual meeting between PSE and Kenmore to review future plans and provide feedback on reliability issues.

6. Kenmore and PSE should have a more formal protocol for reviewing growth plans for Kenmore so that these plans are included in PSE's system planning activities.

These recommendations are intended to assist Kenmore in working with PSE to ensure appropriate levels of support for the Kenmore community.

Note that this Executive Summary does not contain all of Exponent's technical evaluations, analyses, conclusions, and recommendations. Hence, the main body of this report is at all times the controlling document.

Introduction

Objective

Kenmore is undertaking a review of their electric system in preparation for renewal and renegotiation of their Franchise Agreement with Puget Sound Energy (PSE). Kenmore has requested an independent study of the electric system reliability, including infrastructure needs.

Scope of Work

Exponent has performed the following tasks to assist the City of Kenmore in its review of its electric system performance:

- Exponent reviewed the current power infrastructure, reliability and service levels in Kenmore. Standard metrics System Average Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index (SAIDI) were used to provide a high level review of reliability. These metrics were obtained from the WUTC for PSE, Avista and PacifiCorp on a system level; from information provided by Kenmore for City-specific metrics; and publically available records for other municipal utilities.
- Exponent reviewed complaints and actions related to service in Kenmore. This information was obtained from the PSE Annual Reliability Report to the WUTC and discussions were held with the WUTC relative to the complaint process. The complaints were reviewed to determine causes affecting reliability. Exponent also conducted interviews with City personnel and citizens; and attended a local community meeting between PSE and Kenmore residents. Exponent also performed a general walk-through of Kenmore to visually observe the electric system.
- Exponent reviewed PSE's recent and planned capital projects and programs to improve system reliability in Kenmore and recommended approaches that can result in reliability improvements. Exponent met with PSE staff to understand the transmission and distribution system in Kenmore and to identify on-going reliability improvements.
- Exponent reviewed current maintenance practices and vegetation management practices to provide an assessment of how this compares with general industry practice. Discussions were held with PSE to determine their current practice and its impact on Kenmore.
- Exponent reviewed the infrastructure and power supply improvements that are needed to meet future power needs. This task included a review of information on Kenmore (2015 Comprehensive Plan Utilities Element) and information from the PSE Integrated Resource Plan. Discussions were also held with PSE to determine how they are planning to respond to the City and regional growth plans.

- Exponent recommended strategies or technology used in the US that could be adopted by PSE. This task generally involved a review of smart grid initiatives affecting reliability, outage management, and grid performance.

These tasks were performed to provide the current status of reliability issues in Kenmore and recommendations for potential future improvements. The results of this assessment are included in this report.

Background

Power system reliability encompasses the time an electric system is available to deliver electric power to a customer's meter in accordance with voltage and frequency requirements specified by PSE's agreement with WUTC.¹ A highly reliable system is one that has redundancy in the power system design; equipment that is designed, operated, and maintained to minimize the probability of failure; sufficient sensors installed to identify faults and their locations and to restore power to the affected customers or, if this is not possible, isolate the fault to minimize the number of affected customers. A reliable system should also have provisions for effective communication of outage status between all stakeholders.

A brief discussion of electric system operation and general electric system reliability is presented here prior to a discussion of reliability in the City of Kenmore.

Electric System Operation

The electric system consists of generation, transmission, and distribution systems that deliver power from generation stations to the end user. The overall electric system is depicted in the Figure 1 below.

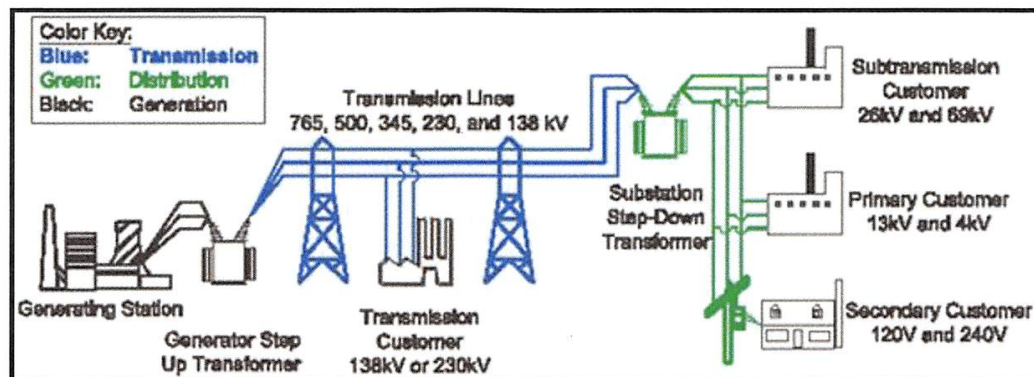


Figure 1 Electric Power System

The overall electric power system consists of the following major systems:

- **Generation:** The generation system is made up of large base-loaded power plants (natural gas, fossil, nuclear), renewable sources (hydro, wind, solar), and smaller distributed generation sources. Generation sources are obtained

¹ See WAC Sections 480-100-368 and 480-100-373.

from utility-owned assets as well as purchased from third parties. The third-party agreements consist of long-term power contracts, as well as short-term market-based power contracts to meet peak demands. Utilities are required to maintain generation assets with sufficient capacity to meet peak electric power demands and reserve margin requirements. Utilities provide long-term forecasts and plans for generation needs through their Integrated Resource Plans.

- **Transmission:** The transmission system delivers electricity from the generation stations at high voltages to the distribution system. Electricity is stepped up from power plant voltage at the generation station switchyards to transmission level voltages and carried to substations, in which voltages are stepped down (transformed) to distribution level voltages. The transmission system consists of high voltage lines that typically span long distances from the generation stations to the receiving substations. The high voltage transmission systems are the bulk power supply assets and the transmission system operations affect all utilities connected to the system. Therefore, these transmission systems are monitored and coordinated through regional transmission system operators. Transmission systems utilize SCADA systems and Energy Management Systems (EMS) to monitor and control the operations of the transmission system and the connected power sources. Also, since the transmission lines carry bulk power affecting large customer populations, they are designed with a high degree of redundancy so that there are typically multiple sources of power provided to transmission substations that in turn feed the distribution system.
- **Distribution:** The distribution system delivers electricity from the transmission substations to the end users. These might be industrial, commercial, or residential users and the utility distribution system typically ends at the last power pole or transformer right before the service drop used to connect to the end users facility. . The distribution system consists of distribution substations which are fed from the transmission substation that step down voltages to distribution level (typically 12.5kV). The distribution voltage is further stepped down to a suitable customer voltage through distribution transformers (pole top, surface mounted or underground), which are fed from the distribution lines.

These three major systems have varying impacts on the reliability of the electric power delivery.

Impacts on Reliability

Reliability to the end user is the availability and quality of electric power delivered to their meter. Reliability is impacted by outages on the system that result in a loss of electricity at the meter, as well as variations in voltage characteristics (power quality), which could be caused by the end users. While power quality issues are not outages, they may affect the performance of equipment and appliances that are sensitive to voltage fluctuations.

Outages are typically caused by:

- Equipment failures
- Weather-related events (typically wind and storm damage)
- Vegetation-induced faults (e.g., tree branches falling on wires)
- Animal-induced faults (e.g., animal or bird interaction with live components)
- Other types of accidents (e.g., car accidents affecting system assets).

Faults in the electric power system may interrupt delivery of electricity to the end users. A fault produces a disturbance in the electric delivery system that may require the system to shut down for operational and safety reasons. When the fault is identified and corrected, then power delivery can be resumed. The fault identification, fault isolation and power restoration may be performed by automated systems or by manual intervention. Interruptions on the electric system are classified into several categories:

- **Momentary interruptions:** These are very short duration outages (industry typically uses less than 1 to 3 minutes). Power quality occurrences can be categorized as similar to momentary interruptions.
- **Sustained interruptions:** These are longer duration outages (industry uses greater than 1 to 3 minutes).
- **Major interruptions:** These are long duration and widespread outages resulting from storms, earthquakes, equipment failures, or other events. These interruptions typically affect a large percentage of the end users.

Relative to measuring reliability, the industry traditionally uses only sustained interruptions in the determination of reliability. However, reporting is often provided for major events or other interruptions as a secondary measure.

The electric system components affect reliability differently. Generation assets are required to be available with sufficient margins that the loss of any single power generating facility or transmission line does not result in outages to end users. For very significant events, such as the northeast outage in 2003, multiple plant shutdowns can result in widespread outages, although these are relatively rare occurrences.² Also, if peak electricity demand increases to levels above the generation capacity and reserve margins, then outages can occur. However, for purposes of electric system reliability, generation components do not have a major effect on industry-reported measures of reliability for normal operations.

The transmission system has a very large impact on power delivery and a major event on the transmission system can result in outages for a very large number of customers. However, while a fault or outage of a transmission line or substation has the ability to impact more end users, there are typically sufficient redundancies in transmission assets to minimize the impacts

² Final NERC Report: "Technical Analysis of August 14, 2003 Blackout"; July 13, 2004

of events on these systems. Additionally, the transmission lines are higher in elevation and usually have larger right-of-ways to reduce the impact of threats to the lines from sources such as trees, animals, and other interactions.³ Due to these features, transmission assets typically experience far fewer faults that cause outages to the end users than distribution lines; therefore, the transmission system has very little impact on measures of reliability. The ability of the generation and transmission assets to deliver the power demand is more of a longer-term planning concern than a day-to-day reliability concern.

The distribution system directly provides electrical power to customers and is subject to a higher number of faults than generation and transmission assets. Distribution systems are typically designed with less redundancy than the other systems and since this is the system delivering the power to the customers, faults or events on the distribution systems result in outages to customers. Therefore, the potential for local system issues to produce outages is greater than for other components in the system. Thus, reliability is primarily determined by the distribution system assets.

Reliability Measures

Reliability is typically measured based on the frequency and duration of outages relative to the number of customers. There are several measures for reporting and measuring electric reliability, such as IEEE Standard definitions⁴ or similar approaches to report reliability. These measures include SAIDI (System Average Interruption Duration Index) and SAIFI (System Average Interruption Frequency Index). These indices are calculated as:

- System Average Interruption Frequency Index (SAIFI)

SAIFI = (Sum of the number of customers affected by each outage)
divided by (Total number of customers served)

- System Average Interruption Duration Index (SAIDI)

SAIDI = (Sum of the number of customers interrupted times the
number of minutes of each interruption) divided by (Total number of
customers served)

These measures are based on the customer base served. SAIFI measures the likely number of outages that a customer experiences and SAIDI measures the likely outage duration (minutes) that a customer experiences. Therefore, these measures represent the average number and duration of outages experienced per customer per year. These measures provide a basis for tracking and trending overall performance and allow for comparison among utilities.

³ Because the towers are typically tall, the towers and the lines can attract lightning surges.

⁴ IEEE 2004 Standard 1366 Guide for Electric Power Distribution Reliability Indices.

Momentary interruptions (and power quality excursions) are typically not measured or monitored continuously at end user sites and are not included in the reliability calculations. Currently, most utilities do not actively track these momentary outages, but work with customers directly to address them when these issues are identified as problems. Customer sites that are very sensitive to momentary or power quality issues typically develop site-specific solutions to protect their assets and operations.

Additionally, major outages are typically not included in reliability measures since these major outages are not representative of how the electric system normally performs. However, utilities today are providing additional reliability measures that include major outage effects. While these reliability metrics allow for tracking and trending performance, they also provide a basis for how an electric utility responds to these measures.⁵ Utilities use these reliability statistics to identify problem areas and define actions to improve reliability.

Reliability Drivers

Since the reliability of the electric system is measured by metrics similar to SAIDI and SAIFI, a key to understanding reliability is defining what factors affect reliability. Electric system reliability relative to the frequency or occurrence of outages is impacted by the following:

- **System Design (Layout):** Distribution system designs vary in the extent of system redundancy (a high level of redundancy means that the system can withstand more contingencies without affecting the customers). In more urban areas, the distribution system may consist of a network that is a highly redundant and allows electricity to be provided from multiple sources (substations). Therefore, a fault on one line may not result in interruptions, since electricity is available from multiple sources. In more rural or less populated areas, the distribution system may be radial. A radial system has limited or little redundancy. A fault on the line will result in an outage of some type. There is only one source (substation) feeding a radial line. Additionally, there are system designs that lie somewhere in between a network and a radial system. Therefore, the overall system design impacts the response of the system to faults and has an impact on the number and duration of outages. System design solutions typically involve additions, modifications, or expansions to the existing system to improve reliability through design. These solutions affect both the occurrence and duration of outages.
- **System Design (Operations):** The degree of automation built into the system has a major impact on reliability. Devices that allow faults to be cleared automatically (fuses and circuit breakers) result in quick power restoration to those not affected by the fault. High impedance faults might not be detectable and might have to be

⁵ For example, restoration of power to most of the customers reduces the duration and number of customers affected by an outage more than a long duration outage to a few customers. Since there are financial penalties associated with not meeting the reliability targets to many utilities, restoring power to as many users as possible with a minimum of delay reduces the penalties.

reported and cleared manually. Automation comes into play when power is restored to customers not directly affected by the fault. Also, the automation equipment often provides for better knowledge of system status, faster identification of fault locations, and the ability to remotely restore power. Limited automation requires personnel to travel to the fault location and to take manual action to restore power to those who are affected by the fault. Therefore, system operations (and automation) have a significant impact on the number of sustained outages and the duration of outages.

- **Equipment Maintenance and Replacement Programs:** Many outages are produced by equipment failures. Typically, substation equipment failures result in outages which affect more end users since the substations feed multiple circuits. Substation equipment is typically subject to preventive or predictive maintenance to reduce the potential failure of components that impact substation performance. Also, key substation assets are being equipped with continuous monitoring technologies that allow for identification of problems prior to equipment failure. Distribution line equipment is most likely to include maintenance strategies that allow for run-to-failure. Distribution circuits affect a lower number of customers. The distribution assets are typically low-cost and easy to replace items and are traditionally replaced on a set time frame. However, utilities modify their maintenance strategies and programs to direct improvements into parts of the system experiencing higher levels (frequency and duration) of outages.
- **Capital Project Prioritization Programs:** The capital project program includes projects that are capacity expansions, system configuration changes, major equipment replacements, system upgrades, reliability programs, and technology upgrades. The priority of capital projects focusing on system reliability is a major factor in improving reliability. Utility planners review overall system impacts for new and existing infrastructure and projects are selected and budgeted. The ability to trend and analyze outages provides a basis for defining projects and programs and these capital programs have a direct impact on system reliability through minimizing outages.
- **Vegetation Management:** A significant number of faults (and outages) on overhead distribution lines are caused by tree-related events. Utilities conduct tree trimming and vegetation management programs to minimize the impact of faults due to vegetation impacts on power lines. Since this is a primary cause of faults, the effectiveness of the vegetation management program is a key to improved reliability.
- **Animal Abatement:** Similar to vegetation management, utilities conduct animal abatement programs to minimize the potential for outages produced by birds, squirrels, and other animals.
- **Outage Management Programs:** The ability to respond to an outage directly impacts the reliability of the system relative to duration of outages. Keys to effective outage management are the ability to quickly identify outages and to locate faults so that appropriate restoration actions can be taken. The outage management

program includes operational visibility into the system, the ability to dispatch crews to fault locations, and the ability to effectively communicate with customers. Overhead line faults might be cleared by automatic reclosing, but underground faults are typically permanent faults that require people to diagnose the problems. Also, many times the fault location has to be inspected before power can be restored.

These work processes are the primary activities that utilities perform to improve overall system reliability.

Electric Infrastructure

Exponent reviewed the current power infrastructure, reliability and service levels in Kenmore. Standard metrics SAIFI and SAIDI are used to provide a high level review of reliability.

Bulk Power Supplies for the City of Kenmore

The City of Kenmore is supplied power from ten 12 kV distributions circuits. These are:

- Inglewood 13, 15, 16 and 17
- North Bothell 26
- Wayne 15
- Kenmore 23, 25, 26 and 27

The distribution lines are fed from the Kenmore, Bothell, Wayne and Inglewood substations. That is, there are four substations inside the City of Kenmore or close to the City's boundaries. These are discussed below.

Figure 2 shows the 115 kV high voltage lines feeding the Kenmore substation. One line comes from the North Bothell substation and the other comes from the Moorlands switching station. The line from Kenmore via North Bothell to the Vitulli is being upgraded from a 4/0 copper conductor to a 272 thousand circular mil (mcm) Aluminum conductor steel reinforced (ACSR) conductor. The current limit for a 1272 mcm ACSR conductor is 1200 A, which enables the line to carry 240 megawatts (MW) but the winter rating in PSE's service territory is 320 MW.⁶ This compares to a current rating of about 490 A for a 4/0 copper cable.⁷ That is, this re-conductoring project will provide a substantial increase of the power carrying capacity into the Kenmore substation. As can be seen in Figure 2, the Kenmore and North Bothell substations, from which the power is distributed into the City, are fed from at least two 115 kV lines. This is also the case for the Wayne and Inglewood substations. Thus, if one of the two lines is lost, power will continue to be fed from the second line. Therefore, it requires a loss of at least two 115 kV lines feeding a substation to lose the power to the distribution lines fed from that substation. That is, the 115 kV system serving the city is a robust system.

⁶ See table 4-32 in the Standard Handbook for Electrical Engineers, 11th edition.

⁷ Ibid table 4-29.

Moorlands-Vitulli 115kV transmission line rebuild project

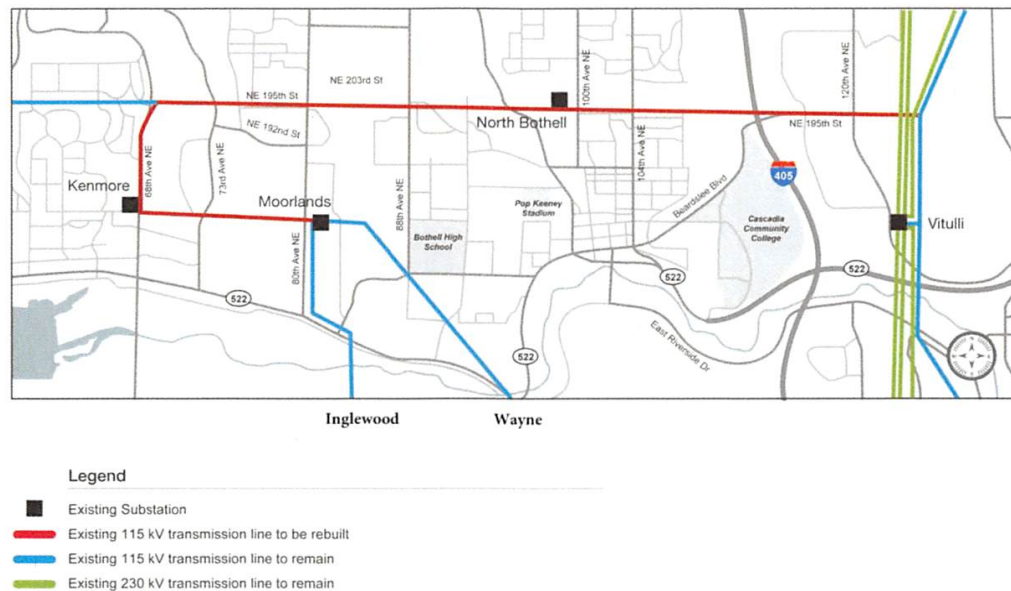


Figure 2. High voltage transmission lines serving Kenmore



Figure 3. Google Earth view of the Kenmore substation

Figure 3 is a view of the Kenmore substation. There are two 115 kV lines connected to this substation. One of these go to the Bothell substation and the other is routed to the Moorlands switching station. According to PSE, there is one 25 MVA transformer installed in the substation. As is readily apparent from the view shown in Figure 3, there is space for at least one additional 25 MVA transformer, which would increase the installed capacity to 50 MVA. A second transformer might also provide some redundant capacity in case one of the two transformers was to fail.

Figure 4 shows the Moorlands switching station. There are three 115 kV lines entering this station. Two of these lines are routed through other substations but eventually connect to the Sammamish substation in PSE's system. One of the lines goes to the Kenmore substation seen in Figure 2. However, there are no transformers installed in this station.



Figure 4. Moorlands switching station at NE 185 street and 80th avenue NE



Figure 5. Inglewood substation at NE 155th street and 84th avenue NE

Figure 5 shows the Inglewood substation. There are two 115 kV lines connected to this substation, one of which goes to the Moorlands substation and the other is routed southward and eventually connects to the Sammamish substation. There appears to be one single transformer installed in this substation but there seems to be adequate space for more transformers.

Figure 6 shows the Wayne substation. There seems to be two 115 kV lines entering this substation. One of these is routed to the Moorlands switching station and the other should eventually reach the Sammamish substation. There appears to be sufficient room for another transformer to be installed in this substation.



Figure 6. Wayne substation along 96th Avenue NE close to the Red Brick Road intersection

Figure 7 shows the North Bothell substation, which is located close to the intersection between the 195th Street NE and 100 Ave NE in the City of Bothell. This substation is surrounded by tall trees that pose a risk for station outages in case of a severe storm. However, there appears to be ample room for expansion of the substation that would allow for the installation of one additional transformer if the need arises to serve more loads from this station.

All of the 115 kV system that feeds electric power to the City of Kenmore originate from the Sammamish substation, which is shown in Figure 8. This substation is a key power node in PSE's power system in the region east of Lake Washington. It receives power via 230 kV circuits from the Monroe substation to the north and the Covington substation to the south as is shown in Figure 9.⁸ That is power can be delivered to the substation both from a strong power node north of the Sammamish substation as well as power from the south. That is, the complete loss of power feeding the Sammamish substation although not impossible during a major storm is relatively unlikely.

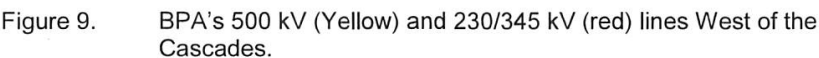
⁸ Reproduced from Figure 31 of Exponent's City of Bellevue Electrical Reliability Study Phase 2 Report.



Figure 7. The North Bothell substation.



Figure 8. Sammamish bulk power substation along Willows Rd in Redmond



The power distribution in Kenmore is operated at about 12 kV. It is a three phase, 4-wire system, which enables the connected loads to be connected from the phase conductors to the neutral conductor. The voltage between a phase conductor and the neutral conductor is about 7 kV. In theory, the distribution lines go radially from a substation to an end point. This is referred to as a radial system. However, at an end point, there is an open manually operated switch, which would enable the circuit to be fed from an alternate source but only if the power from the normal source is opened. For example, if the source in the Kenmore substation is lost, power can be fed from one of the other substations or from another circuit originating in the Kenmore substation. This makes it a “radial – looped” system.

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opens, all of circuit 26 loses power. Trouble shooting of the circuit 26 is therefore, extremely complex and time consuming because it is not just a matter of following a simple radial circuit until the fault location is found but might also be necessary to also inspect the line branches. Restoration of power to circuit 26 after a major storm will also be time consuming because the lines segments have to be inspected before the circuit can be re-energized since if a line is down and becomes re-energized, it represents a serious hazard to people in the vicinity of the down conductor.⁹

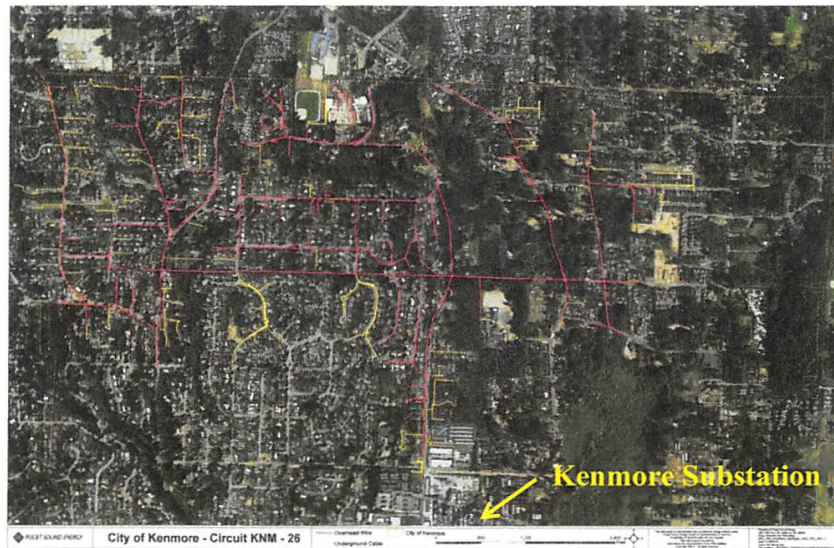


Figure 10. Feeder circuit Kenmore 26; red color is overhead lines and yellow color is underground cables

As can be seen in Figure 11, the distribution circuits are often placed in narrow corridors surrounded by trees or with fast growing trees under the conductors. PSE stated that the easements might in some locations only be 5 feet wide, which means that trees can only be pruned to a distance of 2.5 feet from the centerline where the conductors will be placed. Also, as can be seen in Figure 11, the tree branches at higher elevations appear to have grown over the line conductors.

Figure 12 shows tree branches that are drying out most likely as a result of capacitive current flows from the conductors to the tree branches, which results in heating and drying of the

⁹ Detection of a ground fault on a so-called tree wire is more difficult than from an uninsulated wire because the contact area between the bare, exposed ends of tree wires is small, which increases the fault resistance and reduced the fault current. This is well known in the industry. That is, tree-wires increase the reliability of the distribution circuits but at the cost of increasing the risk for electrocution. However, all downed conductors are dangerous and must be reported to PSE and the public safety authorities.

leaves. In this case, the tree has grown and is at the time this picture was taken (September 28, 2016) too close to the conductors.

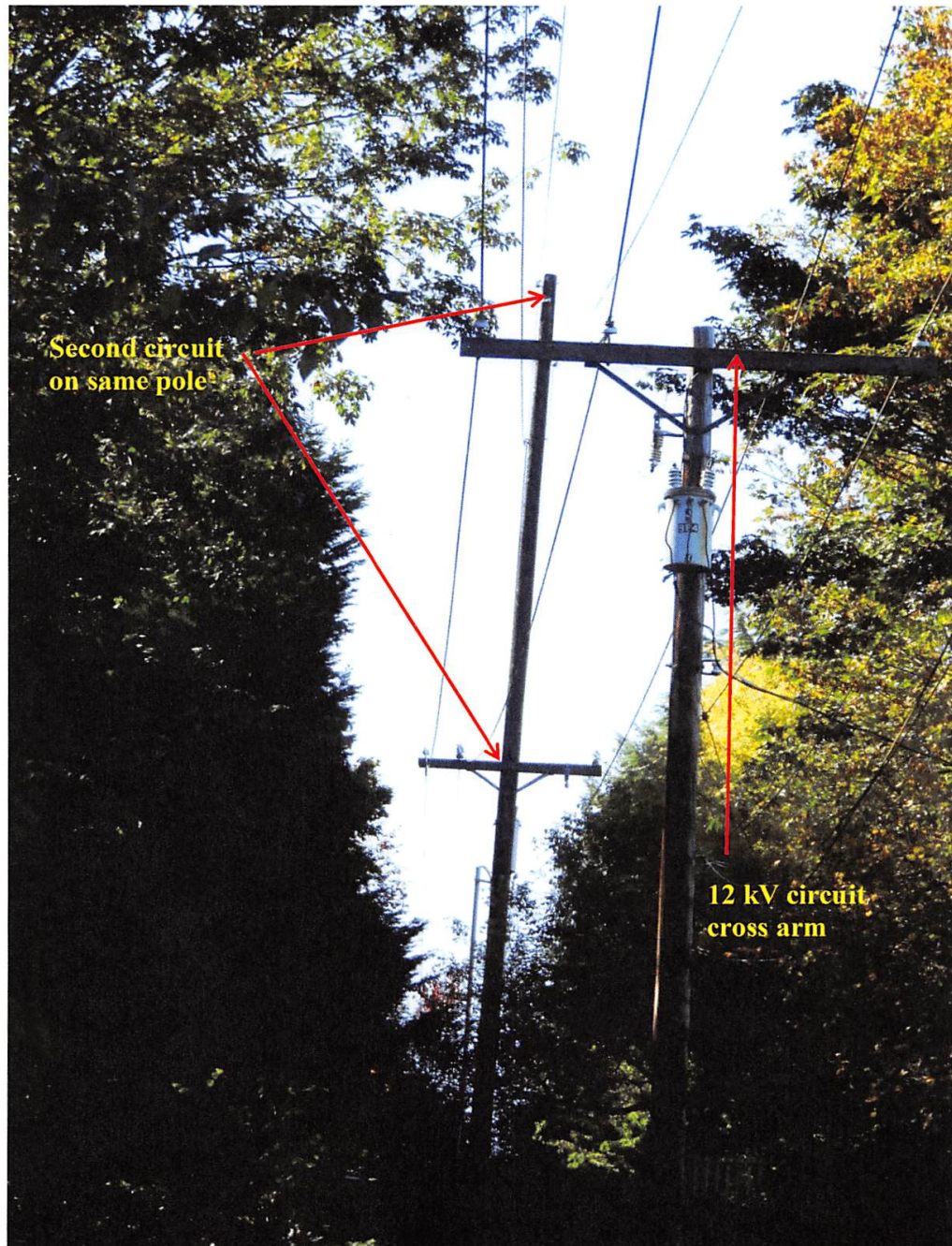


Figure 11. Example of a 12 kV distribution circuit right-of-ways; second circuit appears to be overbuilt on top of the lower circuit

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Figure 12. Example of a 12 kV line with tree limbs approaching the conductors

The line conditions shown in Figure 12 and Figure 12 are found in older residential areas throughout the city. In newer developments, there are fewer tall trees and the power distribution circuits might even be underground. However, if the line between the newer developments and the substation goes through older areas of the city with narrow right-of-ways with tall trees, the reliability of the power to the newer developments is compromised.

Electric System Reliability

The electric reliability review for Kenmore includes the following items:

- Review of overall PSE system reliability
- Review of system reliability in Kenmore

These two perspectives provide for an assessment of how Kenmore reliability compares with the remainder of the PSE system and identifies areas for potential improvement.

PSE System Reliability

PSE reports on its overall system reliability through the Annual Reliability Reports that it issues to the WUTC. These reports provide information on overall reliability that includes metrics for SAIFI and SAIDI based on the IEEE definition (excluding major storm events) and also on total outages experienced by customers (including major storm events). The Annual Reliability Reports also provide information on the following:

- 50 least reliable circuits
- Discussion of customer complaints and resolutions
- Information on pending projects and reliability improvement activities

Based on information from the Annual Reliability Reports, the overall PSE reliability performance is shown in Figure 13 and Figure 14 for SAIFI and SAIDI, respectively.

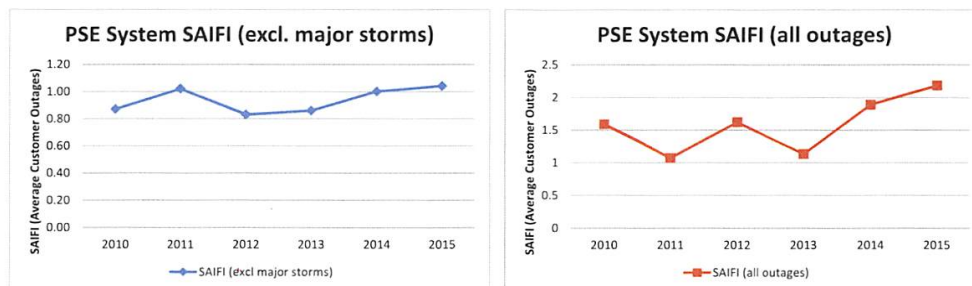


Figure 13 PSE System SAIFI¹⁰

¹⁰ Data obtained from Puget Sound Energy Service Quality and Electric Service Reliability Reports filed with the WUTC (Annual Reports)

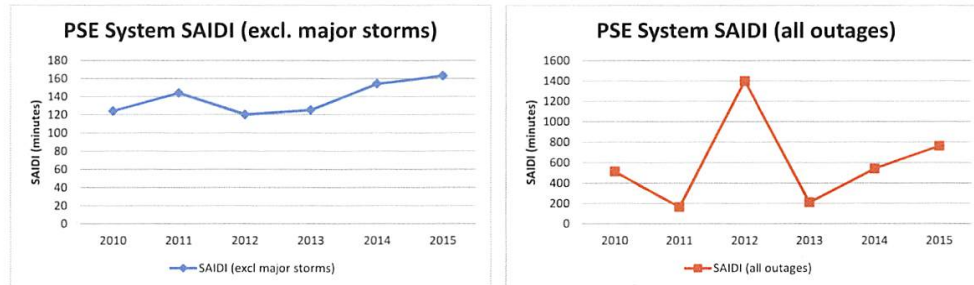


Figure 14 PSE System SAIDI¹⁰

PSE has maintained an overall system SAIFI of between 0.83 and 1.04 since 2010 if major storm events are excluded from the measure. There is an increasing trend to this value over the past three years. This SAIFI value means that each customer experiences about 1 outage per year on average. PSE has maintained an overall system SAIDI of between 120 minutes and 163 minutes since 2010 if major storm events are excluded from the measure. There is an increasing trend to this value over the past three years. This SAIFI value means that each customer experiences between 2-3 hours of electric outages per year on average. This measure (excluding major storms) provides an indication of system reliability from normal conditions and operations.

Major storm events are variable in that they may or may not occur during a given year and the intensity of the storms varies. However, major storms impact a large number of customers and as shown in the figures above, SAIFI and SAIDI increase significantly when major storm events are considered. As seen from the graphs above, the SAIDI value increases dramatically in storm events.

For 2015, PSE reported that SAIDI was high due to two large wind storms. PSE's 2015 Annual Reliability Report stated the following:

Throughout 2015, western Washington experienced abnormal to severe drought conditions due to record low snow pack and precipitation levels. As a result of these adverse conditions, trees were stressed and dying in very dry soil conditions. Trees are shallow rooted with the roots spreading wide rather than deep. When soil conditions are too dry to be a counter-balancing weight, strong winds can easily topple trees and loss of limbs occurs more quickly. On August 29, 2015, PSE's service territory was hit by the strongest summer storm in Northwest history. Winds gusts exceeded 45 mph at Sea-Tac Airport and gusts were much higher in other portions of PSE's service territory. Since it was summer, trees were still fully leafed, and combined with being stressed due to drought conditions, were very vulnerable to these high wind speeds. Trees were uprooted as the dry soil wasn't strong enough to support the trees. Fully leafed limbs were also torn from trees and sailed through the air. The result was an extraordinary storm where over 400,000 customers lost power and it took several days to restore power to everyone. On November 17th, a second intense storm occurred in our service territory. By late fall of 2015, precipitation was returning to normal levels and the region saw record level precipitation on the weekend preceding the storm and on the day of the

storm. When wind gusts, up to 67 MPH hit the region, the saturated soil could not support the trees' shallow root system causing widespread outages. In addition, some trees were still stressed from the drought earlier in the year and were not strong enough to withstand the high wind speeds.¹¹

State of Washington Utility Comparison

The use of these measures allows for some comparison of reliability performance between utilities. However, the calculation of SAIFI and SAIDI varies between utilities relative to the calculation of a sustained outage. WUTC defines that a sustained outage as an outage greater than 1 minute in duration so that PSE uses this definition in its calculations. Other states define sustained outages as greater than 3 or 5 minutes so that there is not a complete common basis of the SAIFI and SAIDI values. However, a review of utility performance does provide some measure of performance in a given area. Also, most reliability measures are determined based on the exclusion of major storms based on requirements from their regulatory agencies.

A comparison of Washington regulated utilities (PSE, Pacificorp WA, and Avista) as well as Seattle City Light is shown in Figure 15. Since the three regulated utilities report using the same criteria, there is a basis for comparison among these three.

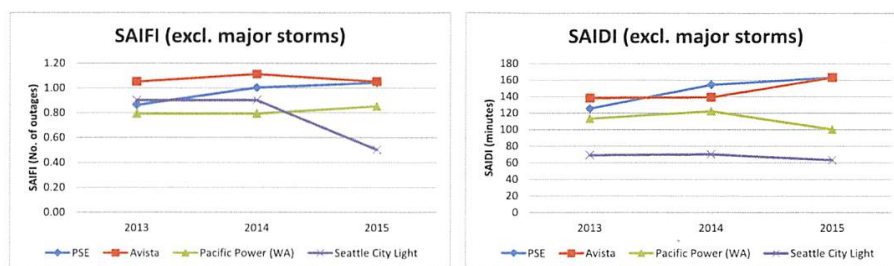


Figure 15 SAIFI / SAIDI Comparison

PSE's reliability performance is comparable to the other regulated utilities in the state of Washington. Seattle City Light has better performance than the three regulated utilities¹². Seattle City Light has several advantages over the three regulated utilities in that it operates mostly in an urban environment with a small geographic footprint. Typically, urban systems have more underground systems and more built-in system redundancy so that the number of outages is reduced; and the redundancy and small footprint allows for more rapid response to outages that reduces the outage time. The density and height of trees is also a major factor to consider when making comparisons between the various utilities.

¹¹ Puget Sound Energy 2015 Service Quality and Electric Service Reliability Reports filed with the WUTC

¹² Seattle City Light website for electric reliability.

IEEE Survey Comparison

Another comparison is from the annual IEEE surveys. IEEE obtains data from most utilities relative to the SAIFI and SAIDI metrics to provide some comparison. As indicated previously, these values may not always be the same, but the large population provides an indication of utility performance. The IEEE measures for 2013 and 2014 are shown in Table 1 below. Results from IEEE have not yet been published for 2015.

Table 1 IEEE Benchmark Results

Quartile	2013		2014	
	SAIFI	SAIDI	SAIFI	SAIDI
1 st /2 nd quartile break	0.90	85	0.86	86
2 nd /3 rd quartile break	1.10	115	1.07	115
3 rd /4 th quartile break	1.40	158	1.33	159

These values are based on outages excluding major storm events and the lower quartile (1st) represents the best reliability. PSE's SAIFI performance for 2013 and 2014 was in the 1st quartile and 2nd quartile, respectively. PSE's SAIDI performance for 2013 and 2014 was in the 3rd quartile for both years. Based on 2015 performance, it is expected that PSE will rank in similar quartiles for 2015. While this comparison shows a relative performance between utilities, there are variances in the way utilities calculate these measures and also variances in geography, topology and weather that affect the results.

Kenmore Circuit Reliability

Kenmore – Overall PSE System Comparison

Based on circuit information provided by Kenmore from PSE, City of Kenmore metrics were calculated for SAIFI and SAIDI.¹³ The results are presented in Figure 16 below. Based on these results, residents of Kenmore on average experienced about one outage per year and experienced approximately four hours of outages on average over the past six years. There have been major storms over the past three years which have increased the number of outages and the duration of outages.

¹³ These are approximate for trending purposes since specific outage information was not available.

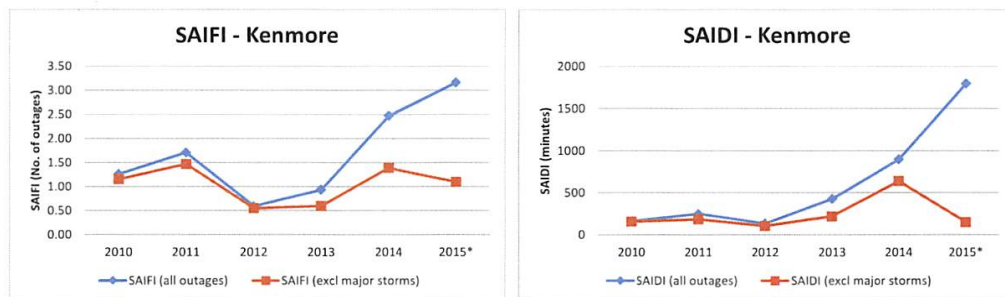


Figure 16 Kenmore SAIFI / SAIDI Results

A comparison of Kenmore results for outages excluding major storms is shown in Figure 17 below. While there are variances in SAIFI between the overall PSE system and Kenmore, over the past six years, on average SAIFI in Kenmore slightly higher than that of the overall PSE system. The outage duration is generally the same in Kenmore as the overall PSE system from 2010 to 2012 and 2015, but there were large variances in 2013 and 2014.

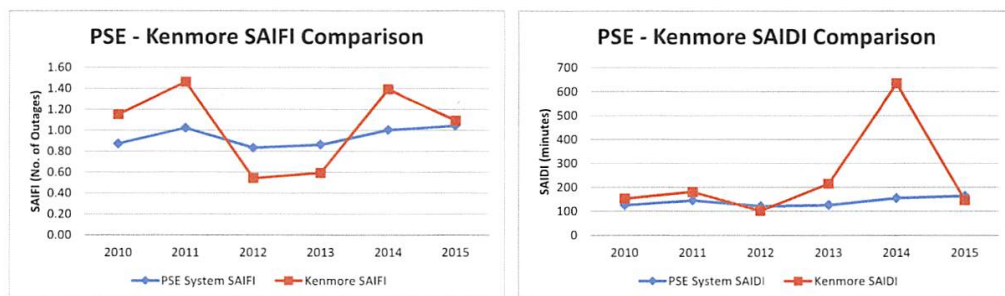


Figure 17 Kenmore – PSE SAIFI / SAIDI Comparison (excl. major storms)

A comparison of Kenmore results for all outages is shown in Figure 18. While there are variances in SAIFI between the overall PSE system and Kenmore, on average Kenmore was comparable to the PSE system except for the past two years where the frequency has increased more than the overall system. The outage duration over the past three years is higher in Kenmore than the overall system.

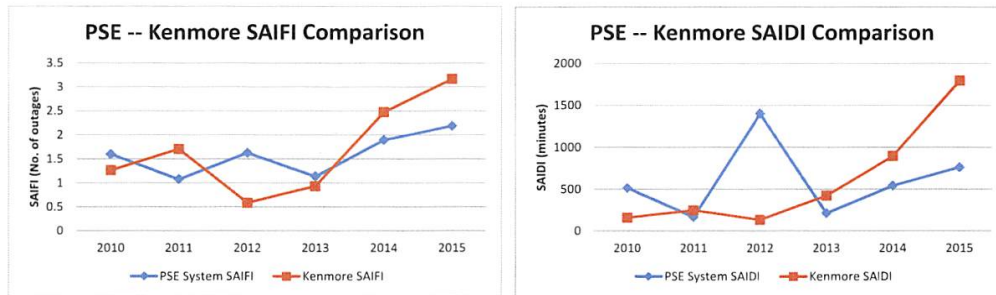


Figure 18 Kenmore – PSE SAIFI / SAIDI Comparison (all outages)

Relative to reliability performance in Kenmore, some of the following factors may explain the variance between Kenmore and the overall system:

- Kenmore is a wooded area with a large number of trees in the vicinity of the overhead distribution lines. This condition makes the overhead circuits more vulnerable to faults on the lines during high winds and storms, where tree branches hitting the lines will create reliability issues.
- The location of some of the distribution circuits are in areas that are difficult to access which prevents rapid restoration from an outage. The access issue makes locating the fault and taking appropriate action more time dependent and may result in higher restoration times.
- During storm restoration, utilities typically prioritize restoration activities on the following criteria:
 - Transmission lines and substations, if affected, are addressed first since these assets can affect a very large number of customers.
 - Circuits with critical facilities
 - Circuits with large number of customers

Therefore, locations with non-critical facilities and low circuit customer counts may receive a lower priority after large storm events; and therefore, these locations will experience longer outage durations.

Kenmore Circuit Review

PSE ranks its circuits based on reliability (five-year average outage duration). Based on a review of the annual reliability reports, circuits from Kenmore are not identified in the list of 50 problem circuits. However, based on the circuit information provided, the majority of Kenmore circuits are in the bottom quartile, which indicates that these circuits perform below average related to outage duration. Figure 19 shows the ranking of Kenmore circuits¹⁴. The percent

¹⁴ Information on circuit ranking based on circuit specific information provided by Kenmore.

number represents where the circuit rates against the approximately 1100 PSE circuits in the system.

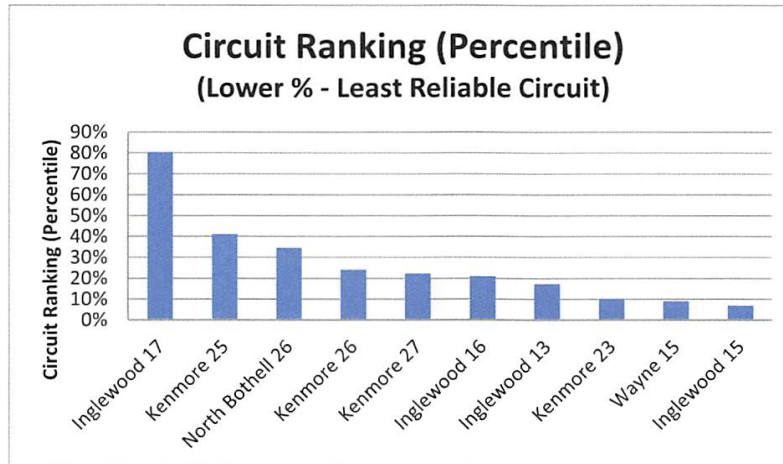
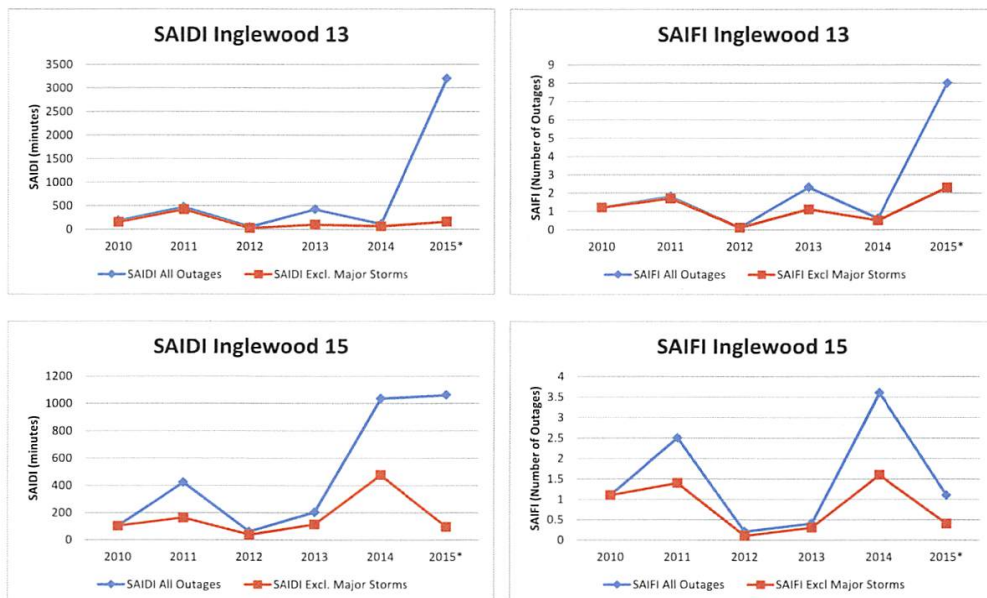
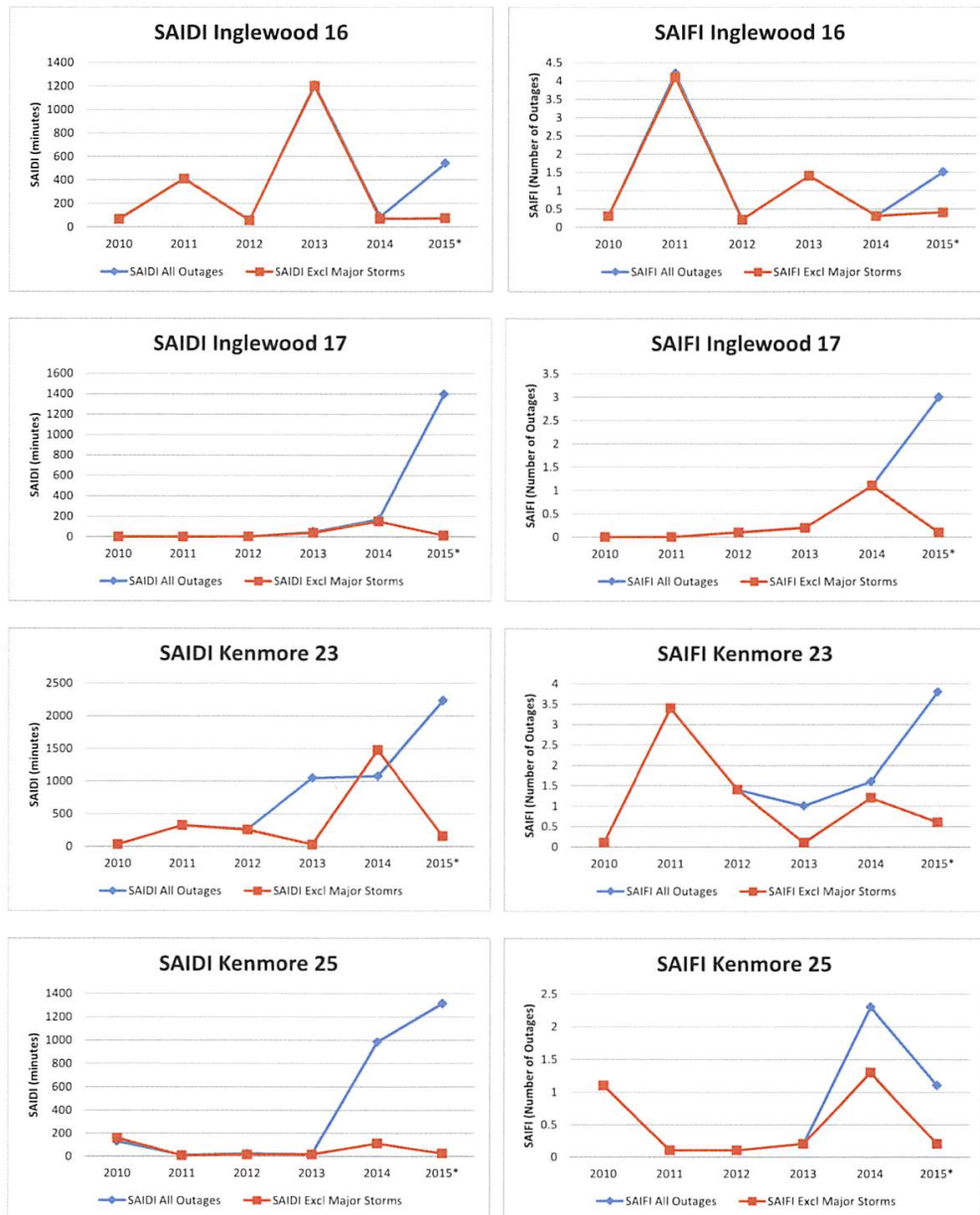


Figure 19 Kenmore Circuit Ranking

The following graphs in Figure 20 provide information on the specific circuits in Kenmore. These performance varies from year-to-year because of impacts of storms, equipment failures, and other outage causes. It is observed that the Kenmore circuits are vulnerable during storm events and therefore, long duration outages are experienced after these events.





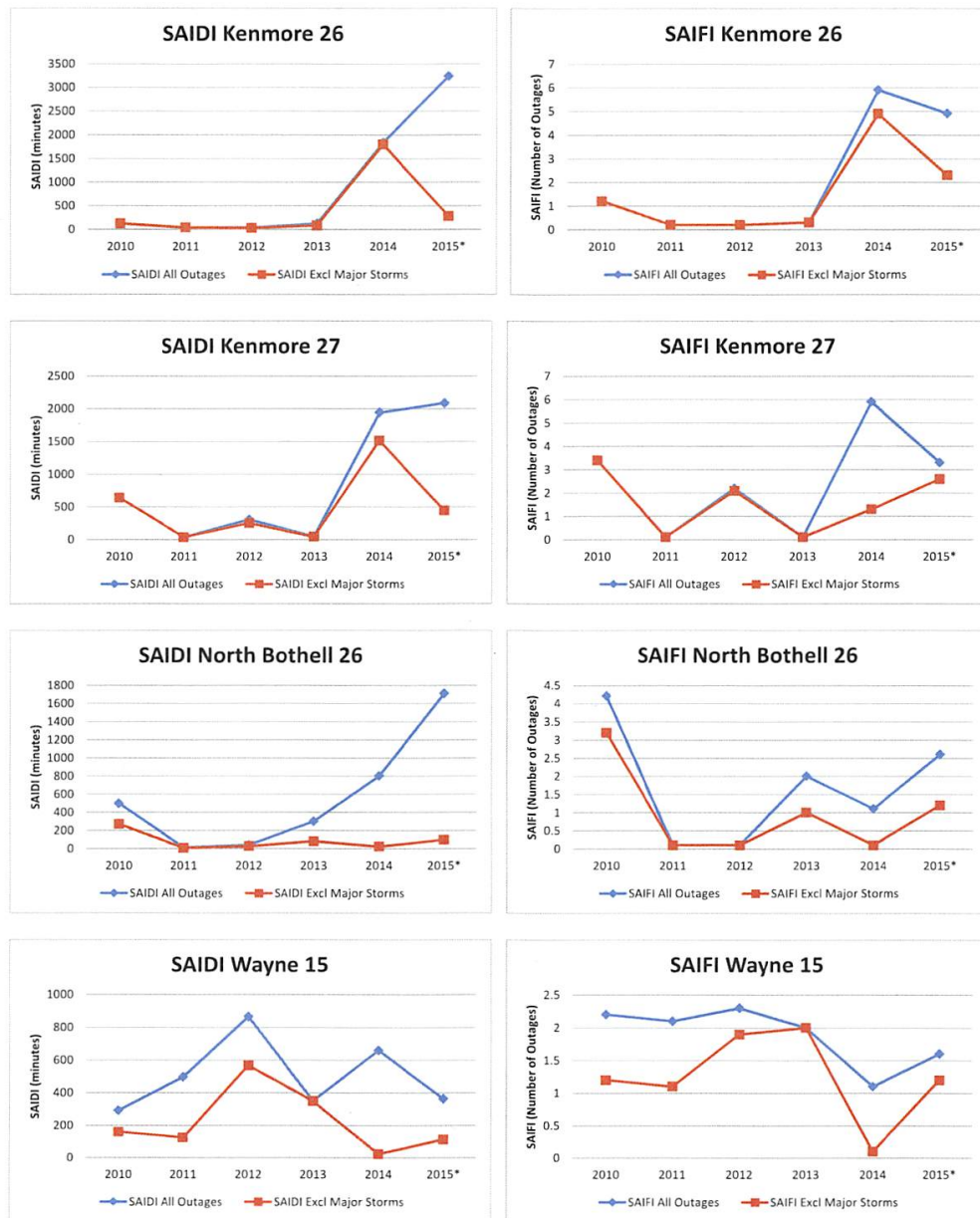


Figure 20 Kenmore Circuit Reliability Performance

Customer Complaints

PSE reports on customer complaints relative to reliability and power quality issues in its Annual Reliability Report to the WUTC¹⁵. PSE tracks customer complaints from two sources:

1. Complaints submitted to the WUTC and
2. Complaints received directly from customers.

PSE considers each individual inquiry to the WUTC as a complaint and considers two inquiries from an individual customer over a two year period as a single complaint. Based on these definitions, complaints were reported on a system, King County and Kenmore basis. The results are shown in Table 2.

Table 2 Reliability and Power Quality Complaints

Year	Number of Complaints - WUTC			Number of Complaints - PSE			Number of Complaints - Total		
	System	King Co.	Kenmore	System	King Co.	Kenmore	System	King Co.	Kenmore
2011	17	9	0	24	10	0	41	19	0
2012	12	3	0	28	14	0	40	17	0
2013	17	4	0	15	8	1	32	12	1
2014	18	14	0	35	26	0	53	40	0
2015	27	16	4	49	23	1	76	39	5

The number of customer complaints reported has risen in the past two years. There have been significant storm-related outages over the past two years which is a likely driver of customer complaints in the overall system. From a Kenmore perspective based on discussion with city officials and residents, there is increasing dissatisfaction with the current reliability of the system in Kenmore. Outages associated with storms and other events have created great concern. The currently tracked number of complaints from Kenmore does not reflect concerns, which have increased in 2016.

PSE also tracks actions against the complaints received. There were only six complaints from Kenmore residents over the past five years and these are indicated in Table 3.

¹⁵ Data obtained from Puget Sound Energy Service Quality and Electric Service Reliability Reports filed with the WUTC (Annual Reports)

Table 3 Kenmore Circuit Complaints

Year	Circuit	Type of Complaint	Resolution
2013	Wayne-15	Reliability	On-going circuit monitoring and maintenance
2015	Unknown	Reliability	
2015	Unknown	Reliability	
2015	Unknown	Reliability	
2015	Unknown	Reliability	
2015	Kenmore-27	Reliability	Two system projects with estimated completion in 2016. On-going circuit monitoring and maintenance.

Capital Projects

PSE performs work related to reliability improvements in two ways: (1) programs and projects that occur throughout its service territory and (2) reliability-specific projects for circuits that need additional attention. Relative to work being performed in Kenmore, the following are programmatic efforts to improve the power system reliability in the City:

- **Installation of tree wire:** PSE installs tree wire on selected circuits to reduce the impact of vegetation contact with wires. The use of insulated wires reduces the potential for faults due to tree branch contacts. The tree wire is also a stronger component than older installed conductors and provides some additional protection against falling branches. However, tree wire does not reduce outages when large branches or trees impact the lines and cause the conductors to break and fall.
- **Distribution sectionalizing devices:** PSE installs reclosers and sectionalizing switches throughout its system to provide for more rapid isolation of the faulted line segment and enables the unaffected portions of the lines to be returned to service. Reclosers are programmed to detect and isolate line faults and to automatically re-energize unfaulted line segments¹⁶. If the fault is longer, reclosers can isolate the section of the line with the fault and allow customers upstream of the reclosers to remain energized. Sectionalizing switches provide for the ability to isolate a smaller section of a line and allow return to service for more customers in a timely manner (not dependent on any subsequent repairs).

¹⁶ Many faults involving short circuits between conductors or short circuits to ground are temporary. This is especially true for lightning induced faults. Reclosers in overhead line systems are typically programmed to attempt to reenergize the circuit after a short time delay. If the fault was not permanent, the reclosing operation will restore power to the customers connected to the affected line.

- SCADA installations: PSE is making broader use of SCADA in its substations and switches. SCADA provides visibility into the system performance and allows for more rapid location of a fault and a quicker return to service response for those sections of the line isolated from the fault.
- Cable remediation: PSE replaces or remediates sections of underground cable that have aged and are vulnerable to failure. This program improves the performance of the underground cable systems.
- Aging overhead wire replacement: PSE replaces smaller diameter wire in vulnerable locations with larger ACSR wire to improve the loadability of the conductors and to reduce the probability of lines breaking by a falling tree branch.
- Substation asset management: PSE monitors its major substation equipment (transformers and circuit breakers) to identify components that are at end of life and to proactively replace these major components, as needed.

All of these system-wide programs provide reliability improvements, which over time will be beneficial to residents in Kenmore.

In addition, PSE has indicated that there are several programmatic projects and targeted reliability improvement projects being performed or scheduled for circuits in Kenmore. These projects include:

- Distribution automation project: Reclosers have been installed along with some automation to test the benefits of new technologies. Additional testing will occur prior to system wide implementation of the automation scheme.
- Two overhead switches will be installed on NE 185th ST for improved sectionalizing.
- Recloser on NE 195th St has been installed, but settings need to be applied to make the recloser functional.
- Recloser is planned for installation on NE 169th St.
- Overhead-to-underground conversion along NE Bothell Way (SR 522) is in the planning stages.
- Kenmore 26 circuit ("KNM-26") along NE 195th St is planned for rerouting and reconductoring to allow this portion of the circuit to be more assessable. This project will address a major vulnerability of a section of line that is difficult to access, which results in long outage times.

- A feeder reconductoring project with tree wire is being planned for KNM-27 along NE 185th St.
- A feeder reconductoring project with tree wire is being evaluated for KNM-23 along Arrowhead Dr.

These projects are consistent with PSE plans to improve the overall reliability of the power distribution system in Kenmore.

System Maintenance

Similar to capital projects, PSE conducts on-going maintenance and inspection activities that are focused on maintaining reliability of the system. These include the following programs:

- **Vegetation management:** PSE performs tree trimming at defined intervals: 4 years for overhead distribution circuits in areas like Kenmore and 3-years for overhead transmission circuits. Additionally, PSE conducts spot inspections when performing work throughout the system. Tree-trimming activities are limited to tree-trimming within the PSE right-of-ways. Therefore, the presence of tall trees adjacent to the right-of-ways is still serious reliability risks even if the tree branches are trimmed back to the edge of the right of ways.
- **Wood pole test and wood treatment programs:** PSE conducts wood pole test and treat the poles to extend the life of the wood poles and to minimize outages caused by falling poles. Poles identified as near failure are replaced.
- **Wildlife management:** PSE monitors wildlife activity that causes outages and utilizes specific products and designs to minimize wildlife impacts. Typically protection measures may include upgrading equipment poles with bushing covers, cutout covers and covered jumpers when maintenance activities are performed.

These maintenance practices are typical within the industry and are utilized to reduce the probability of outages.

Future Power Demands

The Growth Forecast by the City of Kenmore

The population of the City of Kenmore grew by 9.5% (from 18,678 to 20,460) between the year 2000 and 2010. It is estimated to have grown by 14% from the year 2000 and 2014. The number of housing units grew by 18% (from 7,488 to 8,835) over this same time period.¹⁷ The employment dropped during the years 2000 to 2010 by 21% but is expected to rise by 46% by the year 2035. The growth will be somewhat constrained by the lack of developable areas in the City. The available space available for development is estimated to be about 5%.¹⁸ Figure 21 shows the existing use of land in the City of Kenmore. It shows that the existing industrial/commercial areas are primarily found along route 522. The City envisions that this will remain the area for industrial and commercial developments. It is also expected that the existing more heavy industrial sites will over time be converted to more light industrial or commercial use.

Table 4 Copy of Table DE-F from the City's comprehensive plan.

Year	Population	Housing Units	Employment
2000	18,678	7,488	4,601
2010	20,460	8,569	3,625
2035	28,473	12,236	6,704

At present 4 out of the 10 distribution feeder lines are served from the Kenmore substation, in which there is a single 25 MVA transformer installed. According to PSE, this transformer is not heavily loaded. All of the substations from which power is routed into the City have room for at least one additional step-down (from 115 to 12 kV) transformer. Furthermore, the completed and on-going reconductoring of the 115 kV transmission lines have increased the ability of PSE to send more power into the substations that feed the City.

Because the expected realignment of the existing industrial areas in the City from more heavy industry to residential or commercial use, there might not be a substantial increased need for electric power around route 522. However, if this assumption turns out to be wrong, it should be relatively easy to install additional power distribution lines from the Kenmore substation to wherever more power is needed.

¹⁷ City of Kenmore Comprehensive Plan, June 2015, Chapter 3, Demographics and Economics. See <http://www.kenmorewa.gov/comprehensiveplan>

¹⁸ Ibid table LU-A on page 4A-7 shows 4.7% vacant land.

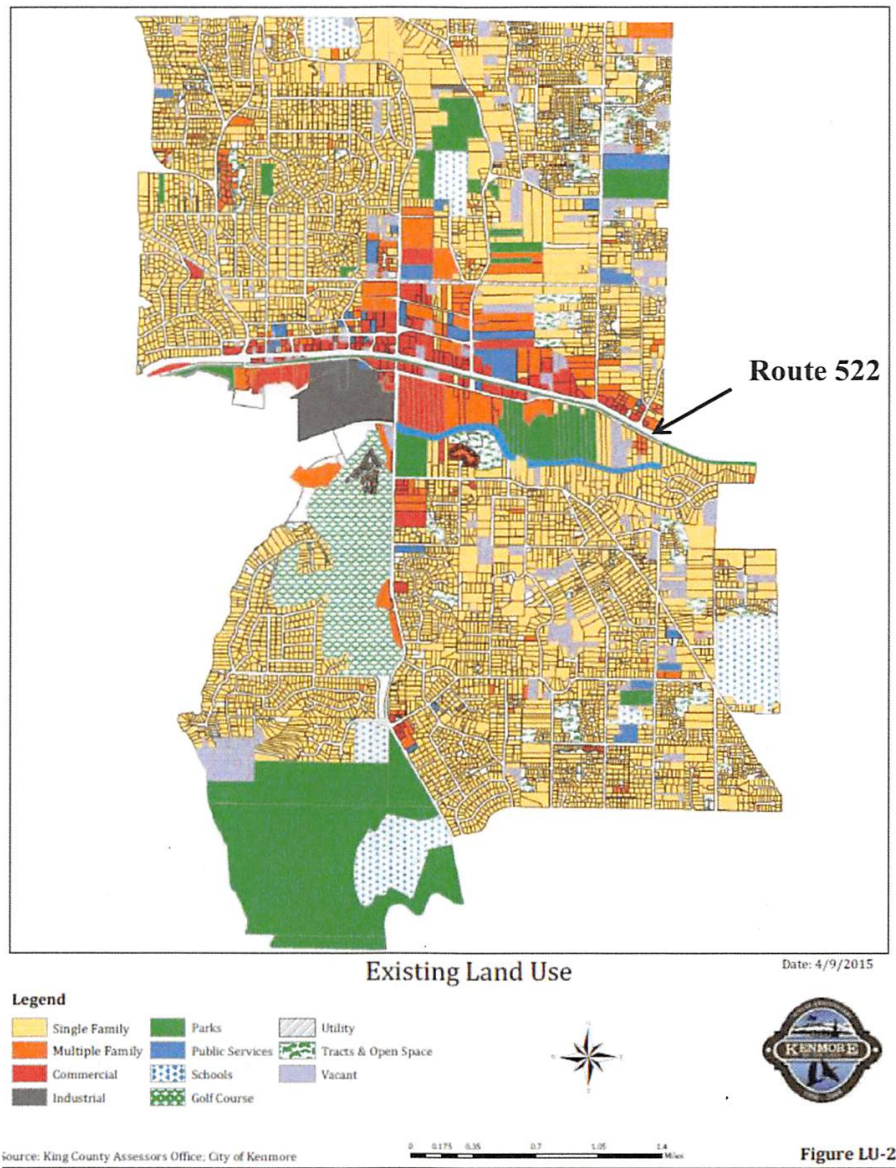


Figure 21. Copy of City of Kenmore map showing existing land use¹⁹

¹⁹ Figure LU-2 from the City's comprehensive plan.

PSE's Integrated Resource Plan Review

The latest available version of PSE's Integrated Resource Plan covers the year 2015 to 2035.²⁰ This plan is revised by PSE and submitted to the Washington Utilities and Transportation Commission (WUTC) every two years.

PSE reports that at the system level, demand growth has slowed significantly compared with the 2013 IRP Base Demand Forecast, but some areas continue to experience rapid growth – particularly the Eastside area of King County that includes downtown Bellevue. The 2015 plan changes the assumed average annual growth to 1.6% per year from 1.9% in the 2013 IRP. The growth is primarily found in the Eastside where the average annual peak demand growth rate is assumed to be about 2.5 percent from 2014 to 2031, which is significantly higher than the 1.6 percent growth rate in the overall system-level forecast.

In the 2015 IRP PSE states the following: “The surplus conditions the Pacific Northwest electric markets have experienced for a decade are forecast to change significantly with the scheduled retirement of two coal plants in 2020, Portland General Electric’s 585 MW Boardman plant in Oregon and TransAlta’s 730 MW Centralia Unit 1. According to studies of long-term resource adequacy from the region’s energy organizations, regional market deficits are a possibility unless new resources are added in the region by 2021, and potential outages could affect more people and last longer than under previous conditions.”²¹

The power output from the Colstrip plant can also be constrained. PSE described the situation as follows: “During the next five years, the Colstrip units will become subject to several recently enacted regulations, changes in existing regulations and a rule governing coal combustion residuals (CCR) published in December 2014.²² CCR includes fly ash, bottom ash and scrubber slurry from Colstrip. Based on the changes to the final rule, the final CO₂ [carbon dioxide] goal for Montana became 26 percent more stringent and the final CO₂ goal for Washington became 35 percent less stringent. By 2030 Montana must reduce CO₂ emissions from coal plants from 20.5 million tons of CO₂ to 11.3 million tons of CO₂ which is a 45 percent reduction in CO₂ emissions. How this will affect Colstrip cannot be determined until a state implementation plan for Montana is finalized and approved by EPA.”

The plan examines the many energy-resource options available to PSE, including the maximum amount of new electric and gas energy "supply" that can be acquired by PSE including the reduced energy demand that are assumed to be possible to achieve through improved energy efficiency. One significant change in the planning assumptions is a reduced loss of load (LOL) probability, which changed from 5% to 1%. Loss of load probability (LOLP) is a measure of the likelihood of a load curtailment occurring; expected unserved energy (EUE) is a measure of the

²⁰ See <https://www.pse.com/aboutpse/EnergySupply/Pages/Resource-Planning.aspx>

²¹ PSE's IRP dated 2015, page 1-2.

²² This is described in detail in Appendix K of the IRP.

magnitude of potential load curtailments, in other words, how much load and how many customers are likely to be impacted. The 2015 optimum planning standard utilized by PSE includes the effect of market risk, which is the risk associated with the ability or inability of PSE to acquire electric power in the open market. PSE is presently acquiring a significant amount of electric energy by purchasing surplus energy available in the region.

In earlier IRPs PSE assumed that wholesale market purchases were 100 percent reliable, but in view of the predicted electric power shortages, this is no longer a reasonable assumption if the surplus capacity in the region is shrinking. Therefore, PSE incorporated a wholesale market risk factor in its 2015 IRP. In fact, a significant portion of PSE's 2015 IRP is based on probabilistic modeling and reasoning. That is, the methods for forecasting the future electric power needs are complex and not intuitive.

The 2015 IRP indicates that PSE needs to acquire approximately 275 MW of firm, dispatchable generation (most likely natural gas plants) in the next 7 years.²³ This will be required to meet PSE customers' capacity needs as the regional capacity surplus – which PSE has relied on as a low cost/low risk resource – dwindles in the next few years. However, this assumes that PSE can achieve about 500 MW of demand side resources (DSR) that offsets the need for electric power generation capacity, which might be optimistic since that is only 5 years from now.

Demand side resources (DSR) covers:²⁴

- Electric energy efficiency measures such as retrofitting programs and new construction codes and standards, appliance upgrades, building envelope upgrades, heating and cooling systems and lighting changes.²⁵
- Demand-response, which are electric power loads that may be curtailed or interrupted during system emergencies or when wholesale market prices exceed the utility's supply cost.
- Distributed generation such as rooftop solar panels, which can generate electricity during daytime hours, located close to the source of the customer's load.
- Distributed efficiency measures, which are achieved by using load balancing and voltage reductions to reduce energy power consumption.²⁶
- Appliance and lighting efficiency might be relatively easy to achieve but building upgrades and retrofits might be more difficult to implement. Furthermore, this might lead to more use of natural gas unless the penetration of all electric homes is significant. Demand response could also be achieved relatively fast since it would only require

²³ Wind and solar power plants are not considered to be firm power generation sources since the output from these plants are zero when the sun is not shining on solar panels or when there is no wind. These types of plants are energy sources not under the control of the dispatchers.

²⁴ See Chapter 6 of the IRP.

²⁵ Increased electric efficiency in appliances and lighting will most likely increase the consumption of natural gas.

²⁶ The benefits of voltage reductions can be expected to be reduced if appliances and electric motor drives in the future are served by power electronic systems, which look like constant power loads relatively independent of the supplied voltage.

contract modifications with large electric power users.²⁷ The other dimensions of the DSR strategy might be more difficult to achieve. If DSR is not successfully implemented, there might be an electric power supply deficiency in PSE's system.

Figure 22 shows PSE's existing and projected peak hour needs and the effective capacity of the existing resources available to PSE.²⁸ The graph shows a power capacity deficit of about 275 MW in 2021. PSE assumes in the 2015 IRP that the impact on demand from electric vehicles would be insignificant, so electric vehicles are not included in PSE's 2015 demand forecast.

It must be understood that the electric power system has to provide not only sufficient electric energy for all of the electric energy users but it also has to have sufficient capacity to serve the connected loads when the demand for power is at a maximum. If the demand for electric power exceeds the supply, then blackouts will arise. By the year 2035 the plan assumes that about 1,000 MW can be had from DSR. This is 17% of the electric power demand. The forecast also shows that by 2035, close to 1,600 MW of new power sources must be obtained. Since the lead time for construction of new power plants can be long, this indicates that there is an urgent need for PSE to begin the process for new power plant construction in the next few years.

²⁷ However, a proposal to have pool pump with a timer set to run during off-peak times (starting after 8:00 p.m. and cycling off before 10:00 a.m.) does not make much sense if solar heating of the pools is installed. See Appendix B2, page 8.

²⁸ PSE's peak power demand is expected to arise during the winter months. The available electric power capacity is shown to be small (9% of capacity) because the probability of having electric power generated by PSE's 823 MW name-plate capacity wind turbines during the peak electric power window is small because the peak demand is most likely associated with cold temperatures and relatively calm wind conditions.

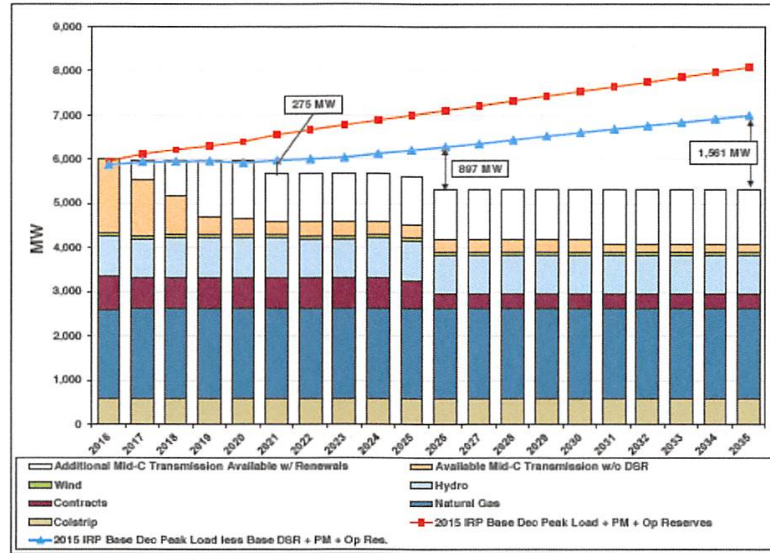


Figure 22. Copy of Figure 1-4 on page 1-14 of PSE's IRP

Peak hour capacity is an important aspect of PSE's ability to adequately meet the physical needs of its customers. The other dimension of the electric energy supply is the mix of generation sources where the electric energy is generated. This mix influences the price of the electric energy sold by PSE because if PSE can deliver power from inexpensive sources, PSE's energy cost per unit sold will be low and vice versa if the generation source produces expensive electric energy. Figure 23 shows PSE's annual forecast of energy sales to retail electric customers with expected generation for the year by resource type.²⁹ This "energy position" reflects PSE's most economical dispatch of its electric resource portfolio based on expected market conditions. PSE states that it is not a physical generation model because PSE asserts that it could generate significantly more energy than needed to meet its load on a monthly or annual basis. Instead, PSE plans to purchase energy in the wholesale market when it is more cost effective than running its thermal resources. The figure shows that PSE's market purchases increases from 806 annual megawatts (aMW) to about 1,650 aMW over the next 20 years. That is, PSE's strategy is to acquire much of its electric energy from the open market, which could benefit PSE's customers if there is a surplus of electric energy sources in the region.³⁰

²⁹ See IRP Chapter 1, page

³⁰ In theory, the marginal cost of a resource becomes infinitive if the availability of the resource is exhausted.

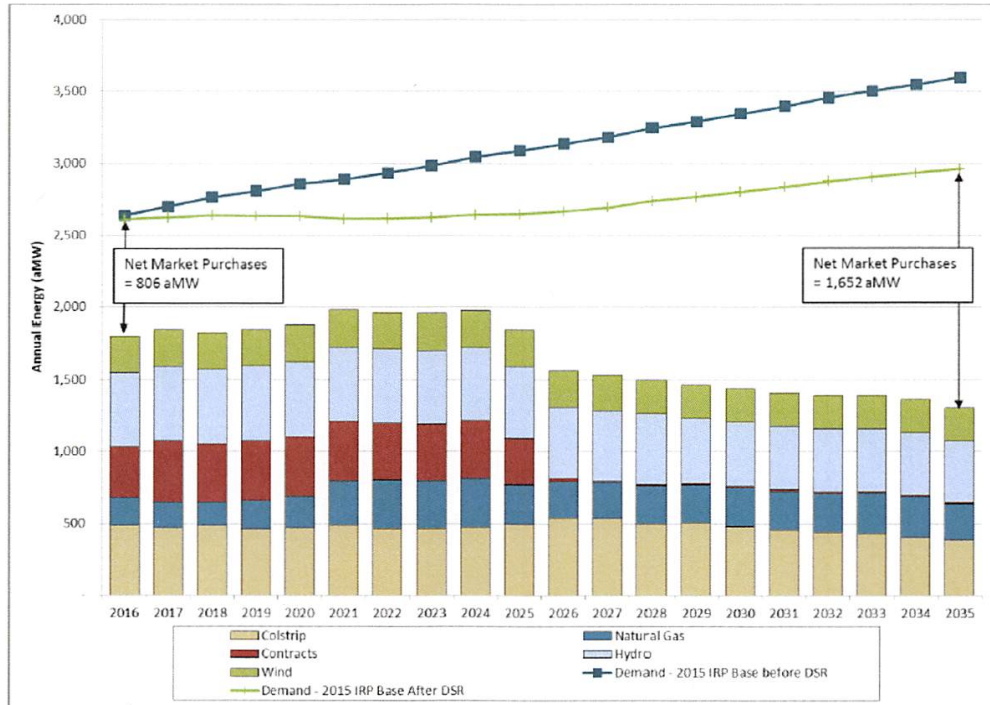


Figure 23. PSE's load forecasts aggregated to an annual basis.³¹

PSE projects that between 2016 and 2033, nominal retail electric rates will grow at an average annual rate of between 1.1 and 1.3 percent, depending on the customer class.³² Assuming an inflation rate of 2.5 percent per year, this means real electric retail rates are expected to decline by 1.2 to 1.4 percent.³³ This is much lower than the 3.1 percent rate increase modeled in the

³¹ See Figure 1-5 on page 1-15 of PSE's IRP

³² Residential electric service rates are at present 0.097543 \$/kWh for the first 600 kWh per month and 0.116365 \$/kWh thereafter. See https://pse.com/aboutpse/Rates/Documents/summ_elec_prices_2016_10_01.pdf

³³ Seattle City Light forecasts an annual rate increase over the next 6 years at 4.3% but does not expect a significant load growth. See Seattle City Light Strategic Plan Update 2017 – 2022. The 2016 residential rate is 0.0596 for the first block (less than 16 kWh per month) and 0.1257 \$/kWh thereafter. A demand change of \$4.51 per month is added. See <http://www.seattle.gov/light/rates/docs/2017/city%20light%202017-2018%20proposed%20retail%20rates.pdf>

2013 IRP.³⁴ Snohomish County PUD that serves the county north of the City has no similar plan available on its web site.³⁵

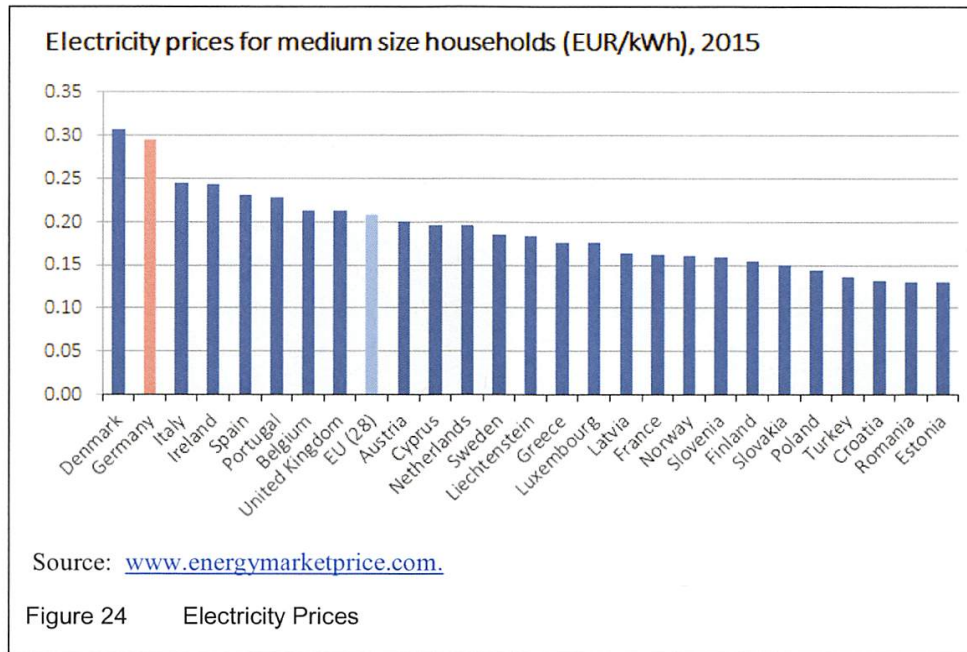
PSE is required according to the state of Washington's RCW 19.285, the Energy Independence Act, to reach certain targets for renewable resources and acquire all cost-effective achievable conservation. Furthermore, according to WAC 480-100-238, "Each electric utility regulated by the commission has the responsibility to meet its system demand with a least cost mix of energy supply resources and conservation." These rules appear to be straightforward and easy to apply. However, alternative energy sources typically cost more than the conventional alternatives based on natural gas, fossil fuels and hydro, which is at odds with the least cost requirement.

The rates in countries with a heavy emphasis on so called Green Power illustrate the high cost of alternative energy sources. Figure 24 below shows typical electric power rates in European countries. The German electric power rate includes a 19% value added tax of 0.0685 EUR/k-Wh.³⁶ In Denmark, about 50% of the electric power is generated by wind power plants. The reason for the high cost of wind energy is that when the wind power is unavailable due to a lack of wind, other sources for electric power generation must be available. That is, the deficit must be made up by other plants that are idle when wind power is generated, which requires added investments in generation facilities. This is reflected in PSE's planning scenarios where the available electric power capacity from PSE's 823 MW of wind power plants is discounted by 91% (9% availability).

³⁴ IRP Chapter 5, page 5-19

³⁵ The power rate as of October 2015 is 0.09879 \$/kWh for an assumed energy consumption of 1,000 kWh per month. See <http://www.snopud.com/?p=1369>.

³⁶ The exchange rate on October 14, 2016 is 1 Euro equals 1.10 \$ US.



PSE and its customers are facing several uncertainties over the 20 year planning horizon. One of these is future policies or regulations associated with carbon emission reductions. Constraints on running generation systems that generate CO₂ could dramatically change the economics of electric power and electric energy. However, if inexpensive electric batteries were to become available, solar and wind power plants might become more reliable electric power sources, which could change the economics for the better of solar and wind power plants. PSE appears to closely monitor these developments.

As part of PSE's ongoing commitment to the exploration and evaluation of emerging resources, PSE's IRP includes analyses of rooftop solar generation (distributed solar)³⁷. In this study, the effect of a system wide installation of 300 MW of solar power plants was included. Electric energy storage technologies such as batteries or pumped hydro plants were also studied.³⁸

³⁷ Distributed solar generation has never been selected in PSE's portfolio analysis as a cost-effective resource for the PSE system, but federal tax credits and state production incentives have made it cost-effective for customers. Already, PSE has 2,800 net-metered customers who have installed rooftop solar panels totaling 17.4 megawatts of capacity and 17,360 megawatt hours of annual energy generation.

³⁸ IRP Chapter 1, page 1-5. See Appendix L for in depth analysis of the studied technologies.

Adoption of New Technologies by PSE

PSE's 2015 IRP is devoted to assessment and plans for adding power supply resources by PSE so it can meet the future, expected demands for electric power. The IRP does not address investments in distribution systems to improve the reliability of PSE's electric power customers. This seems to be appropriate because the key resource limit that PSE needs to address is the potential shortage of electric power generation resources in the northwestern states over the next 20 years. PSE addressed the so called smart grid technology acquisitions and implementation in a report entitled "2012 Smart Grid Technology Report" dated September 1, 2012.³⁹

"Smart grid" is only a marketing slogan, which does not describe a specific set of equipment or prescribe a certain power system architecture. The fundamental component of the smart grid concept is advanced data acquisition and communication infrastructure, which will enable timely and detailed information flow from the power system back to the system operators⁴⁰. To fully utilize the added features in the data acquisition systems, advanced sensors are typically required to be installed in the switches and breakers placed in the lines and substations. The information received from the sensors might make it possible automate some functions that will speed up system restoration after an outage or minimize the parts of the power system that is damaged.⁴¹

PSE's smart grid report describes significant investments from 1998 through 2012 by PSE in the communication and automation infrastructure for both the transmission and distribution systems. A number of "smart grid technologies" were put through testing to establish if the technologies would work and the potential cost benefits from using them. The plan discussed the following:

- Automated meters with two-way communication capability to collect energy usage information that enables customers to check and manage their daily energy usage via the Internet;
- Integration of customer owned grid-connected solar and wind systems allowing them to generate their own power and supply excess energy back to the grid;
- Implementation of conservation voltage reduction in several substations to manage electric power system capacity limitations;
- Automation of transmission and distribution (T&D) systems to improve service reliability; and

³⁹ Filed pursuant to WAC 480-100-505.

⁴⁰ This may also make the power system more susceptible to hackers.

⁴¹ After a major storm, it might be necessary to patrol the lines to make sure that there are no undetected downed conductors, which could reduce in electrocution of people coming in close contact with the conductors if they were to become energized.

- New or upgraded back-end systems such as energy management systems (EMS), outage management system (OMS), and a geospatial information system (GIS), which provide the foundational core for implementation of smart grid technologies.

The costs of fully implementing the systems that are described in the report are very high. Also, the technologies are not mature and the useful life of many of the technologies is short. This is in particular true for automation and communication infrastructure systems and equipment. That is, the annual cost of keeping the systems in operation, maintaining and upgrading the systems to keep up with technology changes will be high. This could have a significant impact on the electric power rates. The rollout of the technologies has, therefore, been slow but the EMS, OMS and GIS systems have been completed.

PSE has had an automated meter reading (AMR) installed for a long time. The step that is being taken now is to move to a two-way communication system using so called smart meters. PSE is migrating to this new technology at a slow pace since wholesale change out of the AMR system is very costly. The new systems might speed up outage reporting since the older system is has a limited capability to report outages. However, the most reliable outage information is derived from customer calls for loss of power. This is at least at present, the most reliable way to identify fallen or broken conductors along distribution lines. The calls made to report outages are fed into the OMS system and provide a map of the outage areas.

Like most utilities pursuing significant reliability improvements on the distribution system, PSE has installed three phase reclosers to reduce the impact of outages on the feeders to its customers. Reclosers interrupt faults and re-energize the line after a short waiting period. If the fault is temporary, this will restore power back to the customers. If the fault is permanent, the recloser will “lock out” and remain open after a preset number of operations. These devices dramatically reduce the impact of outages to customers on the feeder by not requiring the station circuit breaker to lock out and interrupt service to all the customers on the feeder. PSE is also evaluating and piloting the installation of line reclosers with communication used for remote monitoring and control of the device. This will help determine the challenges and benefits from using reclosers as a part of distribution automation systems.

To minimize the customers affected by a distribution line fault, additional, smart reclosers would have to be installed in the distribution feeder circuits serving the City. However, in order to take full advantage of distribution reclosers in the distribution system serving the City, the substation circuit breakers need to be connected to the distribution supervisory control and data acquisition system (DSCADA). This might require replacement of older circuit breakers. Remote control of the substation circuit breakers would be in addition to having remote control of the reclosers and fault data information transferred from the installed reclosers to the distribution system operators. If this were to be done, the number of customers affected by an outage could be significantly reduced. A further reduction of the number of affected customers would be possible if the radial, looped circuit could be remotely energized from the remote ends of the radial lines by the distribution system operators. This can now be done only by having roving operators manually open and tag out substation breakers and manually close the switches at the remote ends of the distribution feeders.

An example of how these new technologies are working can be found in a recent Wall Street Journal article covered the performance of the power systems affected by hurricane Mathews.⁴² In this article it was stated that the power systems survived the onslaught by the hurricane much better than during previous hurricanes such as hurricane Hugo on September 22, 1989, which devastated South and North Carolina.⁴³ This hurricane caused so much destruction of the power systems so a substantial portion of the system had to be completely rebuilt. The devastation resulting from hurricane Mathew was apparently significantly less. One other lesson learnt came out of significant flooding by the Mississippi and Missouri rivers at around the same time as for hurricane Hugo was the need to remove the station batteries from substations prior to the substations being flooded to avoid corroding electrical/electronic equipment by having corrosive electrolytes and corrosive direct current flows causing destruction of electrical connections. That is, the strategies for dealing with major storms or flooding events have evolved from lessons learnt from past events when such information is shared among utility operators.

⁴² <http://www.wsj.com/articles/hurricane-matthew-tests-electric-grids-new-storm-resistant-technology-1476125502>

⁴³ Around midnight on September 22, 1989 Hurricane Hugo roared ashore just north of Charleston, S.C. as a massive Category 4 storm with winds near 140 mph and a storm tide around 20 feet. The hurricane leveled beachfront properties and toppled trees, leaving much of the coastal areas in absolute ruin. Hugo remained strong as it moved into western North Carolina, producing hurricane-force wind gusts all the way to Charlotte.

Conclusions and Recommendations

Exponent has performed a reliability assessment of the electric system within Kenmore to identify the current status of the system reliability and to provide recommendations for improvement in system reliability. Key findings and observations include:

Reliability-related: observations related to electric system reliability

- Kenmore has experienced a lower level of electric power system reliability over the past several years relative to the overall PSE system. The majority of Kenmore's distribution circuits are in the lowest quartile of circuit rankings based on outage duration over the past five years.
- Kenmore is an area with many tall trees and several narrow corridors for the distribution lines and is therefore, susceptible to outages due to storms and wind events. During the past two years, Kenmore suffered long duration electric power outages due to storm events.
- One of the worst performing distribution circuits, the Kenmore-26 circuit, has a section of the circuit that passes through the back properties of homes and is therefore, very difficult to access in order to perform trouble-shooting and repair after outages with faults in that area.
- Kenmore is primarily served from four high voltage substations. These are Kenmore, Inglewood, North Bothell and Wayne substations. These substations have multiple feeds from the transmission system that provides redundancy making the system feeding power into or close to city robust and reliable. Normally two independent events are required for a substation to lose power and thereby lose its ability to serve the affected portions of the City.
- The Kenmore distribution circuits are looped radial circuits. That is, the circuits are normally fed from one end only, which leads to an electric power outage for the customers connected to the circuit. However, it is possible to feed the circuits from the remote ends by performing manual switching after the fault location or locations are isolated. This circuit design provides a good foundation to improve the reliability of the circuits through the use of sectionalizing devices to improve recovery from outages for the unfaulted portions of the circuits.
- There were observations of tree-related issues during a walkthrough of various neighborhoods performed by Exponent. That is, there are indications of the need for a shorter time interval between tree trimming activities.
- System-wide programs and projects as well as targeted projects currently being planned for Kenmore should provide reliability improvements. Additionally, two recent projects

(underground of line to the Bastyr University and upgrade of line from Moorlands to Vitulli stations) provide additional reinforcement that should enhance the reliability of the power system.

- The impartments include investments in what is typically referred to the smart grid concept, which fundamentally includes the addition of advanced data acquisition and communication infrastructure, which will enable timely and detailed information flow from the power system back to the system operators after a disturbance. As a first step, PSE has developed a program to evaluate and implement various technology improvements. A major improvement was the installation of the new outage management system. Additionally, the use of automation within the system will benefit reliability.

Capacity-related: observations related to long-term capacity

- There is the potential to add additional capacity in the substations feeding Kenmore to address future growth needs as an additional transformer can be added to existing substations.
- Relative to system demand: By the year 2035 the plan assumes that about 1,000 MW can be had from demand side resources (DSR). This is 17% of the electric power demand forecast. The forecast also shows that by 2035, close to 1,600 MW of new power sources must be obtained. Since the lead time for construction of new power plants can be long, this indicates that there is an urgent need for PSE to begin the process for new power plant construction in the next few years.
- The Energize Eastside project for upgrade of the 115kV to 230kV does not have a major impact on Kenmore. It can provide for additional redundancy, but the transmission line upgrade does not appear to affect power to Kenmore.

Based on these observations, Exponent has identified several recommendations for potential improvement in electric reliability. These recommendations include:

1. Since the Kenmore circuits are looped radial circuits, the installation of reclosers and sectionalizing switches can make major improvements in outage restoration to reduce overall outage duration. It is recommended the installation of these devices be expedited for the Kenmore area.
2. PSE should implement its current plans for the rebuilding of Kenmore-26 (relocation of sections of the circuit), Kenmore-27 (feeder reconductoring) and Kenmore-23 circuits (feeder reconductoring). They should also implement improvements for other identified reliability issues on other circuits in Kenmore. [Note: there are on-going discussions between PSE and Kenmore regarding the scope of these upgrades.]
3. Kenmore is subject to significant storm impacts related to tree-related outages. The Kenmore area is on a four-year tree trimming cycle. It is recommended to perform more

frequent patrols in Kenmore to identify potential emerging activities within the four-year period.

4. To further effect a turnaround in reliability, it is recommended that PSE install current modern technologies that it is utilizing in other parts of their system. It is recommended that Kenmore work with PSE to install other advanced technologies that are intended to improve electric reliability. These technologies may include various automation solutions, SCADA installations, and communications protocols for events and storm response.
5. Kenmore should request a reliability report from PSE that provides more details for evaluation of the Kenmore circuits. This report would highlight circuit outages, circuit projects, on-going maintenance activities, and performance related metrics. This report would provide for a better communication between Kenmore and PSE relative to reliability and capacity issues. This reliability report can also form the basis for an annual meeting between PSE and Kenmore to review future plans and provide feedback on reliability issues.
6. Kenmore and PSE should have a more formal protocol for reviewing growth plans for Kenmore so that these plans are included in PSE's system planning activities.

These recommendations are intended to assist Kenmore in working with PSE to ensure appropriate levels of support for the Kenmore community right-of-ways

February 23, 2018



Reliability Goals

The City of Kenmore (Kenmore) is developing reliability goals for use in preparation of their franchise agreement with Puget Sound Energy (PSE). These goals are based on results of an electric reliability study performed for Kenmore in 2016. Based on information provided by PSE, the Kenmore circuit performance is shown in Figure 1 below. This figure, which shows the average performance of the circuit over the past four years, indicates the circuit ranking by percent in the PSE system and indicates that the majority of circuits are in the bottom quartile of reliability performance. The framed feeder names indicate the circuits that were upgraded or are planned to be upgraded beginning 2016 and ending 2018.

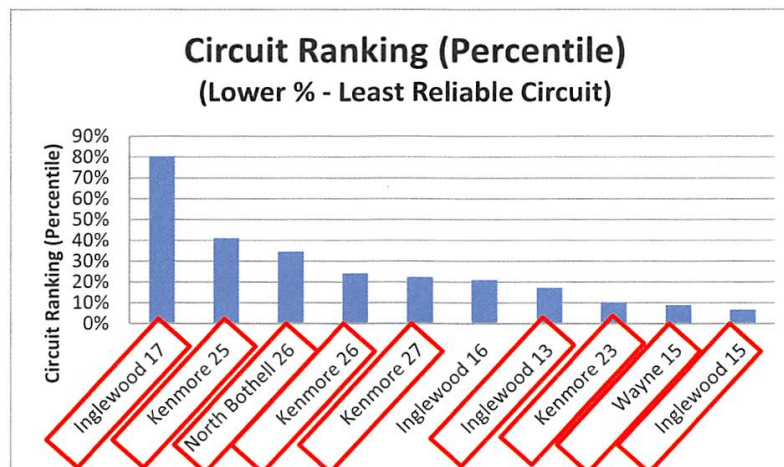


Figure 1: Kenmore Circuit Reliability Rankings^{1,2}

Sustainable reliability improvements are not expected for these circuits until projects have been developed and completed that will provide for reduced number of outages and improved outage response times. Kenmore has provided a list of projects for their circuits based on discussions with PSE. A summary is provided below.

¹ "Electric System Reliability Assessment – City of Kenmore"; Exponent, November 2016. This information is based on a 5-year rolling average from 2010 – 2014.

² Figure is revised on February 23, 2018 based on newly available information on circuits affected by prior projects.

February 23, 2018

Table 1: Kenmore Circuit Projects^{3, 4}

Circuit	Project Description	Project Year
Inglewood 13	Distribution automation test project	2016
Inglewood 15	Feeder reconductor with tree wire	2017/2018
	Replace failing underground cable (2 projects)	2018
Kenmore 27	Install overhead switches	2016
	Replace failing underground cable	2017/2018
Kenmore 26	Feeder reroute and reconductor with tree wire	2017/2018
Kenmore 25	Underground conversion	2016
Kenmore 23	Feeder reconductor with tree wire	2017
Inglewood 17	Replace failing underground cable	2018
North Bothell 26	Installation of recloser	2016
Wayne 15	Installation of recloser	2016
Kenmore Substation	Replace 4 existing feeder breakers	2018
Transmission Line	Moorlands – Vitulli transmission line upgrade	2016

Based on the projects listed above, Kenmore should expect the following improvements on the circuits with identified projects:

- Inglewood 13: Distribution automation test project which is related to more rapid response to potential momentary faults on distribution lines. Automation has the ability to automatically restore power when subject to a momentary fault (such as branch contact with the wire).
- Inglewood 15: Most of the communities in Kenmore are heavily populated with tall trees which creates the opportunity for outages from tree branch contact with conductors or from falling branches. The use of tree wire on the above ground feeders will reduce outages from tree branch contact. Additionally, replacement of older, failing underground cable will improve performance on those parts of the circuit.
- Kenmore 27: The use of tree wire on the above ground feeders will reduce outages from tree branch contact. Additionally, replacement of older, failing underground cable will improve performance on those parts of the circuit.
- Kenmore 26: This circuit previously passed through areas of dense tree growth along the back of residences that offered very limited access making it more difficult for PSE to respond to outages. The relocation of the circuit will provide better access by PSE and will lead to reduced outage durations. The use of tree wire on the above ground feeders will reduce outages from tree branch contact.
- Kenmore 25: The underground conversion of this line focused on ensuring reliability in the main downtown area of Kenmore. This project will result in reduced outage frequency on this circuit since undergrounding this circuit eliminates outages caused by contact with tree branches.

³ "Kenmore Franchise"; Presentation by PSE; January 2018.

⁴ Table and following discussion is revised on February 23, 2018 based on newly available information on circuits affected by prior projects.

February 23, 2018

- Kenmore 23: The use of tree wire on the above ground feeders will reduce outages from tree branch contact.
- Inglewood 17: This is actually a well performing circuit, which is indicated because, as is shown in Figure 1, the circuit is placed in the first quartile. The replacement of older, failing underground cable, however, will improve performance on those parts of the circuit where cable failures have been experienced.
- North Bothell 26: Installation of recloser which will improve time to respond to an outage and restore customers.
- Wayne 15: Installation of recloser which will improve time to respond to an outage and restore customers.
- Moorlands – Vitulli Transmission Line: Upgrade of transmission line provides additional improvement to overall Kenmore and Bothell through upgrade to older transmission lines. While this improves performance in the area, it does not directly address issues on individual distribution circuits.
- Kenmore Substation: The improvements to the Kenmore substation are intended to reduce potential outages associated with equipment failure at the substation and also, increased use of automation should improve outage response time. The improvements at the substation will provide benefits to all circuits fed off this location.

The benefits to reliability are available upon completion of the projects. Therefore, improvements should be noted the year following completion of the various projects.

Relative to reliability goals, it should be expected that circuits that have defined upgrade projects will likely experience improved reliability. Reduced outage frequency and durations can be expected to positively improve the reliability metrics for both SAIFI and SAIDI, and an expected improved response time will also improve SAIDI. Six of the circuits with defined projects have reliability in the lower quartile (between 0 and 25% in Figure 1) and it is expected that all should see improved performance based on the projects completed and underway.

February 23, 2018

Possible reliability goals for Kenmore may be defined as:

1. Overall improvement in SAIFI and SAIDI for Kenmore

The projects being performed from 2016 through 2018 should reduce the likelihood of outages from tree related events (including tree wire installation, underground conversion, and replacement of underground cable). Therefore, there should be a trend for overall reliability improvement in Kenmore. A useful metric would be to move overall Kenmore reliability toward the PSE system average.

PSE tracks reliability by including as well as excluding major events. For monitoring the trends and improvements, the SAIDI and SAIFI metrics excluding major events provides a good indication of performance and these metrics may be used to track performance over time toward the goal.

2. Number of circuits above the fourth quartile⁵

Circuits are only expected to see improved reliability when projects create conditions to reduce outage cause or duration. There are projects associated with several circuits that are in the 4th quartile. A potential metric is to monitor circuit rankings and to expect that circuits with upgrade projects will move into quartiles 1 – 3. As stated previously, circuit rankings are based on a 5-year rolling average, so it may take 3-4 years to move out of the 4th circuit depending on past results. Therefore, in addition to the 5-year moving average, tracking of the circuit performance for each year might indicate the level of improved circuit reliability faster. Based on the current project list, a target of 6 circuits above the 4th quartile should be expected over the next couple of years. Additional circuit upgrades, combined with prudent tree trimming, would be needed to move the rest of the circuits in the 4th quartile up towards the PSE average.

An approach, which includes overall Kenmore performance and specific circuit performance, allows for a balanced focus on improvement throughout Kenmore and provides a basis for PSE to make project decisions.

⁵ The fourth quartile is defined to be the ranking of a circuit in the bottom 25% of circuit reliability. In Figure 1, this would include circuits ranked below 25%.

ATTACHMENT 8

**MAY 20, 2019 PRESENTATIONS
TO KENMORE CITY COUNCIL**

CITY OF KENMORE

PUGET SOUND ENERGY



Proposed Puget Sound Energy City of Kenmore Franchise Agreement and Memorandum of Understanding

May 20, 2019



Council Review of:

- **Non Exclusive Franchise Agreement:** allows PSE to use City Right of Way to locate, construct and operate....and maintain electrical and natural gas facilities. The Franchise is granted only on the condition that the MOU is signed by the parties.
- **Memorandum of Understanding (MOU) on Performance and Reliability Reporting:** annual reporting to the City Council on Kenmore circuit performance, outages, and measures to improve reliability.
- **Note:** PSE activities are regulated by the Washington Utilities and Transportation Commission.



Goals for New Agreements*

- Improved Power Reliability for Kenmore Customers!
- Safety Measures for Natural Gas Facilities
- Specific Process and Requirements for Relocating Facilities in the Way of City Construction Projects
- Third Party Users of PSE Facilities: Identification and Accountability

* Presented to City Council in 2017



Conditions in 2015-2016

Kenmore circuits among the least reliable in the entire PSE system, based on five year average (2010-2015):

- One of the ten circuits serving Kenmore performed above the 50% of all PSE circuits
- Seven performed in the lowest quartile of all PSE system circuits

Many Distribution Circuits Featured Older Equipment
Vulnerable to Damage From Trees and Vegetation



Exponent Consultant Report Recommendations (2016)

- Expedite Installation of Recloser and Sectionalizing Switches
- Implement Plans to Rebuild Circuits 26, 27, 23
- Improve Reliability Issues in Other Circuits
- More Frequent Vegetation Management Patrols (annual) and Trimming
- Install Modern Technologies Available in Other Cities
- Detailed Reliability Reports by Circuit and Regular Reporting to City
- Establish a Protocol for Coordinating with City Growth Plans



2016-2018 PSE Reliability Projects in Kenmore

- Distribution improvements in Circuits serving NW Kenmore (26 & 27) and Arrowhead (23)
- Transmission Line Rebuild
- Kenmore Substation Upgrade
- Vegetation Management



Updated Since 2018 Council Discussion

- Detailed Reliability Goals for Specific Circuits (MOU Section 6)
- Facility Relocation and Third Party Attachments (Franchise Agreement Section 10, Section 17)
- Vegetation Management (Franchise Agreement Section 18)
- Electric Vehicle Charging Station (MOU Section 10)



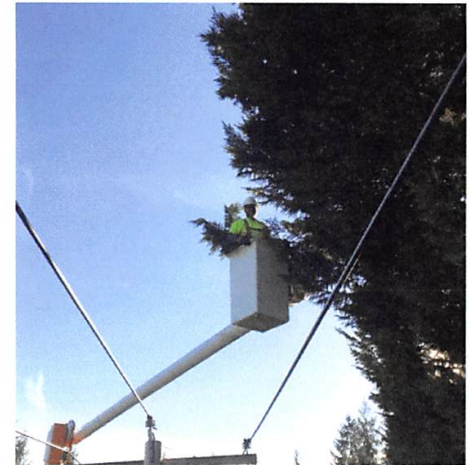
Proposed Franchise Agreement Features

- Term: 5 years with an additional 5 years by mutual agreement (note: current agreement term is 10 years)
- Provisions for natural gas safety and procedures for removal or decommissioning of unused facilities
- Improved mapping of electric and natural gas facilities
- Bond: \$20,000 posted for enforcement of selected provisions, may be increased by mutual agreement related to work undertaken
- Non-Interference of Facilities: Adds bicycle passage and ADA standards to pedestrian and vehicle safe passage requirement



Vegetation Management

- Annual patrols to identify areas needing trimming (currently every 4 years)
- General trimming and management at least every 4 years
- City Staff may accompany PSE on patrols
- Efficiencies on PSE/City vegetation management
- PSE commits to a 24 hour response to customer contacts re planned Vegetation Management at or near residence





Relocation and Third Party Users

- Process for notification and response when facilities must be relocated for City projects
- Includes relocation of third party user facilities
- PSE required to report on location of all known third party users on its facilities.



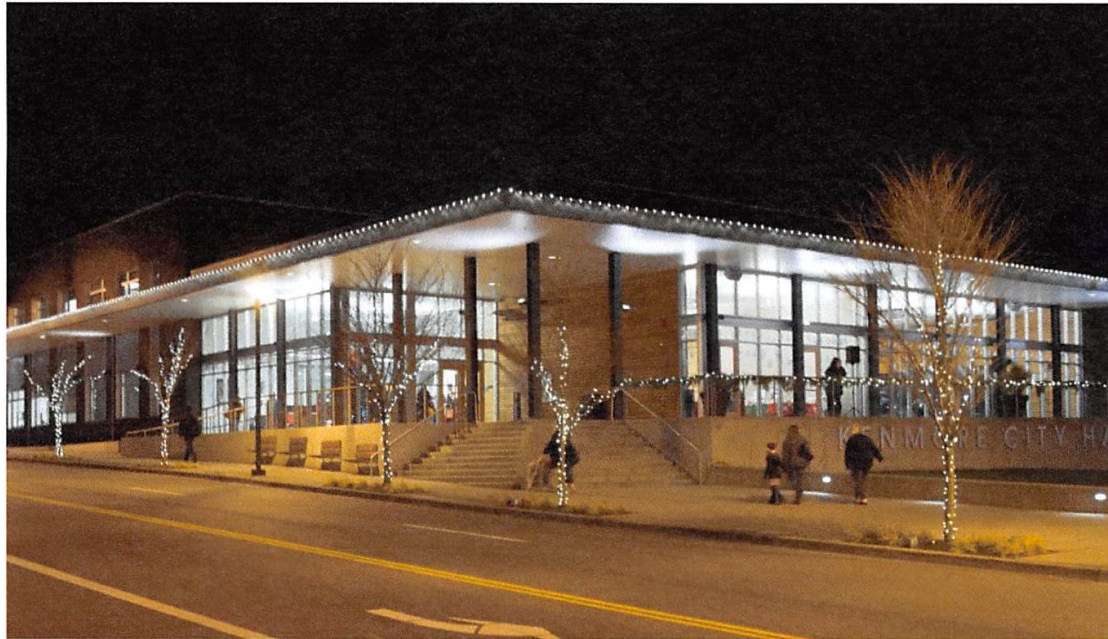


Memorandum of Understanding

- Annual Reporting on Reliability, Outages and Restoration: written report and presentation to City Council
 - Reliability Comparison with bordering cities in PSE service area
 - Extraordinary service restoration delays to an individual neighborhood
 - Projects to Improve Reliability: completed and planned
 - Update on using smart grid technology and reducing reliance on fossil fuel
- Focus on Improving Circuits that Perform Worse Than System Average
- Customer Communication on Restitution Opportunities, Easement Access and Process for Grid Tie Technology
- Collaboration on long range planning and potential legislative agenda items
- EV Charging opportunities in pilot program approved by WUTC in Dec 2018



Questions and Discussion



Kenmore Franchise

Julien Loh
Government Affairs

Justin McConachie
Municipal Relations



PUGET
SOUND
ENERGY

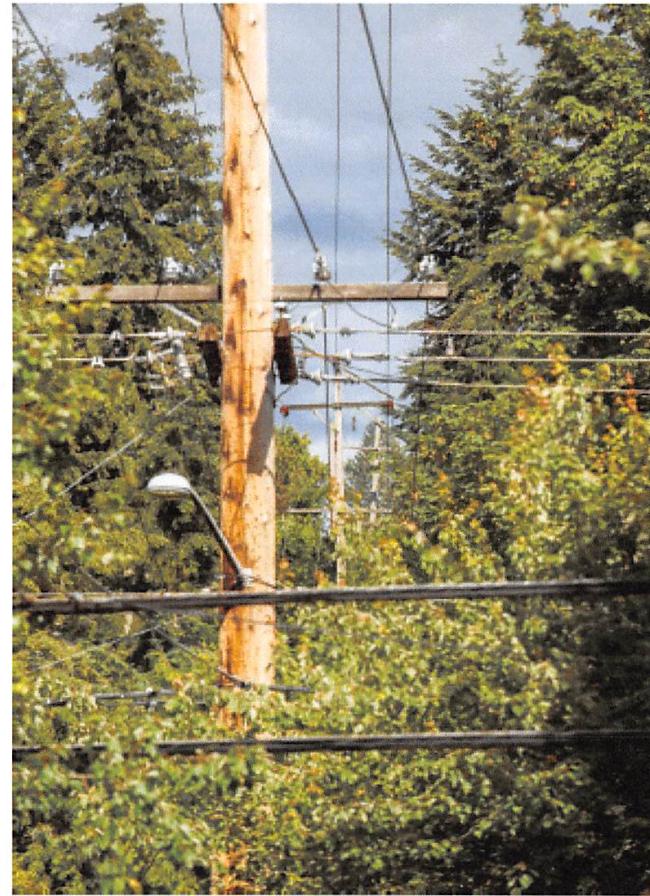
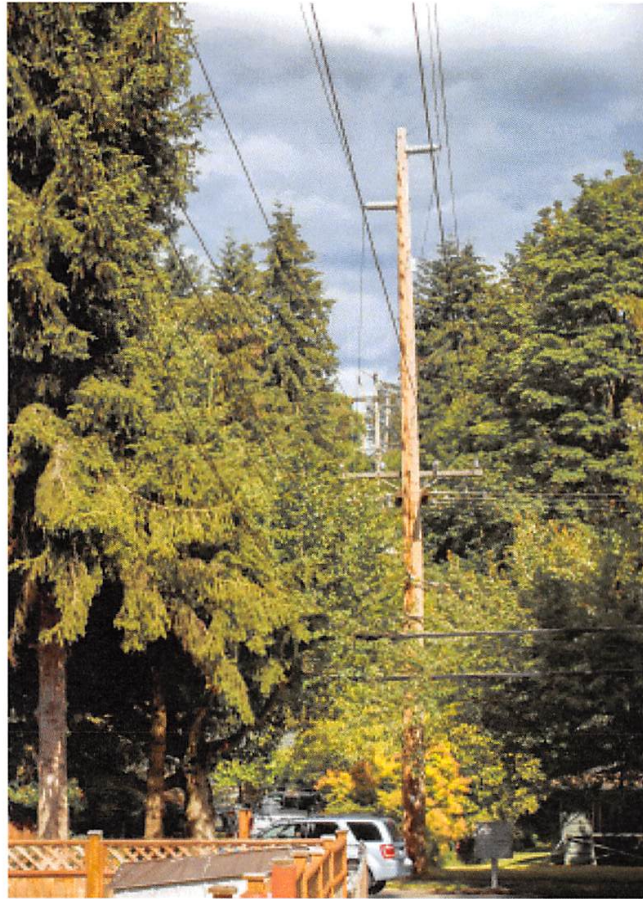
May 2019

Reliability investments completed 2016, 2017 and 2018 Kenmore

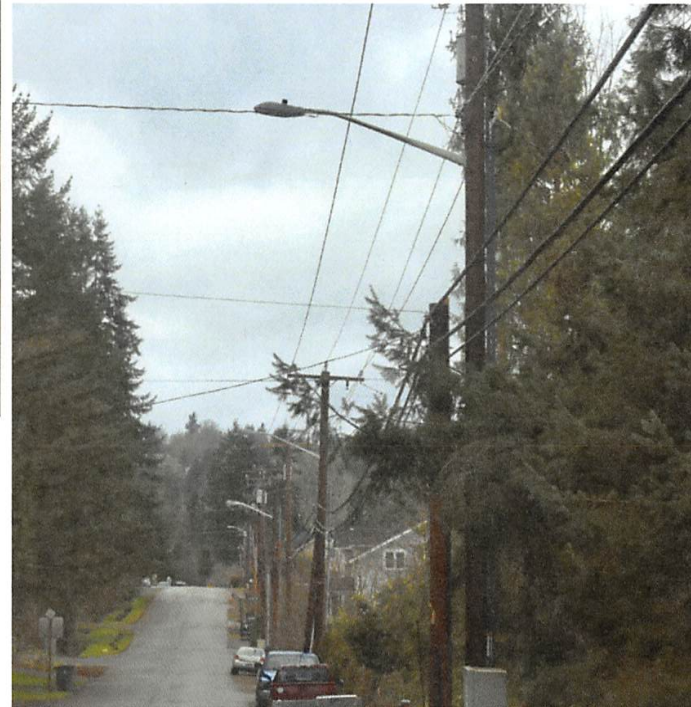


- 1 Distribution automation project (2016)**
 - PSE Test Project
 - Automatically detect damage and restore customers within seconds
- 2 New overhead switches on NE 185th St (2016)**
 - Allow servicemen to reconfigure a distribution circuit to restore customers faster
- 3 New Recloser on NE 195th St (2016)**
 - Prevents some customers from experiencing an outage
 - Tests circuit automatically to quickly restore power if there isn't permanent damage
 - Sectionalizes circuit to reduce restoration time
- 4 New Recloser on NE 169th St (2016)**
- 5 Moorlands-Vitulli transmission line upgrade (2016)**
 - Rebuild existing 5 mile line between Moorlands substation in Kenmore and Vitulli substation in Bothell
 - Provide more reliable electric service to Kenmore/Bothell area
- 6 7 Feeder reconductor with tree wire (2017)**
 - Tree wire is insulated conductor that is less likely to go out from tree branches
- 8 Feeder reroute and reconductor with tree wire (2017)**
 - Reroute due to access issues
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- 9 Kenmore substation upgrades (2018)**
 - Upgraded four aging circuit breakers with new technology
 - The new equipment will improve how outages on the system are identified and managed remotely
 - Replaced aging underground cables to improve reliability
- 10 11 Replaced underground powerlines (2018)**
- 12**
 - Replaced 14 poor performing underground cable runs in various locations to improve reliability.

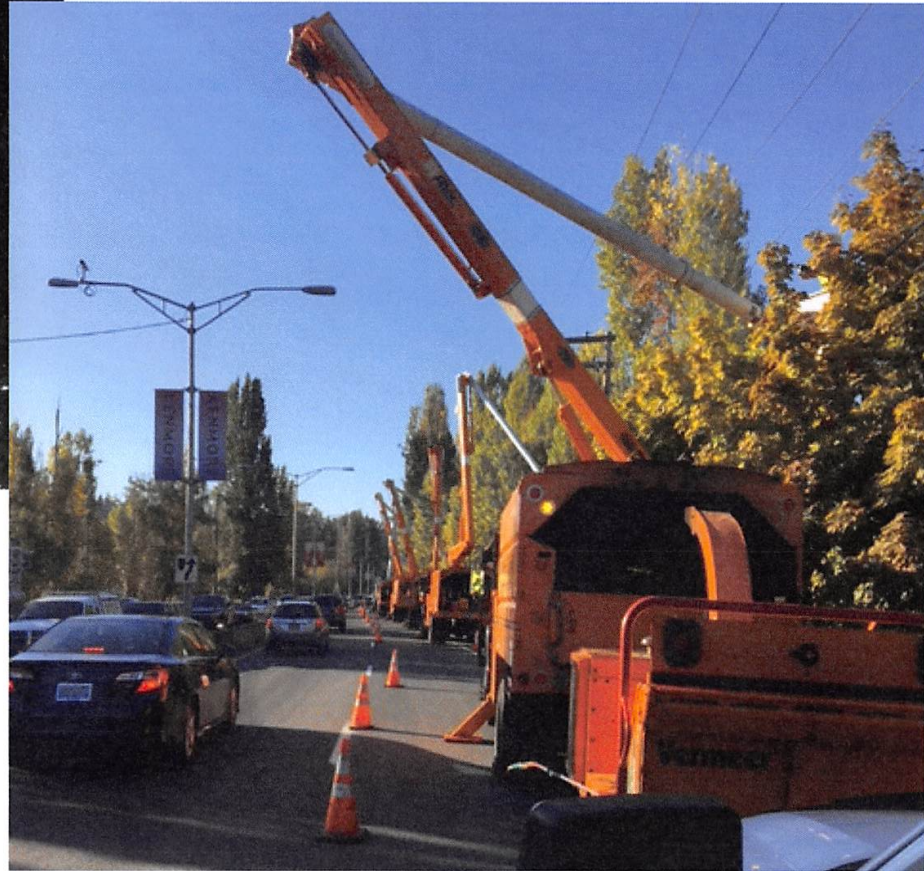
Former Circuit KNM-26



Circuit 26 & 27 Post Rebuild



Vegetation Management Work in Kenmore



Vegetation Management Work in Kenmore



Total Investments

Capital:

- \$18.8 Million in capital improvements 2016 – 2018
- Rebuild of Moorlands-Vitulli transmission line
- Kenmore Substation upgrade
- Distribution rebuilds along KNM-23, KNM-26, & KNM-27
- Replacement of 14 underground cable runs

O & M Vegetation work 2017 & 2018:

- ~52 circuit miles trimmed for \$398,000

Planned reliability projects in 2019 and 2020 Kenmore



- 1 Feeder reconductor (2019)**
 - Reconductor with larger wire to accommodate future load growth and reliability
- 2 Feeder reconductor with tree wire (2019)**
 - Tree wire is insulated conductor that is less likely to be impacted by fallen tree branches
- 3 Replace five poor performing cable runs with new underground cable (2019)**
- 4 Inglewood substation upgrades (2019)**
 - The project will upgrade four aging circuit breakers with new technology
 - The new equipment will improve how outages on the systems are identified and managed remotely
 - We'll also replace aging underground cables to improve reliability
- 5 Distribution automation project (2020)**
 - Installation of seven reclosers in various locations
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- 7 Feeder will be rerouted and rebuilt as an underground powerline (2020)**
 - Phase two of the larger NE 195th St reroute project designed to resolve the access issues with the existing overhead powerline that has previously impacted reliability.

⊗ = Recloser

Planned Investments

- Inglewood Substation upgrades
- Distribution rebuilds along KNM-26
- Distribution automation installations to KNM-23, KNM-26, & KNM-27
- Replacement of multiple underground cable runs along ING-17

Reliability Snapshot

- Overall Reliability in Kenmore has improved significantly over the last couple of years.
- The average number of outage duration minutes has gone down by over 300 minutes/year since 2016 across the City with Circuit KNM 26 & 27 seeing the greatest improvements.
- Kenmore was within 20 minutes of the PSE system average for outage duration at the end of 2018.
- Continued improvements are expected with the additional planned work in 2019 & 2020.



Key Elements of the SB 5116 Clean Electricity Legislation

- Requires all electric utilities to:
 - Eliminate costs of coal power from rates by 2025
 - Supply 80% emissions free generation and carbon-neutral electricity by 2030
 - Set a goal of 100% carbon-free energy delivery by 2045 and file action plans to meet it.
- Requires the Commission to accelerate depreciation of coal facilities to Dec 31, 2025
- Includes needed fix to “used and useful” allowing for multi-year plans of up to 48 months



Up & Go Electric program has five major components

Areas of focus for 2019:

- **Market education:** Comprehensive Education & Outreach program to raise awareness and assist customers with electric car and charging decision-making.
- **Access to charging infrastructure:** Improve customer confidence and develop best practices around charging options at home, public, and workplace.

Ongoing in 2019	Launching for enrollment mid-2019			Operational end of 2019
Education & Outreach	Residential Charging	Multifamily Charging	Workplace Charging	Public Charging
• Raise awareness of benefits of electric car ownership & charging options • Interactive website with info & tools to inform purchase decisions • Test drive opportunities • Ongoing in 2019	• Smart charger + install for up to 500 resi customers • Launch for enrollment June 2019	• Smart chargers + install for 25 MF property owners/mgrs • Launch for enrollment August 2019	• Smart chargers + install for 50 workplaces • Launch for enrollment August 2019	• Well-sited, PSE-owned / branded charging locations (3 operational by end of 2019) • Support all EV types / customers

PSE Storm Communications

- MyPSE smart phone application
 - Search for “Puget Sound Energy”
- www.pse.com/outagemap
- Call 1-888-CALL PSE
- Social Media
 - Facebook
 - Twitter
 - Flickr
 - PSE TV on YouTube



Questions?

Justin McConachie

Municipal Relations

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Kenmore Franchise

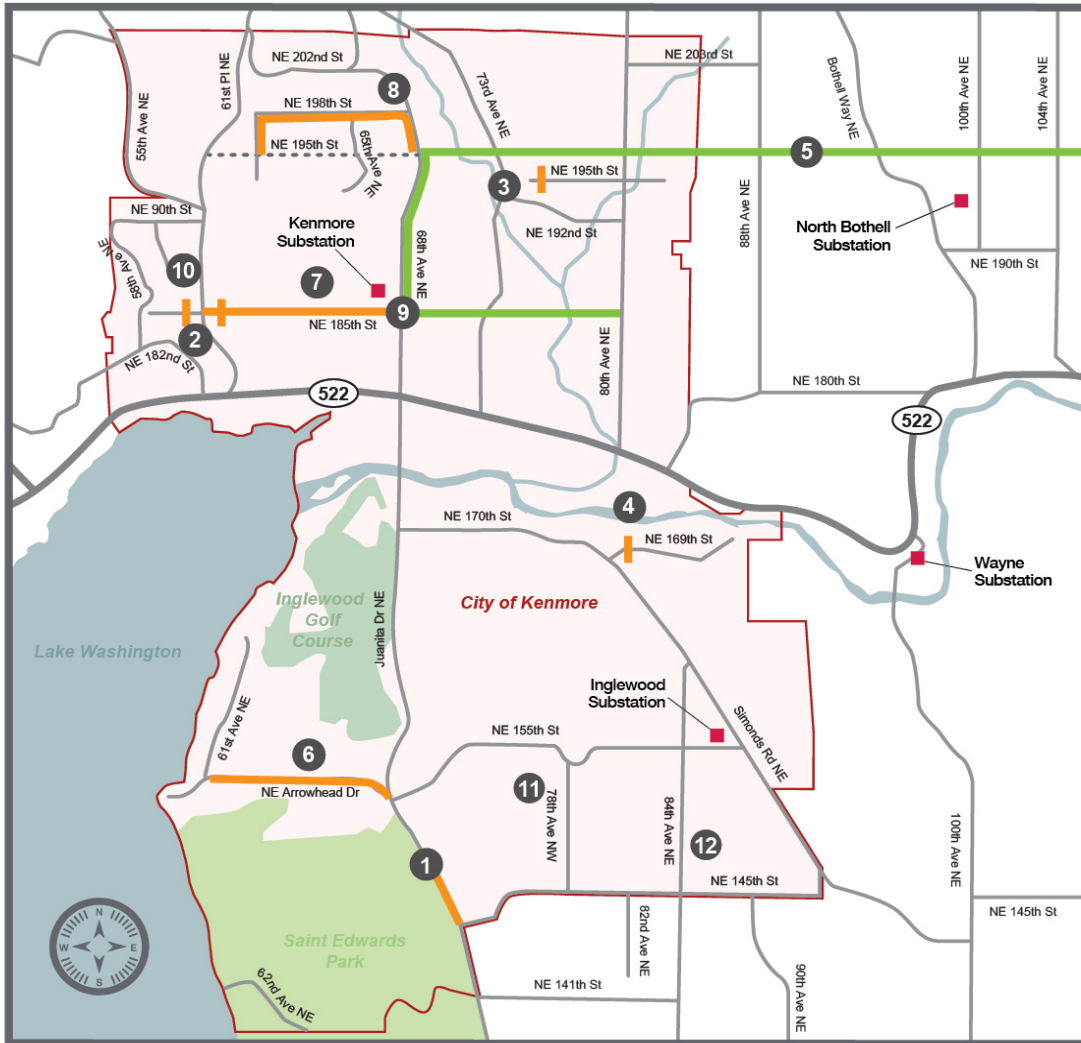
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June 2019

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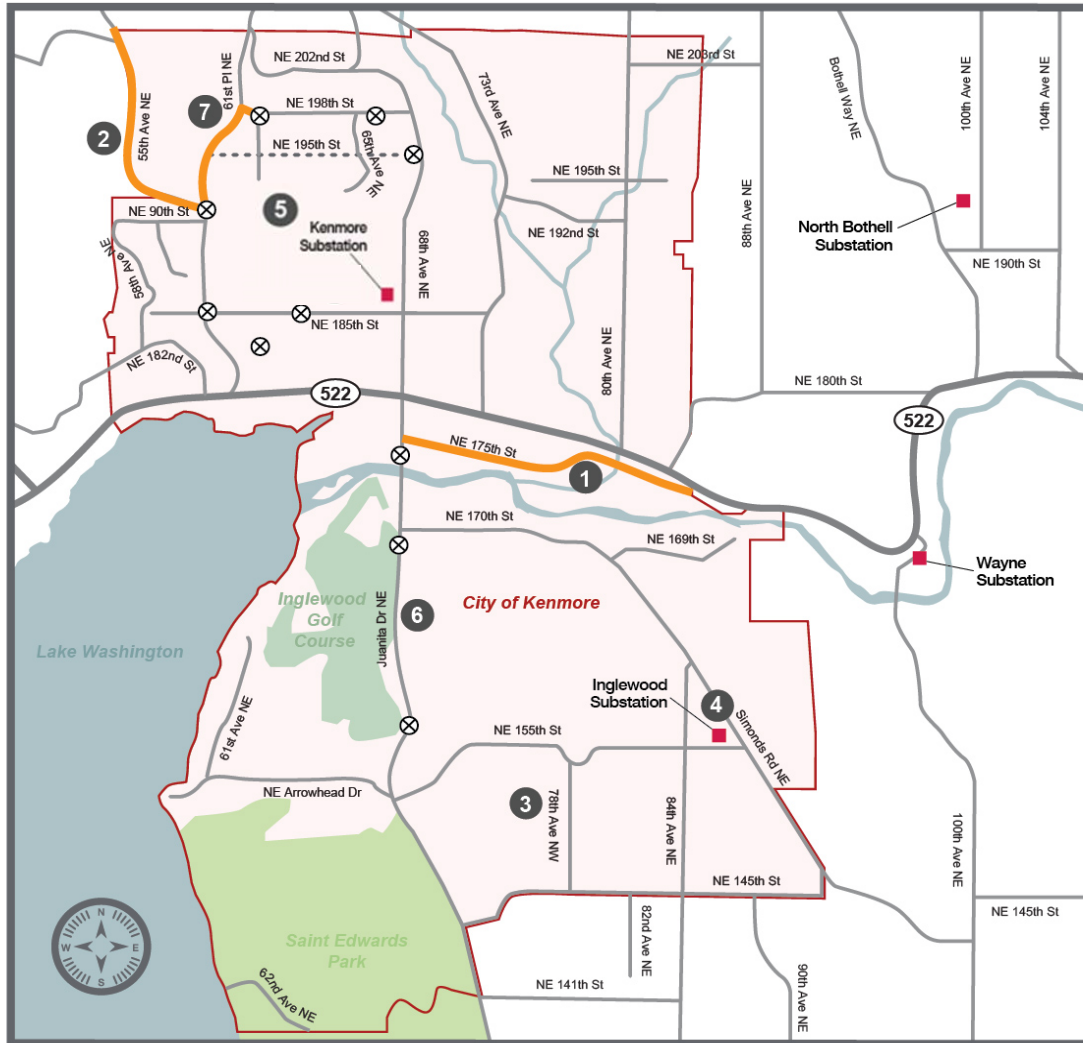
Vegetation Management Work in Kenmore



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- **Access to charging infrastructure:** Improve customer confidence and develop best practices around charging options at home, public, and workplace.

Ongoing in 2019	Launching for enrollment mid-2019			Operational end of 2019
Education & Outreach	Residential Charging	Multifamily Charging	Workplace Charging	Public Charging
• Raise awareness of benefits of electric car ownership & charging options • Interactive website with info & tools to inform purchase decisions • Test drive opportunities • Ongoing in 2019	• Smart charger + install for up to 500 resi customers • Launch for enrollment June 2019	• Smart chargers + install for 25 MF property owners/mgrs • Launch for enrollment August 2019	• Smart chargers + install for 50 workplaces • Launch for enrollment August 2019	• Well-sited, PSE-owned / branded charging locations (3 operational by end of 2019) • Support all EV types / customers

Thank you.

Questions?



Proposed Puget Sound Energy City of Kenmore Franchise Agreement and Memorandum of Understanding

June 10, 2019



Council Action on:

- **Non Exclusive Franchise Agreement:** allows PSE to use City Right of Way to locate, construct and operate....and maintain electrical and natural gas facilities. The Franchise is granted only on the condition that the MOU is signed by the parties.
- **Memorandum of Understanding (MOU) on Performance and Reliability Reporting:** annual reporting to the City Council on Kenmore circuit performance, outages, and measures to improve reliability. (see proposed language on term)
- Note: PSE activities are regulated by the Washington Utilities and Transportation Commission.



Conditions in 2015-2016

Kenmore circuits among the least reliable in the entire PSE system, based on five year average (2010-2015):

- One of the ten circuits serving Kenmore performed above the 50% of all PSE circuits
- Seven performed in the lowest quartile of all PSE system circuits

Many Distribution Circuits Featured Older Equipment
Vulnerable to Damage From Trees and Vegetation



Exponent Consultant Report Recommendations (2016)

- Expedite Installation of Recloser and Sectionalizing Switches
- Implement Plans to Rebuild Circuits 26, 27, 23
- Improve Reliability Issues in Other Circuits
- More Frequent Vegetation Management Patrols (annual) and Trimming
- Install Modern Technologies Available in Other Cities
- Detailed Reliability Reports by Circuit and Regular Reporting to City

2016-2018 PSE Reliability Projects in Kenmore



- Distribution improvements in Circuits serving NW Kenmore (26 & 27) and Arrowhead (23)
- Transmission Line Rebuild
- Kenmore Substation Upgrade
- Vegetation Management



Updated Since May 20, 2019 Council Discussion

- Term for Memorandum of Understanding: five years, with the option to consider a five year extension. This is consistent with the proposed Franchise term, which is five years, with an additional five years by mutual agreement.

Proposed addition to Franchise Agreement Section 4 :

...“If PSE requests the Franchise to be renewed for an additional five years, then the Parties shall also review and determine if the Memorandum of Understanding....shall also be renewed for an additional five year period.”



Proposed Franchise Agreement Features

- Term: 5 years with an additional 5 years by mutual agreement (2005 agreement term is 10 years)
- Provisions for natural gas safety and procedures for removal or decommissioning of unused facilities
- Improved mapping of electric and natural gas facilities
- Non-Interference of Facilities: Adds bicycle passage and ADA standards to pedestrian and vehicle safe passage requirement



Vegetation Management

- Annual patrols to identify areas needing trimming (currently every 4 years)
- General trimming and management at least every 4 years
- City Staff may accompany PSE on patrols
- Efficiencies on PSE/City vegetation management
- PSE commits to a 24 hour response to customer contacts re planned Vegetation Management at or near residence





Relocation and Third Party Users

- Process for notification and response when facilities must be relocated for City projects
- Includes relocation of third party user facilities
- PSE required to report on location of all known third party users on its facilities.





Memorandum of Understanding

- Annual Reporting on Reliability, Outages and Restoration: written report and presentation to City Council
 - Reliability Comparison with bordering cities in PSE service area
 - Extraordinary service restoration delays to an individual neighborhood
 - Projects to Improve Reliability: completed and planned
 - Update on using smart grid technology and reducing reliance on fossil fuel
- Focus on Improving Circuits that Perform Worse Than System Average
- EV Charging opportunities in pilot program approved by WUTC in Dec. 2018



Council Discussion and Action





City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic: Hangar Building Facility Use Policy Proposed Council Action/Motion: Approve Proposed Amendments to the Hangar Building Facility Use Policy	For Council Meeting Agenda of: June 10, 2019 Department: City Manager's Office Prepared by: Rob Karlinsey, City Manager Approved by City Attorney: <u>Initial & Date</u> Approved by Finance Director: <u>D.R. via email</u> Approved by City Manager: <u>[Signature]</u> Exhibits/Attachments: Hangar Building Facility Use Policy with Proposed Revisions Shown
<u>INFORMATION/BACKGROUND:</u> At its June 19 and June 26 regular meetings in 2017, the City Council discussed a draft policy for use of the new Hangar community building. Changes to the policy as directed by the City Council were incorporated and the Hangar Building Facility Use Policy was approved by the Kenmore City Council on July 24, 2017. <u>Background</u> The Town Square and accompanying "Hangar" community building have been in operation for almost two years, and a reservation system for spaces in the Hangar has been functioning since fall of 2017. Both the Town Square and the Hangar serve as a year-round public gathering space in the heart of Kenmore's downtown. The 4,600 square-foot Hangar includes space for a coffee shop retail tenant. In addition to the tenant retail space, the Hangar includes a larger community gathering space (the "Otter" Room) and a smaller multipurpose room (the "Beaver" Room). These spaces are available for the public to use daily, and they can reserve the Otter Room and Beaver Room during certain designated hours of the week. Facility use policies for the Hangar have been essential in creating a framework for the public to reserve the spaces in the building or just "hang out." Now that Hangar has been operating for almost two years, we have been able to assess the adopted policy and how it has been working in practice. As a result, staff propose a number of amendments to the Hangar Building Facility Use Policy, with several amendments highlighted as follows: <u>Eligibility to Reserve Space.</u> Currently, the Hangar spaces are available for anyone to reserve, regardless of residency or other criteria. We are finding that the Hangar is well used and generally in high demand, whether the spaces are reserved. Given the Hangar's popular use and for workload purposes we propose the following eligibility requirements to reserve space in the Hangar:	

Otter Room:

The following may reserve the Otter Room:

- Residents of Kenmore
- Any nonprofit organization registered as a 501(c)(3)

The following cannot reserve the Otter Room:

- Non-residents of Kenmore
- For-profit businesses

Beaver Room:

The following may reserve the Beaver Room:

- Residents of Kenmore
- Any nonprofit organization registered as a 501(c)(3)
- For-profit businesses physically located with a mailing address in the City of Kenmore and Kenmore Business Incubator clients

The following cannot reserve the Beaver Room:

- Non-residents of Kenmore
- For-profit businesses not located in Kenmore, with the exception of Kenmore Business Incubator clients

Refundable Deposits. For larger groups (30 or more) we are proposing the applicant be charged a refundable deposit in advance of the event. The lease with our retail tenant requires us to give our tenant several weeks' advance notice for reservations of 30 or more people. This notice allows the retail tenant to have time to staff up and stock up for the event. Some of the larger group reservations have resulted in "no shows," have over-stayed their allotted time, or have left a mess. Charging a deposit for larger groups will allow the City to recoup cleanup costs and provide an incentive against no-shows and staying past the scheduled end time.

Limited Public Forum. The proposed amendments include retaining the policy's language about the Hangar as a limited public forum; however, given the nature of the Hangar as a public space, we propose eliminating the language that prohibits campaign or political activity as the space is open to the Kenmore community on an equal access, nondiscriminatory basis.

Other proposed changes to the Hangar Building Facility Use Policy are shown as revisions in the attached Exhibit.

COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:

Council Goals:

- 7. Create a vibrant, walkable downtown
- 9. Build Community, Celebrate Diversity, and Create Fun

Hangar Building Facility Use Policy

Created: July 24, 2017
Last Modified: November 20, 2018

The Town Square and the Hangar community building are intended for the use and enjoyment of Kenmore residents and visitors. This facility belongs to the taxpayers of Kenmore and is intended to provide a location free of charge for them to gather, entertain, meet, eat, drink, connect, and just hang out.

Intended uses for the Hangar include but are not limited to the following:

- Meeting up with friends or just hanging out
- Book club meetings
- Recitals
- Lectures
- Musical performances
- Club meetings
- Meeting with clients ([Beaver Room](#))
- After-school programs
- Classes

The 4,600 square-foot Hangar includes approximately 1,200 square feet in the southeast portion of building for a retail tenant. The current tenant provides coffee products and other drinks, baked goods, and other food offerings.

The Hangar is a gathering place for the public to use free of charge. The Hangar contains a two-sided fireplace, comfortable furniture and table space, free wi-fi, plug-ins, a sound system, projector and TV, and a large airplane hangar-style door that can remain open on warm summer days. As shown in the attached floor plan, there are two spaces in the Hangar that people can reserve at no cost, [although a refundable damage deposit may apply as described later in this policy \("Applicant"\)](#). When these spaces are not reserved, they will be available for anyone to use informally for hanging out or meeting friends or a client. These two spaces are:

- The "Beaver" room (the small conference-like room on the east side of the "Otter" gathering area).
- The "Otter" gathering area (the larger, more open space adjacent to the large Hangar door and between the fireplace and the north wall of the building).

Policy Compliance & No Discrimination

All who occupy, use, or reserve the Hangar and its public spaces agree to abide by the policies herein. All users of the Hangar and its premises will abide by local, State, and Federal laws. The City of Kenmore believes in the dignity, equality, and constitutional and civil rights of all people, and will not tolerate discrimination, harassment or any behavior that creates fear, isolation, or intimidation.

Utmost Care

All users of the Hangar's public spaces agree to exercise the utmost care in the use of the premises and property, and comply with this facility use policy document.

Availability

The Otter and Beaver will be available for public use ~~and reservations~~ during the retail tenant's business hours. The City ~~Manager~~ may allocate certain hours for open public use and designate certain hours not available for reservations. The City may also allow certain events outside of tenant's business hours at the City Manager's discretion.

Public Space and Respect for the Retail Use

All users of the Hangar acknowledge that the public is free to come and go throughout the building. The Hangar includes a retail tenant ("Tenant"), and this Tenant may provide seating for the sole use of its customers. The Tenant's customers may also use other portions of the Hangar, except as described in the following paragraph. During the Tenant's business hours, the Tenant's patrons and the public will be free to enter and exit through all doors of the Hangar, provided that the ~~Volunteer & Events Supervisor~~ City Manager or designee may make exceptions with the concurrence of the Tenant and in compliance with building and fire codes.

When using the Otter for an event, ~~all the a~~ Applicants shall acknowledge that the public may attend the event and freely enter and exit through all of the exterior doors of the building.

City-sponsored events have priority in the Hangar, and the City Manager or his/her ~~D~~ designee reserves the right to cancel any prior reservations or use of the Hangar and/or to suspend any portion of this facility use policy.

Reserving the Spaces in the Hangar

Reservations for the two spaces in the Hangar may be made using City's online reservation system, except as noted below. All ~~a~~ Applicants ~~that who~~ reserve space in the Hangar must read and acknowledge that they understand and accept all procedures and regulations in the City of Kenmore's Hangar Building Facility Use Policies.

Group meetings of ten (10) or more people must have a reservation to use the Hangar and premises. Reservations for meetings or events that anticipate attendance of less than 30 people should be made at least three working days in advance. For example, a reservation for 2 pm on a Monday should be booked by 2 pm on Wednesday.

Reservations for meetings or events that expect attendance of 30 or more people will require 35 days' advance notice to the City. The purpose of this advance notice is to allow the Tenant enough time to staff and prepare for the event.

When the Otter Room is reserved, the Beaver Room will also be reserved for that same event and user, due to their proximity. The Beaver Room may be reserved without reserving the Otter Room. On a case-by-case basis and depending on circumstances, the ~~Volunteer and Events Supervisor~~ City

Manager or designee may approve separate simultaneous reservations of both spaces with the concurrence of both parties.

The City encourages maximum public use of the facility. Except for City sponsored events, individuals or groups may not monopolize any space within the Hangar, with or without reservations. Individuals or small groups that may only reserve space on multiple dates at a consistent day and time require with the approval by of the City Manager or designee, at their his/her sole discretion, with the intent of limiting groups from monopolizing the facility. Reservations may be made no sooner than six months in advance. City sponsored events and meetings or organizations providing services in partnership with the City may reserve the space outside of the reservation windows and for durations as determined by the City.

Typical room reservations will be in one hour increments up to a maximum reservation of three hours. If a group wishes to reserve either space for more than three consecutive hours, approval is required from the City's Volunteer & Events Supervisor City Manager or designee at least three working days in advance.

Deposits for Reservations

The City does not charge a fee for reserving the spaces in the Hangar. However, the City will charge a refundable deposit in advance of the reservation under the following circumstances:

- For group sizes of 30 people or more if food and/or beverage is brought in (catered, potlucks, etc.) as part of the event: A \$150 deposit will be charged and refunded if city staff find the space clean and in good condition after the event. This deposit will not be required when attendees incidentally and individually order food or beverage from the Hangar retail tenant.
- For group sizes of 30 people or more if no food is served: \$100 deposit. This deposit will not be refunded for "no shows," and cancellations less than two business days in advance of the reservation date.
- \$50 of the deposit will not be refunded for groups of 30 more who over-stay their reservation by more than 10 minutes past the reservation end time.

Who Can Reserve the Spaces in the Hangar

Hangar reservations are allowed as follows:

Otter Room:

The following may reserve the Otter Room:

- ~~Residents of Kenmore~~ residents
- Any nonprofit organization registered as a 501(c)(3)

The following cannot reserve the Otter Room:

- Non-residents of Kenmore
- For-profit businesses

Beaver Room:

The following may reserve the Beaver Room:

- Kenmore residents
- Any nonprofit organization registered as a 501(c)(3)
- For-profit businesses physically located with a mailing address in the City of Kenmore
- For-profit businesses that are registered as Kenmore Business Incubator clients on the date of the reservation.

The following cannot reserve the Beaver Room:

- Non-residents of Kenmore
- For-profit businesses not located in Kenmore, with the exception of Kenmore Business Incubator clients.

To demonstrate residency or business location in Kenmore, ~~an Applicant must will~~ provide the address of their residence; or in the case of a business, the physical location of their business. A Post Office Box will not be accepted as an address for the purpose of this section. City staff reserve the right to request additional information and further investigate proof of residency/physical location at their discretion.

Any ~~a~~Applicant seeking to reserve either space must be 18 years or older, ~~and~~ sign the City's application form. ~~The Applicant must and~~ agree to follow and abide by these policies ("~~Applicant~~"). The Applicant reserving the space must be present during the entire time of the reservation. Groups comprised of minors (under 18 years of age) shall be supervised by a sufficient number of adults at all times while using Hangar facilities and premises. The Applicant reserving the space is considered to be the responsible party in case of damage, theft, or disturbance during use of the Hangar facility.

MEETINGS & EVENTS

Room Set Up, Take Down, and Clean Up

The City is not responsible for room setup or takedown. Those who have reserved the spaces are responsible for room setup and may use the tables and chairs in the two spaces. The City also has a limited number of chairs and tables in the Hangar's storage closet and these may be available for meetings and events with at least three working days advance notice to the City. At the conclusion of the event, the attendees must restore the room to the way they found it prior to the event. Attendees must remove all trash, belongings, and event related materials and leave the facility clean and intact. The Applicant who reserved the space is responsible for cleanup immediately following the event. Cleanup includes returning furniture to its prior location, throwing away trash and bringing it to the dumpster, wiping up spills, and removing food crumbs and other scraps. If additional cleanup beyond routine cleaning by City staff is required, the Applicant or group will be charged for the City's cost or cleanup and/or may not be allowed to use the facility in the future.

Amplified sound

The Hangar contains a speaker and microphone system. This system may only be set up and operated by the City's Facility Maintenance Technician or other designated and trained City representative. Users of amplified sound must be sensitive and courteous to the retail tenant, its patrons, and other users of the Hangar. The City reserves the right to control the sound level at any time during an event. Amplified sound will generally not be allowed on Saturday and Sunday mornings before 9 am and on weekdays before 7 am.

Audio/Visual

The Hangar also contains a TV and a video projector system. These systems may only be set up and operated by the City's Facility Maintenance Technician or other designated and trained City representative. Groups must bring their own laptops for digital and video presentations.

Display Materials

The Applicant should provide their own easels, flip charts, etc. for displays. See below for restrictions on posting decorations or displays. The Applicant is responsible for removing all display materials prior to leaving the premises.

Decorations

Items may not be affixed to the ceiling, doors, walls, light fixtures or windows. Rice, bubbles, silly string, birdseed, confetti and glitter are not allowed. The Applicant will be charged for the costs of repairing damage resulting from the use of hooks, nails, push pins, staples, tape or other adhesives and may not be allowed to use the facility in the future.

Signage

No exterior or interior signage can be posted on the structure of the Hangar building. Subject to the City's sign code, users may post up to two A-board or small banners near (but not on) the building and no more than one hour in advance of the event. The signs must be removed immediately following the event. The locations of the signs may be adjusted by the City at the City's sole discretion.

Deliveries

The Applicant reserving the space must be present to accept or sign for any deliveries related to the event. No storage space is available in the Hangar for event supplies or equipment.

Late Arrivals

If an individual or group has not arrived within the first 15 minutes of their reservation, the reservation will be considered canceled and the room will be classified as "open use" to the public. Changes to the reservation start time must be made within 48 hours of a reservation.

Lower than Expected Attendance

If after 30 minutes 12 or less people are in attendance during a reservation in the Otter Room, City staff reserves the right to request that the group either move into the Beaver Room, dependent on availability, or allow members of the public to use any unused tables in the Otter Room. Exceptions can be approved by the City Manager or his/her designee.

GENERAL USE POLICIES

Not a Public Forum

The Hangar and its premises are not traditional public forums and are intended to be limited public forums. The Hangar contains a retail tenant, and the Hangar floor plan is an open area space with free flow and overlap of gathering spaces between the Tenant's space and the rest of the facility. These policies are intended to minimize disturbance to the retail use of the Hangar by the Tenant and its patrons, and as a result, the entire Hangar and its premises should be treated as a retail area where patrons may come and go. The City's acceptance of certain use by the public is not intended to create an open public forum, and the City retains the right to control the use of said facilities.

Tobacco Use Prohibited

The use of tobacco products is prohibited inside or within 25 feet of any entrance or window to the Hangar.

Marijuana Possession, Sale, or Use Prohibited

The possession, sale, or use of marijuana products is prohibited in the Hangar or premises.

Lawful Activity

All activities must comply with Kenmore Municipal Code, King County Public Health Code, state and federal law.

Firearms Prohibited

Firearms or weapons of any sort will not be allowed in the Hangar or premises. This restriction does not apply to on-duty law enforcement officers.

Flammable Materials

The use of candles or any other type of open flame, flammable materials or fog/smoke machines is prohibited in the Hangar.

Animals

Service animals are welcome in the Hangar. No other animals are allowed in the Hangar unless

approved in advanced through a City-sanctioned event.

Indemnification

The Applicant must execute an application online to reserve space in the Hangar and agree to be the responsible party in case of damage to the premises, theft, or bodily injury or property damage to others-disturbancees arising from the use of the reserved space. The Applicant must agree to defend, indemnify and hold the City, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, action and liabilities, including costs or attorney's fees, to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected in any way with the Applicant's use of the facility and attendees of the activity, or by the Applicant's or attendees' breach of these policies or application agreement. The City shall-is not be responsible for lost, stolen or damaged items.

~~Not a Public Forum~~

~~The Hangar and its premises are not traditional public forums and are intended to be limited public forums. The Hangar contains a retail tenant, and the Hangar floor plan is an open area space with free flow and overlap of gathering spaces between the Tenant's space and the rest of the facility. As a result, the entire Hangar and its premises should be treated as a retail area where patrons may come and go. The City's acceptance of certain use by the public is not intended to create an open public forum, and the City retains the right to control the use of said facilities.~~

~~No Election, Campaign, or Other Political Activity~~

~~Pursuant to RCW 42.17 A.555, City facilities may not be used for the purpose of promoting or opposing any election, campaign or ballot proposition purposes.~~

No Explicit or Pornographic Material

No explicit or pornographic material, including images, videos, artwork, etc., may be shown or displayed in the Hangar or its premises.

Artwork

No artwork may be shown or displayed in the Hangar or its premises except in conformance with the City's Display and Exhibition Policies, promulgated under the authority of Resolution 12- 206.

Alcohol

Unless approved through a City-sanctioned event and except as provided for in the Tenant's lease agreement, no alcohol will be allowed in the Hangar.

No Endorsement

Receiving permission to use City facilities does not constitute an endorsement of a group's philosophies, policies or beliefs.

Distribution of Give-Aways

The City reserves the right to deny the distribution of items at events deemed to be hazardous, a nuisance or not family-friendly.

Sleeping

Lying down, napping, or sleeping is prohibited in the Hangar.

Sales and Solicitation

Individuals, groups or organizations are prohibited from selling any goods or services or soliciting funds anywhere in the Hangar, unless otherwise approved by the City Manager or his/her ~~d~~Designee.

City May Add Restrictions ~~For~~ Requirements

The City may add requirements and/or restrictions as deemed necessary, depending on the activity or event. The City will identify the required additional requirements and/or restrictions in writing five days in advance of the event. The City can deny room reservation requests at its sole discretion, due to staff or facility availability, incompatibility of the reservation request with the City facilities, or other reasons. All requests are subject to the approval of the City Manager or ~~d~~Designee. The City reserves the right to terminate a reservation if risks to safety or property exist or if users are violating facility use policies or other laws.

No Show

If a user or group reserves the space and does not use the space without notifying the City in advance, the City may cancel the user's or group's other reservations without notice. The City may refuse future reservations after more than one no show. [Also see "Deposits for Reservations" above.](#)

City Cancellation of Reserved Spaces

The City reserves the right to cancel a reservation if the City wishes to make use of the facility which in the judgment of the City supersedes the need of the user. Notice of the City's cancellation for priority use shall be given in accordance with the time limits set forth in KMC 9.40.060. Notice of cancellation for emergencies may be given at any time. As owner of the Hangar, the City shall not be responsible for any claims, losses, liabilities or damages if the City displaces other users, and the Applicant must agree to release and indemnify, defend, and hold City harmless from such claims.

City Right to Refuse ~~For~~ Trespass

If a person or group does not follow these policies, causes damage or disruption to the facility, or otherwise exhibits behaviors that are not in keeping with the effective and efficient use of the facility, the City, at its sole discretion, may [not refund a deposit and may](#) refuse to allow the person or group to reserve or use the Hangar facilities in the future. The City, at its sole discretion and based on

illegal, disruptive or other behaviors not in keeping with the harmonious public use of the facility, may trespass individuals from the property indefinitely.

Maximum Room Capacity

Maximum room capacities are depicted in the attached Hangar floor plan. Events or gatherings that exceed approved capacities may be cancelled immediately and future reservations may be canceled at the City's sole discretion and without notice.

Policy Interpretation

The City Manager or ~~d~~Designee shall make any necessary interpretations of these policies.



City Of Kenmore, Washington

Memorandum

TO: Rob Karlinsey, City Manager

FROM: Debbie Bent, Community Development Director *DB*
Lauri Anderson, Principal Planner *WK*

DATE: June 7, 2019

SUBJECT: Developer Panel Proposal

At the City Council retreat in January, Council asked that a panel of developers/builders be organized to discuss innovative housing types that might help reduce the cost of housing. Compatibility with single-family neighborhoods was also raised as a potential topic for exploration. The panel project responds to Council's Goal #3, "Increase and preserve the options for affordable housing stock."

Possible Panelists

After reviewing efforts throughout the northwest, staff recommends that a panel be convened addressing the following topics:

- Cottage housing (tentative panelist: local cottage housing developer)
- ADUs, tiny houses (tentative panelist: Portland advocate)
- Duplexes in single-family zones (tentative panelist: builder from Tacoma or Olympia)
- Staff also was impressed with Tacoma's creative approach to "missing middle" housing—a program they call the Residential Infill Pilot Program. This program has set up a series of demonstration projects for creative/innovative housing types and staff recommends that an author of this approach also be included on the panel.

Potential Questions

Questions to be asked of panelists could include:

1. What makes a /your housing type successful?
2. Is this housing "affordable"? Who lives in your development?
3. What are the constraints to developing this housing type?
4. Where, in your experience, has this housing type been most successful?
5. Is there a market for this housing type in a suburban community like Kenmore?
6. What could Kenmore do to encourage this type of development?
7. How does this housing type achieve compatibility with the surrounding neighborhood?

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