City of Kenmore

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City of Kenmore
Planning Commission Meeting Agenda

Tuesday, March 5, 2019 @ 7:00 p.m.
Kenmore City Hall
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 Bridgit Baker at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Planning Commission agendas are also available on our website at www.kenmorewa.gov.

1. **CALL TO ORDER**

2. **CITIZEN COMMENTS**

3. **APPROVAL OF MINUTES**

   February 26, 2019 Planning Commission Minutes

4. **AGENDA ITEMS**

   Critical Areas and Shoreline Master Program Memo
   Attachment 1 - Definitions
   Attachment 2 - CAR Intro and Wetlands
   Attachment 3 - CAR Streams and Lakes
   Attachment 4 - CAR Fish and Wildlife Habitats
   Attachment 5 - CAR Geo Hazards
   Attachment 6 - CAR Flood Hazards
   Attachment 7 - CAR Groundwater
   Attachment 8 - SMP Shoreline Sub-Element
   Attachment 9 - Consolidated SMP Regulations
   Attachment 10 - Other Zoning Code Amendments

5. **ADJOURNMENT**

6. **UPCOMING MEETINGS:**

March 19, 2019, 6:15 p.m. (Planning Short Course)
March 26, 2019, 7:00 p.m. (Public Hearing)
April 2, 2019, 7:00 p.m.

City of Kenmore
Planning Commission Meeting
February 26, 2019 @ 7:00 p.m.

Planning Commission Members – In Attendance

Mark Ohrenschall, Chair
Mike Mulcare, Vice Chair
Suzanne Greathouse
Nathan Loutsis
Dennis Olson

Consultants & Staff

Debbie Bent, Community Development Director
Bridgit Baker, Admin. Assistant
Lisa Grueter, Berk
Dave Cline, Shannon & Wilson
Amy Summe, Shannon & Wilson

1. CALL TO ORDER

The meeting was called to order by Chair Ohrenschall at 7:00 p.m.

2. CITIZEN COMMENTS

No citizens rendered comments.

3. APPROVAL OF MINUTES

Commissioner Greathouse motioned to approve the January 15, 2019 minutes which was seconded by Commissioner Loutsis. The motion passed 5-0 with no abstentions. Commissioner Greathouse motioned to approve the January 29, 2019 minutes which was seconded by Commissioner Loutsis. The motion passed 5-0 with no abstentions

4. AGENDA ITEMS

Debbie Bent presented the final set of changes to the Critical Areas and Shoreline Master Program Amendments. Debbie noted that the most significant change was the development of a new shoreline code section: Commercial and Light Manufacturing Uses. Staff will follow-up on the Commission's question of where the boundary is between the Sammamish River and Lake Washington.

Debbie Bent noted that the second set of changes relate to the newly revised section on flood hazard areas. The Federal Emergency Management Agency (FEMA) has reviewed the changes for consistency with their flood insurance program and staff has responded to their suggestions. It is important that Kenmore's regulations reflect FEMA requirements so that property owners in areas of flooding can

participate in the federal National Flood Insurance Program. Dave Cline gave an overview of the changes. Staff will follow-up on the Commission's suggestion to include an illustration showing the components of the floodplain.

Debbie Bent noted that the third set of amendments contain the revised code sections addressing the Public Agency Utility Exception (PAUE). Using suggestions from the Department of Commerce, staff is recommending that only expansions of existing public agency facilities along with new or expanded utility or transportation projects be eligible for consideration using the PAUE process. New public agency projects would be considered through the variance or reasonable use exception processes. The Commission concurred with the approach but asked staff to refine the definition of utility and the description and application of the different processes.

Debbie Bent stated that Staff will bring back any recommendations and/or answers to questions on March 5, 2019 Planning Commission Meeting. The Public Hearing is slated for March 26, 2019. After March 26th, the Planning Commission will be reviewing any comments from the Public Hearing and will work on the recommendations to be presented to the City Council at a Joint Meeting. The Planning Short Course will be held on March 19, 2019.

5. ADJOURNMENT

Chair Ohrenschall adjourned the meeting at 7:56 p.m.

_____
Planning Commission

Approved by Planning Commission on: _____

18120 68TH AVENUE NE
KENMORE, WASHINGTON 98028

MEMO

TO: Planning Commission

FROM: Debbie Bent, Community Development Director DA
Lauri Anderson, Principal Planner LWA

DATE: February 28, 2019

SUBJECT: Critical Areas and Shoreline Master Program Amendments

The agenda for your March 5 meeting is to consider the full set of preliminary critical area and Shoreline Master Program amendments. These amendments will be the subject of your public hearing on March 26.

Attachments 1-10 are the various sets of amendments.

At your last meeting, you asked that we clarify definitions and processes for the Public Agency and Utility Exception (PAUE). Those changes have been incorporated into the amendments. In particular, we have eliminated the term "private utility" and have, instead, added in a general definition of "utility."

At your request, we are preparing a simple illustration of the floodway and floodplain that will be placed into the Flood Hazard Areas section of the critical areas code.

Attachments
Attachment 1: Revised Zoning Code definitions
Attachment 2: Critical areas introduction and wetland regulations
Attachment 3: Stream and lake regulations
Attachment 4: Fish and wildlife habitat area regulations
Attachment 5: Geologically hazardous area regulations
Attachment 6: Flood hazard area regulations
Attachment 7: Groundwater regulations
Attachment 8: Shoreline Sub-Element
Attachment 9: Shoreline regulations
Attachment 10: Other Zoning Code amendments related to the PAUE

ATTACHMENT 1

Amendments to Chapter 18.20, Definitions

18.20.206 Area of shallow flooding

"Area of shallow flooding" means a designated AO, ~~or~~ AH, AR/AO, AR/AH, or VO Zone on ~~the~~ a community's flood insurance rate map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. ~~The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.~~ AO is characterized as sheet flow and AH indicates ponding.

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 ~~a~~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.

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.

18.20.105~~990~~ 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. 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~~.

18.20.1~~0201~~125 ~~Federal Emergency Management Agency (FEMA)Ff~~loodway

"~~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 flood*~~*water 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.~~

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 this chapter.

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.

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 definedwater 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 includenot including irrigation ditches, canals, wasteways, drains, outfalls, operational spillways, channels, storm or surfacewater 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.

ATTACHMENT 2

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 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

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 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 *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

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 development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife *hydraulic project approval* (HPA), Army Corps of Engineers *Section 404 permits*, and National Pollut~~ion~~ant 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;

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 18.55.70~~05~~, Frequently flooded areas and ~~F~~*flood* damage prevention~~*hazard areas.*~~; and

6. Critical aquifer recharge areas and groundwater as designated in KMC 18.55.800, Critical aquifer recharge areas and groundwater.

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 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.

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 maps identify ~~known~~potential *critical areas* located in the *City*:

1. *Wetlands* and *Streams*.

   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*~~*P*~~*h*~~*H*~~*abitat*~~s~~ and ~~s~~S~~pecies~~ ~~maps~~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;

b~~a~~. King County's Landslide Hazards Along King County River Corridors interactive, web-based map folio~~critical areas map folio, as modified by the *City*~~;

c~~b~~. ~~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*.

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 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 natural~~Untreated 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;

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 pervious *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;

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*.

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. Replacement trees at a 1:1 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 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 public *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).

~~B~~C. 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).

~~C~~D. *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 ~~D~~E of this section.

~~D~~E. *Public Agency* and *Utility* Exception Review Criteria. The criteria for review and approval of a *public agency* ~~and~~or *utility* exception~~s~~ are as follow~~s~~:

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 area*~~s~~ 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;

~~2~~3. 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 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 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.

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*;

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.

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 ~~examined~~made 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;

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 habitat~~s~~ ~~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;

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~~ensure 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.

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 homeowner's 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.

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

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~~

~~(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.~~

~~c. 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.

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. 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. 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.*~~

~~1~~2. *Wetland buffers* shall be established as follows:

***Wetland* Type**	***Buffer* Width (Feet)**
~~Class 1~~Category I	150

***Wetland* Type**	***Buffer* Width (Feet)**
Category II with a habitat score of 6-9 points	150
~~Class 2~~Category II with a habitat score of 3-5 points	100
Category III with a habitat score of 6-9 points	100
~~Class 3~~Category III with a habitat score of 3-5 points	60
Category IV	40

~~2~~3. 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.~~

~~3~~4. 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 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.

~~E~~D. 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.~~

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 Alterations

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

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

~~A~~B. Unless otherwise allowed by this chapter, a~~A~~ctivities 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*.

~~6~~E. 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*:

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

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

~~(1)~~a. Private w~~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~~

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.

A1. *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)a. Additional protection to the *wetland* will be provided through implementation of a *buffer enhancement* plan;

(2)b. It will not reduce *wetland functions* or values;

(3)c. The *wetland* contains variations in sensitivity due to existing physical characteristics or the character of the *buffer* varies in slope, soils, or *vegetation*, and the *wetland* would benefit from a wider *buffer* in places and would not be adversely impacted by a narrower *buffer* in other places;

(4)d. The total area contained in the *buffer* after averaging is no less than that which would be contained within the standard *buffer*; and

~~(5)~~e. ~~For Class 1 and 2 *wetlands*, t~~The *buffer* width shall not be reduced by more than ~~20~~25 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~~2. *Buffer* Reduction with *Enhancement*. Standard *buffer* widths for *degraded wetland buffers* may be reduced up to 25 percent 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~~Category I	25 percent	112.5 feet
Category II with a habitat score of 6-9 points	25 percent	112.5 feet
~~2~~Category II with a habitat score of 3-5 points	25 percent	75 feet
Category III with a habitat score of 6-9 points	25 percent	75 feet
~~3~~Category III with a habitat score of 3-5 points	25 percent	45 feet
Category IV	25 percent	30 feet

~~C~~a. 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~~b. *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 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~~B)(~~4~~2)(~~e~~a) 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.~~

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 *buffer*~~s~~ 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:

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 ~~class~~category, 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.~~

Standard Wetland Mitigation Ratios

Category and Type of Wetland	**Creation or Reestablishment (C/R)**	**Creation (C) or Reestablishment (R) plus Enhancement (E)**	**Enhancement (E) Only**
Category I	4:1	1:1 C/R plus 6:1 E	16:1
Category I (Mature Forested)	6:1	1:1 C/R plus 10:1 E	24:1
Category II	3:1	1:1 C/R plus 4:1 E	12:1
Category III	2:1	1:1 C/R plus 2:1 E	8:1
Category IV	1.5:1	1:1 C/R plus 1:1 E	6:1
Buffer	1:1	1:1	1:1

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.

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

4.

(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 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.

3.

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 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.

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).

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.

ATTACHMENT 3

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 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 ~~1~~S ~~*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.

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;

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

~~B~~C. 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 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.

F~~B~~. *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 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 ~~1~~S - ~~and~~ Swamp Creek, Lake Washington and Sammamish River~~Little Swamp Creek~~	~~150~~See KMC 16.65.020
Type F – Little Swamp Creek	150
Type ~~2~~F (other waterbodies used by or containing habitat suitable for salmonid fish)	100
Type ~~3~~F (waterbodies used by or containing habitat suitable for fish other than salmonids)	50

***Stream* Type**	***Buffer* Width (Feet)**
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.~~

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

~~5~~A. *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*.

~~6~~C. *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:

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

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

~~(1)~~a. Private w~~W~~alkways 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.

~~C~~3. 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.

~~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 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.~~

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:

***Stream* Type**	**Maximum *Buffer* Reduction**	**Minimum *Buffer* 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

Stream Type	Maximum *Buffer* Reduction	Minimum *Buffer* Width (Feet)
Any type stream restored from a pipe	25 percent	18.75 feet

~~A~~1. 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;

~~(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.

~~b~~2. 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 ~~wetland~~critical 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.~~

~~c. 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 3~~F *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 *stream*s ~~types~~ as part of a public project for which a public agency and utility exception is granted pursuant to this chapter; or

b. Type ~~3 or 4~~F 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. ~~a~~Accomplished 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*.

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

2~~1~~. The project results in a~~n~~ 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 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 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.

ATTACHMENT 4

Chapter 18.55
CRITICAL AREAS

Sections:

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

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 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

2. Great blue h~~H~~eron 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 Program~~Class 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; or~~Type 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).

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 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*.~~

   ~~b~~a. An analysis of how the proposed *development* activities will affect the fish and wildlife habitats of importance and ~~listed~~ *species* of importance.

   ~~c~~b. ~~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.

   ~~d~~c. ~~The habitat management plan should also address~~Consideration of the following issues:

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

(~~2~~1) Establishment of a *buffer* around the fish and wildlife habitat ~~conservation area~~of importance;

(~~3~~2) Retention of certain *vegetation* or areas of *vegetation* critically important to the ~~listed~~ *species* of importance;

(~~4~~3) Limitation of access to the fish and wildlife habitats of importance and *buffer*;

(~~5~~4) Seasonal restrictions on construction activities on the subject property; and

(~~6~~5) 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.~~

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;

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

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

~~C~~A. *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 w~~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 the 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, *m~~M~~itigation* 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.

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.~~

~~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.~~

~~B~~A. Great Blue Heron Rookery.

1. A *buffer* equal to the distance of a ~~900~~656-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 ~~900~~656 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~~.

~~C~~B. *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

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~~A~~n 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*.~~

ATTACHMENT 5

Chapter 18.55
CRITICAL AREAS

Sections:

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 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*, landsliding, 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;

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 ~~L~~*landslide hazard areas* are areas ~~potentially subject to~~at 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 1~~0~~6,000 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;

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

~~5~~4. Areas potentially unstable because of rapid *stream* incision, stream bank *erosion*, and undercutting by wave action; and

~~6~~5. 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:

~~7~~1. 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.

~~C~~D. *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.

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.

~~D~~E. 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.

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

~~A~~B. *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

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.

~~B~~C. *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* hazard~~s 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*.

~~5~~3. *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.

~~6~~4.Seasonal Restriction. ~~*Clearing*~~*Site development work* shall be allowed only from May 1st to October 1st of each year; provided, that the ~~*C*~~*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.

~~7~~5. 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.~~

~~8~~6. 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:

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~~.

~~3~~7. *Alterations*. In addition to meeting the requirements in KMC 18.55.640, ~~A~~a*lterations* 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:

~~2~~1. 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~~i. 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.

~~b~~ii. *Buffer* Reduction. The *buffer* may be reduced to a minimum of ~~10~~25 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 *developments* and *uses* and the subject *critical area* through slope stability improvements or structural means.

~~c~~iii. 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.~~

~~5~~b. *Vegetation* Shall Be Retained. Unless otherwise provided or as part of an approved *alteration*, removal of *vegetation* from a~~n erosion or~~ *landslide hazard area* or related *buffer* shall be prohibited.

~~8~~c. Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from a~~n erosion or~~ *landslide hazard area* shall be prohibited except as follows:

~~a~~i. 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;

~~b~~ii. 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~~iii. 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.

~~7~~d. 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.

~~b~~ii. 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*.

~~6~~e. Seasonal Restriction. Permitted ~~*Clearing*~~site development work shall be allowed only from May 1st to October 1st of each year; provided, that the ~~*C*~~*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. 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 non-vehicular use only, and is a maximum of 4 (four) feet wide;

ii. 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.

~~9~~g. Subdivisions. The division of land in *landslide hazard areas* and associated *buffers* is subject to the following:

~~a~~i. 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 *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.

~~10~~h. 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.

~~4~~a. 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:

~~a~~i. 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. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

~~c~~ii. *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;

~~d~~iii. *Structures* and improvements shall be located to preserve the most critical portion of the *site* and its natural landforms and *vegetation*;

~~e~~iv. 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;

~~f~~v. The use of *retaining walls* that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

~~g~~vi. *Development* shall be designed to minimize impervious *lot* coverage.

~~11~~C. **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*.

~~B~~D. *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.

~~C~~E. 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.

THIS ARTICLE HAS BEEN COMPLETELY REWRITTEN

Chapter 18.55
CRITICAL AREAS

Sections:

Article XIX. Flood Hazard Areas

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Article XIX. Flood Hazard Areas

18.55.700 Purpose.

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 has also established that floodplains and other areas subject to flooding perform important hydrologic functions, and as such they must also be regulated as a critical area 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 FEMA-designated special flood hazard areas, 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 chapter 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 Chapter:

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

J. Qualify for participation in the National Flood Insurance Program, thereby providing owners located within the mapped *special flood hazard area* 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 code 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. Development.

B. Existing manufactured home park.

C. Manufactured home.

D. New construction.

E. Recreational vehicle.

F. Structure.

G. Substantial improvement.

H. Variance.

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 Areas," dated April 19, 2005, 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.

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*.

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.

18.55.720 Final certification by engineer or surveyor.

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*.

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 chapter; 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 *special flood hazard areas* (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 chapter.

C. Alteration of Watercourses. The *City* shall:

1. 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. 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. 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. 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. 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 chapter.

18.55.730 Development standards applicable to all flood hazard areas.

Development proposals on *sites* within *flood hazard areas, including the special flood hazard area,* 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

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; 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.

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 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.

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);

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 on the community's FIRM 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 *Special Flood Hazard Area*. 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; and

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.

18.55.750 Development in the floodway.

The requirements which apply to the *all flood hazard areas* (KMC 18.55.730 and .740), including the *special flood hazard area,* shall also apply to the f*loodway*. The more restrictive requirements shall apply where there is a conflict.

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

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 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.

C. New residential *structures* or any *structure* accessory to a residential *use* shall meet the following requirements:

1. The *structures* shall be outside the f*loodway*; 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 floodway.

D. The following modifications to existing residential *structures* are permitted:

1. Repairs are not substantial. Damage to 50% or greater of the structure is considered substantially damaged and the structure must meet the requirements of new construction.

2. Repairs, reconstruction, or improvements to a *structure* which do not increase the ground floor area.

3. Repairs, reconstruction or improvements to a *structure*, the cost of which does not exceed 50 percent of the market value of the *structure* either:

a. Before the repair or reconstruction is started; or

b. If the *structure* has been damaged, and is being restored, costs to repair the structure to the previous condition before the damage occurred.

Work done on *structures* to comply with existing health, sanitary, or safety codes cited prior to the work being proposed shall not be included in the 50 percent. For structures identified as historic places, repair, reconstruction or improvements must not preclude its continued designation as a historic structure to be counted towards the repair costs.

Substantial improvements shall meet the requirements of new structures and provide the information required in Section C.

E. 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 *floodway* on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *floodway* and which have a total building footprint of all proposed *structures* on the lot of less than 2,000 square feet; or

2. *Substantial improvements* of existing residential *structures* outside the *floodway*, where the footprint is not increased.

F. Post or piling construction techniques which permit water flow beneath a *structure* shall be used.

G. 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 f*loodway* during the *flood* season from September 30th to May 1st.

H. 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, and if they meet the requirements for floodway development.

I. *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 and meets the requirements for floodway development. 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.

J. Utilities may be allowed within the *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. Meets the requirements for *floodway* development.

K. The project applicant shall submit a hydraulic engineering a study, by a registered professional engineer in the State of Washington, certifying that the *development proposal* meets no-rise.

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 special *flood* hazard area. See KMC Chapter 18.55, Article XIV.

18.55.770 Warnings and disclaimer of liability.

The degree of *flood* protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. *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 chapter does not imply that land outside *flood* hazard areas or uses permitted within such areas will be free from *flooding* or *flood* damages. This chapter shall not create liability on the part of the City of Kenmore, any officer or employee thereof, or the Federal Emergency Management Agency for any *flood* damages that result from reliance on this chapter 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:

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;

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;

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 chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. 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 chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

ATTACHMENT 7

THIS IS AN ENTIRELY NEW ARTICLE

Chapter 18.55
CRITICAL AREAS

Sections:

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 XX. Groundwater Susceptibility and Critical Aquifer Recharge Areas

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, 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.

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:

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.

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."

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 (~~3~~C) 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.

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).

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;

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 E~~e~~nvironment. 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

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.

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.~~2~~3 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.~~2~~3.1 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.~~2~~3.2 Multifamily and multi-lot residential and recreational developments should provide public access and community recreational facilities.

Policy LU-17.~~2~~3.3 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development.

17.~~3~~4 Urban Conservancy Environment

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, flood plain 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.~~3~~4.1	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 ~~e~~Environment.
Policy LU-17.~~3~~4.2	New development should be restricted to those which are compatible with the natural and biophysical limitations of the land and water.
Policy LU-17.~~3~~4.3	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.~~3~~4.4	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.~~3~~4.5	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.

Policy LU-17.~~3~~4.6 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.~~3~~4.7 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.~~3~~4.8 New structural flood control devices should be strongly discouraged in the Urban Conservancy Environment.

Policy LU-17.~~3~~4.9 Developments should not be allowed unless connected to a sewer line.

Policy LU-17.~~3~~4.10 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.~~3~~4.11 Standards should be established for shoreline stabilization measures, vegetation conservation, water quality and shoreline modifications within the Urban Conservancy Environment.

Policy LU-17.~~3~~4.12 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 ~~e~~Environment 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.

Management Policies

Policy LU-17.~~4~~5.1 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.~~4~~5.2 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.~~4~~5.3 Limited access should be allowed to areas in the Natural Environment.

Policy LU-17.~~4~~5.4 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.~~4~~5.5 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.~~4~~5.6 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.~~4~~5.7 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.~~5~~6 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.~~5~~6.1 New over-water structures should be limited, with priority given to water-dependent uses, public access and ecological restoration.

Policy LU-17.~~5~~6.2 The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

Policy LU-17.~~5~~6.3 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.~~5~~6.4 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.~~5~~6.5 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.~~5~~6.6 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.

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.

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 ~~e~~Environments.

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

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,

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 ~~A~~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.

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 handicapped~~those 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

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 though 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.

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.

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.

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.~~6~~5 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.~~7~~6 Uses or activities that degrade the natural resources of the shoreline should not be allowed.

Policy LU-21.2.~~8~~7 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.

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;

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~~ DAMAGE PREVENTION 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

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 GEOLOGIC~~AL~~ 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.

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

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;

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

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 Department~~s~~ of Fish~~eries~~ 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~~Environment~~s~~ 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.

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.

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:

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

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.~~

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.

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.~~6~~5 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.~~7~~6 Public recreational shoreline areas should serve as emergency refuge areas for boaters.

Policy LU-23.9.~~8~~7 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.~~9~~8 The acquisition of public easements to the shoreline should be encouraged.

Policy LU-23.9.~~10~~9 Setbacks should be established for recreational 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 uses, and protect the visual quality of views of the shoreline.

Policy LU-23.9.11 ~~Existing public recreation shorelines should be restored and, w~~Where possible during park master plan development or redevelopment, ~~Kenmore should~~consideration should be given to revegetat~~e~~ing the shoreline, re-sit~~e~~ing roads and parking areas further away from the shoreline, and remov~~e~~ing stream channelization and shoreline protection devices.

Policy LU-23.9.1~~2~~0 Prime fishing areas should be given priority and protected for recreational use.

Policy LU-23.9.1~~3~~1 Boating activities that increase shore erosion should be discouraged.

Policy LU-23.9.1~~4~~2 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;

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.~~9~~7 In residential developments, the water's edge should be kept free of fences.

Policy LU-23.10.~~10~~8 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.~~12~~9 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-23.10.1~~3~~0 Residential developments should be permitted only where there are adequate provisions for utilities, circulation, access, site layout and building design.

Policy LU-23.10.1~~4~~1 Residential development plans submitted for approval should contain provisions for protection of groundwater, erosion control, water quality, aesthetic characteristics and landscaping.

Policy LU-23.10.1~~5~~2 Subdivisions should provide public pedestrian access to the shorelines within the development in accordance with this Master Program.

Policy LU-23.10.1~~6~~3 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.

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.~~6~~5 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.~~7~~6 Shoreline transportation facilities should be designed, located and maintained to fit the topography, minimize cuts and fills, and minimize erosion.

Policy LU-23.11.~~8~~7 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.~~9~~8 Shoreline roadways should have a high priority for arterial beautification funds.

Policy LU-23.11.~~10~~9 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-23.11.1~~1~~0 Passenger only ferry facilities should be encouraged.

Policy LU-23.11.1~~2~~1 Abandoned road or railroad rights-of-way that contain unique shoreline amenities should be acquired for public benefit.

Policy LU-23.11.1~~3~~2 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.

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.~~6.9~~12.9 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

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

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

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.

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.~~20~~19 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-24.2.2~~1~~0 If structural shoreline stabilization measures are demonstrated to be necessary, Kenmore shall limit the size of stabilization measures to the minimum necessary.

Policy LU-24.2.2~~2~~1 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-24.2.2~~3~~2 Adverse impacts of erosion and mass wasting should be mitigated through protection of geologically hazardous areas.

24.3 ~~Piers and Docks~~Water Access Structures

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

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.

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.

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).

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.

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.~~

Policy LU-24.6.~~4~~3 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.~~5~~4 Dredging and excavation in environmentally critical areas within the shoreline should not be allowed.

Policy LU-24.6.~~6~~5 Dredging operations should be scheduled so as to not materially interfere with the migration of native fish.

Policy LU-24.6.~~7~~6 When dredged spoil has suitable organic and physical properties, dredging operators should be encouraged to recycle dredged material for reuse.

Policy LU-24.6.~~8~~7 Dredging should be allowed only in the Aquatic ~~shoreline e~~Environment and to support water dependent uses.

Policy LU-24.6.~~9~~8 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 Eenhancement

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.

Insert Revised Shoreline Map

ATTACHMENT 9

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~~

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*.

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;~~

~~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).~~

~~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).~~

~~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).~~

4.

~~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.

1

~~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 ~~2012~~2019 ~~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.

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.

16.10.02~~20~~38 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.

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16.10.178 Feasible.

16.10.180 Fill.

16.10.185 Fish and wildlife habitat~~s~~ ~~area~~ of importance.

16.10.190 Float.

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.~~45~~40 Shorelands.

16.10.445 Shoreline buffer.

16.10.460 Shoreline environment.

16.10.470 Shoreline Master Program.

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.**~~
16.10.590 Water-dependent use.
16.10.6~~1~~00 Water-enjoyment use.
16.10.6~~2~~10 Water-oriented use.
16.10.6~~0~~20 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 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*.

16.10.02~~0~~38 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 date), "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, 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.

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.~~

160.10.106 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.~~

16.10.110 Critical areas.

"Critical areas" means any of the following areas or ecosystems: aquifer recharge areas, *fish and wildlife habitat 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 date), "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 up~~on 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.

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 date), “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 date), “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*.

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 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 date), "floodplain" "is synonymous with "100-year floodplain" and means ~~the~~that 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 date), "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."

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 date), "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*.

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.~~310~~285 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.

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 date), "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.~~

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.~~

~~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.~~

16.10.4~~50~~40 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.

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*, *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. 12-0334 as Exhibit 2, and incorporated by reference—REPLACE WITH NEW MAP). 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.

~~**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 vactor 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.

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.

16.10.6~~1~~00 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.

16.10.6~~20~~10 Water-oriented use.

"Water-oriented use" means a use that is *water-dependent*, *water-related*, or *water-enjoyment*, or a combination of such uses.

16.10.6~~0~~20 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,

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:

A. Downtown Waterfront Environment.

B. Swamp Creek Commercial Environment.

C. Shoreline Residential Environment.

~~C~~D. Urban Conservancy Environment.

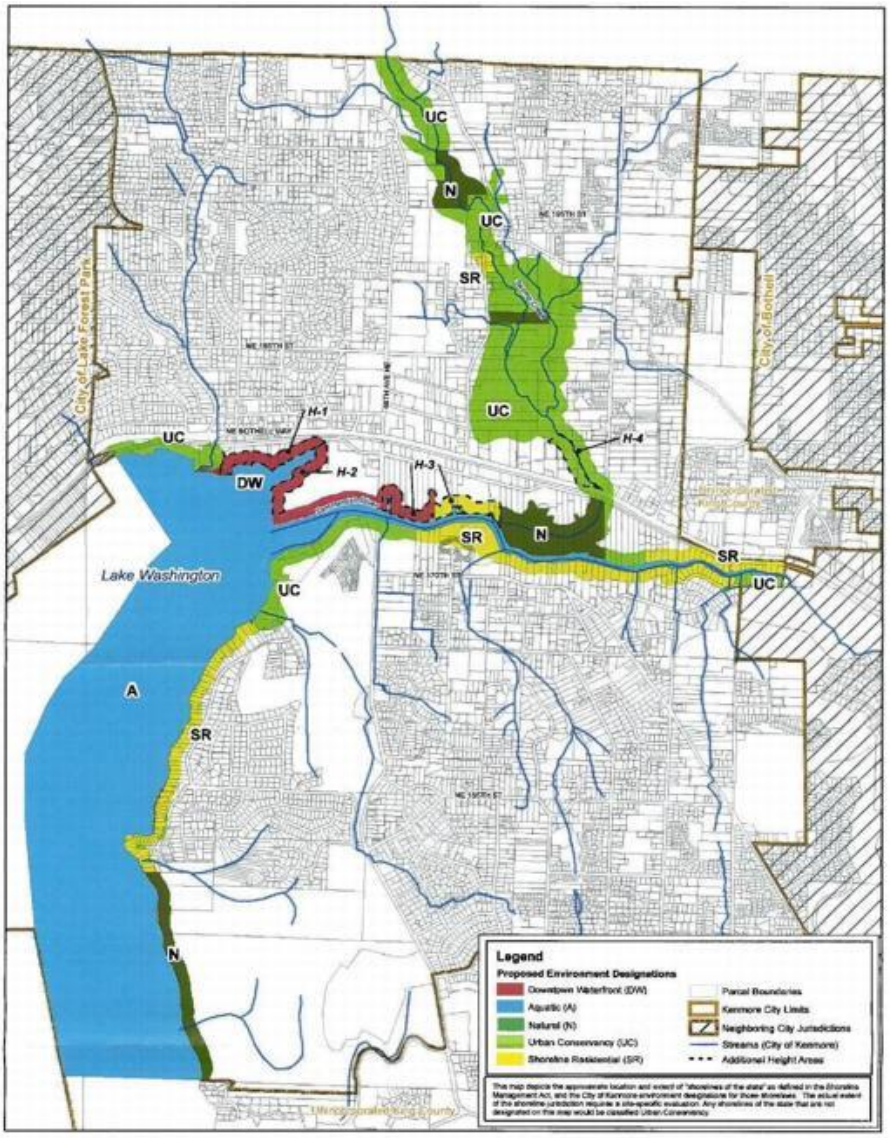
~~D~~E. Natural Environment.

~~E~~F. 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.

(THIS MAP WILL BE REVISED)



[Ord. 12-0334 § 3 (Exhs. 1, 2).]

4.

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:

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.

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.

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~~E*n*vironment 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.

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~~

~~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 habitat*s ~~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.

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 *applicant*s; 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

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 ~~director~~*city 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 ~~director~~*city 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 ~~director~~*city 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 ~~director~~*city 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 ~~director~~*city 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, 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 ~~R~~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

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 environment*~~*s*~~ 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 environment*~~*s*~~ 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.

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 “P.” ~~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.

4.

ATTACHMENT 9

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**
Adult entertainment business	P2	P2	X	X	X	X
Air transportation service	X	X	X	X	X	C14
Ambulatory surgery center	X	X	X	X	X	X
Animal kennel/shelter	X	X	X	X	X	X
~~Recreational/cultural~~*Arts, entertainment, indoor*	P~~25~~	P2	~~P6~~X	P~~6~~2,18	~~P7~~X	~~C5~~X
Arts, entertainment, outdoor	P2	P2	X	P2	P6	X
Auction house	X	X	X	X	X	X
Automotive sales and service, marine	P2	P2	X	X	X	U3
Automotive sales and service, non-marine	X	X	X	X	X	X
Business service, intensive	X	X	X	X	X	X
Business service~~s~~, standard	P2~~, X2~~	P2	X	~~P2, 3,~~ X~~2~~	X	~~C2~~X
Cemetery, columbarium or mausoleum	X	X	X	X	X	X
College/university	P3	P3	P3	P3	X	U
Community residential facility	P2	P2	P	X	X	X
Construction and trade	X	X	X	X	X	X
Day-care	P2	P2	X	X	X	X
Eating and drinking place	P2	P2	X	P2,18	X	X

4.

ATTACHMENT 9

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
Educational service	P2	P2	P2	P2	X	X
Family child-care home	X	X	P	X	C	X
~~Golf course~~	~~X~~		~~X~~	~~C~~	~~X~~	~~X~~
~~Government services~~*Fire or police facility*	P43	P3	P43	~~P~~C43	~~P4~~X	~~C4~~U
Funeral home/crematory	X	X	X	X	X	X
Health care and social assistance	P2,15	P2,15	X	P2,15	X	X
Hospital	X	X	X	X	X	X
Laboratory	P2	P2	X	X	X	X
Manufacturing, ~~uses~~*heavy*	~~P2~~X	X	X	X	X	X
Manufacturing, light	P2	P2	X	X	X	X
Marijuana business	P2	P2	X	X	X	X
Marijuana cooperative	X	X	X	X	X	X
~~Marina (recreational boat moorage)~~	~~P8~~		~~X~~	~~P~~	~~X~~	~~P~~
Mobile food service	P2	P2	X	P2	X	P43
~~Mobile home park~~*Manufactured housing community*	X	X	C16	X	X	X
Multiple-family d~~D~~*welling*~~, multiple-family~~. See also KMC Section 16.50.090.	P2	P2	P	P2	X	X

4.

ATTACHMENT 9

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~~	C~~11~~10	C10	C~~11~~10	C~~11~~10,12	C~~11~~10,12	C~~11~~12
~~In-water and overwater highway and street facilities~~	~~X~~		~~C11, 14~~	~~C11, 14~~	~~C11, 14~~	~~C11, 14~~

4.

ATTACHMENT 9

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, X2~~18	X	~~C2~~X
Retail sales, bulk	X	P2	X	X	X	X
Secure facility	X	X	X	X	X	X
~~Signs~~	~~P15~~		~~P15~~	~~P15~~	~~P15~~	~~P15~~

4.

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
Single detached d~~D~~welling unit~~s, single detached~~. See also KMC 16.50.090.	X	X	P	P	C	P~~9~~10
~~Commuter~~*Standalone parking*. See also KMC Section 16.50.087.	C~~16~~13	X	X	X	X	X
~~Group residences~~*Supportive living facility*	P2	P2	P	~~P~~X	~~C~~X	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.	P~~13~~11	P11	P~~13~~11	P~~13~~11	P~~13~~11	~~X~~P3,11
~~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**~~					

4.

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
	~~**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.

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;

(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 ~~Aquatic~~Swamp 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.

~~6~~5. 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.

~~7~~6. 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.

~~8~~7. 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.~~

~~10~~9. 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*.

~~11~~10. 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.~~

~~13~~11. 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.

~~14~~12. 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.~~

~~16~~13. Commuter parking ~~may~~ only, and only ~~be allowed~~ if it is designed to serve a passenger ferry system.

~~17~~14. 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 (date of ordinance), which are permitted outright.

17. *Marinas* are prohibited on *shorelines* of the Sammamish River and Swamp Creek.

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.~~

~~2~~1. ~~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*.

~~3~~2. 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.

~~4~~3. Accessory ~~P~~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.

~~5~~4. 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*.

~~6~~5. *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.

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.

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;

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;

~~A~~C. 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;

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.

~~B~~D. 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.

~~C~~E. 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.

~~D~~F. *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).~~

~~F~~G. 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*.

~~3. Where constitutional or other legal limitations apply.~~

16.50.070 Parks and ~~R~~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

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 migrat~~ory~~ion habitat;

B. Water intakes shall not be permitted near fish spawning, migrat~~ory~~ion, 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;

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.

~~E~~B. Transportation ~~uses~~facilities shall employ mitigation sequencing specified in Chapter 18.55 KMC to avoid and mitigate for impacts to *critical areas*.

~~B~~C. Bridges, when necessary, should span open water and *floodways*.

~~C~~D. 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.~~

~~D~~E. 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.

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:

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, ~~T~~the *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*:

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 structures~~Docks, piers, moorage, buoys, floats or launching facilities~~.
16.55.060 Grading, dredging, dredge material disposal and filling.

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.

~~C~~D. 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.~~

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 **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	**DOWNTOWN WATERFRONT**	**SWAMP CREEK COMMERCIAL**	**SHORELINE RESIDENTIAL**	**URBAN CONSERVANCY**	**NATURAL**	**AQUATIC**
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

4.

Shoreline Modifications Table

KEY **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	**DOWNTOWN WATERFRONT**	**SWAMP CREEK COMMERCIAL**	**SHORELINE RESIDENTIAL**	**URBAN CONSERVANCY**	**NATURAL**	**AQUATIC**
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*	P~~5, C5~~	P	P~~5, C5~~	P~~5, C5~~	C~~5~~	~~C5~~NA
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	C~~6~~5	C5	C~~6~~5	C~~6~~5	C~~6~~5	C~~6~~5
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

4.

Shoreline Modifications Table

KEY **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	**DOWNTOWN WATERFRONT**	**SWAMP CREEK COMMERCIAL**	**SHORELINE RESIDENTIAL**	**URBAN CONSERVANCY**	**NATURAL**	**AQUATIC**
Disposal waterward of the ordinary high-water mark	NA	X	X	X	X	P
Upland disposal outside of *floodplain* or *channel migration zone*	P	P	P	P	C	NA
Upland disposal inside of *floodplain* or *channel migration zone*	C	C	C	C	C	NA
Shoreline habitat and natural systems enhancement projects						
Habitat and natural systems enhancement projects	P~~7~~6	P6	P~~7~~6	P~~7~~6	P~~7~~6	P~~7~~6

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*.

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.~~

~~6~~5. *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.

~~7~~6. 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

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

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.

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 *dock*s, *pier*s, moorage~~,~~ buoys, *float*s or launching facilit~~y~~ies authorized by this chapter shall ~~not interfere with navigation~~comply with the following general standards~~.~~:

~~B~~1. 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.~~

4.

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

~~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.~~

~~10~~2. Existing habitat features (e.g., large and small woody debris, ~~substrate material~~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.

~~11~~3. 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.

~~12~~4. 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

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.

~~13~~5. 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*.

~~15~~6. 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~~6) 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~~7) Only one boat lift canopy per single detached residence shall be allowed.

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.

~~14~~7. 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.~~

~~16~~8. 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 *dock* or *pier* 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. • 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*.	

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

4.

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

Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	• All *floats* and *ells* must be at least 30 feet waterward of the *ordinary high-water mark*.	facilities may extend no farther waterward than one-third the width of the river in the location of the proposed structure. • The *city manager* may allow *floats* to be positioned up to an additional 10 feet waterward from the *ordinary high-water mark* as needed to reach a sufficient boat moorage depth (greater than 3 feet). • *Floats* shall be located as far as feasible 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 *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 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 *float* 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 *feasible* 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.	

4.

Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
	• If ACZA-treated pilings are proposed, the *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 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. • ~~c.~~ 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.	

4.

~~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.

(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.

~~C~~D. 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

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

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.

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~~b~~e 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 t~~Take into account the degree to which the existing buffer has already been compromised~~.~~;

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 f~~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~~

4.

~~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:~~

~~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.~~

~~2~~1. 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*.

~~3~~2. 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~~

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 Other	 NA 50 ft	 NA NA	 25 ft 75 ft	 115 ft 115 ft	 150 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~~

4.

ATTACHMENT 9

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)	(3)	(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 uses~~All uses	15 ft (2)	15 ft (2)	~~25~~15 ft (2)	15 ft (2)	15 ft (2)	~~Z~~ -

4.

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 (~~5~~7)	Yes (5)	Yes (~~5~~7)	~~Yes (7)~~No	No	No

[1]Residential 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.

[2]Sammamish 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

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~~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(~~G~~H).

~~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

4.

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~~

~~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:

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*.~~

~~7~~5. 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. 12-0334 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. ~~Be~~The structures are outside of the *floodway* in effect at the time of permit application; and

f. The structures would ~~N~~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

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.

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

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.

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

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 storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water 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.

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 ~~s~~ 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 Act s.

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.

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;

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.

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

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.

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.

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.

~~B~~C. The effective date of the City's decision shall be the date of ~~receipt~~filing with the Department of Ecology as defined in RCW 90.58.140.

~~C~~D. 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 ~~receipt~~filing 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 ~~director~~city manager.

The ~~director~~*city manager* is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The ~~director~~*city manager* may prepare and require the use of such forms as are necessary to its administration.

16.75.100 Enforcement.

A. The ~~director~~*city 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.~~

~~C~~B. The ~~director~~*city 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.

~~D~~C. 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

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;

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

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.

~~D~~E. 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;

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.

Amendments to other sections of the Zoning Code related to the Public Agency and Utility Exception

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.

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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.

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D. Where other provisions of this code stipulate maximum parking allowed or reduced minimum parking requirements, those provisions shall apply.

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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.

l. *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.