City of Kenmore

City of Kenmore - 18120 68th Avenue NE - P.O. Box 82607 - Kenmore, WA 98028
Phone: 425-398-8900 - Fax: 425-481-3236 - E-mail: cityhall@kenmorewa.gov

City of Kenmore
Planning Commission Meeting Agenda

Tuesday, April 16, 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**

   March 5, 2019 Planning Commission Meeting Minutes
   March 26, 2019 Planning Commission Meeting Minutes

4. **AGENDA ITEMS**

   Final Recommendations: Critical Areas and Shoreline Master Program Amendments Memo
   Attachment 1 - Critical Area Intro and Wetlands
   Attachment 2 - Revised flood hazard regulations
   Attachment 3 - Wetland code changes
   Attachment 4 - Memo to Ecology - Kenmore Wetland Regulations
   Attachment 5 - Draft Response to Kenmore 04/10/19
   Attachment 5a - Wetlands Regulations
   Attachment 6 - Correspondence
   Attachment 7 - Final BAS Paper for the PAUE

   Introduction to Parks, Recreation & PROS Plan Goals and Policies Memo

5. **ADJOURNMENT**

6. UPCOMING MEETINGS:

May 7, 2019, 7:00 p.m.
May 13, 2019, 7:00 p.m. - Joint meeting with City Council
May 21, 2019, 7:00 p.m.

City of Kenmore
Planning Commission Meeting
March 5, 2019 @ 7:00 p.m.

Planning Commission Members – In Attendance

Mike Mulcare, Vice Chair
Suzanne Greathouse
Carol Baker
Nathan Loutsis
Dennis Olson
Michael Vanderlinde

Consultants & Staff

Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner
Bridgit Baker, Admin. Assistant
Amy Summe, Shannon & Wilson

1. CALL TO ORDER

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

2. CITIZEN COMMENTS

No citizens rendered comments.

3. APPROVAL OF MINUTES

Commissioner Loutsis motioned to approve the February 26, 2019 minutes which was seconded by Commissioner Olson. The motion passed 5-0 with no abstentions. Commissioner Baker arrived after the vote was taken.

4. AGENDA ITEMS

Lauri Anderson pointed out two minor items being presented. On the PAUE attachment #2 (page 12 – KMC 18.55.160(a)(3)) "Public Utility" rather than "Utility" was inadvertently left in. "Public" will be stricken from that clause. Additionally, Lauri pointed out the flow chart to see how a PAUE would work and it will be included in the background documents. The Planning Commission agreed to remove both the terms "Public" and "Private" Utilities from the flow chart.

The Planning Commission went through each of the ten (10) attachments to verify and/or make any necessary changes. After discussing each of the attachments, the Planning Commission unanimously agreed on them. On Attachment 6, Lauri will follow up to see if Title 16 and Title 18 are enforced the same way as the Enforcement Section Chapter 1.2. She will also confirm that if a property owner meets the FEMA requirement rules then they could obtain flood insurance.

Lauri Anderson outlined the flow of the Public Hearing, shared some of the new docket items and confirmed the attendance of the Commissioners for the upcoming meetings. Commissioner Baker will not be available for the Public Hearing on March 26, 2019. Vice Chair Mulcare will not be available for the Joint Meeting with City Council on April 15, 2019.

5. ADJOURNMENT

Vice Chair Mulcare adjourned the meeting at 8:04 p.m.

_____
Planning Commission

Approved by Planning Commission on: _____

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

Planning Commission Members – In Attendance

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

Consultants & Staff

Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner
Bridgit Baker, Admin. Assistant
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 citizen comments were rendered.

3. CITIZEN COMMENTS – PUBLIC HEARING

Phyllis Finley, 5962 NE Arrowhead Dr, Kenmore, WA 98028. Ms. Finley commented that there is an inconsistent message on Kenmore's philosophy and practice regarding environmental stewardship. She believes that some of the changes to the Critical Areas Regulations and Shoreline Master Program appear to facilitate development of the ballfields at St. Edward, as well as, impacting the shorelines at Log Boom Park and Swamp Creek designation. She requests that the City consistently be proactive in protecting the natural resources.

John Hendrickson, 5919 NE 202nd Lane, Kenmore, WA 98028. Mr. Hendrickson addressed the amendments to the PAUE. He commented that years ago the City Council tried to apply the PAUE to build Wallace Park, Log Boom Park and a ballfield at St. Edward Park but the legal interpretation changed. Mr. Hendrickson gave additional background information on this. Additionally, he feels that Log Boom Park may be why the City is amending the PAUE. He believes that these amendments to the PAUE will be used again for the ballfields at St. Edward.

4. AGENDA ITEMS

Debbie Bent explained that the City of Kenmore is required by the state to periodically update the Shoreline Master Program and Critical Area Regulations which is due in June 2019. Lauri Anderson gave a brief overview of the most significant changes to the preliminary amendments to the Shoreline Master Program. She suggested not making final recommendation on wetland regulations (Attachment 2 in the packet) or flood hazard amendments (Attachment 11 in the packet) until April 16, 2019 once a final flood review from FEMA is received.

Lauri Anderson responded to the Citizen Comments from the Public Hearing. She stated that the PAUE is unrelated to the St. Edward's ballfields as a permit application is currently under review through a variance process. She also stated the PAUE could not be used at Log Boom Park since it is a prohibited process in the Shoreline jurisdiction. Lastly, the letter from Commerce was in the January 26, 2019 Planning Commission packet but was inadvertently called a letter from Ecology. The revision to the PAUE was in response to the letter from Commerce.

The Planning Commission made the final recommendations to the Critical Areas and Shoreline Master Program Amendments with the exception of wetland regulation amendments and flood hazard regulation amendments . Commissioner Vanderlinde moved to approve the staff recommendations on Attachments 1,3,4,5,7,9,10 & 13 which was seconded by Commissioner Loutsis. The motion passed 4-2 with no abstentions. Commissioner Mulcare moved to approve the staff recommendations on Comprehensive Plan Amendments on Attachments 8 & 12 which was seconded by Commissioner Loutsis. The motion passed 6-0 with no abstentions.

Commissioner Greathouse moved to cancel the April 2, 2019 meeting which was seconded by Commissioner Olson. The motion passed 6-0 with no abstentions.

5. ADJOURNMENT

Chair Ohrenschall adjourned the meeting at 7:37 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
Lauri Anderson, Principal Planner

DATE: April 11, 2019

SUBJECT: Critical Areas and Shoreline Master Program Amendments

A public hearing on the preliminary amendments to the critical areas regulations and Shoreline Master Program was held at your meeting on March 26 and recommendations were made on all amendments except those in Attachment 1 (critical areas introduction and wetland regulations) and Attachment 2 (flood hazard areas). As you know, we have been working with Ecology and FEMA to resolve final issues. Attachment 3 (attached to your last meeting packet as Attachment 15) contained resolutions to some of their concerns.

Following review by FEMA and by Ecology, staff incorporated final flood hazard area recommendations into Attachment 2. Staff recommends that the Planning Commission discuss these modification and make final recommendations.

Attachment 1 are the critical areas and wetland regulations that were in your packet 3/26/19, for reference. Continued conversations with Ecology followed production of a memo by the City's consultant addressing the City's rationale for both buffer widths and allowing buffer reduction with enhancement (see Attachment 4). Ecology's "draft" response is attached (see Attachment 5). Staff has not had time to follow-up with Ecology but will provide an update at your meeting 4/16/19. Attachment 5a provides a preliminary "draft" response to Ecology comments regarding their recommendation for wetlands with a habitat score of 6 or more to provide a requirement for a 100-foot- wide vegetated corridor. The buffer tables have also been amended to show the buffer widths across the full range of habitat scores and have added 50 feet to the buffer for any wetland with 8 or 9 points.

The Ecology response (Attachment 4) also raised comments on the City's proposal to continue to allow buffer reductions with enhancements, this tool is included in the City's current regulations. A section of code is added (Attachment 5a) that includes the buffer reduction with enhancement tool. Further discussion is needed with Ecology to explain how the City's approach would provide a net increase in ecological functions and/or discuss options that would address Ecology's comments. For example, allowing buffer reductions with enhancement where there are six or fewer habitat points or only on category III or IV wetlands

Staff recommends that the Planning Commission discuss the modifications (Attachments 1 and 5a) and assuming agreement is made with Ecology, make final recommendations as well as the additional wetland amendments contained in Attachment 3. The full package of amendments then would be presented to the City Council at a joint meeting—tentatively scheduled for May 13. We will be asking about your availability for a meeting on May 13 at the April 16 meeting.

At the public hearing, correspondence was received from four individuals (see Attachment 6). A question was raised about whether or not the Planning Commission had seen the best available science (BAS) memo prepared for the public agency and utility exception. The draft memo was provided to the Planning Commission on 2/26 (not 1/26 as stated at your meeting). We are attaching a copy of the final BAS memo for your information (see Attachment 7).

Attachments

Attachment 1: Critical areas introduction and wetland regulations (from your 3/26/19 packet)
Attachment 2: Flood hazard area regulations (revised)
Attachment 3: Other recommended changes to the wetland regulations (from your last meeting)
Attachment 4: City memo about wetland regulations
Attachment 5: Ecology's draft response, letter dated 4/10/19
Attachment 5a. Draft response to some of Ecology's comments
Attachment 6: Correspondence submitted at the public hearing
Attachment 7: Final BAS report for the PAUE

ATTACHMENT 1

Chapter 18.55
CRITICAL AREAS

Sections:

Article I. Purpose and General Provisions

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

Article II. Best Available Science

18.55.110 Best available science.

Article III. Applicability, Exemptions, and Exceptions

18.55.120 Applicability.
18.55.130 Mapping.
18.55.140 Signs and fencing of critical areas.
18.55.150 Exemptions.
18.55.160 Exception – Public agency and 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~~95~~, 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*~~*Priority* ~~*h*~~*Habitats* and ~~s~~Species ~~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 *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;

4.

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 habitats ~~areas~~ of importance, and flood hazard areas, the following minimum performance standards shall be met for the *restoration* of a *critical area*; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

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

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).

4.

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.

~~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 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.

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

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

~~A~~1. *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

4.

~~(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 *buffers* consistent with the *buffer* requirements of this chapter, unless determined by the *city manager* through a *variance* or a *reasonable use* exemption that a different *buffer* would provide adequate protection to the *critical area*.

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

1. Restoring *wetlands* on upland sites that were formerly *wetlands*.

2. Creating *wetlands* in upland areas, considering degraded areas first.

3. Enhancing significantly degraded *wetlands*.

4. Preserving high quality *wetlands* that are under imminent threat.

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

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

(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 2

THIS ARTICLE HAS BEEN COMPLETELY REWRITTEN. CHANGES FROM THE VERSION PREVIOUSLY REVIEWED BY THE PLANNING COMMISSION ARE SHOWN IN YELLOW HIGHLIGHTING.

Chapter 18.55
CRITICAL AREAS

Sections:

Article XIX. Flood Hazard Areas

18.55.700 Purpose.
18.55.705 Definitions
18.55.707 Lands to which this article applies.
18.55.710 Basis for establishing flood hazard areas.
18.55.715 Permits.
18.55.720 Final certification by engineer or surveyor.
18.55.723 Designation and responsibilities of the local administrator.
18.55.725 Information to be obtained and maintained by the City.
18.55.730 Development standards applicable to all flood hazard areas.
18.55.740 Development standards for specific uses in flood hazard areas.
18.55.750 Development in the floodway.
18.55.760 Habitat assessment.
18.55.770 Warnings and disclaimer of liability.
18.55.780 Variances in flood hazard areas.
18.55.790 Penalties for noncompliance.
18.55.795 Abrogation and greater restrictions.

Article 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 also 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 areas* under the Growth Management Act (GMA). This article addresses both mandates as an integrated set of regulations.

The *flood hazard areas* of the City of Kenmore, which encompass the Federal Emergency Management Agency (FEMA)-designated *areas of special flood hazard* ~~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 article is to establish minimum standards for *developments* located within or adjacent to *flood hazard areas*, including *areas of special flood hazard*. The following statements describe the purpose of this article:

A. Protect human life and health;

B. Minimize expenditure of public money and costly *flood* control projects;

C. Minimize the need for rescue and relief efforts associated with *flooding*;

D. Minimize prolonged business interruptions;

E. Minimize damage to public infrastructure, facilities and utilities;

F. Minimize damage to critical fish and wildlife habitat areas;

G. Protect frequently flooded areas that provide natural and beneficial ecological functions, including providing vital habitat to support salmon and other fish and wildlife species;

H. Ensure that potential buyers are notified that property is in a *flood hazard area*;

I. Ensure that those who occupy *flood hazard areas* assume responsibility for their actions; and

J. Qualify for participation in the National Flood Insurance Program, thereby providing owners located within the mapped *area of 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 article that are required to have unique meanings separate from those in Chapter 18.20 KMC. Those terms listed below are defined in 44CFR 59.1 and supersede those provided in Chapter 18.20

KMC for purposes of administering this article. Any undefined terms used in these definitions will also be based on 44CFR 59.1.

A. "Appeal" means a request for a review of the interpretation of any provision of this article or a request for a *variance*.

BA. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other *structures*, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

CB. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the *manufactured homes* are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the *floodplain* management regulations adopted by the *City*.

D. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a *structure*.

EC. "Manufactured home" means a *structure*, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *manufactured home* does not include a *recreational vehicle*.

FD. "New construction" means, for the purposes of determining insurance rates, *structures* for which the *start of construction* commenced on or after the effective date of an initial *Flood Insurance Rate Map* or after December 31, 1974, whichever is later, and includes any subsequent improvements to such *structures*. For *floodplain* management purposes, *new construction* means *structures* for which the *start of construction* commenced on or after the effective date of a *floodplain* management regulation adopted by the *City* and includes any subsequent improvements to such *structures*.

GE. "Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

HF. "Structure" means, for *floodplain* management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a *manufactured home*.

IG. "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a *structure*, the cost of which equals or exceeds 50 percent of the market value of the *structure* before the *start of construction* of the improvement. This term includes *structures* which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a *structure* to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of an *historic structure*, provided that the alteration will not preclude the *structure*'s continued designation as an *historic structure*.

JH. "Variance" means a grant of relief by the *City* from the terms of a *floodplain* management regulation.

18.55.707 Lands to which this Article applies.

This article shall apply to all *flood hazard areas* within the jurisdiction of the City of Kenmore, including *areas of special flood hazards* as mapped by FEMA and shown on the *FIRM*.

18.55.710 Basis for establishing Flood Hazard Area.

A. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available *floodway* data for a *flood* having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year *flood*." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used.

B. The *areas of special flood hazard* identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled "The Flood Insurance Study of King County, Washington and Incorporated Areas," dated November 8, 1999~~April 19, 2005~~, and any revisions thereto, with an accompanying effective *flood insurance rate map (FIRM)*, dated November 8, 1999, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article. The *flood insurance study* is on file at Kenmore City Hall. In areas where the *flood insurance study* for the *City* includes detailed *base flood*

elevation calculations, those calculations will be used until projections of future flows are completed and approved by the *City* and FEMA.

C. The *City* may use other sources of *flood* hazard data to determine *floodplain* boundaries, *floodway* boundaries, *base flood elevations* or cross sections when identifying a *flood hazard area* if the data from sources listed below is more restrictive than the effective data:

1. Preliminary Flood Insurance Rate Maps;

2. Preliminary Flood Insurance Studies;

3. Draft *flood* boundary work maps and associated technical reports;

4. *Critical area* reports prepared in accordance with FEMA standards contained in 44 C.F.R. Part 65 and consistent with the King County Surface Water Design Manual provisions for *floodplain* analysis;

5. Approved Letter of map amendments;

6. Approved Letter of map revisions;

7. Channel migration zone maps and studies;

8. Historical *flood* hazard information;

9. Wind and wave data provided by the United States Army Corps of Engineers; and

10. Any other available data that accurately classifies and delineates the *flood hazard area* or *base flood elevation*.

D. Where elevation data is not available either through the *flood insurance study* or from the *FIRM*, or another authoritative source for the *City* to administer the *floodplain* development requirements, applications for building permits shall be reviewed to ensure that proposed construction will be reasonably safe from *flooding*. The test of reasonableness is a federal, state or local source; historical data; documented high water marks; photographs of past *flooding*; or additional modeling studies, etc., where available. *Structures* shall be elevated two feet above the *highest adjacent grade* in these zones.

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

18.55.715 Permits.

A. Development Permit Required. A development permit shall be obtained before construction or *development* begins within any *flood hazard area*. The permit shall be for all *structures*, including *manufactured homes* as defined in KMC 18.55.705, and for all *development* as defined in KMC 18.55.705.

B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the City of Kenmore and may include but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed *structures*, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level and the effective *flood* study *base flood elevation* survey datum of the *lowest floor* (including *basement*) of all *structures*;

2. Elevation in relation to mean sea level and the effective *flood* study *base flood elevation* survey datum to which any *structure* has been floodproofed;

3. Map depicting existing conditions, *wetlands*, *streams*, waterbodies, designated fish and wildlife habitats of importance, the boundary of the *flood hazard area* and *floodway*, and the location of grading and *structures* in the proposed *development*.

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed *development*; and

5. Certification by a registered professional engineer or architect that the *floodproofing* methods for any nonresidential *structure* meet the *floodproofing* standards in this article.

C. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

D. Prior to approving any permit, the *City* shall determine that all permits required by State or federal law have been obtained.

E. A notice on title shall be recorded consistent with KMC 18.55.250.

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 article; and.

C. Interpretation of flood hazard area boundaries. The *city manager* shall make interpretations, where needed, as to exact location of the boundaries of the *flood hazard area,* including the FEMA-mapped *area of special flood hazard* ~~*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 article.

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

1. The *City* shall n~~N~~otify adjacent communities and the Department of Ecology, or federal resource agencies where required, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.

2. The *City* shall r~~R~~equire that the *flood* carrying capacity of the altered or relocation portion of said watercourse is maintained.

3. *Base f~~F~~lood e~~E~~levations* may increase or decrease resulting from physical changes affecting *flooding* conditions. If a project will alter the *base flood elevation* or boundaries of the *area of special flood hazard*, then the project proponent shall provide the *City* with engineering documentation and analysis regarding the proposed change. If the change to the *base flood elevation* or boundaries of the *area of special flood hazard* would normally require a Letter of Map Change, then the applicant shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR. As soon as practicable, but not later than six months after the date such information becomes available, the *city manager* shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. The *City* reserves the right to require the *applicant* to develop and provide the required technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting *flooding* conditions, risk premium rates and *floodplain* management requirements will be based upon current data.

4. The *City* shall n~~N~~otify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

D. The *City* shall maintain for public inspection all records pertaining to the provisions of this article.

18.55.730 Development standards applicable to all flood hazard areas.

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

6. Water wells shall be located on high ground that is not in the *floodway*.

E. Encroachments.

The cumulative effect of any proposed *development*, where combined with all other existing and anticipated *development*, shall not increase the water surface elevation of the *base flood* more than one foot at any point within the *City*.

18.55.740 Development standards for specific uses in flood hazard areas.

A. Residential Construction.

1. *New construction* and *substantial improvement* of any residential *structure* shall have the *lowest floor*, including *basement*, elevated one foot above the *base flood elevation*. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710.

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

a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to *flooding* shall be provided;

b. The bottom of all openings shall be no higher than one foot above grade; and

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

B. Manufactured Homes.

1. Except as noted in B.2, all *manufactured homes* to be placed or substantially improved within any *flood hazard area* shall be elevated on a permanent foundation such that the *lowest floor* of the *manufactured home* is elevated one foot above the *base flood elevation* and shall be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement. In any *flood hazard area* where the *base flood elevation* has not been determined on the *FIRM*, the *base flood elevation* is determined by the *city manager* consistent with KMC 18.55.710. The *City* reserves the right to require the *applicant* to perform the engineering studies necessary to determine the *base flood elevation*.

2. *Manufactured homes* to be placed or substantially improved on sites in an existing *manufactured home park or subdivision* within a *flood hazard area* that have not incurred *substantial damage* as the result of a *flood* shall be elevated so that either:

   a. The *lowest floor* of the *manufactured home* is elevated one foot above the *base flood elevation*; or

   b. The *manufactured home* chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

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

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

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

3. Be certified by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the *flood* depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications;

4. Nonresidential *structures* that are elevated, not floodproofed, must meet the same standards for space below the *lowest floor* as described in subsection (A)(2) of this section;

5. Approved building permits for floodproofed nonresidential *structures* shall contain a statement notifying *applicants* that *flood* insurance premiums shall be based upon rates for *structures* which are one foot below the floodproofed level (e.g., a building floodproofed to the *base flood* level will be rated as one foot below);

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 *area of 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*~~:~~.

5. All subdivision proposals shall be consistent with the need to minimize *flood* damage; and

6. All subdivision proposals shall have adequate drainage provided to reduce exposure to *flood* damage.

NOTICE

Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

18.55.750 Development in the floodway.

~~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 *floodway*. The more restrictive requirements shall apply where there is a conflict.~~

A. Encroachments. Encroachments, including fill, *new construction*, *substantial improvements*, and other *development*, within the adopted regulatory *floodway* are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed ~~certification by a registered professional engineer is provided demonstrating that~~ encroachments shall not result in any increase in *flood* levels within the *City* during the occurrence of the *base flood* discharge.

B. If the requirements in Subsection A are satisfied, the requirements which apply to *all flood hazard areas* (KMC 18.55.730 and .740), including the *area of special flood hazard,* shall also apply to all *new construction* and *substantial improvements* in the *floodway*. The more restrictive requirements shall apply where there is a conflict.

C~~B~~. Any *development proposal,* including, but not limited to, new or reconstructed *structures,* ~~shall not cause~~that results in any increase in the *base flood elevation* ~~unless~~ shall meet the following requirements ~~are met~~:

1. Amendments to the *flood insurance rate map* are approved and adopted by FEMA, in accordance with all requirements of 44CFR 65.7, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased *flood* elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

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

1. The *structures* shall be outside the *floodway;* and

2. The *structures* shall be on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the floodway.

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

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.

Cost estimates for wWork 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. Cost estimates Ffor structures identified as historic placesthat meet the definition of *Historic Structure* shall not be included in the 50 percent determination provided that any repairs, reconstruction or improvements must do not preclude its continued designation as a historic structure to be counted towards the repair costs.

Substantial improvements (i.e., work done that equals or exceeds 50 percent of the structure's market value) shall meet the requirements of new structures and provide the information required in Section A. – 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:

4.

~~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.~~

D~~F~~. If allowed, p~~P~~ost 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 *floodway* 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.~~

4.

~~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 *area of 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 article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. *Floods* larger than the regulatory *base flood* can and will occur. *Flooding* and *flood* hazards may occur in unmapped areas. *Flood* heights may be increased by manmade or natural causes. This article does not imply that land outside *flood hazard areas* or uses permitted within such areas will be free from *flooding* or *flood* damages. This article shall not create liability on the part of the City of Kenmore, any officer or employee thereof, or the Federal Emergency Management Agency for any *flood* damages that result from reliance on this article or any administrative decision lawfully made hereunder.

18.55.780 Variances in flood hazard areas.

A. Conditions for Variances.

1. Generally, the only condition under which a *variance* from the elevation standard may be issued is for *new construction* and *substantial improvements* to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing *structures* constructed below the *base flood* level, providing subsections (B)(1) through (B)(11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the *variance* increases.

2. *Variances* may be issued for the repair or rehabilitation of *historic structures* or the *City's* local landmarks, upon a determination that the proposed repair or rehabilitation will not preclude the

structure's continued designation as a *historic structure* and the *variance* is the minimum necessary to preserve the historic character and design of the *structure*.

3. *Variances* shall not be issued within a designated *floodway* if any increase in *flood* levels during the *base flood* discharge would result.

4. *Variances* shall only be issued upon a determination that the *variance* is the minimum necessary, considering the *flood* hazard, to afford relief.

5. *Variances* shall only be issued upon:

   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 article and other applicable regulations. Violations of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the City of Kenmore from taking such other lawful action as is necessary to prevent or remedy any violation.

18.55.795 Abrogation and greater restrictions.

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

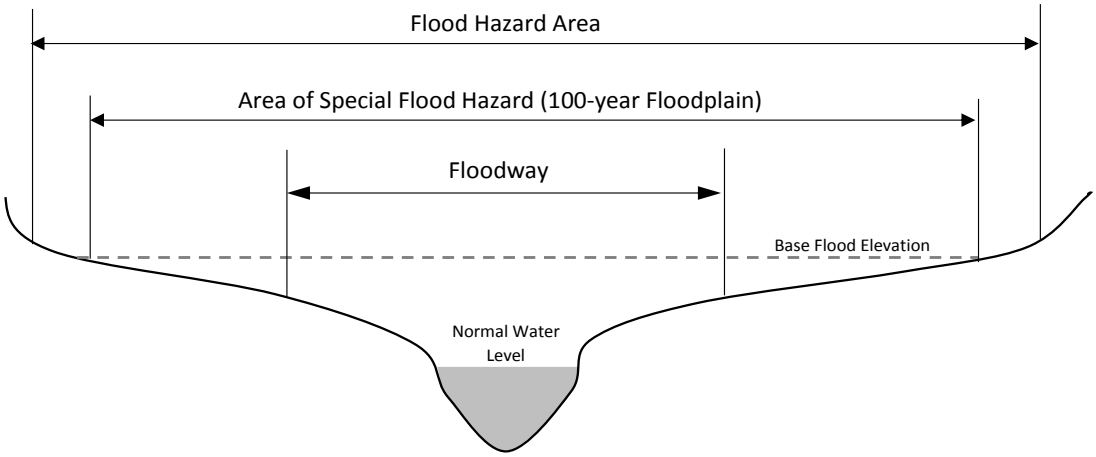
REVISED DEFINITIONS RELATED TO FLOOD HAZARD AREAS

~~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.~~

18.20.1673 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~~ article XIX of chapter 18.55.



Note: The City's Flood Hazard Area encompasses the Area of Special Flood Hazard, which is the 100-year floodplain and floodway mapped by FEMA, and may be expanded to include those areas determined by the City to be subject to flood risks from channel relocation or stream meander.

PROPOSED CHANGES TO THE AMENDMENTS BASED ON DEPARTMENT OF ECOLOGY COMMENTS

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:

***

6. *Emergency* activities necessary to prevent an immediate threat to public health, safety, property or welfare, provided that the *critical areas* shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better within one year of the activity. The restoration, rehabilitation, and/or replacement of the *critical area* is limited to that area impacted by the prevention effort; this section does not require the responsible party to restore, rehabilitate or replace *critical areas* damaged by natural disaster;

***

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

1. The removal of *vegetation* listed in King County's *noxious weed* list.

2. The removal of *trees* that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to *private* property, from *critical areas* and *buffers*; provided, that the *city manager* determines that the disturbance to the *critical area* is minimal. Topping or limbing the tree to eliminate the hazard should be considered before removal. When removal is necessary, place the hazard tree in the *critical area* or *buffer* to provide habitat as downed wood unless doing so would pose a safety risk or increase a geologic hazard. Replacement trees at a 3~~1~~:1 ratio are required.

18.55.330 Performance standards – Mitigation requirements.

***

G. *Mitigation* Ratios.

1. Acreage Replacement Ratios. The following ratios shall apply to creation or *restoration* that is *in-kind*, on-site, the same 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.

Standard Wetland Mitigation Ratios

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

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

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

SHANNON & WILSON

MEMORANDUM

TO: Lauri Anderson and Debbie Bent, City of Kenmore

FROM: Amy Summe, Shannon & Wilson

DATE: April 1, 2019

PROJECT: City of Kenmore Shoreline Master Program and Critical Areas Regulations Update

PROJ. #: 21-1-30128-006

SUBJECT: Justification for Proposed City of Kenmore Wetland Regulations

1 INTRODUCTION

Since April 2018, the City of Kenmore (Kenmore) has been developing updates to its Shoreline Master Program (Title 16, Division I – Shoreline Management) and Critical Areas Regulations (Chapter 18.55). The consultant team (Shannon & Wilson, Confluence Environmental Company, and BERK) finalized a report titled *Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations* in August 2018. Chapter 3.2 of that report included an analysis of the existing wetland regulations and provided recommendations for revisions related to best available science, specific items identified in Washington Department of Ecology's (Ecology's) *Critical Areas Checklist* and *Shoreline Master Program Periodic Review Checklist*, and public and staff input.

The wetland-related findings of the *Gap Analysis* were presented to and discussed with the Planning Commission on July 17 and August 7, 2018. The revised wetland regulations were presented to the Planning Commission on October 16, 2018. On March 5, 2019, Kenmore received its first comments on the proposed wetland regulations from Doug Gresham, an Ecology Wetland Specialist, via an email and follow-up phone call. Kenmore staff, Ecology representatives, and I participated in a conference call on March 12 to discuss Ecology's comments and a strategy for moving forward.

Ecology provided six bulleted comments, four of which were resolved during the conference call and then incorporated into the proposed wetland regulations presented to the Planning Commission on March 26, 2019. The remaining two comments relate to Ecology concerns about the adequacy of the proposed buffer widths, and the retention of a buffer reduction with enhancement tool within the proposed regulations. The purpose of this memorandum is to describe in greater detail Kenmore's justification for its proposed wetland regulations in these two topics areas, focusing on existing conditions, and to present an updated set of wetland regulations.

2 BUFFER WIDTH HISTORY

Kenmore completed a critical areas regulations update in 2006. In support of that update, Adolfson Associates, Inc. (now ESA) provided two supporting memoranda (enclosed) that justified Kenmore's original three-tiered rating system and the associated buffers. As noted in one of the memoranda, "Adolfson has provided on-call wetland peer review services to Kenmore since its incorporation and has reviewed approximately 250 development applications over the past eight years. We base our information on our knowledge of the local conditions in Kenmore... In summary, based upon this evaluation and our past work experience with wetland permit review in the City of Kenmore, we conclude that there are no wetlands in the City of Kenmore that would likely be rated as Category I wetlands using the 2004 Ecology rating system."

When Kenmore began its comprehensive Shoreline Master Program Update in 2010, ESA Adolfson (now ESA) prepared an additional memorandum that documented the use of best available science to justify Kenmore's wetland rating system and buffers. As part of Ecology's review of Kenmore's wetland buffer widths during the 2010 update, Wetlands Specialist Patrick McGraner completed his own review of Adolfson/ESA Adolfson's two memos and Ecology's guidance documents and concluded the following (McGraner, pers. comm., August 3, 2010):

> The main point in these memos is that the current standards found in Kenmore's CAO – KMC 18.55 provide adequate protection for wetlands within the shoreline jurisdiction and that therefore no additional changes to the standards are required. To aid my analysis, I reviewed the data provided in the memos using Appendix 8-C in the publication *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008*. Specifically, I utilized Table 1 Wetland Rating Comparison in Kenmore, Washington from page 2 of the May 4, 2006 memo and completed my own comparison with 8C.2.1 (Buffer Alternative 1), 8C.2.2 (Buffer Alternative 2) and 8C.2.3 (Buffer Alternative 3). While the first two comparisons failed to show adequate protection, the comparison with Buffer Alternative 3 showed that a sound argument can be made that the city's existing CAO provides adequate buffers under the 3-tiered system. Alternative 3 is the most refined of the three alternatives and is based upon detailed wetland scoring for each of the three major functions of wetlands: water quality, hydrologic and habitat.

Ecology approved Kenmore's update in 2012, including the tailored rating system and buffers.

3 PROPOSED BUFFER WIDTHS

In this round of regulation updates, Kenmore has eliminated its three-tier rating system and moved forward with adopting Ecology's four-tier 2014 rating system. The previously approved buffers were translated to the new system. As described in the *Gap Analysis,* the proposed widths are based on existing buffer requirements—and the best available science supporting those buffer widths—along with updated best available science (derived from Hruby, 2013), wetland category, adjacent land use, and wetland function. The proposed buffer widths followed "Buffer Alternative 3" in *Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System*[1] (Hruby, 2014b), which recommends buffer widths adjacent to high-intensity uses ranging from 50 feet for Category IV wetlands to a maximum of 150 feet for Category I, II, or III wetlands with moderate level of function for habitat (score of 5-7 points).

The proposed (and existing) buffers range from 40 to 150 feet, depending on wetland category and habitat score. The maximum proposed wetland buffer is 150 feet because that is the maximum buffer recommended for wetlands with a moderate habitat function score, and the existing development within Kenmore already constrains existing buffers to less than 150 feet in a majority of areas. We assumed that the adjacent land use for all wetlands would be defined as high; thus, different buffer widths were not defined separately for moderate- or low-intensity land uses. The proposed buffer widths were determined based on the following rationale:

- No Category I wetlands exist, either as scored or designated as wetlands with special characteristics, as defined by Hruby (2014a).
- In the unlikely event a Category I wetland is discovered, it would have a moderate habitat score (i.e., 5-7 points) because of the existing site potential and landscape potential constraints (see discussion in Section 4).
- The landscape potential score for all wetlands would be low to moderate.
- Although the wetlands have low to moderately functioning habitat, water quality functions could be high.

Section 4 of this memorandum provides more analysis of existing conditions.

[1] The "Buffer Alternative 3" cited here and in Table 1 is functionally identical to the "Buffer Alternative 3" referenced in Patrick McGraner's analysis of Kenmore's buffers in 2010 provided in Section 2 of this memorandum. The difference is that the 2014 version of Buffer Alternative 3 was updated by Ecology for consistency with the points system using in the Ecology 2014 rating form.

Ecology's comment suggested that Kenmore modify its buffers to reflect one of the two options included in *Wetland Guidance for CAO Updates Western Washington Version* (Bunten and others, 2016). Table 1 shows how Kenmore's existing and proposed buffer widths relate to that Ecology guidance.

Ecology's proposed buffer widths are accompanied by an assumption that the buffer is "vegetated with a native plant community appropriate for the ecoregion." If that is not the case, then Ecology's model regulations (Bunten and others, 2016) require that the buffer either be planted or widened. In urban areas like Kenmore, buffers are commonly occupied by legal uses and modifications, including parking lots, roads, commercial and residential buildings, residential yards and landscaping, and active recreation space associated with parks and schools, among others. This requirement would likely trigger Variance requests for nearly every project as it would be a hardship for applicants to lose those existing developments and uses and space limitations make widening infeasible. Kenmore prefers to achieve enhancement of degraded buffers through its buffer reduction with enhancement tool (see discussion in Section 5), which provides a more clear and defensible linkage between the actual effects of an applicant's proposed activity and the required mitigation (nexus and proportionality).

4 EXISTING CONDITIONS

Kenmore boundaries encompass approximately 6.1 square miles of land. Kenmore contains primarily single-family residential land uses, but also includes a variety of other uses (Kenmore, 2015). Kenmore is largely a built-out community with a limited amount of unconstrained vacant land suitable for development, but significant opportunities for redevelopment. According to Kenmore's Comprehensive Plan (Kenmore, 2015), "Most of the [sic] Kenmore's single-family residential growth will occur on remaining vacant parcels, estimated at 102 acres net available in 2007, or as a result of infill development of partially developed properties. Most of Kenmore's commercial growth would occur as redevelopment of developed lands." In 2007, the vacant parcels totaled 2.9 percent of the City's total land area. Many large parcels are already in government ownership and designated as parks or open space (e.g., Squire's Landing Park, Rhododendron Park, Wallace Swamp Creek Park, Saint Edward State Park).

Table 1. Comparison of Proposed Buffers and Washington Department of Ecology-Recommended Buffers

Original Text in City Ordinance Adopted July 25, 2011, and approved by Ecology in 2012		Current Proposal 2019 SMP and Critical Areas Update		Ecology Option 1 [1, 2]	Ecology Option 2 [1]	Buffer Alternative 3 [4]
Wetland Type	Buffer Width (Feet)	Wetland Type	Buffer Width (Feet)	Buffer Width (Feet) and Associated Habitat Score	Buffer Width (Feet) and Associated Habitat Score	Buffer Width (Feet) and Associated Habitat Score
Class 1	150	Category I	150	75 (3-4 pts) 105 (5 pts) 165 (6-7 pts) 225 (8-9 pts) [3]	100 (3-4 pts) 140 (5 pts) 220 (6-7 pts) 300 (8-9 pts) [3]	100 (3-4 pts) 150 (5-7 pts) 300 (8-9 pts) [3]
		Category II, habitat score of 6-9 points	150	165 (6-7 pts) 225 (8-9 pts) [3]	220 (6-7 pts) 300 (8-9 pts) [3]	150 (5-7 pts) 300 (8-9 pts)
Class 2	100	Category II, habitat score of 3-5 points	100	75 (3-4 pts) 105 (5 pts)	100 (3-4 pts) 140 (5 pts)	100 (3-5 pts) 150 (5-7 pts)
		Category III, habitat score of 6-9 points	100	165 (6-7 pts) 225 (8-9 pts) [3]	220 (6-7 pts) 300 (8-9 pts) [3]	80 (3-4 pts) 150 (5-7 pts) 300 (8-9 pts)
Class 3	60	Category III, habitat score of 3-5 points	60	60 (3-4 pts) 105 (5 pts)	80 (3-4 pts) 140 (5 pts)	
		Category IV	40	40	50	50

NOTES:

1 Options 1 and 2 are from Washington Department of Ecology's *Wetland Guidance for CAO Updates: Western Washington Version* (Bunten and others, 2016).

2 Option 1 requires implementation of the measures in Ecology's Table XX.2 - "Required measures to minimize impacts to wetlands."

3 Habitat scores of more than 7 points are not feasible in the City of Kenmore because of the prevalence of high- and moderate-intensity land use.

4 Buffer Alternative 3 is from Washington Department of Ecology's *Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System* (Hruby, 2014b)

SMP = Shoreline Master Program

Most of Kenmore's land use would be defined as high-intensity land use when rating wetlands using the 2014 wetland rating system (Hruby, 2014a). Residential zones with greater than one unit per acre and other urban or commercial zoned lands are defined as high-intensity land use. Single-family zoning in Kenmore is typically at six dwelling units per acre, with the ability to go to nine dwelling units per acre if, for example, affordable housing is provided. Multifamily zoning ranges from 12 to 24 dwelling units per acre, with increases up to 150 dwelling units per acre in the City's transit-oriented development district.

Based on the land use analysis in 2015, approximately 33 percent of the City is in non-single-family high-intensity land use (multifamily residential, commercial, industrial, public, schools, utility, golf course, and transportation rights-of-way) (Kenmore, 2015). An additional 50 percent of the City's land use is in single-family residential development. Assuming that the percentage of high-intensity single-family land use (greater than one dwelling unit per acre) parallels the zoning percentages in the R-4 (four dwelling units per acre) and R-6 (six dwelling units per acre) zones, 91 percent of the 50 percent of single-family residential development is high-intensity. In sum, approximately 78 percent of the City's total land use would be considered high intensity. In addition, Lake Washington would be defined as a high-intensity land use area because of the high boat use and the use of the lake as a runway for seaplanes by Kenmore Air.

Residential land use of one or fewer residential units per acre (estimated at about 175 acres, using the above analysis), parks, and utility corridors are considered moderate- to low-intensity uses. The lower-density zoning in Kenmore has been applied to environmentally constrained areas. In particular, the area along Swamp Creek has been zoned R-1 (one dwelling unit per acre) with a special requirement that development be clustered away from the wetland/stream with at least 50 percent of the site retained in an open space tract. Subdivision rules in the R-1 zone require that open space tracts created by clustering be located and configured to create urban separators and greenbelts, connect and increase protective buffers for critical areas, connect and protect wildlife habitat corridors, and connect existing or planned public parks or trails.

After single-family residential land use, the next largest land use by category in Kenmore is parks and open space (approximately 13 percent) (Kenmore, 2015).

In reviewing Kenmore's wetlands and streams geographic information system dataset, existing wetlands within Kenmore are surrounded by either commercial or residential development and a majority of the buffers appear to be less than 175 feet. Wetlands within

the Bastyr University property and Saint Edward State Park are the exceptions to this along the lake and the forested interior.

After review of the characteristics of wetlands within Kenmore and comparison of these characteristics with Ecology's 2014 rating system questions (Hruby, 2014a), no Category I wetlands are believed to exist in Kenmore for the following reasons:

1. Since Kenmore is a highly urbanized, already built environment, habitat functions, especially the "landscape potential," as defined in the wetland rating system, will almost invariably be low. Again, the exception to this would be wetlands located within the Bastyr University property and Saint Edward State Park. Based on analysis completed for the hypothetical wetland in the forested portion of the Bastyr University property, the relatively undisturbed habitat with low- to moderate-intensity land use within a one-kilometer circle around the wetland would only exceed 50 percent of the total area by 1 to 3 percent. The 50 percent value is a key threshold for achieving a high score for habitat function. With Kenmore's existing land use, the overall habitat function of wetlands and their buffers (as rated using the 2014 rating system) will never be considered highly functioning, with a majority of wetlands having a low-functioning "landscape potential."
2. Many of the wetlands within Kenmore are also dominated by invasive species, such as reed canarygrass (*Phalaris arundinacea*) and Himalayan blackberry (*Rubus armeniacus*) and likely have fewer than 19 species present. As such, the "site potential" for wetlands within Kenmore is low to moderately functioning.
3. There are no "special characteristic" wetlands within Kenmore, as defined by Hruby (2014a.)

Thus, even if water quality and hydrology scores received the highest possible points for a wetland, the habitat score is not expected to be high enough to classify any wetland within Kenmore as a Category I. Four recent wetland ratings that used Ecology's 2014 rating system, including three of the highest-value wetlands in Kenmore, support this conclusion (Table 2). A "hypothetical" wetland was also evaluated in a forested portion of the Bastyr University property, which is the only location other than the surrounding Saint Edward State Park where undisturbed and low/moderate land use exists over a substantial area. The hypothetical wetland is located where the landscape potential rated as high. A depressional wetland was assumed, and then realistic but conservative attributes were assigned to the wetland. Even when a wetland is surrounded by undisturbed/low- to moderate-intensity land use, it cannot achieve a high enough total point score to classify as Category I because the opportunity for high hydrology or water quality landscape potential

scores is low (i.e., there are no stormwater sources within 150 feet of the wetland, and Lake Washington does not have flooding problems).

Table 2. Summary of Wetland Ratings for the Highest Quality Wetlands in Kenmore

Wetland Name	Water Quality Score	Hydrology Score	Habitat Score	Total Score	2014 Ecology Rating
Swamp Creek No. 3	7	8	7	22	Category II Rated March 2019 by Confluence
Squires Landing Park	8	5	7	20	Category II Rated June 2017 by Confluence
Log Boom Park[1]	9	7	4	20	Category II Re-rerated March 2019 by Confluence
Saint Edward State Park (ballfield)	7	5	7	19	Category III Rated January 2016 by ESA
Hypothetical Bastyr University[2]	7	5	8	20	Category III Hypothetical rating March 2019 by Confluence

NOTES:

1 An initial rating of the wetland at Log Boom Park concluded it was Category I. A careful reassessment of the wetland rating by Confluence Environmental Company resulted in a lowered Habitat score, which changes the result to Category II. The reductions were driven by correction to the land use intensity of Lake Washington and the characterization of the plant community structure.

2 Note: the 8-point habitat score is only hypothetical; no known wetland delineations in Kenmore have received 8 habitat points.

All of these higher-functioning wetlands and all or portions of their buffers are located in Kenmore parks and open spaces.

5 BUFFER REDUCTION WITH ENHANCEMENT

Ecology also suggested eliminating Kenmore's buffer reduction with enhancement tool (KMC 18.55.320.F.4.b), stating that "Degraded buffers should either be widened or enhanced, but not reduced." Ecology's 2016 model regulations only allow buffer averaging as an administrative buffer modification tool. Kenmore staff report that approximately 95 percent of the buffer modification requests are for a reduction with enhancement of a degraded buffer. Kenmore staff also noted that the vegetated portions of the buffers are often dominated by invasive Himalayan blackberry. Buffer averaging within urban areas is difficult because available areas outside of the buffer that could be averaged are already occupied or proposed to be occupied by a legal development or use and/or are not owned

by the applicant. Buffer averaging potential is generally limited to large public properties, and Kenmore is only aware of one such application.

Use of a buffer reduction with enhancement tool provides opportunities for substantial improvements to the ecological function of the wetland and degraded buffers without negative impact to the functions and values of the associated wetland, while minimizing the need for variances.

Kenmore's existing regulations governing buffer reductions with enhancement are robust. Key elements of the regulations are as follows:

- Requires use of low impact development strategies.
- Can only be used if the existing buffer condition is considered degraded, which is explicitly defined in KMC 18.20.665.
- Is limited to 25 percent of the standard width.
- Requires demonstration that the "reduced buffer will function at a higher level than the standard buffer," with specific decision criteria that the reduced buffers provides overall improvements in water quality, habitat, and drainage and/or stormwater detention capabilities, among others.
- Applicants must fund a review of the enhancement plan by Kenmore's wetland consultant.
- The enhancement plan must assess the habitat, water quality, stormwater detention, groundwater recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the decision criteria.
- Mitigation plans require a minimum of five years of performance monitoring.

6 OTHER PROTECTIVE TOOLS

As outlined below, Kenmore's wetlands regulations include several mechanisms that provide additional protection of wetlands, buffers and mitigation sites.

- KMC 18.55.140 (Signs and fencing of critical areas) requires fencing and allows for permanent signage to be required at the outer perimeter of a critical area or its buffer.
- KMC 18.55.250 (Notice on title) requires all properties with critical areas or buffers that seek any development approval from Kenmore to record the critical area and its buffer in a Notice on Title with the County's Records and Election Division.

- KMC 18.55.260 (Critical area tracts) requires subdivisions, short subdivisions, site plan reviews, commercial and multifamily building permits, and binding site plans to place critical areas and buffers in a special tract that is recorded on all documents of title of record and must be shown on the face of the plat, short plat or recorded drawing.
- KMC 18.55.280 (Bonds to ensure mitigation, maintenance, and monitoring) requires posting of a performance bond "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." The bonds are held for a minimum of five years contingent on mitigation performance.
- KMC 18.21.030 (Residential zones R-1, R-4 and R-6 – Development standards) requires clustering for subdivisions and short subdivisions in the R-1 zone for properties containing a higher category wetland. The resulting open space must be preserved in an open space tract, and such tract must be "located and configured to… to connect and increase protective buffers for critical areas" (KMC 17.20.130).

7 CONCLUSION

Kenmore is committed to protecting wetlands and other critical areas within its boundaries to maintain and improve ecological functions. As demonstrated above, Kenmore has carefully considered its existing conditions, best available science, and the desire to minimize variances in crafting the existing regulations and proposed revisions. During this review and in response to Ecology comments, Kenmore has identified the following areas where the regulations can be further amended to meet both Kenmore and Ecology objectives.

- Increase buffers for Category I wetlands
- Strengthen Kenmore's ability to increase buffers for any wetlands that might have a Habitat score of 8 points or greater.
- Incorporate the impact minimization measures included in Ecology's Table XX.2.

Kenmore's updated proposal reflecting these changes is enclosed.

8 REFERENCES

Adolfson Associates, Inc., 2006, Memorandum: Wetland Rating Comparison. Prepared for City of Kenmore, May 4.

ESA Adolfson, 2010, Memorandum: Shoreline Master Program Update, Critical Areas Ordinance integration. Prepared for City of Kenmore, May 5.

Bunten, D.; Mraz, R.; Driscoll, L.; and Yahnke, A., 2016, Wetland Guidance for CAO Updates Western Washington Version. June. Washington State Department of Ecology Publication #16-06-001, Olympia, Washington. Available at https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

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Hruby, T., 2014b, Appendix 8-C, guidance on widths of buffers and ratios for compensatory mitigation for use with the western Washington wetland rating system. Washington State Department of Ecology Publication #05-06-008 Olympia, Washington. October. Available at https://fortress.wa.gov/ecy/publications/parts/0506008part1.pdf (accessed March 25, 2019)

Kenmore (City of Kenmore), 2015, City of Kenmore comprehensive plan. Available at www.cityofkenmore.com/sites/default/files/2015%20Comprehensive%20Plan%20For%20Website.pdf (accessed March 25, 2019).

McGraner, Patrick, 2010, Wetlands Specialist, Washington Department of Ecology. Email to David Radabaugh, Washington Department of Ecology: "Response to ESA Adolfson memo re Shoreline Master Program Update-CAO integration." 3 August.

Shannon & Wilson, Inc., Confluence Environmental Company, and BERK, 2018, City of Kenmore Critical Areas Regulations and Shoreline Master Program Gap Analysis and Recommendations. Prepared for City of Kenmore, August 30. Project # 21-1-30128-003.

AJS:KLW/ajs

Acknowledgment: Kerrie McArthur of Confluence Environmental Company contributed to Sections 2, 3 and 4.

Enc. Adolfson Memorandum: Wetland Rating Comparison, 2006
ESA Adolfson Memorandum: Shoreline Master Program Update, Critical Areas Ordinance integration, 2010
Proposed Revised Wetland Regulations

MEMORANDUM

ADOLFSON

Environmental Solutions

DATE: **May 4, 2006**

TO: **Debbie Bent, Interim Community Development Director**

FROM: **Teresa Vanderburg, Director of Natural Sciences**

CC: **Ann Root, Sr. Planner**

RE: **Wetland Rating Comparison**

Adolfson Associates, Inc. (Adolfson) is pleased to provide this memorandum to the City of Kenmore (City) to assist the City Council in its consideration of adoption of the proposed critical areas ordinance. As you are aware, the wetland regulations within the proposed critical areas ordinance rely upon a three-tiered wetland rating system rather than the four-tiered system currently recommended by the Washington State Department of Ecology (Hruby 2004). Adolfson recommended retaining the three-tiered wetland rating system in Kenmore, with some revisions, due to the limited diversity of wetlands within the City. Adolfson has provided on-call wetland peer review services to Kenmore since its incorporation and has reviewed approximately 250 development applications over the past eight years. We base our information on our knowledge of the local conditions in Kenmore.

The City's existing three-tiered wetland rating system was revised by Adolfson to include important parameters such as association with Swamp Creek and/or Lake Washington. We believe that this rating system provides equivalent protection to the wetlands in the City of Kenmore as compared to the Ecology rating system. This memorandum summarizes the results of a limited field effort to rate selected wetlands using both the proposed Kenmore three-tiered system versus the Ecology four-tiered system, and provides information to the Council related to this comparison.

Five wetlands were rated in the field with site visits occurring on May 3 and May 4, 2005. Wetlands were selected based upon site access and chosen to represent a range of wetland types. We also relied upon permit application information where available. The largest wetland in the City of Kenmore is Swamp Creek No. 3. This wetland was also included to represent the most important wetland resource in the City.

The following wetlands were selected for this evaluation:

1. Swamp Creek No. 3 (between 73rd and 80th Avenues)
2. East Lake Washington Wetland (near mouth of Sammamish River)
3. Wetland B, Hanks Long Plat (73rd and 202nd)
4. Disturbed Forested Wetland (east of 80th and 192nd)
5. Cattail ditch on Tolt Pipeline (near Northshore Utility District office)

The results of the rating comparison are outlined in Table 1. The locations of each wetland are shown in the attached figure and referenced by the numbers in the table.

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Tel 206 789 9658 www.adolfson.com Fax 206 789 9684

Table 1. Wetland Rating Comparison in Kenmore, Washington.

Wetland No. / Name	Area (est.)	Ecology Water Quality Score	Ecology Hydrologic Score	Ecology Habitat Score	Ecology Total Score	Ecology 2004 Rating	Kenmore Wetland Class	Kenmore Proposed Buffer
1 - Swamp Creek No. 3	93 acres	20	26	20	66	Category II	Class 1	150 feet
2 – E. Lake Washington Wetland	10 acres	24	12	23	59	Category II	Class 1	150 feet
3 - Hanks Long Plat Wetland B	1 acre	26	12	19	57	Category II	Class 2	100 feet
4 - Forested Wetland East of 80th and 192nd	4 acres	20	12	14	46	Category III	Class 2	100 feet
5 - Cattail Ditch, Tolt Pipeline ROW	0.5 acre	14	5	9	28	Category IV	Class 3	60 feet

In summary, based upon this evaluation and our past work experience with wetland permit review in the City of Kenmore, we conclude that there are no wetlands in the City of Kenmore that would likely be rated as Category I wetlands using the 2004 Ecology rating system. The City's highest quality wetland, Swamp Creek Wetland No. 3, rates as a Category II wetland under the Ecology system. The other wetlands evaluated in this limited review are provided equivalent protection under the City's three-tier system. Therefore, in our best professional opinion, the three-tiered wetland rating system proposed in the Kenmore critical areas ordinance will function in an equivalent fashion to the new Ecology rating system and provide comparable protection of the wetlands within the specific local conditions found in the City of Kenmore.

REFERENCES

Hruby, T. 2004. *Washington State Wetland Rating System for Western Washington.* Revised. August 2004. Publication #04-06-025. Olympia, Washington.

ESA Adolfson

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memorandum

date May 5, 2010

to Lauri Anderson, Senior Planner, City of Kenmore

from Teresa H. Vanderburg, PWS

cc: Mark Johnson, Senior Planner

subject **Shoreline Master Program Update, Critical Areas Ordinance integration**

At the request of Washington State Department of Ecology (Ecology), I have prepared this memorandum to document the history of the City's use of "best available science" and its incorporation into the Kenmore Municipal Code (KMC) Chapter 18.55 – Critical Areas Ordinance.

The City of Kenmore began its critical areas update and review when it retained ESA Adolfson (then Adolfson Associates, Inc.) in 2001 to prepare a gap analysis. This gap analysis identified areas of the City's policies, programs, and regulations that could be modified to respond to the Endangered Species Act listing of Chinook salmon. As a result, several issues and "gaps" in the city's regulations and/or operations were marked for revision or improvement to increase protections for listed fish. From 2002 through 2006, ESA Adolfson, teamed with GeoEngineers, Inc., assisted the City in updating its critical areas maps and regulations. This work included conducting a citywide wetland and stream inventory and preparing GIS maps for streams, wetlands, and geologically hazard areas. Inventory maps for streams and wetlands are attached.

On March 1, 2004, the City provided notice of the proposed amendments to the City's critical areas regulations to the Department of Community, Trade and Economic Development (CTED) as required by RCW 36.70A.106. This process also included preparation of a programmatic checklist and issuance of Determination of Non-Significance on May 3, 2004.

The Kenmore City Council reviewed the proposed amendments to its critical area regulations at numerous public meetings, and held three public hearings on July 26, 2004, July 11, 2005, and March 13, 2006 in order to obtain public comment relating to the ordinance. The City Council considered the Wetlands, Streams, and Geologically Hazardous Areas - Best Available Science Technical Memorandum from Adolfson Associates (draft dated December 8, 2003 and final draft dated March 24, 2004) that gives an overview of the scientific record pertaining to the management and protection of critical areas and its application to urban environments such as those found in Kenmore.

In addition, a report outlining protection recommendations for the Kenmore great blue heron rookery was prepared on July 14, 2004. Special management recommendations, buffer zones, and seasonal work limitations near the heron rookery are based upon these recommendations, which were adapted from the Washington Department of Fish and Wildlife Guidance for Priority Habitat and Species.

Other information provided to the City Council during its review process included two additional documents related to the City's wetland rating system; these are:

- A Memorandum describing the City's proposed wetland rating system relative to the state's recently updated rating system in 2004. This analysis was provided in a memo from Adolfson on February 16, 2006 (attached).

- A Memorandum comparing use of the City's and State wetland ratings systems on 5 representative wetlands in the City (attached).

In summary, the City demonstrated its use of "best available science" during development and update of Chapter 18.55 as required under the Growth Management Act. The functions and values of wetlands in the City have been protected ever since adoption in 2006. The protection measures provided in the Chapter 18.55 are based upon a locally-tailored wetland rating and buffer system that places highest priority for protection on wetlands associated with shorelines of the state.

PROPOSED CHANGES TO THE AMENDMENTS BASED ON DEPARTMENT OF ECOLOGY COMMENTS. CHANGES ARE SHOWN IN YELLOW HIGHLIGHTING.

18.55.300 Designation and rating of wetlands.

***

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.

2. Buffers shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls.

3. Native vegetation removal or disturbance is not allowed in established buffers, unless the removal or disturbance is part of a restoration activity or is allowed by other provisions of this chapter. In all cases, the removal or disturbance should be appropriately mitigated consistent with KMC 18.55.200 and 18.55.210.

~~2. Required buffer widths (KMC 18.55.320(F)) shall reflect the sensitivity of the particular critical area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the critical area.~~

~~F. *Wetland Buffers*.~~

~~1~~2~~4~~. *Wetland buffers* shall be established as follows:

***Wetland* Type**	***Buffer* Width (Feet)**
~~Class 1~~Category I	~~150~~165
Category II with a habitat score of 6-9 points	150

Wetland Type	*Buffer* Width (Feet)
~~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

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

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

4.

~~2~~36. 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~~47. 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~~.~~; or

c. The wetland scores 8 or more habitat points using the 2014 Department of Ecology *Washington State Wetland Rating System for Western Washington*, Publication #14-06-029 (Hruby, 2014 or latest edition). In such cases, the buffer shall be increased by a minimum of 50 feet.

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ATTACHMENT 5

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000

April 10, 2019

Debbie Bent, Community Development Director
City of Kenmore
18120 68th Ave NE
Kenmore, WA 98028

Dear Ms. Bent:

Thank you for the opportunity to review the City's proposed critical areas ordinance (CAO) presented to the Planning Commission on February 28, 2019, and the Memorandum to the City from Amy Summe of Shannon & Wilson dated April 1, 2019. This memo provided information regarding the City's wetland buffer widths and the strategy of allowing buffer reduction with enhancement. We have additional comments and requests based on this information.

The City contends there are no Category I wetlands within the City limits, but this contradicts previous studies. The Summary of Wetland Ratings in Table 2 shows Log Boom Park as a Category II wetland based on a new rating in March 2019. This contradicts the *City of Kenmore Log Boom Park Waterfront Improvements Project–Critical Areas Report and Habitat Management Plan* that indicates it is Category I. We would like to review the rating forms for Log Boom Park and Swamp Creek No. 3 to confirm they are not Category I wetlands.

We appreciate the proposed changes to the amendments, including increasing the buffer width by 50 feet for wetlands that score 8-9 habitat points. However, the format of the buffer table itself may create confusion about this. We recommend the buffer tables be revised to include separate rows in each category for habitat scores of 8-9, 6-7, and 3-5 showing the corresponding buffer width. The City's buffer widths are within Ecology's recommendations for buffers adjacent to moderate-intensity land uses. The City proposes to require minimizing measures, so these buffers should be appropriate for high-intensity land uses as well.

Our guidance also includes the requirement that wetlands that score 6 or more habitat points be provided a protected, relatively undisturbed, vegetated corridor at least 100 feet wide between the wetland and any other relatively undisturbed habitat. The proposed CAO does not include this requirement. Not every parcel will have the opportunity to access a corridor, not every wetland will score moderate to high for habitat function, and not every development will need to

provide a corridor. Nonetheless, the CAO should require a corridor be provided when applicable.

We recognize the highly developed urban character of Kenmore makes it challenging to develop buffer standards that include the best available science (BAS), provide reasonable accommodation of existing uses, and allow for the development density needed within an Urban Growth Area. When we review proposed wetland buffers, we ask the following questions:

- What functions does the wetland perform?
- How wide is the buffer after all of the available reductions are employed?
- What is the quality of the resulting buffer?
- Is the resulting buffer wide enough to protect those existing wetland functions from the proposed adjacent land uses?

The scientific literature unequivocally states buffers are necessary to protect wetland functions and values. The literature consistently reports that the primary factors to evaluate in determining appropriate buffer widths are:

1) The wetland type and functions needing protection (buffers filter sediment, nutrients, or toxics; screen noise and light; provide forage, nesting, or resting habitat for wetland-dependent species; etc.).
2) The types of adjacent land use and their expected impacts.
3) The characteristics of the buffer area (slope, soils, vegetation).

We appreciate the criteria the City has included in its buffer enhancement strategy. However, Ecology's buffer guidance recommends that if the existing buffer areas are not currently vegetated in a manner to provide the necessary buffer function, then either the buffer area should be planted or the buffer width should be increased. Allowing buffer reductions in exchange for planting upland species in the buffer area will result in buffers that are inadequate to protect wetland functions, based on our review of the BAS.

The scientific literature on buffer widths referred to above is *Wetlands in Washington State, Volume 1: A Synthesis of the Science* (Ecology Publication #05-06-006, March 2005). Tom Hruby's *Update on Wetland Buffers: The State of the Science Final Report* (Ecology Publication #13-06-11), October 2013, further discusses buffer widths and their role in protecting functions and providing connectivity to wildlife habitat. Further support for our recommended buffers comes from Appendix 8E.2.1 of *Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands* (Ecology Publication # 05-06-008, April 2005).

A wetland with a high score for habitat functions (8-9 points) has both the physical structures (e.g., vegetation, open water, etc.) and the connections to other wildlife habitats that are necessary for a wide range of species, including birds, mammals, and amphibians. This means the wetland is very likely to be providing habitat for one or more species that need a larger buffer. Without direct evidence that such species are not using the wetland, one should assume wildlife species that require a large buffer are using it for habitat. In addition, section 5.5.4 in Volume 1 discusses maintaining terrestrial habitat adjacent to wetlands. Key points are summarized in section 5.5.4.4 on page 5-49.

We recommend the City evaluate these issues in terms of risk management. The buffer widths that Ecology recommends in our guidance ((*Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands* and *Wetland Guidance for CAO Updates (Western Washington)* (Ecology Publication #16-06-001, June 2016)) are based on our review of the BAS. They represent a moderate risk approach to wetland management, i.e., there is a moderate risk of impact to wetland function when these buffers are applied. Larger buffers will lower the risk; smaller buffers will increase it. Relying on wetland buffers alone for wetland protection also increases the risk. If wetland buffers are the only tool the City uses for wetland protection, then the large buffers are necessary. If the City has other tools, such as a watershed assessment, public preservation and restoration, habitat conservation programs, landowner incentives, etc., then smaller buffers may be defensible.

We support the protective tools listed in Section 6 of the Shannon & Wilson Memorandum that help mitigate wetland impacts from buffer reduction. However, BAS indicates there is a minimum buffer width that needs to be protected. Where there is a departure from the science based on local circumstances, the issues need to be thoroughly evaluated. The written record supporting the City's decision to adopt an updated CAO should state why the standards supported by the BAS are not practical or not the best way to protect the functions and values of wetlands. It should identify the difference between the standard being adopted and that which is supported by BAS, and then explain the minimum departure from the BAS standard that would meet the City's objectives. A detailed explanation should be provided of the risk to the critical area functions that is likely to follow implementation of the proposed departure from BAS-recommended standards. Last, the written rationale for departure from BAS to protect critical areas should include an evaluation of alternative methods the City will employ to ensure no net loss of critical area structure, function, and value.

In summary, our remaining concerns on the proposed wetland regulations are as follows:

- Based on our review of BAS, allowing buffer reductions in exchange for upland plantings in degraded buffers will result in buffers that are inadequate to protect wetland functions.
- We recommend that, for wetlands with a habitat score of 6 or more, a relatively undisturbed, vegetated corridor of 100 feet or more be protected between the wetland and any connected undisturbed habitat.

If you have any questions or would like to discuss my comments, please give me a call at (425) 649-7199 or send an email to Doug.Gresham@ecy.wa.gov.

Sincerely,

Doug Gresham

Doug Gresham, PWS
Wetland Specialist
Shorelands and Environmental Assistance Program

DRAFT

E-cc: Donna Bunten, Ecology
Maria Sandercock, Ecology
Valerie Smith, Commerce
Amy Summe, Shannon & Wilson

DRAFT

ATTACHMENT 5a

PROPOSED CHANGES TO THE AMENDMENTS BASED ON DEPARTMENT OF ECOLOGY COMMENTS (ONLY NEW CHANGES HIGHLIGHTED)

18.55.300 Designation and rating of wetlands.

***

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.

2. Buffers shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls.

3. Native vegetation removal or disturbance is not allowed in established buffers, unless the removal or disturbance is part of a restoration activity or is allowed by other provisions of this chapter. In all cases, the removal or disturbance should be appropriately mitigated consistent with KMC 18.55.200 and 18.55.210.

~~2. Required buffer widths (KMC 18.55.320(F)) shall reflect the sensitivity of the particular critical area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the critical area.~~

~~F. *Wetland Buffers*.~~

~~1~~2~~4~~. *Wetland buffers* shall be established as follows:

***Wetland* Type**	***Buffer* Width (Feet) Based on Habitat Score (points)**			
	3-4	**5**	**6-7**	**8-9**
~~Class 1~~Category I	75	105	~~150~~165	215
Category II ~~with a habitat score of 6-9 points~~	75	105	150	200

Wetland Type	*Buffer* Width (Feet) Based on Habitat Score (points)			
	3-4	5	6-7	8-9
~~Class 2Category II with a habitat score of 3-5 points~~			~~100~~	
Category III ~~with a habitat score of 6-9 points~~	60	75	100	150
~~Class 3Category III with a habitat score of 3-5 points~~			~~60~~	
Category IV	40	40	40	40

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

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

4.

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

~~2~~37. 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~~48. 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.

***

NOTE: The only proposed change shown below at this time is deletion of the table identifying the minimum reduced buffer widths, which is not necessary with the addition in the code text of a 25 percent reduction limit and has been complicated with the expansion of the standard buffer width table above. However, this full section is provided below for reference and discussion as Washington Department of Ecology's comments suggest removal of the buffer reduction with enhancement tool in KMC 18.55.325.B.2.

18.55.325 Buffer Width Alterations.

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

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

~~A~~1. *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)~~
~~1Category I~~	~~25 percent~~	~~112.5 feet~~
~~Category II with a habitat score of 6-9 points~~	~~25 percent~~	~~112.5 feet~~
~~2Category 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~~
~~3Category 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.

ATTACHMENT 6

John Hendrickson
5919 NE 202nd Lane
Kenmore WA. 98208

03/26/2019

To: The Kenmore Planning Commission

In Regards to your Public Hearing on the Critical Areas Regulations Update:

Please consider that by amending the PAUE Exception that you are inviting a law suit and should consider the following:

The bad faith and abuse of authority demonstrated by the City in the 2008 use of the PAUE Exception to build parks:

- The history of the misappropriation of the PAUE in 2008 when it was improperly used to develop the St. Ed's Ballfield, Log Boom Park, and Wallace Park Ball Fields.
- Review the GMHB (Growth Management Hearing's Board appeal of the Kenmore PAUE Ordinance in 2016) documentation that showed that Kenmore had lost around $290,000 in pre-development cost in reliance on the illegal use of the PAUE Exception.
- Brent Smith's emails to State Parks on August 16th 2008 and August 22nd 2008 as an example of the historical corporate culture of abusing authority, that the city and it's associates have adopted around this issue of environmental non-compliance.
- Todd Bergman's and his attorney's letters of 12-03-2008 and 3-23-2009 stating that the City could not legally use PAUE to build parks and likely could not amend the ordinance under the GMA.

The bad faith and abuse of authority demonstrated by the City in the 2016 attempt to amend the PAUE Exception for the expressed purpose of encroaching on the wetland at the St Ed's State Park Ball Field:

- Please review the exhibits in the GMHB appeal of the 2016 PAUE Ordinance.
- Review the November and December 2015, and the January 2016 Council Retreat meeting summaries on the bad faith exhibited in approving and moving forward with the St Ed's project, without public knowledge.
- Review how the St Ed's Balllfield was not listed on the January 2016 Retreat Agenda, and the Council was not prepared to discuss the issue, but the City Manager brought it up as part of the Hotel Development issue.
- Review the Brent Smith email in January 2016 as he boasts how the project is progressing without public knowledge.
- Review the January 11th Council Meeting where the City specifically needed to amend the PAUE so that they could "over engineer" the drainage of the St. Ed's Ballfield and wetland, and that they planned on limiting the mitigation costs to $40,000 in off-site mitigation.
- Review the consultant's 2016 email correcting the City on the issue of off-site mitigation, and that it could not be used.
- Notice in these early meetings how the council members (Baker, Sperry, Curtis, Van Ness and Smith) were all aware of the costs of the 2008 PAUE failure, yet they expressed no concern about repeating the same folly without any concerns about the costs associated with a failure to protect the critical areas.

- Please review the 2017 public record request #2326, where I believe that to date the city has not provided the legal costs associated with the GMHB legal defense. You should be aware of these costs, as your passage of the ordinance will likely result in similar costs to the taxpayers, and could have the same failed results.
- Review how the (during the 2016 GMHB Hearing) that the City's attorney falsely claimed that evidence in the record (i.e., the history of the City's use of the PAUE Permit) was not part of the record, and therefore should not be used to as proof that the City was making a materially false statement to the Board in their defense.
- Review how the City Manager made a false statement to the State Parks Commission while explaining that the City lost the GMHB appeal, but that the City "followed the state recommend model ordinance" when in the GMHB ruling they clearly stated that the City did not follow the model ordinance.

In regards to the 2019 PAUE Amendments:

- Please review the WA Department of Commerce (DOC) comment letter dated 01/22/2019 and address and resolve all outstanding issues and issues of concerns, such as:
    - The DOC recommends narrowing the scope of the PAUE Amendment to existing facilities to limit impacts to critical areas.
    - The DOC recommends showing how this exception amendment warrants a different process than the regular development policies.
    - The DOC asks that you "explain how" expanding exempt projects from critical area regulations can be done without impacting the functions and values of critical areas.
    - Note that the DOC recognizes that the Best Available Science (BAS) evaluation states that: "...the city codes and standards provide a framework for ensuring that projects are **thoughtfully designed, and any impacts are appropriately minimized and mitigated."**
        - And then review the City's January 11th 2016 plan for St. Ed's where the amended PAUE would allow the city to "Over-Engineer" the drainage of the wetland (in a state recognized wildlife bio-diversity corridor) and that they city's mitigation plan called for a $40,000 investment in off-site mitigation.
        - Also note how the city's revised wetland report relocated the stream from the southern edge of the ball field to approximately 350 to 400 feet away from the proposed over-engineered drainage.
    - The DOC clearly recognizes that the city's proposed PAUE Amendments departs from the state recommended process, and is a significant expansion of the scope and intended use of the PAUE for local jurisdictions.

- Please clarify if the proposed development at Log Boom Park could be constructed without this expansion of the PAUE Exception.
    - In 2008 the City had to abandon the Log Boom Phase II project because it violated critical area protections under the law.
    - Note that the City has in the past desired to remove the vegetation from the banks of the Lake Washington at Log Boom Park in order to broaden the view.
    - Also note that the Salmon migrating downstream from the Sammamish Slough need this vegetation to hide from predators, especially the bass who lie in waite at the mouth of the river.

- Note that the Log Boom development will hurt the salmon run which in turn hurts the greater ecosystem, including the Orcas who have been starving for years now in Puget Sound.

- Please review the BAS against the recommended BAS provided by the state DOC, DOE, Fish and Wildlife, and the other state agencies
  - Do not consider passing this amendment until the BAS is finalized.
  - According to an email I received today from Laurie Anderson, the current report on BAS is not finalized and that there will be amendments.

- Please review the legislative intent of the PAUE and do not expand it as it is only a continued (and costly) attempt to get around our environmental protection laws.
  - Consider developing parks projects within the law, and figure out how to make them better in the long run.

- Finally, the City Manager should not be the person who reviews and approves the PAUE Exception, it should go to independent persons, along with the ability to appeal to a hearing examiner.

Summary:

The city is not above the law, even though it has tried to be on several occasions under this PAUE exception. Note that the city is not legally allowed to pass a law that is in conflict with state law.

The Planning Commission should not bow to peer pressure from the City Council, City Staff, or any local special interest groups and instead should support and fair and equal imposition of the environmental laws. You have a legal Duty to Care.

Jack

Bridgit Baker

Subject: FW: City of Kenmore Planning Commission Agenda for March 26, 2019

From: Steven Hu <steven_hu2014@icloud.com>
Sent: Thursday, March 21, 2019 5:47 PM
To: Lauri Anderson <landerson@kenmorewa.gov>
Subject: Fwd: City of Kenmore Planning Commission Agenda for March 26, 2019

Hi Lauri,

Thank you for added me to your mailing list. So I can have an opportunity to look your agenda.

As a private investor and represent of an investment institution wishing to invest in Kenmore for a long time, I appreciate and firmly support the position of the Planning Commission on critical area program. And objected to the opinions of the Washington Department of Ecology. Kenmore is a special Kenmore and will continue to prosper.

Just express my opinion for your reference.

Sincerely

Steven Hu

Begin forwarded message:

> **From:** City of Kenmore <cityofkenmore@public.govdelivery.com>
> **Date:** March 21, 2019 4:04:46 PM
> **To:** steven_hu2014@icloud.com
> **Subject: City of Kenmore Planning Commission Agenda for March 26, 2019**
>
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> Planning Commission agendas are always available for your viewing on the City's website: www.kenmorewa.gov
> You can watch meetings as they happen live online at: www.youtube.com
> If you should have any questions related to the agenda and/or the transmission of this e-mail, please contact the City of Kenmore at (425) 398-8900 or stop by City Hall at 18120 68th Ave. NE, Kenmore. You can also e-mail your questions to: cityhall@kenmorewa.gov.
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This email was sent to steven_hu2014@icloud.com using GovDelivery Communications Cloud on behalf of: City of Kenmore Washington · 18120 68th Ave NE · Kenmore, WA 98028

Laurie Anderson, Planner, City of Kenmore

Dear Ms. Anderson:

I have read the draft CAO and Shoreline Management Master Program amendments soon to be presented to the Kenmore Planning Commission, and the "Gap Analysis" memo that purports to provide rationale for them based on new data, science, court cases, etc.

I understand the City of Kenmore would like to expand the Public Agency/Utility Exception exemptions and standards to make it easier to put a more developed playing field on the existing playing field on a mostly-filled wetland in Saint Edward State Park. Maybe the Gap Analysis provides a justification for this and maybe not. What I don't see in that document is anything that would justify making it easier to develop that kind of intensive development while at the same time narrowing the existing exemption for some pervious-surfaced trails within critical areas or their buffers.

Also, the City of Kenmore has no in-house expertise with which to judge the suitability or design of trails within Saint Edward State Park.

Therefore, I recommend replacing the draft CAO amendment language with the following (my new language bolded because I can't do strike-through and underline) language which would facilitate development of the proposed new trails for Saint Edward State Park provided for by the Classification and Management Plan (CAMP) adopted by the Washington State Parks and Recreation Commission in 2007:

KMC 18.55.150 Exemptions

KMC 18.55.15.(A)(5):

Educational activities, scientific research, and passive outdoor recreational activities, including but not limited to interpretive field trips, and birdwatching, and pervious trails for **non-motorized use** ((hiking)), that will not have a significant adverse effect on the critical area...

I also recommend this change to the Shoreline Management regulations:

16.50.070 Recreation.

KMC 16.50.070(B)(2) and (3)

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 **only** ((primarily)) for **non-motorized** ((pedestrian)) access, including access by wheelchair where appropriate, and should be no larger than is necessary to accommodate **permitted use** ((expected pedestrian traffic));

3. Removal of vegetation for recreational uses shall be the minimum necessary to provide **non-**

motorized trail ((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. [Ord. 12-0334 § 3 (Exh. 1).]

Sincerely

Tom Fitzpatrick
6476 NE 153rd St
Kenmore 98028

Bridgit Baker

Subject: FW: March 26 meeting

-----Original Message-----
From: Liz <esundquist@comcast.net>
Sent: Tuesday, March 26, 2019 2:11 PM
To: City Hall <CityHall@kenmorewa.gov>
Subject: March 26 meeting

Since I will be unable to attend the meeting, I would like to express my views. I hope that your agenda will be discussing saving critical areas and wetlands, including trees situated elsewhere, and not giving them over for development. I feel the same about the shoreline. It needs to be saved for public use and animal habitat. Kenmore is unique in that it has some remaining critical areas and wetlands, one being behind my house, and I get to enjoy owls and ospreys and other urban wildlife. Unfortunately, the city has allowed a developer to build homes on this land. This critical area will soon be gone. Please save the city of Kenmore from losing more critical areas and wetlands. We need them to keep the planet healthy and for all to enjoy.

I hope you will forward this message to the proper person or to the mayor and the city council.

Thank you,

Elizabeth Sundquist
8613 NE 169 Place
Kenmore

Sent from my iPhone

Attachment 7

Best Available Science Evaluation

APRIL 2019 | PUBLIC AGENCY & UTILITY EXCEPTION (PAUE)

Prepared for:

City of Kenmore

18120 68th Ave NE
Kenmore, WA 98028

Prepared by:

SHANNON & WILSON, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

BERK

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BERK Consulting, Inc. 56

1. Situation and Recommendation

BACKGROUND AND PURPOSE

Public agency and utility projects are often both difficult to site and to permit. A public agency and/or utility may have limited funding and constraints on facility location or access to property. Before a public agency or utility project even enters the permit process, there may have been years of public discussion about project design and location. The project may have been discussed in the Comprehensive Plan and/or placed into a Capital Facilities Plan. In other cases, public projects may have been permitted many years ago on properties containing critical areas. Changes in current conditions may necessitate expansion, renovation or replacement of the public facility or utility despite critical area concerns.

Historically, if a public agency or utility could not meet the City of Kenmore's critical areas regulations standards, an exception permit review process (the Public Agency and Utility Exception or PAUE) was allowed subject to a study and demonstration that impact minimization and other criteria had been met. Several years ago, it was determined that this exception only could be applied to utility projects, leaving no exception for public agency projects. In an attempt to remedy this situation, revisions to the PAUE were proposed in 2016. These revisions were appealed to the Growth Management Hearings Board which overturned the regulations after finding that the City needed to better demonstrate how the code proposal incorporated best available science (BAS) in development of the regulations or provide the basis for departures from BAS in its record.

State guidance provides criteria for including BAS in development regulations and also discusses departures from BAS:

> *WAC 365-195-915*
>
> *Criteria for including the best available science in developing policies and development regulations.*
>
> *(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:*
>
> > *(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.*
> >
> > *(b) The relevant sources of best available scientific information included in the decision-making.*
> >
> > *(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:*
> >
> > > *(i) Identify the information in the record that supports its decision to depart from science-based recommendations;*
> > >
> > > *(ii) Explain its rationale for departing from science-based recommendations; and*
> > >
> > > *(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.*
>
> *(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas.*

Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

The purpose of this report is to address BAS for the PAUE regulations. The City presently is updating all its critical area regulations and amendments to the PAUE appropriately are included with this update.

Attachment A summarizes the City's current code for the PAUE for utilities. Attachment A also shows the 2016 Kenmore code amendment proposal, which would have reextended the exception to public agency projects, as well as utilities, and added more stringent review criteria. This is the proposal that was challenged and not upheld by the Growth Management Hearings Board due to the Board's findings. Washington Department of Commerce recommendations about PAUEs, which continue to incorporate public agencies as recently as their June 2018 *Critical Areas Handbook*[1], are also provided in Attachment A.

This BAS Evaluation is intended to address scientific and other considerations consistent with the Growth Management Act (GMA) rules, and to identify issues and options towards amending PAUE regulations to address necessary public agency and utility projects. The document is organized as follows:

1. Situation and Recommendations
2. Best Available Science Provisions in GMA
3. Science and Regulatory Context
4. Other Considerations
5. Departures from Best Available Science
6. Conclusion

The City's critical area regulations are found in Chapter 18.55 of the Kenmore Municipal Code. These regulations are designed to protect critical areas and their functions and values. Chapter 18.55 also sets out the critical areas review process and exemptions, variances and exceptions to the rules. According to the Commerce Critical Areas Handbook, exemptions are those activities or uses for which the critical area rules do not apply and no review is required. Variances may be used to modify the standards. Exceptions are used when application of the critical area regulations would prohibit a development proposal by either a public agency or utility or a private property owner. The evaluation in this report is focused on the BAS underlying revisions to the PAUE and its critical areas review process. Attachments support elements of this evaluation.

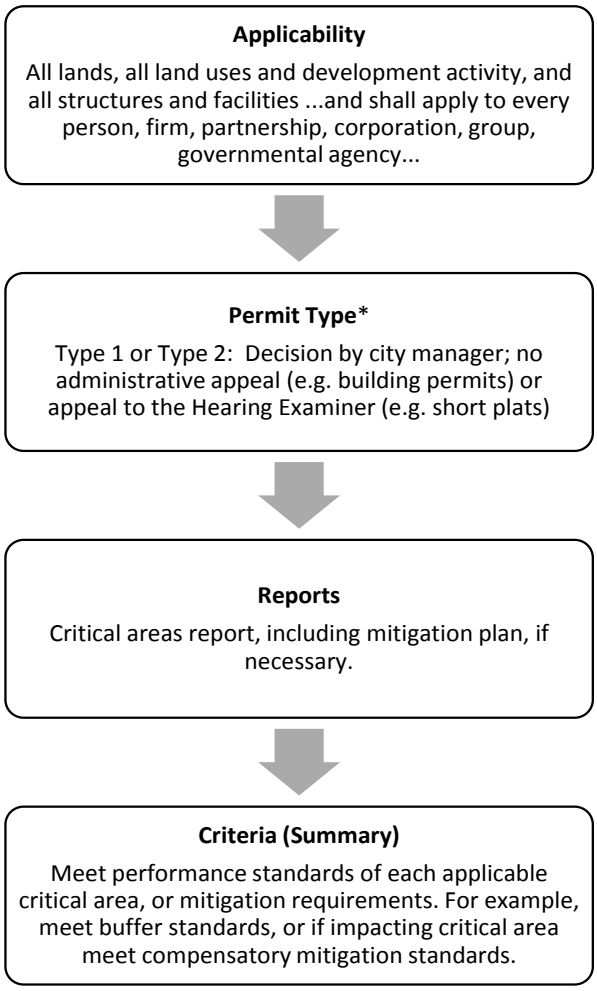
CRITICAL AREA EVALUATION PROCESS

Standard Process

The City applies its critical areas regulations to all types of development and project sponsors. The permit review is administrative in many cases.

[1] Washington Department of Commerce (2018). Critical Areas Handbook (Chapter 3: Structuring Critical Areas Regulations). Available: https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/critical-areas/

Exhibit 1 Kenmore Standard Critical Areas Regulations Process



Note: *Review may take permit type of associated land use activity. Type 1 City Manager (CM) Decision, Type 2 CM Decision with Appeal to Hearing Examiner, Type 3 Hearing Examiner Decision with CM recommendation, and Type 4 City Council Decision with CM and Hearing Examiner recommendation.

However, there are limited circumstances in which variances or exceptions are needed. The City's Municipal Code addresses three different ways to modify the regulations: a variance, a reasonable use exception, or a PAUE. Review procedures for these three processes are described below.

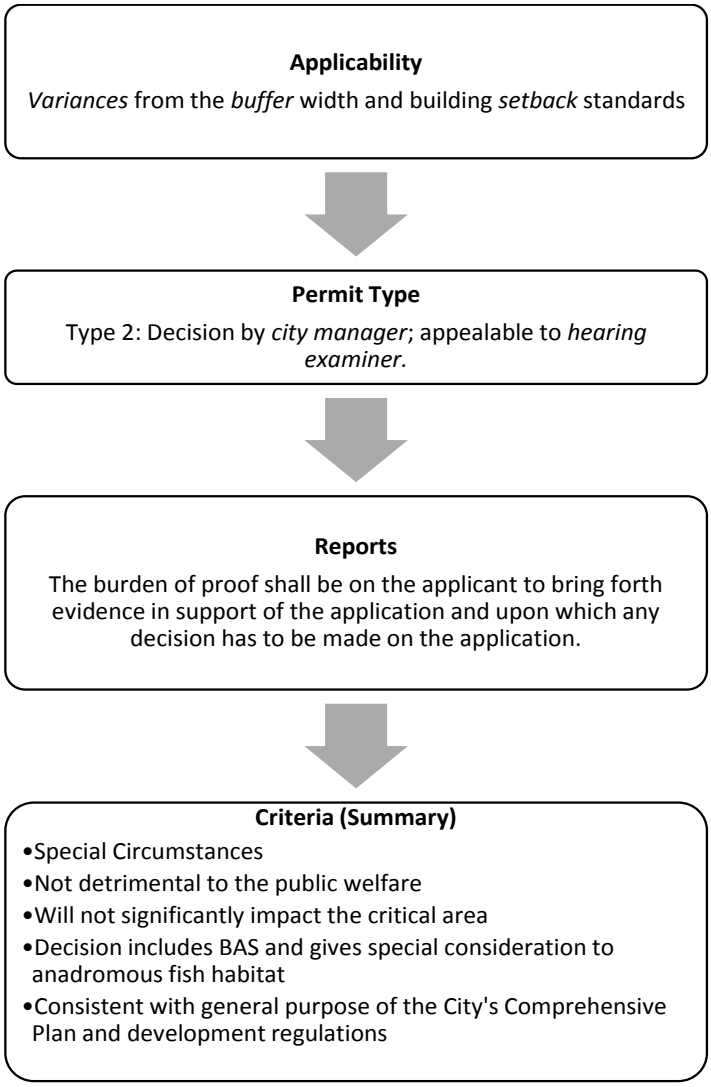
Variance

A variance is a deviation from the dimensional standards in the code. The City allows a critical area variance from the buffer width and building setback standards of the code. The decision is administrative, but appealable to the City's Hearing Examiner. A couple of the review criteria for a variance are difficult for public agency and utility projects to address because they are geared for private landowners. For example:

"2. 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;"

While variances have been used historically by public agencies for buffer modifications, the variance process is better suited to private applications where no balancing of public agency responsibilities is considered. In addition, variances only apply to buffer width and building setback standards and cannot be used for projects within a critical area.

Exhibit 2. Kenmore Critical Areas Variance Process



4.

Reasonable Use Exception

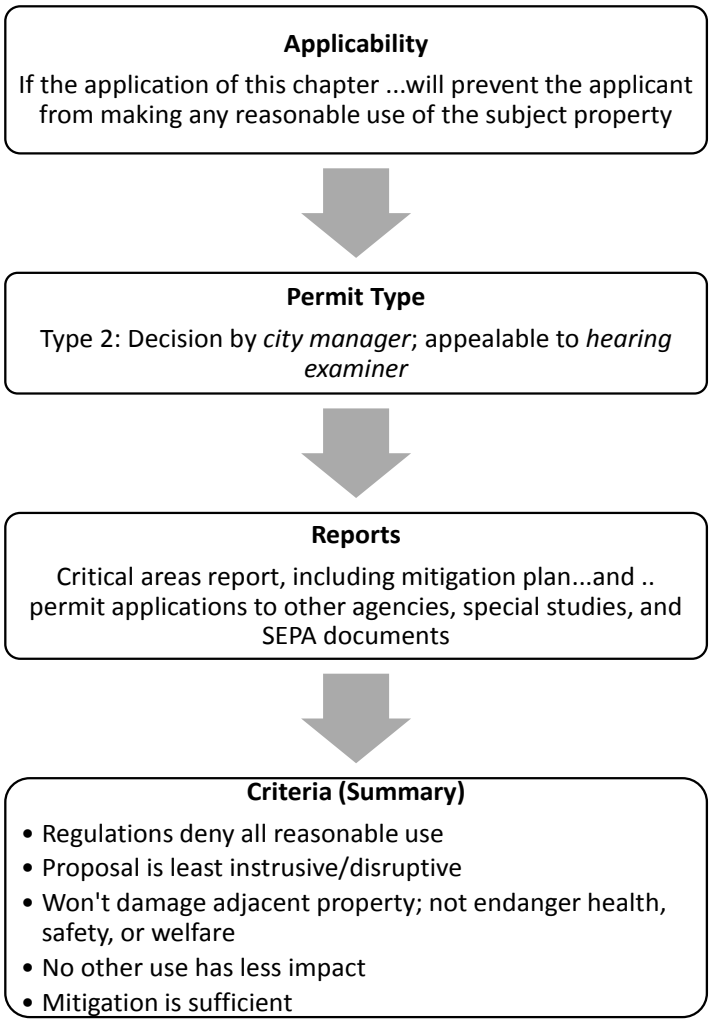
For private development, in cases where an entire property is encumbered by critical areas and the development proposal would be prohibited by the critical area regulations, the City allows a Reasonable Use Exception (RUE) to avoid takings of private property rights. This would be used if a variance process is not feasible or fully applicable – for example, if a critical area may be altered beyond a buffer or setback change. The RUE process is a Type 2 decision like a variance (administrative, but appealable to the City's Hearing Examiner). The RUE is intended for projects where "critical areas will prevent the applicant from making any reasonable use of the subject property…"

The specific review criteria for an RUE are inappropriate for public agency and utility projects, as they are meant for the exercise of private property rights and to avoid the taking of private property rights. For example:

> "a. The applicant demonstrates that the application of this chapter will deny all reasonable use of the subject property otherwise allowed by applicable law;"

Allowing a minimal level of "reasonable use" could substantially restrict or prevent a public agency service from being provided.

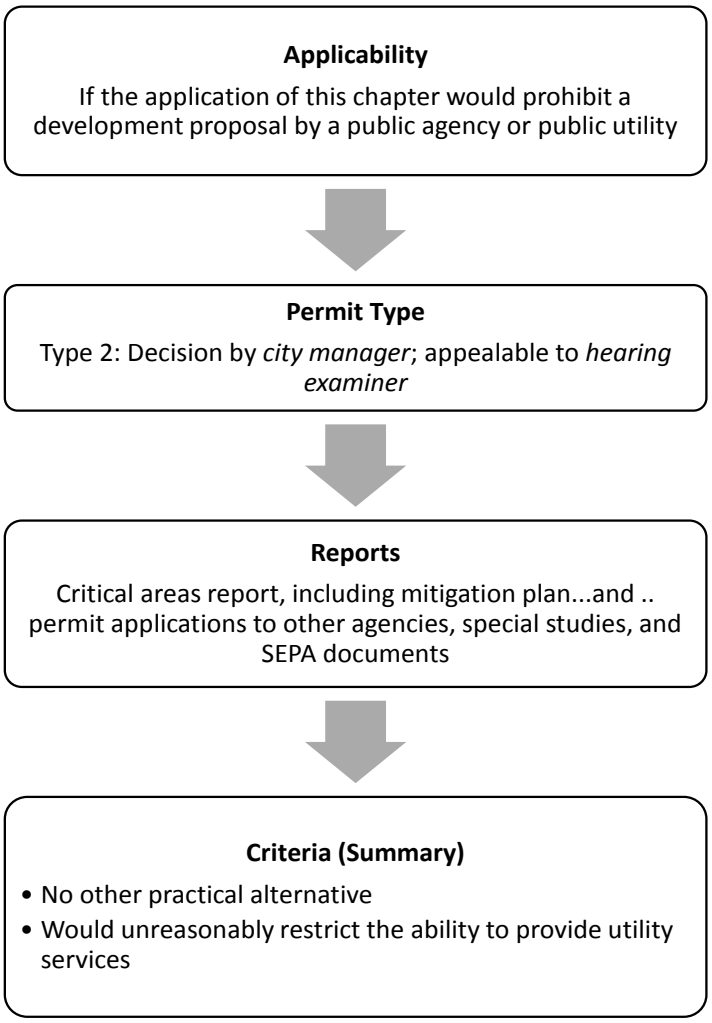
Exhibit 3. Kenmore Critical Areas Reasonable Use Exception



Public Agency and Utility Exception (PAUE)

For public utilities, when a development proposal includes critical area or buffer alterations that are otherwise prohibited, the City offers the PAUE. This would include cases where buffer and/or critical area intrusion or impacts would occur, and standard requirements cannot be met. The process is a Type 2 decision like a variance or RUE (administrative, but appealable to the City's Hearing Examiner).

Exhibit 4. Kenmore Current Public Agency and Utility Exception



The Washington Department of Commerce has published a 2018 Critical Areas Handbook ("Handbook"). Chapter 3 of the Handbook describes having Exemptions, PAUEs, Allowed Uses or Activities, and RUEs.

The City of Kenmore's existing critical areas procedures follow the Handbook and include similar PAUE criteria. However, the City proposes to depart from the Handbook PAUE criteria to: 1) allow critical area review for public agency projects that expand existing public facilities, beyond linear utilities; and 2) propose enhanced decision-making procedures with amended decision criteria to assure no net loss of critical areas functions and values. See Attachment A, part A-3 for Commerce example language.

State law requires the City (and other public agencies) to adequately plan for capital facility projects, including procedural steps that include public input and consideration (for example, RCW 36.70A.070(3),(4),(6) – GMA mandatory elements). Without the PAUE, planned capital facility projects that are not candidates for consideration under the variance process have no alternative process for

permit evaluation. The RUE process is used by private applicants but is not applicable to public agencies. For example, an existing public facility, such as a school, may already include uses or structures at or near the edge of a critical area. Without a proper review process, future support of school and education requirements by expansion and modernization of buildings and supporting recreation areas might not be accomplished without the PAUE.

Prior to the interpretation that the PAUE was to be used only for utilities, public agency projects were permitted through that process. In Kenmore, the Brightwater conveyance system portal access and odor control facility intruded into wetlands, streams and their buffers and was reviewed through the PAUE process. The project provided extensive enhancement and restoration as described under historic projects further below. Without the PAUE, the expansion of beneficial public agency capital facilities may be precluded by application of the critical areas rules, negating the ability of a public agency to provide needed public services.

CODE OPTIONS AND RECOMMENDATIONS

This section recommends amendments to the PAUE for public agency and utility[2] proposals.

Review Process and Reports

We recommend that the PAUE permit review process continue as Type 2 with City Manager Decision, Appealable to Hearing Examiner and continue with a Critical Area Report and Mitigation Plan.

> *Rationale: The decision-making process provides for sufficient oversight and evaluation, with an appeal process should there be unusual circumstances. The added Criteria for Approval will strengthen the review process and will be addressed in the Critical Area Report and Mitigation Plan.*

Exception or Variance Options

Options for consideration of public agency projects include:

1. Propose amendments as presented in 2016 ordinance.
2. Amend 18.55.160 Exception – Public Agency and Utility to ensure a consistent approach to public agency proposals and utilities that serve the public interest and address new decision criteria (see below). Allow conditions of approval and consideration of best management practices (BMPs) like King County allowed alterations in their critical area regulations.
3. Remove 18.55.160 Exception – Public Agency and Utility and integrate allowances for considering public agency proposals and utilities into Variance or Reasonable Use processes; provide for unique criteria. Allow conditions of approval and consideration of BMPs like King County allowed alterations in their critical area regulations.
4. Allow utility projects and the expansion of *existing* capital facilities, as defined by the GMA, by way of the PAUE process in 18.55.160, per #2. Additionally, for *new* public agency capital facility

[2] Where private utilities (e.g. telecommunications, power) serve the general public, have a duty to serve under state and federal laws, or have oversight and requirements to plan such as with the Washington Utilities and Transportation Commission, the City has indicated it wishes to treat them similar to public facilities and services.

projects, allow them to be reviewed under the Variance (buffer widths) or RUE (critical areas) process with criteria adapted for public agencies' unique considerations per #3.

5. Retain the existing PAUE which limits review to utility projects.

We recommend that the City select Option 4 and amend the PAUE as well as Variance and RUE criteria.

> *Rationale: Based on Commerce's review of the PAUE in January 2019, and its recommendation to limit the PAUE to linear utilities and the expansion of existing public agency capital facilities, Option 4 is recommended. An amended PAUE would be similar to the current structure, meet the 2018 Commerce Guidebook recommendations for process, and recognize that public capital facilities and utilities must meet public purposes and other laws. The focus of the PAUE would be adapted to allow for consideration of buffer and critical area adjustments for the expansion of existing public agency capital facilities, which are likely to be the majority of the situations in Kenmore given the "built out nature" and decades of investment in parks, schools, and other public agency facilities prior to critical areas regulations. It would also allow for consideration of public and private utilities that serve the public, which are typically linear facilities that have physical and locational requirements that are unique.*
>
> *Option 4 would also allow for permit review of "new" public agency facilities under a Variance (for buffers) and RUE (for critical areas standards)) process. The Variance and RUE criteria would need to be revised to provide such review (e.g. having both common criteria and unique criteria for public proposals). Though using the Variance and RUE would blur the distinction between private development and a process to reduce takings and a process to consider the needs of public agencies and utilities that have different responsibilities for the community compared to a private owner, revisions to the criteria and the City's experience in applying the code to public agency proposals since 2016 would help overcome this concern.*

Criteria for Permit Approval

PAUE

We recommend amendments to the permit decision criteria.

> *Rationale: This is the heart of the proposal – to have a more comprehensive list of decision criteria that illustrate the thought and care that has gone into the public agency and utility proposal, the ways in which mitigation sequencing has been integrated, the consistency of the proposal with a system-wide plan, program, or policy, and assures no net loss of critical areas functions and values and protects/mitigates critical areas.*

Specifically, we recommend that the City:

1. Retain the criterion that states that there is no other practical alternative to the proposed development with less impact on the critical areas.
2. Amend the criterion that states that the application of this chapter would unreasonably restrict the ability to provide public agency or utility services to the public.
3. Add criteria like the following:
   - The proposal consists of linear utilities/transportation facilities or the expansion of existing public agency facilities.
   - There is not another feasible location with less adverse impact on the critical area and its buffer.

- Mitigation sequencing[3] has been demonstrated in a mitigation plan, with a robust demonstration of the agency or utility's efforts to site mitigation using a watershed approach.
- Development activities involve the least intrusion into and disruption of the critical area necessary while fulfilling a public purpose and need.
- The proposal is consistent with a public agency or utility system plan, master plan, program, or policy that has been the subject of a public review process.
- The proposal is consistent with the general purpose and intent of the City's comprehensive plan and adopted development regulations.
- The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
- The proposal protects existing critical area functions and values and mitigates impacts to the critical area functions and values consistent with the best available science.
- The proposal would result in no-net-loss of critical area functions and values.
- The proposal is consistent with other applicable regulations and standards.

PAUE Standard Conditions of Permit Review and Approval

We recommend that the City require documentation from the applicant that demonstrates that all feasible options have been considered, and that mitigation is robust. Sources of example best management practices (BMPs) include King County table notes and the Commerce Guidebook. See Attachment A, parts A-3 and A-4 respectively. Applicants also should address Conditions of Approval by federal and state agencies described in Section 3 of this document under "Impacts, Risks, Protections, and Mitigation."

1. Further, we recommend that the City: Continue to condition proposals based on the critical area report and mitigation plan; and
2. Identify best management practices (BMPs) for PAUE proposals as standard conditions; these standard conditions could be supplemented or adjusted based on the results of the critical area report and mitigation plan.

Example standard conditions of approval could include (but not be limited to):

[3] Per KMC 18.20.1710 "Mitigation" means the use of any or all of the following actions listed in descending order of preference:
A. Avoiding the impact by not taking a certain action;
B. Minimizing the impact by limiting the degree or magnitude of the action by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
C. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area or buffer;
D. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;
E. Compensating for the impact by replacing, enhancing or providing substitute critical areas and environments; and
F. Monitoring the impact and taking appropriate corrective measures."

Facilities over water:

- Facilities/utilities are not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the city manager determines that there is no other feasible crossing site.
- The construction occurs during approved periods for instream work.
- Facilities/utilities will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- If new construction, bridge piers or abutments for bridge crossings are not placed within the FEMA floodway or waterward of the ordinary high-water mark.

Facilities in fish or wildlife habitat or buffer; or wetland buffer:

- No clearing, external construction or other disturbance in a fish or wildlife habitat of importance is allowed during breeding seasons.
- Minimize impervious surfaces that will contribute to surface water run-off, unless the construction is necessary for soil stabilization or soil erosion prevention or unless the facility is specifically designed and intended to meet Americans with Disability Act provisions.
- To the maximum extent practical, buffers are expanded equal to the width of the facility (a trail, for example) including disturbed areas.
- The facility is not located over habitat used for a species listed as endangered or threatened by the state or federal government; except that the city manager may approve the location if it is determined that there is no other feasible crossing site for linear facilities such as pipelines, bridges, or trails.
- Standard conditions for facilities over water are followed where applicable.
- To the extent feasible, temporarily disturbed areas will be replanted to native forest or shrub communities. Applicants will plan and implement a robust invasive species monitoring and control program.

Facilities in geologically hazardous areas:

- The alterations will not subject the critical area to an increased risk of landslide or erosion.
- Vegetation removal is the minimum necessary to locate the facility.
- In a landslide hazard area, information from a qualified geotechnical professional demonstrates that the project is safe as sited and designed.

Variance and RUE Criteria Amendment

We suggest amending variance criteria that are currently difficult for public agency and utility projects to address because they are geared for private landowners. For example:

1. 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 requirements;

2. 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;

Regarding #1 the public owned property may or may not be similarly situated as other properties and may not own other properties where such an activity can occur; substituting a practical alternatives criterion would be appropriate for a new public agency proposal.

Regarding #2, we suggest a criterion more applicable to a public agency, regarding the need to fulfil a duty to serve, to provide an essential public facility, or to meet a service demand per an adopted capital plan or system plan or other plan that has been the subject of an alternatives evaluation and public review process.

The specific review criteria for a RUE regarding the need to avoid the taking of private property rights is inapplicable to a public agency proposal:

a. The applicant demonstrates that the application of this chapter will deny all reasonable use of the subject property otherwise allowed by applicable law;

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.

Allowing a minimal level of "reasonable use" under "a" could substantially restrict or prevent a public agency service from being provided. Instead, we suggest a criterion about a duty to serve, etc. per the discussion of variance criteria above.

Regarding "b", the idea of the least intrusion is applicable to both private and public proposals, but "necessary to allow a reasonable use" is best for a private proposal, and something like "or to achieve a public agency responsibility consistent with adopted laws, rules, and plans" would be a better match to public agency proposals.

2. Best Available Science Provisions in GMA

As mentioned in the Background/Purpose section of this report, State rules implementing GMA guide how to demonstrate that best available science is included in the development of critical areas policies and regulations. The criteria also acknowledge that agencies can depart from best available science and consider non-scientific information such as legal, social, cultural, economic, and political information.

WAC 365-195-915 Criteria for including the best available science in developing policies and development regulations.

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

4.

(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

Consistent with state rules, this document provides the analysis necessary to support PAUE regulations that accommodate critical areas modifications in support of necessary public agency and utility projects. It is worth noting that a PAUE is *not* an exception from the requirement to complete and document a thorough mitigation sequencing process, nor is it an exception from the requirement to implement appropriate mitigation. The unique characteristics of the PAUE lie in recognition that many projects proposed by public agencies and utilities have more limited opportunities to avoid and minimize critical area impacts at the project scale. However, on the flip side, they typically have had more extensive avoidance and minimization analysis at that entity's program planning scale or have other opportunities for off-site mitigation at other public sites.

Each of the BAS tenets related to development of critical area regulations is addressed in the following sections of this report.

3. Science and Regulatory Context

This section of the report addresses:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

CRITICAL AREA FUNCTIONS AND VALUES, BAS AND PROTECTIVE REGULATIONS

Critical area functions and values are described more fully in several BAS sources developed by Washington State agencies (See Attachment B).

A summary of common critical area functions and values is provided in Exhibit below. Critical areas are listed in rows, and typical functions and values are listed in columns. Where functions and values are typically associated with that critical area an "X" appears in the intersecting cell.

For example, in terms of water quantity, wetlands can store surface water, alter flood flows, or recharge or discharge groundwater. They can improve water quality by removing sediments and decreasing

4.

downstream erosion, moderating water temperatures, and removing nutrients. They provide habitat for aquatic species, birds, and other wildlife. (Washington Department of Ecology 2005)

However, in an urban environment, not all functions and values are fully present. For example, habitat quality and structure may markedly differ in an urban environment, and species dependent on the habitat and associated buffers may differ in their responses to abutting urban uses, roads, etc.

> *Recent research is emphasizing that relatively undisturbed uplands between wetlands are important for maintaining the populations of many wetland dependent species. A narrow undisturbed buffer can provide the first stage of a connection between wetlands, or it alone can provide that connection if wetlands are close together. A buffer, however, that is not part of a system of connected upland and wetland habitats may not provide adequate protection for populations of amphibians. (Washington Department of Ecology 2013)*

Exhibit 5. Critical Area Functions and Values Summary

	Water Quantity		Water Quality				Habitat	Safety
	Flow	Storage	Sediment	Nutrients	Temperature	Contaminants	Quality & Structure	Persons & Property
Streams (Water) and/or Buffers	X		X	X	X	X	X	
Fish and Wildlife Habitats of Importance							X	
Wetlands and/or Buffers		X	X	X	X	X	X	
Frequently Flooded Areas	X	X	X					X
Geologic Hazards			X					X

POTENTIAL IMPACTS, PROTECTIONS, AND MITIGATION

All projects in Kenmore that could impact critical areas or their buffers, regardless of the nature of the project or applicant, are required to demonstrate how mitigation sequencing has been applied. The mitigation sequencing process itself was formalized at the federal level by a joint memorandum between the Environmental Protection Agency and the U.S. Army Corps of Engineers in 1990 as part of its Clean Water Act review, indicating recognition by the agencies that avoidance and minimization cannot always eliminate adverse impacts. Prior to that, mitigation sequencing was incorporated into state and local regulations and guidance (such as those listed in Attachment B, WAC 197-11-768 in 1984, and elsewhere in this document), and much of the science in the natural resources management realm relates to quantifying impacts and designing compensation. Projects that may be pursuing an exception from a specific dimensional or performance standard contained in the regulations would not be exempt from that process.

A critical areas report also is required for any project affecting critical areas or their buffers. This report must be prepared by a qualified professional and must incorporate BAS to protect the functions and values of the critical areas. KMC 18.55.110 states that BAS is scientific information applicable to the

critical area prepared by local, State or federal natural resource agencies, a qualified scientific professional or a team of qualified scientific professionals.

Kenmore's critical area regulations (KMC Chapter 18.55) focus on preserving and protecting critical areas in the City. In general terms, projects that may need to pursue a PAUE, RUE, Variance, or some other higher-level approval have the potential to adversely affect functions and values of critical areas and buffers. These projects may affect the critical area directly or its buffer. Extending the PAUE to public agencies may increase the number of projects that could depart from strict adherence to the regulations. However, the existing City codes and standards provide a framework for ensuring that projects are thoughtfully designed, and any impacts are appropriately minimized and mitigated. KMC 18.55.200, for example, requires that "Mitigation shall be … sufficient to maintain the functions and values of the critical area, or to prevent risk from a hazard posed by a critical area."

Several agencies other than the city have permit authority over projects in and over streams and lakes, or in wetlands. Any project in these areas would still be required to obtain all necessary permits. These agencies have designed protections and mitigations to address potential adverse impacts. These protections and mitigations, which are based on best available science, could be adapted by the City for projects in critical areas or their buffers and included as additional conditions of approval in City permits.

The following table (Exhibit 6) summarizes potential impact mechanisms and how they may be moderated through Kenmore's existing Municipal Code and standard conditions adapted from other state and federal regulatory authorities.

Exhibit 6. Potential Impacts and Mitigation

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
Habitat	▪ Short-term losses of vegetation and associated habitat during construction. ▪ Permanent losses of vegetation and associated habitat. ▪ Short-term or permanent wetland fill, stream channel modifications, or other alterations. Note: As a practice, the City does not issue permits for permanent wetland fill. In many cases, the proposed "impacted" buffer areas are already in use and	▪ Both permanent and temporary impacts to vegetation in critical areas and their buffers are required to be mitigated as outlined in Kenmore Municipal Code. For example, enhancement, restoration, or compensatory mitigation onsite or offsite may be allowed. ▪ All wetland fills would require mitigation consistent with KMC, as well as	Any in-stream or in-wetland activities would likely require permits from Washington Department of Fish and Wildlife, Washington Department of Ecology, and/or U.S. Army Corps of Engineers. These permits include extensive conditions designed to protect aquatic habitats. ▪ "No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
	a proposed change of conditions or use in that area of buffer does not result in any practical changes to buffer function or degradation of the critical area.	federal and state standards.	crossing should be designed and constructed to minimize adverse effects to aquatic life movements." [1] ▪ "Confine the use of equipment to specific access and work corridors to protect riparian, wetland, and aquatic vegetation." [2] ▪ "Restore the disturbed bed, bank, and riparian zones as close as possible to pre-project condition unless modified elevations and contours are authorized by the department in the approved construction drawings." [2]
Water Quality	▪ Short-term construction-related impacts from sediment/erosion. ▪ Short-term construction-related impacts from incidental spills or accidents. ▪ Long-term operation-related impacts from stormwater management. Note: In many cases within urban areas, potential water quality impacts are temporary in nature, and technologies and BMPs exist that can significantly reduce the duration or intensity of an impact. Rarely do projects introduce long-term adverse water quality impacts. It is more common that new stormwater detention and/or treatment requirements in urban areas developed before modern standards will improve water quality compared to a current condition.	▪ Compliance with the City-adopted *2016 King County Surface Water Design Manual* when applicable. ▪ All projects with any ground disturbance already require development of and compliance with a Temporary Erosion and Sediment Control (TESC) plan. ▪ All projects require compliance with the City's *Stormwater Pollution Prevention Manual*.	▪ All projects over an acre or that might discharge into waterbodies would be operating under a National Pollutant Discharge Elimination System Construction Stormwater General Permit from Washington Department of Ecology, which includes a Stormwater Pollution Prevention Plan and monitoring and reporting requirements. ▪ "Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark…, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow..." [1] ▪ "Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state." [2] ▪ 'Protect all disturbed areas from erosion. Maintain erosion and sediment control until work and cleanup of the job site are completed." [2] ▪ "Completely remove any temporary fill and return the affected areas to pre-project elevation and contours. Fill material must be removed before the end

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
			of the in-water timing window if the fill material could erode into or deliver sediment-laden water into waters of the state." [2]
Water Quantity	▪ Changes to ground or surface water inputs to streams and wetlands resulting from site development and stormwater management.	▪ Compliance with the City-adopted *2016 King County Surface Water Design Manual* when applicable.	Any in-stream or in-wetland activities would likely require permits from Washington Department of Fish and Wildlife, Washington Department of Ecology, and/or U.S. Army Corps of Engineers. These permits include extensive conditions designed to protect aquatic habitats. ▪ "To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, stormwater management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities)." [1]

[1] Source: U.S. Army Corps of Engineers Nationwide Permit General Conditions.

[2] Source: WAC 220-660-120 (Common freshwater construction provisions) which are incorporated into Washington Department of Fish and Wildlife Hydraulic Project Approvals.

WATERSHED APPROACH TO MITIGATION FOR PUBLIC AGENCY PROJECTS

Over the years, scientific studies[4,5,6,7] have increasingly shown that on-site, in-kind mitigation can fail to provide adequate compensation for lost functions in the long term, for a variety of reasons. Some of those reasons are specific to management and maintenance (or lack of) of the mitigation site in the first

[4] Johnson, P., D.L. Mock, A. McMillan, L. Driscoll, and T. Hruby (2006). Washington State Wetland Mitigation Evaluation Study Phase 2: Evaluating Success. Washington State Department of Ecology Publication #02-06-009. Available: https://fortress.wa.gov/ecy/publications/documents/0206009.pdf

[5] Hruby, T., K. Harper, and S. Stanley (2009). Selecting Wetland Mitigation Sites Using a Watershed Approach. Washington State Department of Ecology Publication #09-06-032. Available: https://fortress.wa.gov/ecy/publications/documents/0906032.pdf

[6] Johnson, P., D.L. Mock, E. Teachout, and A. McMillan (2000). Washington State Wetland Mitigation Evaluation Study Phase 1: Compliance. Washington State Department of Ecology Publication #00-06-016. Available: https://fortress.wa.gov/ecy/publications/documents/0006016.pdf

five to ten years after implementation. However, some of those reasons are related to larger-scale ecosystem processes and urbanization outside of the mitigation site. For example, Ecology's *Selecting Wetland Mitigation Sites Using a Watershed Approach* (Hruby and others, 2009) says this:

> "Permitting agencies require compensatory mitigation when applicants cannot reasonably avoid all impacts to wetlands and their functions and values. State and national studies of wetland mitigation, however, show a disappointingly low success rate in meeting performance measures and replacing wetland functions (Ecology 2002; National Research Council 2001). The studies identify a number of reasons for this including poor site selection. Our past policies and practices have over-emphasized the need to replace lost functions at or near the wetlands impacted (the impact site), rather than choosing mitigation sites that best fit with the mitigation goals of the project and its contributing basin. The studies demonstrate a clear need to change this approach."

Accordingly, there is increasing science-based guidance and agency rules that provide direction on how and where to implement mitigation (such as the joint Environmental Protection Agency and U.S. Army Corps of Engineers *Compensatory Mitigation for Losses of Aquatic Resources*[7] and the Ecology resources mentioned above).

Many City critical areas codes (e.g., Sammamish, Kirkland, Lake Forest Park, Seattle), including Kenmore's, include a preference for on-site and in-kind mitigation, with a set of criteria for when off-site and out-of-kind mitigation is appropriate (related to probability of success, connectivity, and adjacent land uses or development pressures). These codes are consistent with Ecology's 2016 *Wetland Guidance for CAO Updates: Western Washington Version*. Effectively, these criteria do not preclude use of a watershed approach to mitigation, and on-site mitigation may still be appropriate. In practice, though, the watershed approach is more difficult to implement as envisioned for private property owners who have limited access to other potential mitigation sites unless there are banking or in-lieu fee programs that serve the impacted drainage basin. Public agencies and utilities typically have a larger suite of properties and corridors to choose from, which may even span multiple drainage basins. They are therefore better equipped to use and implement a watershed approach, starting with comprehensive and forward-looking planning efforts prior to project-specific design and later in the mitigation development process.

City of Mukilteo provides an example of evaluating watershed characterization results at a sub-basin scale. This pairing with local fine scale information led to stormwater and land use strategies and prioritization of specific capital improvements for Japanese Creek basins.[8,9]

4. Other Considerations

This section of the report addresses:

[7] Environmental Protection Agency and U.S. Army Corps of Engineers, 2008, Compensatory Mitigation for Losses of Aquatic Resources, Final Rule. 73 FR 70:19594-19705. April 10. Available: https://www.epa.gov/sites/production/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf

[8] See example with Washington Department of Ecology Watershed Characterization Project Website: https://fortress.wa.gov/ecy/coastalatlas/wc/StoryMap.html?id=mukilteo.

[9] See the City of Mukilteo's Critical Areas Mitigation Program https://mukilteowa.gov/wp-content/uploads/2015/08/01_CAMP-11-10-11_complete01.pdf

(c) *Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science.*

As part of its BAS review, the City can consider non-BAS factors – e.g. legal, social, economic, and political information. Some considerations related to public agency and utility proposals include:

Duty to Serve (Legal): Some public agencies or utilities have a duty to serve the public. For example, schools must serve children at least 8 years old and above and offer K-12 education. Water providers must service all properties in their retail service area. Telecommunication providers must provide landline phone connections. Agencies may have federal or state requirements regarding service reliability, redundancy, expansion, proximity to population served, or other factors. To meet each agency's duty, they may need to consider a variety of planning, engineering, and legal practicalities to site and operate existing and future facilities.

Feasibility (Economic): Under state wetlands protection laws, mitigation requirements should be practicable, and an agency may weigh public costs, logistics, and technology:

> *State and federal laws require applicants to avoid and minimize impacts whenever reasonable through practicable alternatives. Under state rule, a practicable alternative is defined as an alternative that is:*
>
> *"Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."*
>
> *Avoiding and minimizing impacts becomes even more important when rare, high quality, or difficult to replace resources are involved. (State of Washington Department of Ecology, 2018)*

Under the federal Clean Water Act, practicable is similarly defined:

> *Pursuant to these requirements, the district engineer will issue an individual section 404 permit only upon a determination that the proposed discharge complies with applicable provisions of 40 CFR part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines. (CFR › Title 33 › Chapter II › Part 332 - Compensatory Mitigation for Losses of Aquatic Resources, Section 332.1(c)(2))*

Essential Public Facilities (Legal): Under the Growth Management Act some public facilities are considered essential such as highways of regional significance like SR 522 or difficult to site facilities such as solid waste, airports, etc. and cannot be precluded, though mitigation can be required. (RCW 36.70A.200)

Growth Management Act Goals, Other State Laws, and Local Plans and Regulations (Legal and Social): The Growth Management Act has 14 goals that guide plans and regulations, and they are not listed in a priority order. Each community weighs and balances goals. These goals address: urban growth, reduce sprawl, transportation, housing, economic development, property rights, permits, natural resources industries, open space and recreation, environment, citizen participation, public facilities and services, historic preservation, and shoreline management. The City must accommodate growth and provide capital facilities and services to meet the demands of growth according to levels of service standards. Additionally, there are other laws and rules that guide local planning such as regular transportation

improvement programs, stormwater standards, etc. The City must respond to a range of laws as well as the desires and needs of its community.

Capital Facilities Plans (Legal, Social, and Political): Public agencies or utilities often prepare capital facilities plans to meet state laws (e.g. water or wastewater) or to qualify for grant funding (e.g. parks). Through these plans, the need and demand for the facilities is addressed, alternative alignments or locations are considered, and the public is engaged in the policy choices. The agency or utility can use that process to help demonstrate that the least impactful and most appropriate locations have been selected, or there are no other feasible alternatives.

For the City, State law requires "early and continuous public participation" prior to adoption of a capital facilities plan. Public agency projects generally are vetted through this type of process prior to any efforts to implement at the permit review stage, providing more detailed review of potential critical areas impacts and mitigation.

Attachment C provides an evaluation of Parks, Schools, Roads and Trails, Stormwater, Sewer and Water, and Power and Telecommunications, including applicable laws, current facilities, and planned facilities including system plans, master plans, and programs. The information shows that the City and other agencies are managing infrastructure and facilities built decades ago, are extensive throughout the City, and touch on every critical area. However, each has identified needs to modernize or add to their system in a way that accounts for environmental stewardship and meets requirements of federal, state, and local laws.

5. Departures from BAS

HISTORIC PROJECTS

This section of the report addresses the first criterion for departure from BAS:

> *(i) Identify the information in the record that supports its decision to depart from science-based recommendations;*

Historically, the following ten examples of public agency projects support the City's decision to depart from Handbook PAUE recommendations. In all cases, the process to review, approve and construct the capital facility projects included submittal of needed critical area studies and required compliance with appropriate conditions of approval. These critical public agency capital facilities could not have been completed under the standard critical area regulations, but still continue to protect critical area functions and values consistent with BAS while allowing public agencies to meet their responsibilities under state law:

- Brightwater portal (2005)
- Log Boom Park play area (2006)
- Log Boom Park regulator (facility for odor control) (2007)
- Log Boom Park restroom (2007)
- Sewer main extension 163rd / 90th (2015)
- SR-522 pedestrian bridge (2006)
- SR-522 Phase II (2005)
- Swamp Creek flood reduction (2003)
- Tributary 0057 storm drainage and box culvert (2011)
- Wallace Swamp Creek Park sediment pond improvements (habitat channel) (2004)

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These projects were a mix of recreation, utility, transportation, and flood control-related modifications that served public needs, with impacts distributed between streams, wetlands, and their buffers. Any of the above projects that included work in or over a stream, or in a wetland, were also subject to state and/or federal agency review and approval. Following are more comprehensive descriptions of some of these projects that demonstrate the need for the PAUE and the resulting protection of functions and values of the affected critical areas.

Brightwater Wastewater Treatment Facility

Facilities associated with the Brightwater Wastewater Treatment Facility were approved through a PAUE. These actions required more than a variance (which is limited to buffer modifications) and exceeded what could be considered a minimal "reasonable use" of the property. Impacts to wetlands and streams were necessary to install the regional conveyance system portal access and odor control facility. The mitigation strategy included daylighting two streams, and creating, enhancing and restoring wetlands. Hydrology and vegetation monitoring were required for 10 years.

Log Boom Park Restroom Relocation

Although this property is within the shoreline jurisdiction and the PAUE is not applicable, it does illustrate the necessity for special consideration of public agency projects in or near critical areas. Nearly all of Log Boom Park is within wetland buffers. In 2008, an existing restroom, approximately 20 feet from Lake Washington, was relocated to approximately 96 feet from Lake Washington in an area occupied by maintained lawn and a pathway. The existing restroom area was then converted to a swimming beach, a water-dependent use. The project reduced overall impervious surface. Mitigation and enhancement were provided for the buffer impacts, and a maintenance agreement was signed.

Kenmore Jr. High Renovation

The renovation of Kenmore Junior High School was approved through the critical areas variance process but would have required a PAUE had there been any direct wetland impacts and not just buffer modifications. The project also received a zoning variance that enable additional minimization of the proposed buffer impacts. The school facilities were already in wetland buffers. Facility renovations in the buffer required enhancement and restoration.

SR522 West Segment A Project

This major road improvement project was completed in 2016 and included widened and additional vehicle lanes, sidewalks, and public access improvements, among other actions. It was approved through the critical areas variance process but would have required a PAUE had there been any direct stream or wetland impacts and not just buffer modifications. Road realignment activities shifted paved surfaces farther from the stream when feasible. Impacts were mitigated through buffer enhancements.

NEED FOR THE PAUE

This section of the report addresses the second criterion for regulatory departure from BAS:

> *(ii) Explain rationale for departing from science-based recommendations;*

Kenmore incorporated in 1998 but has been a growing urban place since at least the 1930s. The City provides parks and recreation, stormwater, and transportation services. SR-522 traverses Kenmore.

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Northshore Utility District provides water and sewer service, and King County provides wastewater treatment. Northshore School District provides elementary, middle, and high schools. PSE provides power and gas service. Several parks contain extensive critical areas (e.g. Squires Landing and Saint Edward State Park), schools often abut critical areas, and roads and utilities cross and parallel them. See the development pattern and selected critical areas in Exhibit 7.

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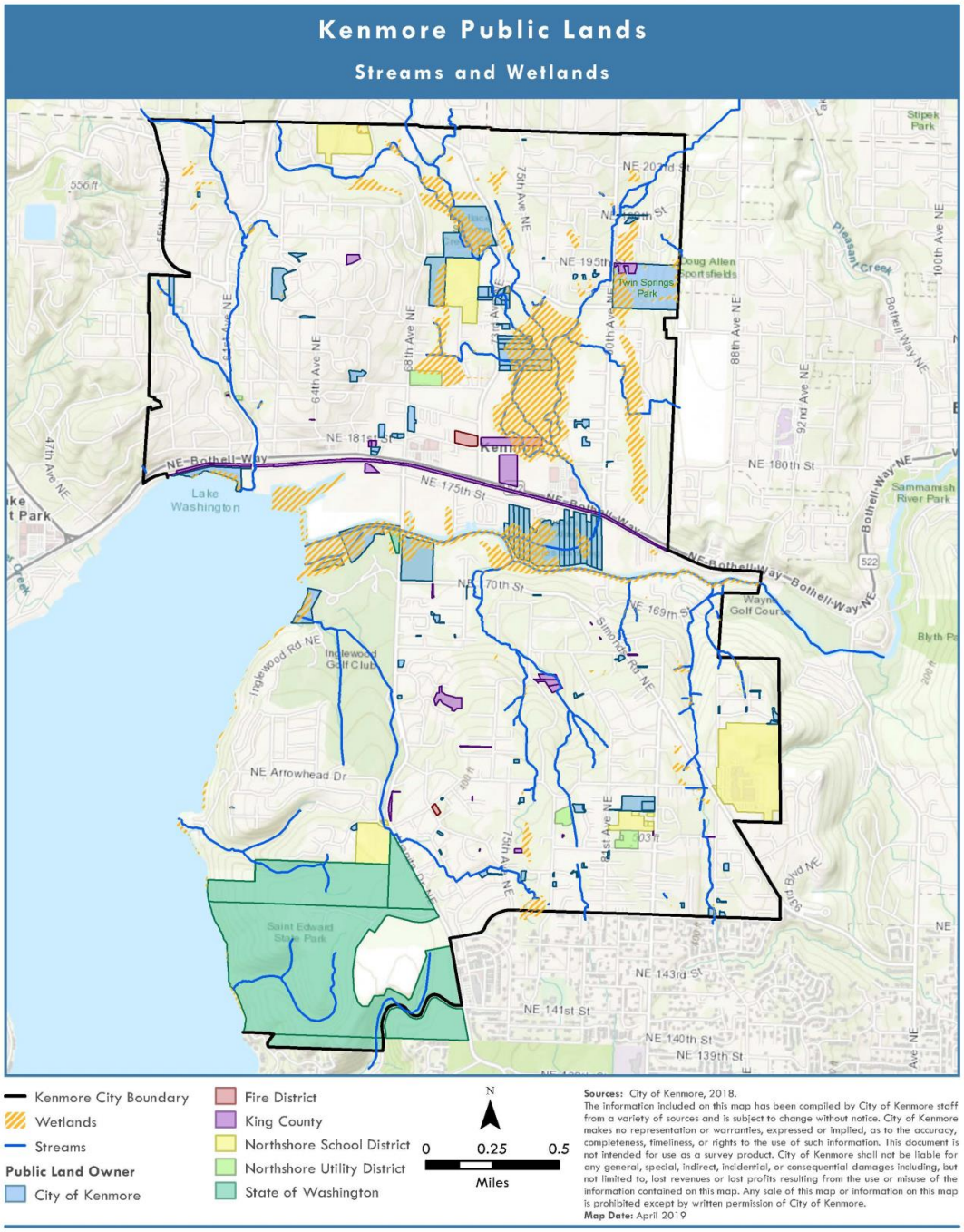
Exhibit 7. Map of Facilities



Source: City of Kenmore, King County, BERK 2018

As previously mentioned and demonstrated by the list of historic projects, public agency and utility projects are unique because of the balancing of non-environmental factors with protection of critical areas. The need for the PAUE process will continue as growth occurs and the Comprehensive Plan and capital facilities plans include projects necessary to manage that growth as required by State law.

FUTURE PROJECTS

This section of the report addresses the third criterion for regulatory departure from BAS:

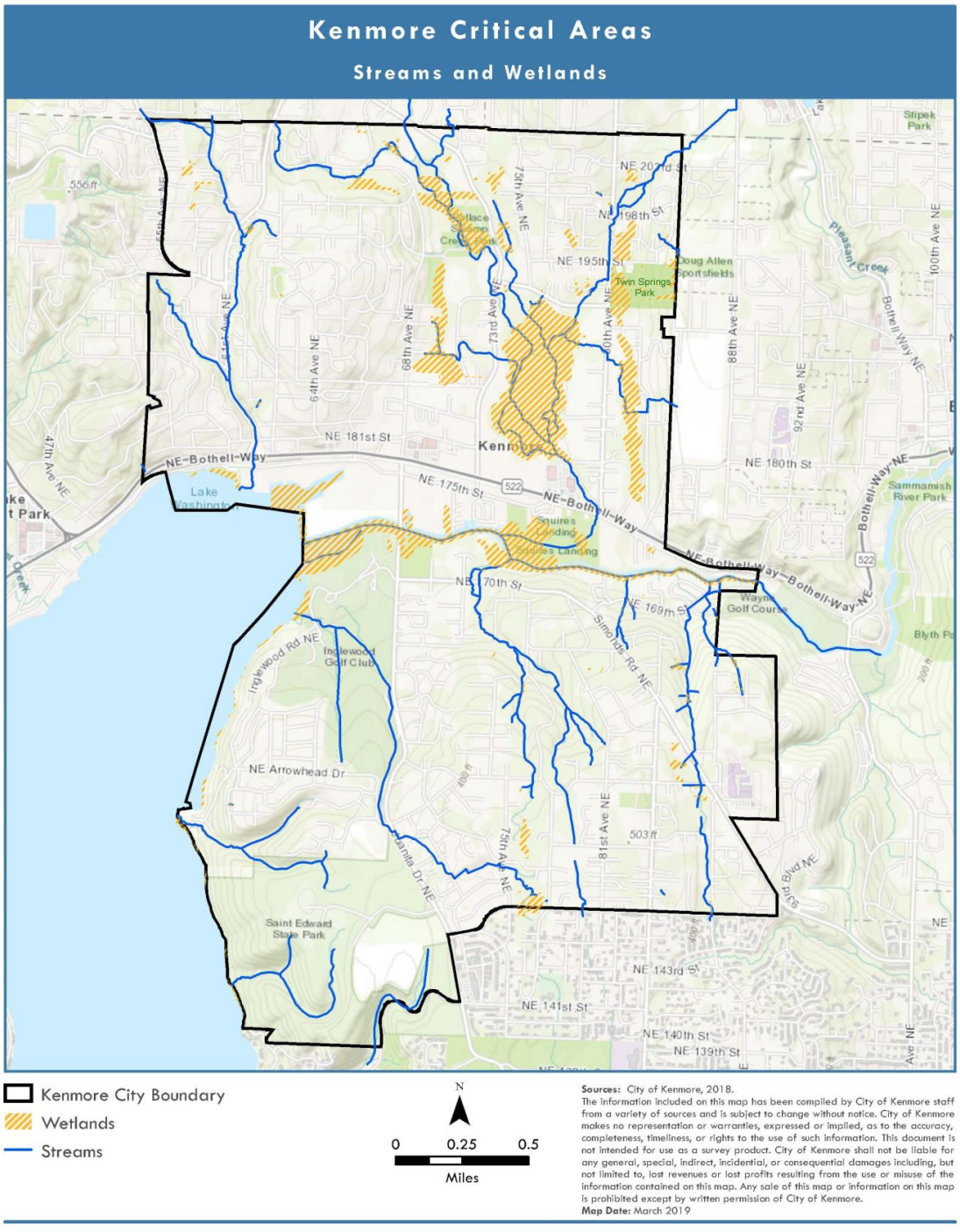
> *(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.*

The City contains three shorelines of the state – Lake Washington, Sammamish River, and Swamp Creek. Smaller streams drain to these shorelines. See Exhibit 8. Wetlands are concentrated within the floodplains of Swamp Creek and the Sammamish River. See Exhibit 8. Geologic hazard areas in Kenmore include lands with erosion, landslide, and seismic hazards. See Exhibit 9.

Critical areas in Kenmore provide the following functions and values:

- **Wetlands** – assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats.
- **Streams** – provide physical habitat for aquatic life and support terrestrial species, convey surface water; includes riparian areas that reduce erosion, store flood waters, and promote water quality
- **Fish and wildlife habitats of importance** – contribute to biodiversity and provide open space corridors.
- **Frequently flooded areas** – perform important hydrologic functions and may present a risk to persons and property.
- **Geologically hazardous areas** – include areas susceptible to erosion, sliding, earthquake, or other geological events, and pose a threat to public health and safety when incompatible development is sited in areas of significant hazard.

Exhibit 8. Streams and Wetlands



Source: City of Kenmore, WDNR, USFWS, AWC, BERK, 2019

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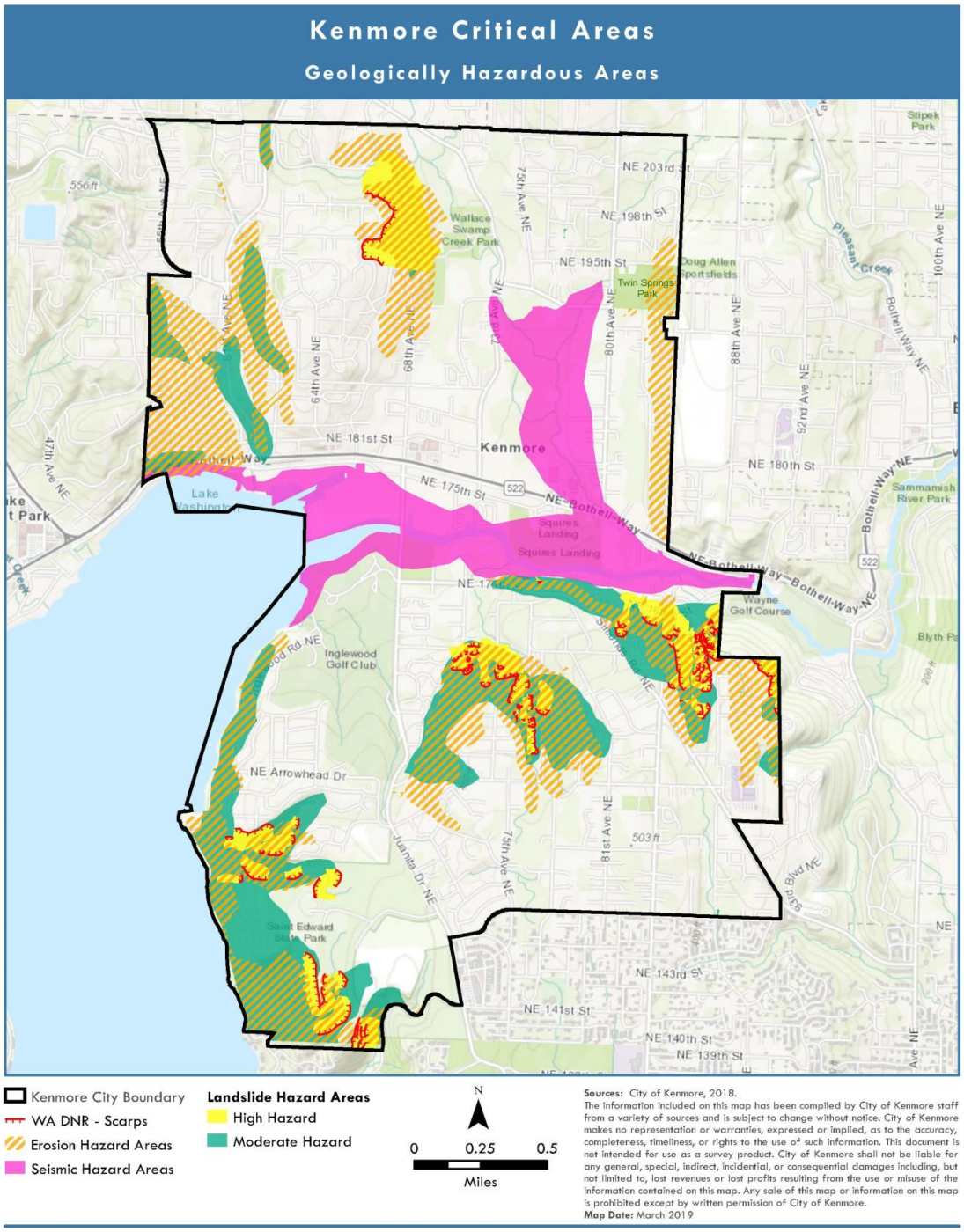
Exhibit 9. Geologically Hazardous Areas



Source: City of Kenmore, Shannon & Wilson, WDNR, AWC, BERK, 2019

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Based on current capital facilities plans and master plans (described in Attachment C), the proposals most likely to use the PAUE process in the next 6 years include:

Parks

The City inherited these sites primarily from King County upon incorporation. These sites provide for active and passive recreation, and open space. Improvements are planned to all parks and most have critical areas including degraded habitats. The system is improved based on a comprehensive evaluation of the system and based on site master plans. The plans balance public health and recreation needs with ecological stewardship. Attachment C lists critical area enhancements incorporated into park master plans. As previously noted, the PAUE process is not available within the shoreline jurisdiction.

Schools

Most schools were renovated and updated in the last 10 years as shown in Attachment C, except Inglemoor High School. There are no specific capacity projects in the 6-Year Capital Plan in Kenmore currently. However, beyond adding capacity, the District implements maintenance and rehabilitation projects. The ability to meet federal and state laws and manage their system may require some campus proposals.

Roads and Trails

The City prepares a Transportation Element, Capital Facilities Element, Transportation Improvement Program, and implements a sidewalk program and neighborhood program. The City has successfully permitted projects with shorelines and critical areas, and improves critical area functions and values, e.g. culverts and fish passage, etc. For SR 522, an essential public facility, the City also complies with federal laws and authorities which may result in other environmental requirements. See Attachment C.

Stormwater

The City manages a built stormwater system in the context of the natural surface water system. The City applies modern stormwater standards for new development. Improvements to the existing system may require alterations of critical areas, but often involve associated environmental enhancements (e.g. culverts and fish passage, reduced erosion and improvement of water quality, etc.) that can result in a net improvement to ecological function.

Water and Sewer

Several sewer or water improvements are proposed to cross over or under streams or rivers or affect geologic hazard areas. Improvements would be designed to avoid impacts where feasible and provide for vegetation restoration. See Attachment C.

Power and Telecommunication

It is likely that projects will be needed near critical areas. Much of it takes place in improved right of way. A current gas project is taking place across the Sammamish River. Within established rights of way, impacts are not anticipated or easily mitigated.

Potential Project-Specific and Cumulative Impacts

The Growth Management Hearing Board's decision included the following statement:

The City failed to include an analysis of environmental impacts of amending the PAUE.

Without assurances that preservation of critical areas functions and values will occur and that critical areas impacts will be minimized, project-specific and cumulative impacts of these public agency and utility projects could be significant in terms of loss of habitat, flood storage, water filtration, and other functions. However, as noted in Exhibit 6, "As a practice, the City does not issue permits for permanent wetland fill. In many cases, the proposed "impacted" buffer areas are already in use and a proposed change of conditions or use in that area of buffer does not result in any practical changes to buffer function or degradation of the critical area." Effectively, many of the projects that could pursue a PAUE in the future include critical area and buffer intrusions "on paper" that do not translate to on-the-ground function reduction. This is the mostly likely circumstance for future park and school projects, and many road and trails projects.

The potential for the utilities (stormwater, water, sewer, power and telecommunications) projects described above to directly encounter functioning critical areas and buffers is greater than for schools, parks, and some road and trail projects. In the case of new or replacement utility lines, the more common impacts relate to temporary construction-related disturbance if the line is below-ground (trenched or directional drilling). These impacts are typically well-controlled by compliance with standard BMPs included in project-specific temporary erosion and sediment control (TESC) plans. If the line bisects a forested community (either wetland or upland buffer), there may also be permanent conversion of forest to shrub depending on utility-specific requirements for plantings, maintenance and future access. Utility line corridors can also become dominated by non-native, invasive plants (Scotch broom or Himalayan blackberry).

6. Conclusion

The Growth Management Hearing Board's decision included the following statement:

> *The City failed to explain how expanding the kinds of projects exempted from critical area regulations can be done without impacting the functions and values of critical areas in violation of RCW 36.70A.172.*

As discussed in this BAS Evaluation, the City's original and revised PAUE proposals are not exemptions from critical areas regulations, but provide an appropriate pathway for allowing essential projects with clear public benefit to move forward while still requiring full and robust compliance with all steps of the mitigation sequencing process.

The fundamental difference between a PAUE and the accepted Variance and RUE processes is in the nature of the projects and the nuances of the review criteria. The same science-based standards for mitigation sequencing and compensation planning and implementation apply to all these processes. However, where the reasonable use exception typically provides a single owner with a mechanism to implement a proposed development that serves only that owner, the PAUE provides public agencies and utilities a mechanism to implement a proposed development that serves the public consistent with federal laws, balancing GMA goals, and meeting local needs. Local system plans help guide city and other agency investments and offer stewardship and enhancement opportunities as demonstrated in Kenmore's local parks, roads, and stormwater plans.

Using the recommended approach to the PAUE for both utility proposals and for expansions of existing public agency proposals, described in the *Code Options and Recommendations* section above, these future

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projects would go through mitigation sequencing, would have a critical areas report prepared by a qualified professional, would meet specific approval criteria founded in BAS, would include public notification and an appeal process, and the permit would include appropriate conditions such as those described above in *Standard Conditions of Permit Review and Approval*. This BAS Evaluation identifies a code proposal that strengthens PAUE review criteria and identifies standard conditions of approval based both scientific and non-scientific considerations consistent with BAS rules. This report would combine the PAUE revisions, with targeted Variance and RUE criteria adjustments for new public agency proposals to recognize the unique public service requirements these uses would have.

Attachment A: Example Exception and Allowed Activity Processes

A-1. KENMORE CURRENT 18.55.160 EXCEPTION – PUBLIC AGENCY AND UTILITY. DETERMINED TO APPLY ONLY TO UTILITIES.

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

B. Exception Request and Review Process. An application for a public agency and 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. 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 public agency and utility exception criteria in subsection D of this section.

D. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

1. There is no other practical alternative to the proposed development with less impact on the critical areas; and

2. The application of this chapter would unreasonably restrict the ability to provide utility services to the public.

A-2. KENMORE 2016 PROPOSAL

Amend Kenmore Municipal Code (KMC) Section 18.20.2102 as follows:

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*.

Amend Kenmore Municipal Code (KMC) Section 18.55.160 as follows:

18.55.160 Exception – Public agency ~~and~~or private utility.

A. If ~~the~~strict application of this chapter would prohibit a *development* ~~*proposal*~~ by:

1. a *public agency* or

2. ~~public utility~~ a private entity delivering water, sewer, stormwater, electrical, or gas services (private utility),

then the agency or private 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. Exception Request and Review Process. An application for a *public agency* ~~and~~or private 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. *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 ability to comply with ~~all of~~ the *public agency* and private utility exception criteria in subsection D of this section.

D. *Public Agency* and Private Utility Exception ~~Review~~ Criteria. The criteria for review and approval of a *public agency* ~~and~~or private utility exceptions are as follows:

1. There is no other *practical alternative* to the ~~proposed~~ *development proposal* with less impact on the *critical areas* or *buffer*; and

2. The *development proposal* benefits the public; and

3. Strict application of this chapter would ~~unreasonably~~ restrict or prohibit the ~~ability to provide utility services to the public~~*development proposal*; and

4. The *development proposal* minimizes impacts to the *critical area* or *buffer* to the maximum extent practical, for example, through placement of facilities on previously disturbed areas, boring rather than trenching for utilities, use of pervious or other low impact materials, etc.; and

5. The *development proposal* mitigates impacts to the *critical area functions and values* to the maximum extent practical, consistent with the *best available science* and with the objective of no net loss of *critical area functions and values*. For impacts to *wetlands*, the *development proposal* should strive to meet the mitigation performance standards outlined in KMC Sections 18.55.330(G) and 18.55.330(H).

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A-3. COMMERCE CRITICAL AREAS HANDBOOK, 2018

Agency/Utility Exceptions

The Commerce Critical Areas Handbook 2018 gives example language on agency/utility exceptions:

> If the application of the critical areas regulations would prohibit a development proposal by a public agency or utility, the regulations may allow the agency or utility to apply for an exception. Criteria for review and approval may include:
>
> - There is no other practical alternative to the proposed development with less impact on the critical areas;
> - The application of the critical area regulations would unreasonably restrict the ability to provide utility services to the public;
> - The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
> - The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
> - The proposal is consistent with other applicable regulations and standards.

Commerce Guidebook 2018 – Allowed Uses or Activities

The Handbook also provides guidance on allowed activities in critical areas or buffers such as some roadway expansion or minor utility proposals:

"Allowed uses or activities" are those uses or activities that are unlikely to result in a critical areas impact because of other regulations or previous reviews. These activities are subject to review by the city or county, but do not require a separate critical areas review or report. Since these activities are generally not "exempt," the critical areas standards continue to apply and the underlying permit could be conditioned to ensure that the activity complies with critical areas protection. Some jurisdictions use the term "partial exemptions" to note that these activities are exempt from the critical areas review process, but not the protection standards. Allowed uses or activities that may not need to complete a new critical review might include:

- **Projects previously reviewed for critical areas impacts.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits), may not need to complete a new critical area review. Some jurisdictions place a time limit on how long a previous critical area review is good for, such as five years, to account for changes in codes, critical areas' boundaries, or other factors over time.
- **Modification of existing structures.** Structural modifications or replacement of an existing legally constructed structure that doesn't alter or increase impacts to a critical area or buffer and doesn't increase risk to life or property.
- **Activities within the improved right-of-way.** 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 county/city authorized private roadway. Provisions to address activities that alter a wetland or watercourse or result in the transport of sediment or increased stormwater runoff may include: (1) Increasing buffer widths equal to the width of the right-of-way improvement, including disturbed areas; and (2) Retention and replanting of native vegetation along the right-of-way and resulting disturbance.
- **Minor utility projects.** Utility projects with minor or short-duration impacts to critical areas and no significant impact on the function or values of a critical area, provided such projects are constructed with best management practices and additional restoration measures. Criteria for minor utility projects can include: (1) No practical alternative with less impact on the critical area; (2) The activity involves the placement of a small utility facility (e.g., pole, street sign, etc.); and (3) The activity involves disturbance of an area less than a certain number of square feet.
- **Public and private pedestrian trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers. Conditions for approval can include: (1) The trail surface must meet all other requirements including stormwater regulations: (2) Critical area and/or buffer widths must be increased, where

WAC 365-195-910 does not say Commerce's model ordinances are the best and most current science available. *Id* at 15.

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possible, equal to the width of the trail corridor, including disturbed areas; and (3) Trails proposed in landslide or erosion hazard areas must be constructed so as to not increase the risk of landslide or erosion in accordance with an approved geotechnical report.

- **Minor vegetation removal.** Selective removal of invasive, noxious and non-native vegetation with hand labor and light equipment. However, removal of vegetation from a critical area or its buffer may require approval.
- **Removal of hazard trees.** Removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property may require a report from a certified arborist, registered landscape architect, or professional forester. The report documents the hazard and provides a replanting plan for replacement trees consistent with the jurisdiction's compensatory mitigation standards to provide for no net loss of ecosystem functions and values. Other tree pruning or cutting activities may be subject to requirements regarding tree replacement or provision for critical wildlife habitat. Measures to control a fire or halt the spread of disease or damaging insects should be consistent with the state Forest Practices Act (Chapter 76.09 RCW, and local forest regulations if adopted) with provisions for replacement.
- **Chemical applications.** The application of herbicides, pesticides, fertilizers, or other hazardous substances, as approved the city/county. Provided, their use should be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency.[10]
- **Minor site investigation work.** Work necessary for land use permit submittals, such as surveys, soil logs, percolation tests, and other related activities, can be an allowed use when they do not require construction of new roads or significant amounts of excavation. But, in every case, impacts to the critical area should be minimized and disturbed areas immediately restored.
- **Navigational aids and boundary markers.** Construction or modification of navigational aids and boundary markers.

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A-4. KING COUNTY ALLOWED ALTERATIONS EXAMPLES

King County has a detailed table of allowances in critical areas.

KEY
Letter "A" in a cell means alteration is allowed

A number in a cell means the corresponding numbered condition in subsection D. of this section applies

"Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network

ACTIVITY	LANDSLIDE HAZARD AND OVER 40% AND BUFFER	STEEP SLOPE HAZARD AND BUFFER	WETLAND AND BUFFER	AQUATIC AREA AND BUFFER AND SEVERE CHANNEL MIGRATION	WILDLIFE AREA AND NETWORK
Roads					
Construction of new public road right-of-way structure on unimproved right-of-way			A 26	A 26	
Construction of new road in a plat			A 26	A 26	
Expansion beyond public road right-of way structure	A	A	A 26	A 26	
Bridges or culverts					
Construction of a new bridge	A 16, 39	A 16, 39	A 16, 39	A16, 39	A 4, 16, 39
Replacement of bridge or culvert	A 16	A 16	A 16	A 16, 30	A 16, 27
Expansion of bridge or culvert	A 16, 17	A 16, 17	A 16, 17, 31	A 17, 31	A 4
Utilities and other infrastructure					
Construction of new utility corridor or utility facility	A 32, 33	A 32, 33	A 32, 34	A 32, 34	A 27, 32, 35
Construction or maintenance of a hydroelectric generating facility	A 67	A 67	A 66	A 66	A 4, 66
Construction of a new residential utility service distribution line	A 32, 33	A 32, 33	A 32, 60	A 32, 60	A 27, 32, 60
Maintenance, repair or replacement of utility corridor or utility facility	A 32, 33	A 32, 33	A 32, 34, 36	A 32, 34, 36	A 4, 32, 37
Construction of new surface water conveyance system	A 32, 33	A 32, 33	A 32, 38	A 32, 38	A 4
Construction, maintenance or repair of in-water heat exchanger			A 68	A 68	
Maintenance, repair or replacement of existing surface water conveyance system	A 33	A 33	A 16, 32, 38	A 16, 40, 41	A 4, 37
Construction of new surface water flow control or surface water quality treatment facility			A 32	A 32	A 4, 32
Construction of new flood protection facility			A 42	A 42	A 27, 42
Maintenance, repair or replacement of flood protection facility	A 33, 43	A 33, 43	A 43	A 43	A 27, 43
Flood risk reduction gravel removal	A 61	A 61	A 61	A 61	A 61
Construction of new instream structure or instream work	A 16	A 16	A 16	A 16, 44, 45	A 4, 16, 44, 45
Recreation					
Construction of new trail	A 46	A 46	A 47	A 47	A 4, 47
Habitat, education and science projects					
Habitat restoration or enhancement project	A 49	A 49	A 49	A 49	A 4, 49

A summary of common conditions cited in the table includes:

Facilities over water:

- the corridor is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the department determines that there is no other feasible crossing site.
- the corridor width is minimized to the maximum extent practical.
- the construction occurs during approved periods for instream work.
- the corridor will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- if new construction, bridge piers or abutments for bridge crossings are not placed within the FEMA floodway or waterward of the ordinary high-water mark.

Facilities in geologically hazardous areas:

- the alterations will not subject the critical area to an increased risk of landslide or erosion.
- vegetation removal is the minimum necessary to locate the utility or construct the corridor.
- significant risk of personal injury is eliminated or minimized in the landslide hazard area.

Construction of new trail:

- No clearing, external construction or other disturbance in a fish or wildlife habitat of importance is allowed during breeding seasons.
- Allowed as long as the trail is not constructed of impervious surfaces that will contribute to surface water run-off, unless the construction is necessary for soil stabilization or soil erosion prevention or unless the trail system is specifically designed and intended to be accessible to handicapped persons.
- to the maximum extent practical, buffers are expanded equal to the width of the trail corridor including disturbed areas.
- there is not another feasible location with less adverse impact on the critical area and its buffer.
- the trail is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the department determines that there is no other feasible crossing site.
- the trail width is minimized to the maximum extent practical.
- the construction occurs during approved periods for instream work.
- the trail corridor will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- the trail may be located across a critical area buffer for access to a viewing platform or to a permitted dock or pier.

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Attachment B: State Sources of Science

Washington State Department of Ecology's sources of science for **wetlands** include, but are not limited to:

- *Wetlands in Washington State - Volume 1: A Synthesis of the Science*, March 2005
- *Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands*, April 2005
- *Update on Wetland Buffers: The State of the Science*, October 2013
- *Washington State Wetland Rating System for Western Washington*, 2014 Update
- *Selecting Wetland Mitigation Sites Using a Watershed Approach*, December 2009

The Washington State Department of Fish and Wildlife's sources of science for **fish and wildlife habitat conservation areas** include, but are not limited to:

- *Management Recommendations for Washington's Priority Habitats: Riparian*, 1997 (currently being updated and open for public comment)
- *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*, 2018
- *Riparian Ecosystems, Volume 2: Management Recommendations*, 2018
- *Stream Habitat Restoration Guidelines, 2012*
- *Water Crossing Design Guidelines, 2013*

The Washington State Department of Ecology describes sources of best available science and effective regulation in **frequently flooded areas** at a website:

- Frequently flooded areas: Critical Areas Ordinance, accessed September 19, 2018

A description of **geologic hazards**, mapping, and resources is found at the Washington Department of Natural Resources website:

- Geologic Hazards and the Environment, accessed September 19, 2018.

The Washington State Department of Commerce Growth Management Services has also been updating guidance on how jurisdictions consider BAS in **critical areas regulations**, with several chapters completed in June 2018, and the final chapters ready in fall 2018:

- *Critical Areas Handbook*, 2018

Attachment C: Public Facility and Utility Evaluation

This section considers system plans or master plans, how these plans address alternative public facility and utility locations, and how they have identified avoidance, impacts, and mitigation measures.

PARKS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Identification of Open Space Corridors – RCW 36.70A.160

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. …

Other Laws and Rules

Federal Americans with Disabilities Act requirements influence project locations and design, e.g. trail and sidewalk widths and parking.

The State Shoreline Management Act requires no-net-loss of shoreline ecological function and requires shoreline public access be implemented when new demand is created.

Washington State plans for state facilities and applies public use rules and regulations.

Inventory

After Kenmore incorporated in 1998, the City eventually inherited parks acquired by King County. Kenmore has 92.5 acres of parks.

Exhibit 1. Kenmore Park Inventory

Park Name	Classification	Acreage	Shoreline	Stream	Wetland	Flood	Geo
Linwood	Neighborhood	1.4		X			
Moorlands	Neighborhood	3.6					
Northshore Summit	Neighborhood	3.6			X		X
Squire's Landing	Nature	40.4	X		X	X	X
Wallace Swamp Creek	Nature	25.5	X		X	X	X
Rhododendron	Community	12.5	X				
Log Boom	Waterfront	5.5	X		X		
Total		**92.5**					

Source: City of Kenmore 2013

Other regional facilities include St Edward State Park, Burke Gilman Trail, and Tolt Pipeline Trail.

Exhibit 2. Regional Park Facilities

Park Name	Owner	Acreage/Length	Shoreline	Stream	Wetland	Flood	Geo
St Edward	State Park	291 acres	X	X	X		X
Burke-Gilman Trail	King County	2.5 miles	X	X	X	X	X
Tolt Pipeline Trail	Seattle/Kenmore	.28 miles			X		

Source: City of Kenmore 2013

The City has also inherited or acquired Public Open Space, which includes property that is not presently accessible or serves to protect habitat or environmentally sensitive areas. Examples include the Inglewood Wetlands located along Lake Washington and the Sammamish River and multiple parcels along 73rd Avenue NE associated with flood control efforts. In all the City has 29.36 acres of city-owned open space, King County has 2.58 acres associated with the heron rookery, and Seattle Audubon has 4.16 acres.

System Management / Future Plans

The City plans and manages its parks, recreation, and open space through a Park, Recreation, and Open Space Plan (PROS; adopted Nov. 25, 2013). The City has goals to enhance and develop its existing

properties, add a water walk, as well as protect sensitive areas. The PROS Plan also has a habitat conservation element.

> *Goal P-2 Create an interconnected system of Linear Parks, sidewalks, bike routes and safe crossings linking and improving access to the downtown, waterfront, parks, and public spaces within Kenmore and with neighboring cities. (A/D) (PP)*
>
> *Goal P-3 Protect environmentally sensitive areas, including Nature Parks, and provide opportunities for restoration, enhancement and public access. (S)*
>
> *Goal P-4 Preserve, develop, and enhance existing parks and similar city properties to provide a balance between passive and active recreation opportunities, acquire new parks where needed and appropriate and when resources are available.*

Kenmore has also developed park master plans for most parks which identify critical area protection and enhancement measures. The Kenmore Walkways and Waterways includes several projects in current parks including Rhododendron Park, Log Boom Park, and Squire's Landing.

Exhibit 3. Kenmore Parks Plans and Critical Area Protection & Enhancement Measures

Property	Master Plan	Critical Area Protection & Enhancement Measures
Existing Parks		
Linwood	X	Not applicable
Moorlands	X	Not applicable
Northshore Summit	X	▪ Enhanced wetland, wetland buffer
Squire's Landing	X	▪ New elevated walkways, trails, and viewpoints, and natural open space and environmental enhancements (listed below) ▪ Environmental enhancements: upland restoration, wetland creation area, wetland restoration/enhancement, and wetland buffer.
Wallace Swamp Creek	X	▪ Restore degraded habitat areas including riparian corridor restoration
Rhododendron	X	▪ Walkways and Waterways Proposals: improve public access to waterfront and to preserve and enhance ecological functions of existing wetlands and their buffers.
Log Boom	X	▪ Improve public access to Lake Washington waterfront and preserve and enhance ecological functions of existing wetlands and their buffers, as much as possible. ▪ Log Boom Beach restoration assumes 6:1 mitigation for 0.5-acre beach restoration
Tolt Pipeline Trail	X	Not applicable
New Projects		
Water Walk and Waterfront Master Plan	Future	▪ Since land is not fully acquired the environmental conditions are unknown. If critical areas are present, critical area regulations, shoreline regulations, and master planning would determine habitat protection and enhancement measures.
Twin Springs Park (Future)	Future	▪ Habitat restoration

Source: City of Kenmore 2013, 2018

Summary

The City owns developed and undeveloped parkland and open space. Other state and county agencies own regional parkland and trails. Most of the properties contain critical areas or their buffers and serve both recreation and open space functions.

Future park and trail development has been identified through a system plan. Given limited land availability and development patterns, the City must leverage its existing parks and work with partners such as Seattle on the Tolt Pipeline to create new opportunities. To connect existing and future facilities and to provide recreation that meets the demand for parks and recreation, the City would develop already disturbed sites in an urban environment with degraded wetlands and streams and shorelines. There are opportunities for both recreation and environmental protection and enhancement going forward. The City has identified opportunities for restoration and enhancement on its park sites through master plans. Master plans have thoughtfully balanced both public access to recreation with stewardship of environmentally sensitive areas and enhancement/restoration.

SCHOOLS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

Many state laws address education requirements from operations to curriculum to public works. A detailed list is available at this link: http://www.k12.wa.us/RulesRegs.aspx. In terms of a duty to serve, any child 8 years of age and under 18 years of age shall attend a public school.

Inventory

There are three elementary schools, one middle school, and one high school in Kenmore. All were built decades before Kenmore incorporated in the 1950s and 1960s. Many decades later, schools were modernized. All have portables.

Exhibit 4. School Sites in Kenmore: Capacity, Age, Recent Improvements

School	Year Built	Last Modernization or addition	Permanent Classroom Capacity	Portables			Total Capacity
				Total #	Interim Capacity	% of Total	
Arrowhead ES	1957	1994/2011	312	4	96	23.5%	408
Kenmore ES	1955	2002/2011	408	6	144	26.1%	552
Moorlands ES	1963	2002/2011	432	9	216	33.3%	648
Kenmore MS	1961	2002/2008/2012	849	1	23	2.6%	872
Inglemoor HS	1964	2000	1,677	6	146	8.0%	1,823

Source: Northshore School District, 2017

Most of the school sites are located in or near mapped critical areas and their buffers.

Exhibit 5. Kenmore School Sites and Critical Areas Onsite or Near

School	Shoreline	Stream	Wetland	Flood	Geo
Arrowhead ES		X			
Kenmore ES			X	X	
Moorlands ES					
Kenmore JHS		X	X		X
Inglemoor HS					X

Source: City of Kenmore, BERK 2018

System Management / Future Plans

District growth projections anticipate growth of over 2,300 new students in the next ten years. The District also must respond to federal and state requirements, e.g. reduced class sizes. The District uses several means to manage and efficiently use its facilities such as altering attendance boundaries, installing portables, and adding capacity at existing sites or new properties. However, no major capital projects are proposed in Kenmore in the 2017 6-year capital facility plan (2017-2022). Improvements are proposed in other locations in the district. However, as shown in prior tables the schools are several decades old and were modernized for the most part in 2011 and 2012 except for Inglemoor High School last modified in 2000. It is anticipated that future school improvements may be proposed as needs or demand arises.

The District conducts environmental review itself, but projects in or near critical areas must comply with City regulations.

ROADS AND TRAILS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including: [see law for details – all modes – local and state]

(iv) Finance, including: [see law for details]

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies.
…

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation

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systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

If federal funds are used for roads or if a permit is required from a federal agency, the City must comply with the National Environmental Policy Act and related environmental authorities such as federal Endangered Species Act. Many roads have stormwater facilities and must comply with other state or federal laws (see below).

Inventory

The City of Kenmore owns and maintains over 110 miles of public road, and shares management of 2 miles of SR 522 with the Washington State Department of Transportation. The City's Public Works Department manages the improvement and maintenance of this transportation network.

Some roadways cross or abut streams, wetlands, floodplains, and geologically hazardous areas. Many of the roads were established decades ago without modern stormwater treatment or management.

SR 522 is a state highway under Kenmore's management. It is an essential public facility under state laws. It crosses shorelines (e.g. Swamp Creek), creeks, floodplains, and geologically hazardous areas (seismic), and lies near wetlands.

System Management / Future Plans

The City or state may require roadway improvements to manage all modes of travel – cars, transit, bikes, and pedestrians.

The City has adopted a Transportation Element of its Comprehensive Plan. The City also phases and programs projects through its Capital Facility Plan and Transportation Improvement Program. The City also has a Neighborhood Transportation Plan Program, where local projects may include signing and striping or lighting. Some larger projects may also be identified.

A sample of city capital programs and projects include:

- SR 522 West Segment B Improvements (57th to 61st Avenues)
- West Sammamish River Bridge (Southbound Traffic) (See environmental permitting results below)
- Sidewalk Plan – 20-30 Year Plan with 6-Year Priority List
- Walkways and Waterways

- Juanita Drive Pedestrian and Bicycle Safety
- 68th Avenue Pedestrian and Bicycle Safety

Examples of recent road projects that resulted in shoreline and critical areas permits and related enhancements include:

West Sammamish River Bridge Proposal and Environmental Protection: Replacement of an existing two-lane, 600 foot-long by 30-foot-wide bridge that carries southbound traffic across the Sammamish River ("West Sammamish River Bridge"). Constructed in 1938, the West Sammamish River Bridge has become an important link in the regional transportation network; each day 26,000 vehicles and 2,000 transit riders utilize the bridge. In 2012, an inspection of the bridge revealed critical deficiencies including cracking, settlement and significant loss of soil around the piers. The bridge sufficient rating is 6.45 out of 100; replacement is considered critical. Repair is not considered cost-effective or practical. The project proposes to replace the deteriorated bridge with a new and wider two-lane bridge that includes an added 16-foot-wide bicycle and pedestrian path that meets current ADA standards.

The existing bridge is supported by 11 piers and the new replacement bridge will be supported by six (6) piers that align with the East Sammamish River Bridge, resulting in a net reduction of piers and improved navigability and channel flow. Coffer dams will be installed to isolate pier removal and pier installation areas from Sammamish River flows.

The project does not add additional vehicle capacity and is not anticipated to result in additional noise. Work includes construction of the bridge, abutments, roadway work tying the new bridge into 68th Avenue NE/Juanita Drive NE roadways, lighting, aesthetic improvements to the East Sammamish River Bridge so both bridges match, extending and improving bicycle and pedestrian facilities along both sides of 68th Avenue NE, upgrading signals, replacing utilities, landscaping, stormwater treatment, and temporary reconfiguring boat launch parking during construction.

The project spans three (3) shoreline environments: 1) Downtown Waterfront (DW) located north of the Sammamish River, 2) Urban Conservancy (UC) located south of the Sammamish River, and 3) Aquatic (A) located in areas below the Ordinary High-Water Mark (OHWM).

Environmentally Critical Areas include the Sammamish River, Fish and Wildlife Habitats of Importance, Seismic Hazard, Flood Hazard, and two (2) associated Wetlands. Environmentally critical areas have been addressed in detail to ensure compliance and adequate protection measures.

Lower Swamp Creek Bridge Repair: The proposal is for the repair of existing bridge referred to as Lower Swamp Creek Bridge #5015 located at NE 175th St and 80th Ave NE. The repair includes patching pick holes on the top of the concrete bridge, treating the ends of the glulam cap beams with roofing tar and covering with tin hats, hand relocating existing loose scatter riprap to protect the upstream corner of Pier #1 and placing quarry spalls behind the timber fender planks. Best management practices (BMPs), as outlined in the King County Surface Water Design Manual, will be implemented to reduce and control soil erosion.

STORMWATER

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land... The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. … Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

The City must comply with:

- Clean Water Act
- National Pollutant Discharge Elimination System

Inventory

Kenmore's Public Works Department is responsible to ensure that public surface water and stormwater systems function properly. They oversee 4,550 catch basins and manholes, 69 miles of drainage pipes, 13 miles of ditches, and over 200 flow control and water quality facilities.

The City also inspects and regulates privately owned and maintained surface water and stormwater systems, including an additional 2,400 catch basins and manholes, 47.5 miles of drainage pipes, 6 miles of ditches, and 130 flow control and water quality facilities. Surface water management also relies on

the natural surface water system and vegetation including forests, wetlands, floodplains, rivers, and streams on both public and private lands.

Development can cause problems like flooding, erosion, sedimentation, habitat loss, loss of groundwater recharge, and water quality degradation, and therefore Surface Water Management policies, codes, and procedures are implemented to reduce adverse impacts including comprehensive and thorough permit review, construction inspection, enforcement, and maintenance. The City's full Surface Water Runoff Policy can be found in Kenmore Municipal Code Chapter 13.35. Since 2016, the City has utilized the 2016 King County Surface Water Design Manual, City of Kenmore Surface Water Design Manual Addendum, and the 2016 City of Kenmore Road Standard to design and implement projects.

Low Impact Development (LID) is the City's surface water management philosophy that strives to manage surface water at the source through principles such as, but not limited to:

- Retention of native soils, vegetation and trees
- Reduction of impervious areas
- Clustering of development away from critical habitat

These requirements are met by using Best Management Practices (BMPs) like rain gardens, green roofs, bio-retention facilities and permeable surfaces (including asphalt and concrete pavements, pavers and reinforced vegetated surfaces).

SEWER AND WATER

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

The District must abide by several state and federal laws:

- Federal Clean Air Act
- Federal Clean Water Act
- Federal Endangered Species Act
- Local Permits (e.g. Critical Areas)
- Municipal Water Law
- National Environmental Policy Act
- Reclaimed Water Regulations and Standards
- Safe Drinking Water Act
- Shoreline Management Act Permit
- State Hydraulic Project Approval
- State Environmental Policy Act
- State Water Pollution Control Act
- Water Rights

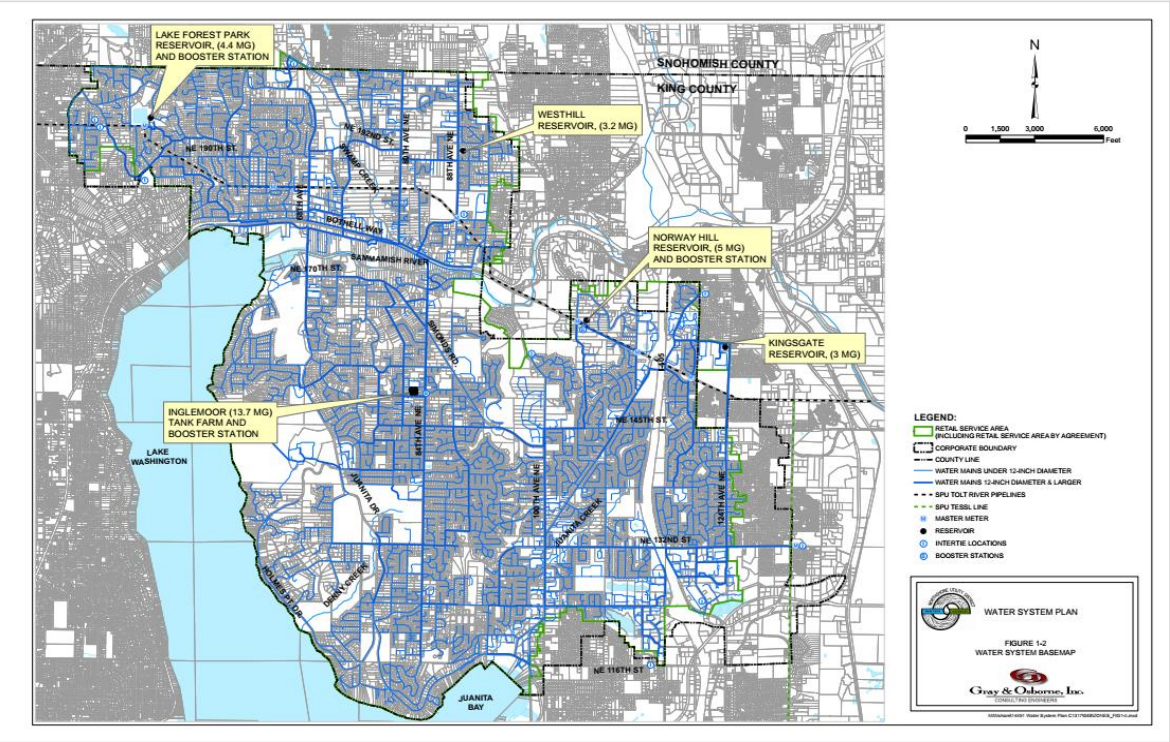
Inventory

Northshore Utility District provides the local water distribution system and wastewater collection system. The district purchases water from the City of Seattle and has a 60-year contract as of 2005.

The Northshore Utility District has a duty to serve within its water retail service area. All proposed structures and developments within the District's retail service area is required connect directly to the District's water system.

The water system traverses every corner of Kenmore and crosses all types of critical areas and shorelines.

Exhibit 6. Water System Base Map

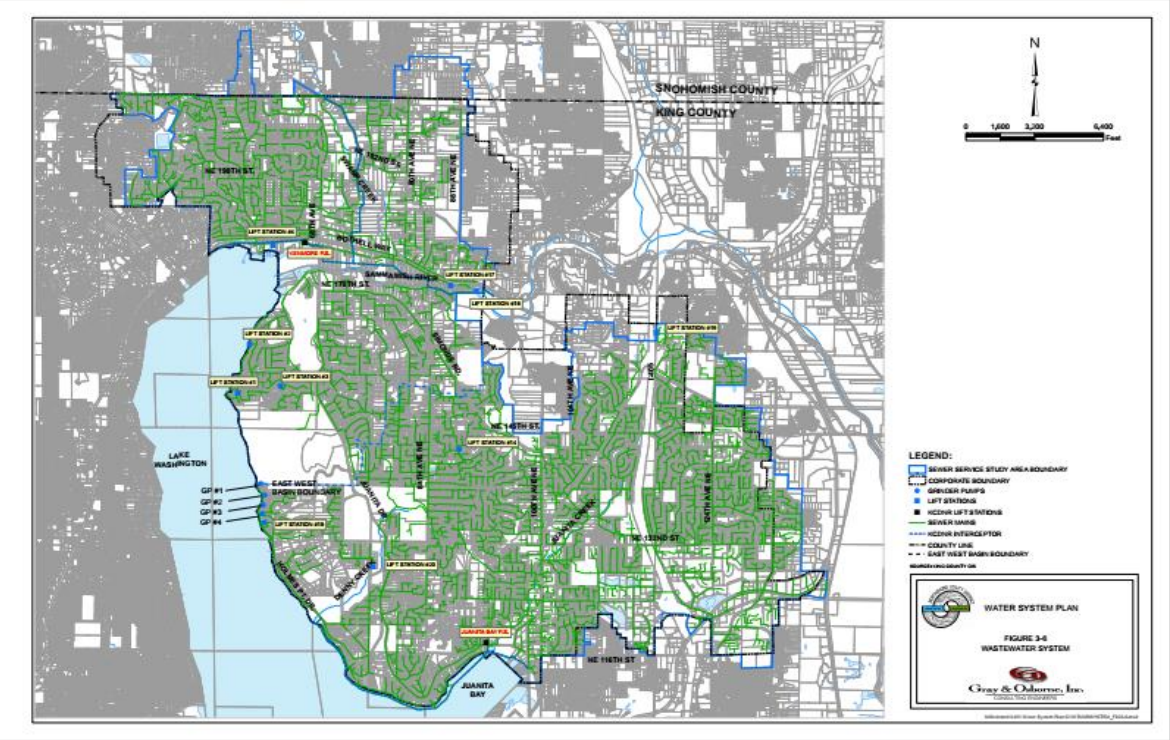


Source: NUD 2016

The District has a 2017 Water System Comprehensive Plan. Proposed water system capital projects are proposed in Kenmore including water main replacement projects. For example, projects include St. Edwards Water Main Loop that will be located in an existing sewer easement. The Inglemoor Restrained Joints in Liquefaction Zone Project will strengthen the pipeline through unstable soils along its alignment. The 68th Avenue Ne Bridge Water Main Replacement would will replace approximately 800 linear feet of the existing 12-inch ductile iron water main attached to the existing bridge crossing of the Sammamish River. The Sammamish River Crossing Replacement Water Mains project plans to directionally drill a 10-inch water main beneath the Sammamish River at 84th Avenue NE. The Inglemoor Transmission Main Replacement would replace the Inglemoor Transmission Main between the Tolt connection and the Inglemoor Tank Farm and likely follow the alignment of the existing pipeline.

The District owns and operates a wastewater collection system consisting of collection sewers, trunk sewers, lift stations and force mains. King County's Department of Natural Resources (KCDNR) Brightwater Treatment System provides wastewater treatment. In response to increased growth and limited expansion options, KCDNR designed and constructed the Brightwater Treatment System which began operation in September 2011.

Exhibit 7. Wastewater System



Source: NUD 2016

The District has a 2006 Wastewater System Comprehensive Plan. A recently bid project in Kenmore includes:

- Slough/68 City of Kenmore Bridge Sewer Bypass Installation of approximately 380 linear feet (LF) sanitary sewer piping, approximately 170 LF of steel casing pipe, four manholes, one sanitary sewer stub, two connections to the existing system, and abandonment in place of the existing sanitary sewer main. Work will include all labor, appurtenances, equipment to facilitate the work, and restoration. The proposed project is located within City of Kenmore - Rhododendron Park, Kenmore Boat Launch, and City right-of-way.

POWER AND TELECOMMUNICATIONS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

Other Laws and Rules

The Washington Utilities and Transportation Commission (WUTC) regulates Power (electric and gas) and Telecommunication utilities.

By rule, (WAC 480-100-238) and (WAC 480-90-238), all natural gas and electric utilities regulated by the commission are required to develop plans for how they will obtain future energy resources for their customers. An Integrated Resource Plan is used to identify a utility company's long-term energy resource strategy. These plans describe how the company will meet future customer needs at the least cost to ratepayers. Utility companies are required to update their plans every two years.

The WUTC regulates the rates and services of telephone companies operating in the state of Washington. The Federal Telecommunications Act of 1996 was the first major re-write of the Communications Act of 1934. It opened up local markets to competition, which changed the dynamics of the existing system of funding universal service. The 1996 Act explicitly adopted principles to guide universal service policy. These principles include:

- Promote the availability of quality services at just, reasonable and affordable rates for all consumers
- Increase nationwide access to advanced telecommunications services
- Advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas, at rates that are reasonably comparable to those charged in urban areas
- Increase access to telecommunications and advanced services in schools, libraries and rural health care facilities
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services for the fund supporting universal service programs

Inventory

Frontier Communications Northwest, Inc. serves Kenmore with traditional landline services. Puget Sound Energy provides electric and natural gas service to Kenmore. These facilities tend to be in street rights of way and are found in every neighborhood and extent of the city limits. The facilities cross all critical areas types in Kenmore.

Puget Sound Energy is implementing a gas main relocation area across the Sammamish River Bridge in 2018: https://www.pse.com/pages/pse-projects/kenmore-public-improvement-projects. Other projects are likely in the future as areas change, e.g. Lakepointe.

Attachment D: Preparer Qualifications

SHANNON & WILSON, INC.

Amy Summe, Associate

Amy is a senior biologist/permit specialist and associate with Shannon & Wilson, Inc., a geotechnical engineering and environmental services firm. Amy has more than twenty years of experience in local, state and federal permitting of public and private projects, including schools, parks, utilities, roads, and commercial and residential developments. Over the last 15 years, she has also specialized in policy and regulation development: critical areas regulations updates under the state's Growth Management Act (over 6 efforts) and shoreline master programs under the Shoreline Management Act (managed or contributed to more than over 34 efforts, including cities and counties in eastern and western Washington). Most of those SMP updates also included updates of the critical areas regulations as they apply in shoreline jurisdiction.

Education

- B.S. Zoology, Washington State University, Pullman, 1997
- B.S. Environmental Science, Washington State University, Pullman, 1997

BERK CONSULTING, INC.

Lisa Grueter, Principal

Lisa is a senior land use planner and principal with BERK Consulting, Inc., a public policy firm. Lisa has more than thirty years of experience in community planning for the public and private sectors. Her expertise includes comprehensive planning, subarea planning, capital facility planning, and development regulations under the state's Growth Management Act (over 24 efforts), programmatic and planned action environmental documentation under the State Environmental Policy Act (over 36 efforts), and shoreline master programs under the Shoreline Management Act (over 15 efforts).

Education

- Master of City Planning, University of California, Berkeley, 1990
- B.A. Social Ecology, University of California, Irvine, 1987
- American Institute of Certified Planners

18120 68TH AVENUE NE
KENMORE, WASHINGTON 98028

MEMO

TO: The Planning Commission

FROM: Debbie Bent, Community Development Director
Maureen Colaizzi, Parks Project Manager

DATE: April 16, 2019

SUBJECT: Parks, Recreation and Open Space (PROS) Plan / The Comprehensive Plan PROS Element Update

The City Council has assigned review of the City's Parks, Recreation and Open Space (PROS) Plan, PROS Comprehensive Plan Element and associated Capital Facilities Comprehensive Plan Element related to parks capital improvements to the Planning Commission as part of the 2019 docket. Before the April 16th meeting, staff recommends the Commission review the current PROS Plan document. You can find it on the City's website at **kenmorewa.gov/content/parks-recreation-and-open-space-plan.**

At your April 16th meeting, Staff will give a general overview of the project and the proposed schedule. Staff will review the 2013 PROS Plan accomplishments. Explain the planning context – how does the PROS Plan inform the Comprehensive Plan Capital Facilities Plan and the 6-year Capital Improvement Program. Review the existing park system inventory and review the PROS Plan document's guiding principles. Since Kenmore's first PROS Plan, the goals and policies have evolved as each plan update reflected changing community priorities and values. At a future meeting we will review updates to the Goals, Objectives and Policies.

What is the PROS Plan and PROS Plan Element?

In 2013, the PROS Comprehensive Plan Element was adopted referencing the 2013 PROS plan. For the 2019 update Staff is recommending that (following the Planning Commission's recommendations), Council adopt the PROS Comprehensive Plan Element and Capital Facilities Element by Ordinance in late 2019. Staff is recommending that the PROS Plan Element be in a format consistent with other comprehensive plan elements, rather than adopting the PROS plan by reference. Staff is further recommending that Council adopt the PROS Plan by Resolution in early 2020 so the plan can be formatted to meet the Washington State Recreation and Conservation Office (RCO) planning requirements. The PROS Comprehensive Plan Element provides a 20-year vision and framework for parks, recreation and open space programs and facilities. The update is an opportunity to reassess community needs and align program and capital projects with the City's mission and goals.

PROS Plan: Recreation & Conservation Office (RCO) Planning Eligibility
The PROS Plan is required to be updated every six years so the City maintains eligibility to apply for grants offered through the Washington State Recreation and Conservation Office (RCO). The updated PROS Plan is due to the RCO office no later than March 1, 2020.

RCO requires the following six elements be included in the PROS Plan:

1. Goals and objectives.
2. An inventory of current facilities. The purpose of an inventory is to provide the context for proposed improvement, renovation, or new projects
3. Documentation of the public involvement process.
4. A demand and needs analysis. The analysis takes the inventory work and public involvement into consideration, balancing public demand with capacity.
5. A capital improvement program of at least six years that lists land acquisition, development, renovation and restoration projects. The list of projects is suggested to be ranked in order of preference, indicating the year of implementation and the plan for financing the projects.

Comprehensive Plan PROS Element
A Parks and Recreation Element is a required element in the City's Comprehensive Plan and the Washington Administrative Code (WAC 365-196-440) provides guidance on requirements that must be included.

1. **Consistency with other comprehensive plan elements**: Including the capital facilities element for park and recreation facilities. Strategies for financing must be consistent with the financing plan in the capital facilities element. Also paying attention to consistency with the land use element, approaches to protecting critical areas and conserving natural resource lands, and identification of open space corridors and lands for public purpose. Planning policies and implementing regulations in each element should complement each other to achieve adopted community goals.

2. **Estimates of park and recreation demand:** Estimates for at least a ten-year period or a period that matches other comprehensive plan elements. In preparing estimates, factors that should be considered include: population forecasts; level of service for facilities; community surveys; national or local trends in recreational demands and services; facilities provided by other entities; and review of other statewide recreation plans.

3. **An evaluation of facilities and service needs**. Identifying future facilities and services needed to meet the estimated demand consistent with the level of service assumptions and projections for growth. The system should consist of an integrated and complementary set of parks and open spaces that, considered together, meet the needs of a full range of community interests. Preparing an inventory of existing park and open space land and facilities including: a description of location; size and type of each facility; current condition and capacity; and intended service area. Public engagement in the process of identifying needs and evaluating satisfaction with existing opportunities and developing goals to guide the development of the park and recreation element. Selecting level of service or planning assumptions that reflect local priorities.

4. **An evaluation of intergovernmental coordination opportunities:** To provide regional approaches for meeting park and recreation demand. Review of other local, statewide and regional plans to identify future facilities that may help in meeting future demand. Evaluating opportunities for intergovernmental or public/private partnerships.

PROS Plan/Element Update Schedule

Date	Planning Commission Topic
16-Apr	Park, Recreation and Open Space Plan Update Overview
18-Jun	Goals, Objectives & Policies
16-Jul	Demand & Need and Level of Service Analysis Results - Recommendations for CIP & Capital Facilities Plan
6-Aug	Community Outreach Meeting
3-Sep	Review Draft Parks Recreation and Open Space Element
17-Sep	Public Hearing
1-Oct	Final PROS Element
18-Sep	Submit Final PROS Element SEPA Checklist - Notify Commerce
Date	**City Council Topic**
21-Oct	Draft PROS Element
18-Nov	Adopt Comprehensive Plan Amendments

Public Involvement

Through January and February, a random sample of Kenmore citizens were surveyed to better understand how they use our parks and recreation services, how they view the quality of their experience at park/recreation facilities and programs, and to get a sense of their priorities for future parks and recreation services. This survey was conducted to provide background information as Staff engages the community to update the PROS Plan. The City hired ETC Institute to administer the survey, analyze the data and synthesize the results. Given the extent of their survey work with parks and recreation agencies across the country they were able to report how Kenmore's responses compare to other cities in the United States. They will be presenting results at a joint meeting of the Planning Commission and City Council currently scheduled for Monday, May 13. Staff plans to attend other summer events to engage with the community and host a community outreach meeting in August.

Demand and Need and Level of Service Analysis

The City has hired HBB landscape architecture consulting firm to assist the City with conducting a demand and needs and level of service analysis. Staff will present results from their analysis in July.

Draft PROS Element

Staff would provide a draft PROS Element to the Planning Commission in September and City Council in October. Adoption would occur with other Comprehensive Plan amendments in November.