

Title 20

DEVELOPMENT CODE

Division I. Unified Development Code

- 20.20** Definitions
- 20.30** Procedures and Administration
- 20.40** Zoning and Use Provisions
- 20.50** General Development Standards
- 20.80** Critical Areas

NOTE: Items highlighted grey are included for information only. No revisions proposed in these sections and they will not be included in the final critical areas update ordinances.

Chapter 20.20

Definitions*

Sections:

- 20.20.010 A definitions.
- 20.20.012 B definitions.
- 20.20.014 C definitions.
- 20.20.016 D definitions.
- 20.20.018 E definitions.
- 20.20.022 G definitions.
- 20.20.026 I definitions.
- 20.20.032 L definitions.
- 20.20.034 M definitions.
- 20.20.036 N definitions.
- 20.20.040 P definitions.
- 20.20.042 Q definitions.
- 20.20.044 R definitions.
- 20.20.046 S definitions.
- 20.20.048 T definitions.
- 20.20.050 U definitions.
- 20.20.052 V definitions.

*Code reviser's note: Ordinance 238 provided all of the definitions initially set out in this chapter. History notes following definitions indicate amending ordinances only.

20.20.010 A definitions.

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

Comment [jn1]: Definition added based on Commerce example code.

20.20.012 B definitions.

Best Available Science Current scientific information used in the process to designate, protect, mitigate impacts to, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-196-900 through 925.

Comment [jn2]: Definition added based on Commerce example code.

Binding Site Plan A process that may be used to divide commercially and industrially zoned property, as authorized by State law. The binding site plan ensures, through written agreements among all lot owners, that the collective lots continue to function as one site concerning but not limited to: lot access, interior circulation, open space, landscaping and drainage; facility maintenance, and coordinated parking. It may include a plan drawn to scale, which identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, critical areas, parking areas, landscaped areas, surveyed topography, water bodies and drainage features and building envelopes. (Ord. 695 § 1 (Exh. A), 2014).

Comment [jn3]: Definition included for information only because it references critical areas. **No changes proposed and definition will not need to be included in the final CAO update.**

Bond A financial guarantee in the form of a surety bond, cash deposit, escrow account

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		assignment of savings, irrevocable letter of credit or other means acceptable to, or required by, the Director to guarantee work is in compliance with all applicable requirements.	
	<u>Buildable Area</u>	The area of a lot remaining after the minimum yard and open space requirements of the Development Code have been met, <u>not including critical areas and their buffers.</u>	Comment [jn4]: This term is used commonly when discussing development constraints on a site, but is not directly used in the development code or critical areas ordinance anywhere. Included here for informational purposes because it references critical areas. This definition will not be included in final proposed ordinance.
20.20.014	C definitions.		
	<u>Certified Arborist</u>	A person or firm with specialized knowledge of the horticultural requirements of trees, certified by the International Society of Arboriculture or <u>by the National Society of Arboriculture or by the National Arborist Association American Society of Consulting Arborists as a registered consulting arborist.</u>	Comment [jn5]: Definition updated for accuracy. The National Arborist Society does not certify or register arborists, but they do provide training for ISA certification. Added the other type of credential accepted by the City to be considered a qualified professional.
	Clearing	The limbing, pruning, trimming, topping, cutting or removal of vegetation or other organic plant matter by physical, mechanical, chemical or other means.	
	<u>Conservation Easement</u>	<u>A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.</u>	Comment [jn6]: Definition useful for any type of easement that would protect critical areas. Specifically required under new wetlands regulations and still mentioned in Buffers section for a means of protecting critical area buffers.
	<u>Consultant, Qualified</u>	A person who is licensed to practice in the professional field of the requested consultation or who has equivalent educational training and at least four years of professional experience.	Comment [jn7]: This term was previously used in the critical areas ordinance as adopted in 2000, but the term was replaced by qualified professional in 2003 in the context of critical areas regulations. Not all instances of qualified consultant were replaced with professional at that time. The proposed revisions include this correction. This definition is included here for context, but will not be included in the final CAO update recommended by staff.
20.20.016	D definitions.		
	Development	The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, clearing, or grading; changes to surface or ground waters; or any use, change of use, or extension of the use of land. (Ord. 324 § 1, 2003).	Comment [jn8]: Definition included for reference only. No change proposed.
			Qualified consultant is still applicable to preparation and review of environmental impact statements under SEPA review procedures and is not overridden by the CA standards.
20.20.018	E definitions.		
	<u>Excessive Pruning</u>	<u>Pruning more than four years of branch growth 25 percent of the tree canopy in one growing season or over a five year period, unless necessary to restore the vigor of the tree or to protect life and property.</u>	Comment [jn9]: Recommended edit based on general best practices for tree pruning.
20.20.022	G definitions.		
	Grading	Any excavation, filling, removing the duff layer or any combination thereof.	Comment [jn10]: Definitions included for reference only. No changes proposed.
	Groundcover	Living plants designed to grow low to the ground (generally one foot or less) and intended to stabilize soils and protect against erosion.	

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20.20.026 I definitions.

Invasive Species Any nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. Invasive species do not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms. Invasive species include but are not limited to noxious weeds.

Comment [jn11]: Definition added based on RCW 79A.25.310. Similar to but not the same as noxious weeds; defined separately. Commonly noxious weeds and invasive species are used interchangeably when applied to vegetation.

20.20.032 L definitions.

Landscape Architect A person licensed by the State of Washington to engage in the practice of landscape architecture as defined by RCW 18.96.030.

Comment [jn12]: Definition included for reference only. **No change proposed.**

20.20.034 M definitions.

Marine Environment/Marine Waters Aquatic lands and waters under tidal influence, including saltwaters and estuaries to the ordinary high water mark.

Comment [jn13]: Definition added per Planning Commissioner request. Language based on RCW 43.372 definition of marine waters.

Monitoring Evaluating the impacts of development proposals on biologic, hydrologic and geologic systems and assessing the performance of required mitigation through the collection and analysis of data for the purpose of understanding and documenting changes in natural ecosystems, functions and features including, but not limited to, gathering baseline data.

Comment [jn14]: Definition included for reference only. **No change proposed.**

20.20.036 N definitions.

Native Vegetation, Native Plant(s) A tree, shrub or groundcover plant of a species that is native to western Washington. Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest, which reasonably could have been expected to naturally occur on the site.

Comment [jn15]: Update terminology and clarify definition for consistency with SMP and recommended CAO definitions.

Noxious Weed Any plant which is highly destructive, competitive or difficult to control by cultural or chemical practices, limited to those plants on the State noxious weed list contained in Chapter 16-750 WAC.

Comment [jn16]: Definition included for reference only. **No change proposed.**

20.20.040 P definitions.

Practical Alternative An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less adverse impacts to critical areas.

Comment [jn17]: Definition added based on Commerce example code. This term is in one of the criteria for Critical Area Special Use Permits.

Private Stormwater Management Facility A surface water control structure installed by a project proponent to retain, detain or otherwise limit runoff from an individual or group of developed sites specifically served by such structure.

Comment [jn18]: Definition included for reference only. **No change proposed.**

Protected Tree/Protected Vegetation A tree or area of understory vegetation identified on an approved tree protection and replacement plan (or other plan determined to be acceptable by the Director) to be retained and protected during construction and/or permanently protected by easement, tract, or covenant restriction. A protected tree may be

Comment [jn19]: Term updated for accuracy.

located outside or within a
NGPA, sensitive critical area
or sensitive critical area buffer.

Protection Measure

A practice or combination of practices (e.g.,
construction barriers, protective fencing, tree
wells, etc.) used to control construction or
development impacts to vegetation that is
approved for protection.

Comment [jn20]: Definition included for
reference only. **No change proposed.**

Protective Fencing

A temporary fence or other structural barrier
installed to prevent permitted clearing or
construction activity from adversely affecting
vegetation which is designated for retention.

Comment [jn21]: Definition included for
reference only. **No change proposed.**

20.20.042 Q definitions.

Qualified Professional

A person with the experience, training and
competence in the pertinent discipline. A
qualified professional must be licensed to
practice in the State of Washington in the
related professional field, if such field is
licensed. If not licensed, a qualified
professional must have a national
certification in the pertinent field. If national
certification in the field does not exist, the
minimum qualification should be a
bachelor's degree with 10 years of related
professional work, or master's degree in the
field and three years of related professional
work. Minimum qualifications for specific
fields of practice shall include but not be
limited to the following:

Comment [jn22]: Updated to more clearly tie
this definition to the administration of the CAO.

A. Arborists must be certified arborists as
defined in SMC 20.20.014 and have a valid
ISA Tree Risk Assessment Qualification
(TRAQ).

B. Professionals for geologic hazard areas
must be licensed in the State of Washington
as a geotechnical engineer or engineering
geologist as defined in SMC 20.20.018 and
20.20.022.

C. Professionals for streams and other fish
and wildlife habitat must have a degree in
biology, environmental planning, natural
science, stream ecology or related field and
the minimum years of experience, listed
above, related to the subject habitat or
species.

D. Professionals for vegetation restoration
planning where specific expertise for
wetlands, streams or other fish and wildlife
habitat is not required, must have a degree in
botany, environmental planning, natural
science, ecology, landscape architecture or a
related field and the minimum years of
experience, listed above, with an emphasis on
restoration ecology and vegetation
management associated with critical areas
and buffers. Professionals must demonstrate
a minimum of three years of experience with
the type of critical area or buffer for which
the critical area report is being submitted.

E. Professionals for wetlands must be
currently certified as a Professional Wetland.

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Scientist (PWS) with the Society of Wetland Scientists or meet the minimum education and years of experience, listed above, as a wetlands professional.

F. Minimum qualifications of professionals for other critical area related disciplines shall be determined by the Director consistent with the minimum qualifications defined above and specific to the discipline identified. (Ord. 324 § 1, 2003).

20.20.044 R definitions.

Reasonable Use The minimum use to which a property owner is entitled under applicable State and Federal constitutional provision, including takings and substantive due process. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003).

Comment [jn23]: Definition included for reference only. **No change proposed.**

Remediation To restore a site to a condition that ~~compiles~~ complies with sensitive critical area or other regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the public health, safety or welfare.

Comment [jn24]: Correction of terms. Remediation is restoration or other corrective action that corrects or mitigates impacts to a critical area or other site. Not just critical area specific.

Runoff Water not absorbed by the soil in the landscape area to which it is applied.

Comment [jn25]: Definition included for reference only. **No change proposed.**

20.20.046 S definitions.

Site Development Permit A permit, issued by the City, to develop, redevelop or partially develop a site exclusive of any required building or land use permit. A site development permit may include one or more of the following activities: paving, grading, clearing, tree removal, on-site utility installation, stormwater facilities, walkways, striping, wheelstops or curbing for parking and circulation, landscaping, critical area and buffer mitigation, enhancement, remediation, or restoration. (Ord. 439 § 1, 2006; Ord. 352 § 1, 2004).

Comment [jn26]: Language updated to include critical area work. This is the type of permit used when critical area work needs a permit but is being reviewed separate from or without a related building permit.

Site Plan The development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, ~~and~~ waterways, critical areas and critical area buffers; landscaping and open spaces; walkways; means of ingress and egress; circulation; utility services; structures and buildings; signs and lighting; berms, buffers, and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

Comment [jn27]: Critical areas added explicitly to list of things included on a site plan.

Substantial Development ~~Any extension, repair, reconstruction, or other improvement of a property, the cost of which equals or exceeds 50 percent of the fair market value of a property either before the improvement is started or, if the property has been damaged and is being restored, before the damage occurred.~~

Comment [jn28]: Tree definitions included for reference only. **No changes are currently planned to these definitions and they will not be in the final ordinance.**

20.20.048 T definitions.

<u>Tree</u>	A self-supporting woody plant characterized by one main trunk or, for certain species, multiple trunks, with a potential at maturity for a trunk diameter of two inches and potential minimum height of 10 feet.
<u>Tree and Vegetation Removal</u>	Removal of a tree(s) or vegetation, through either direct or indirect actions including, but not limited to, clearing, cutting, causing irreversible damage to roots or trunks; poisoning; destroying the structural integrity; and/or any filling, excavation, grading, or trenching in the dripline area of a tree which has the potential to cause irreversible damage to the tree, or relocation of an existing tree to a new planting location.
<u>Tree Canopy</u>	The total area of the tree or trees where the leaves and outermost branches extend, also known as the "dripline."
<u>Tree, Hazardous</u>	A tree that is dead, or is so affected by a significant structural defect or disease that falling or failure appears imminent, or a tree that impedes safe vision or traffic flow, or that otherwise currently poses a threat to life or property.
<u>Tree, Significant</u>	Any tree eight inches or greater in diameter at breast height if it is a conifer and 12 inches or greater in diameter at breast height if it is a nonconifer excluding those trees that qualify for complete exemptions from Chapter 20.50 SMC, Subchapter 5, Tree Conservation, Land Clearing, and Site Grading Standards, under SMC 20.50.310(A). (Ord. 669 § 1 (Exh. A), 2013).

20.20.050 U definitions.

<u>Understory Vegetation</u>	Small trees, shrubs, and groundcover plants, growing beneath and shaded by a significant tree which affect and are affected by the soil and hydrology of the area surrounding the significant tree roots.
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Comment [jn29]: Vegetation definitions included for reference only. **No change proposed.**

20.20.052 V definitions

<u>Vegetation</u>	Any and all plant life growing at, below or above the soil surface.
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Chapter 20.30

Procedures and Administration

Sections:

Subchapter 3. Permit Review Procedures

20.30.080 Preapplication meeting.

Subchapter 5. Nonconforming Uses, Lots, and Structures

20.30.280 Nonconformance.

Subchapter 6. Review and/or Decision Criteria

20.30.290 Deviation from the engineering standards (Type A action).

20.30.295 Temporary use.

20.30.310 Zoning variance (Type B action).

20.30.330 Special use permit-SUP (Type C action).

20.30.333 Critical areas special use permit (Type C action).

20.30.336 Critical areas reasonable use permit (Type C action).

20.30.353 Master development plan.

20.30.355 Development agreement (Type L).

Subchapter 7. Subdivisions

20.30.370 Purpose.

20.30.410 Preliminary subdivision review procedures and criteria.

Subchapter 8. Environmental Procedures

20.30.560 Categorical exemptions – Minor new construction.

Subchapter 9. Code Enforcement

20.30.730 General Provisions.

20.30.770 Enforcement provisions.

NOTE: Items highlighted grey are included for information only. No revisions proposed in these sections and they will not be included in the final critical areas update ordinances.

Subchapter 3.

Permit Review Procedures

20.30.080 Preapplication meeting.

A preapplication meeting is required prior to submitting an application for any Type B or Type C action and/or for an application for a project ~~located within that may impact~~ a critical area or its ~~buffer~~ consistent with SMC 20.80.045.

Applicants for development permits under Type A actions are encouraged to participate in preapplication meetings with the City. Preapplication meetings with staff provide an opportunity to discuss the proposal in general terms, identify the applicable City requirements and the project review process including the permits required by the action, timing of the permits and the approval process.

Preapplication meetings are required prior to the neighborhood meeting.

The Director shall specify submittal requirements for preapplication meetings, which shall include a critical areas ~~checklist worksheet~~ and, if available, preliminary critical area reports. Plans presented at the preapplication meeting are nonbinding and do not “vest” an application. (Ord. 439 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. III § 4(a), 2000).

Comment [jn30]: Clarification added to cross referencing with 20.80 section. If not otherwise required, specific activities may be exempted from the preapplication meeting in Chapter 20.80.

Subchapter 5.

Nonconforming Uses, Lots, and Structures

20.30.280 Nonconformance.

- A. Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of a land use regulation that rendered it nonconforming, shall be considered nonconforming if:
1. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
 2. The use or structure does not comply with the development standards or other requirements of this code;
 3. A change in the required permit review process shall not create a nonconformance.
- B. **Abatement of Illegal Use, Structure or Development.** Any use, structure, lot or other site improvement not established in compliance with use, lot size, building, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.
- C. **Continuation and Maintenance of Nonconformance.** A nonconformance may be continued or physically maintained as provided by this code.
1. Any nonconformance that is brought into conformance for any period of time shall forfeit status as a nonconformance.
 2. **Discontinuation of Nonconforming Use.** A nonconforming use shall not be resumed when abandonment or discontinuance extends for 12 consecutive months.
 3. **Repair or Reconstruction of Nonconforming Structure.** Any structure nonconforming as to height or setback standards may be repaired or reconstructed; provided, that:
 - a. The extent of the previously existing nonconformance is not increased;
 - b. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction; and
 - c. The provisions of Chapter 13.12 SMC, Floodplain Management, are met when applicable.
 4. **Modifications to Nonconforming Structures.** Modifications to a nonconforming structure may be permitted; provided, the modification does not increase the area, height or degree of an existing nonconformity. Single-family additions shall be limited to 50 percent of the use area or 1,000 square feet, whichever is lesser, and shall not require a conditional use permit in the MUR-45' and MUR-70' zones. Modification of structures that are nonconforming with regards to critical areas may only be permitted consistent with SMC 20.80.040.
- D. **Expansion of Nonconforming Use.** A nonconforming use may be expanded subject to approval of a conditional use permit unless the indexed supplemental criteria (SMC 20.40.200) require a special use permit for expansion of the use under the code. A nonconformance with the development standards shall not be created or increased and the total expansion shall not exceed 10 percent of the use area.
- E. **Nonconforming Lots.** Any permitted use may be established on an undersized lot, which cannot satisfy the lot size or width requirements of this code; provided, that:
1. All other applicable standards of the code are met; or a variance has been granted;
 2. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;

Comment [jn31]: This section applies to critical areas in combination with 20.80.040 so cross reference added for additional regulations.

3. The lot cannot be combined with contiguous undeveloped lots to create a lot of required size;
4. No unsafe condition is created by permitting development on the nonconforming lot; and
5. The lot was not created as a “special tract” to protect critical area, provide open space, or as a public or private access tract.

Subchapter 6.

Review and/or Decision Criteria

20.30.290 Deviation from the engineering standards (Type A action).

B. Decision Criteria. The Director shall grant an engineering standards deviation only if the applicant demonstrates all of the following:

1. The granting of such deviation will not be materially detrimental to the public welfare or injurious or create adverse impacts to the property or other property(s) and improvements in the vicinity and in the zone in which the subject property is situated;
2. The authorization of such deviation will not adversely affect the implementation of the Comprehensive Plan adopted in accordance with State law;
3. The deviation is not in conflict with the standards of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II;
4. A deviation from engineering standards shall only be granted if the proposal meets the following criteria:
 - a. Conform to the intent and purpose of the Code;
 - b. Produce a compensating or comparable result which is in the public interest; and
 - c. Meet the objectives of safety, function and maintainability based upon sound engineering judgement;
45. Deviations from road standards must meet the objectives for fire protection. Any deviation from road standards, which does not meet the International Fire Code, shall also require concurrence by the Fire Marshal;
56. Deviations from drainage standards contained in the Stormwater Manual and Chapter 13.10 SMC must meet the objectives for appearance and environmental protection;
67. Deviations from drainage standards contained in the Stormwater Manual and Chapter 13.10 SMC must be shown to be justified and required for the use and situation intended;
78. Deviations from drainage standards for facilities that request use of emerging technologies, an experimental water quality facility or flow control facilities must meet these additional criteria:
 - a. The new design is likely to meet the identified target pollutant removal goal or flow control performance based on limited data and theoretical consideration;
 - b. Construction of the facility can, in practice, be successfully carried out; and
 - c. Maintenance considerations are included in the design, and costs are not excessive or are borne and reliably performed by the applicant or property owner; and
89. Deviations from utility standards shall only be granted if following facts and conditions exist:
 - a. The deviation shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and in the zone in which the property on behalf of which the application was filed is located;
 - b. The deviation is necessary because of special circumstances relating to the size, shape, topography, location or surrounding of the subject property in order to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

Comment [jn32]: The terms used to cross reference the critical area regulations are not consistent and not included in all types of review decision criteria in Chapter 20.30. Proposed change would standardize so the code sections that apply are clear and consistent. SMP references also added for clarity.

- c. The granting of such deviation is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same zone or vicinity. (Ord. 531 § 1 (Exh. 1), 2009; Ord. 406 § 1, 2006; Ord. 238 Ch. III § 7(a), 2000).

20.30.295 Temporary use.

B. The Director may approve or modify and approve an application for a temporary use permit if:

1. The temporary use will not be materially detrimental to public health, safety, or welfare, nor injurious to property and improvements in the immediate vicinity of the subject temporary use; ~~and~~
2. The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use; ~~and~~
3. Adequate parking is provided for the temporary use and, if applicable, the temporary use does not create a parking shortage for the existing uses on the site; ~~and~~
4. Hours of operation of the temporary use are specified; ~~and~~
5. The temporary use will not create noise, light, or glare which would adversely impact surrounding uses and properties; and
6. The temporary use is not in conflict with the standards of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II.

20.30.310 Zoning variance (Type B action).

B. **Decision Criteria.** A variance shall be granted by the City, only if the applicant demonstrates all of the following:

1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;
4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;
5. The variance is compatible with the Comprehensive Plan;
6. The variance does not create a health or safety hazard;
7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:
 - a. The property or improvements in the vicinity, or
 - b. The zone in which the subject property is located;
8. The variance does not relieve an applicant from:
 - a. Any of the procedural or administrative provisions of this title, or
 - b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - c. Use or building restrictions, or

- d. Any provisions of the critical areas ~~development standards regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II;~~
9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or
11. The variance is the minimum necessary to grant relief to the applicant. (Ord. 324 § 1, 2003; Ord. 238 Ch. III § 7(c), 2000).

20.30.330 Special use permit-SUP (Type C action).

B. Decision Criteria. A special use permit shall be granted by the City, only if the applicant demonstrates that:

1. The use will provide a public benefit or satisfy a public need of the neighborhood, district or City;
2. The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas;
3. The special use will not materially endanger the health, safety and welfare of the community;
4. The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity;
5. The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
6. The special use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts;
7. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties;
8. The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title; and
9. The special use is not in conflict with the standards of the critical areas ~~development standards regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II.~~ (Ord. 238 Ch. III § 7(e), 2000).

20.30.333 Critical area special use permit (Type C action).

- A. **Purpose.** The purpose of the critical areas special use permit is to allow development by a public agency or utility when the strict application of the critical areas standards would otherwise unreasonably prohibit the provision of public services. This type of permit does not apply to flood hazard areas or within the shoreline jurisdiction.
- B. **Decision Criteria.** A critical areas special use permit shall be granted by the City only if the utility or public agency applicant demonstrates that:
 1. The application of the critical areas ~~development standards regulations, Chapter 20.80 SMC, Critical Areas,~~ would unreasonably restrict the ability of the public agency or utility to provide services to the public; ~~and~~
 2. There is no other practical alternative to the proposal by the public agency or utility which would cause less impact on the critical area; ~~and~~

Comment [jn33]: Updated for accuracy of terms and applicability.

3. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity; ~~and~~
4. This special use permit process shall not allow the use of the following critical areas for regional retention/detention facilities except where the Hearing Examiner makes a finding that the facility is necessary to protect public health and safety or repair damaged natural resources:
 - a. Type ~~I S~~ or Type F-anadromous streams or buffers;
 - b. Type Category I wetlands or buffers with plant associations of infrequent occurrence; or
 - c. Type Category I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or Federal designated endangered or threatened species unless clearly demonstrated by the applicant, using best available science, that there will be no impact on such habitat;_
5. Any alterations permitted to the critical area are mitigated in accordance with SMC 20.80.082 and relevant mitigation standards for the impacted critical area(s);
6. The proposal attempts to protect the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
7. The proposal is consistent with other applicable regulations and standards. (Ord. 641 § 4 (Exh. A), 2012; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(I), 2000. Formerly 20.80.090.).

C. Permit Conditions. The Director may condition the proposed activity as necessary to mitigate the impacts to critical areas and to conform to the standards required by Chapter 20.80 SMC. Critical Areas.

20.30.336 Critical areas reasonable use permit (Type C action).

- A. **Purpose.** The purpose of the critical areas reasonable use permit is to allow development and use of private property when the strict application of the critical area ~~standards regulations~~ would otherwise deny all reasonable use of a property. This type of permit does not apply to flood hazard areas or within the shoreline jurisdiction.
- B. **Decision Criteria.** A reasonable use permit shall be granted by the City only if the applicant demonstrates that:
 1. The application of the ~~development standards~~ critical area regulations, Chapter 20.80 SMC. Critical Areas. would deny all reasonable use of the property; and
 2. There is no other reasonable use of the property with less impact on the critical area; and
 3. Any alterations to the critical area would be the minimum necessary to allow for reasonable use of the property; and
 4. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity, is consistent with the general purposes of this title and the public interest, and all reasonable mitigation measures have been implemented or assured; and
 5. The inability to derive reasonable economic use is not the result of the applicant's action unless the action 1) was approved as part of a final land use decision by the City or other agency with jurisdiction; or 2) otherwise resulted in a nonconforming use, lot or structure as defined in this title;
 5. Any alterations permitted to the critical area are mitigated in accordance with SMC 20.80.082 and relevant mitigation standards for the impacted critical area(s);
 6. The proposal attempts to protect the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and

Comment [jn34]: References changed to match updated classifications/ratings and for consistency with new applicability language in CAO. Added clarifying provisions regarding the decision criteria for this type of permit.

Comment [jn35]: Updated for consistency with proposed Chapter 20.80 changes. This section is a required part of the CAO to meet GMA requirements. Added clarifying provisions regarding the decision criteria for this type of permit.

7. The proposal is consistent with other applicable regulations and standards.

C. **Development Standards.** To allow for reasonable use of property and to minimize impacts on critical areas the decision making authority may reduce setbacks by up to 50 percent, parking requirements by up to 50 percent, and may eliminate landscaping requirements. Such reductions shall be the minimum amount necessary to allow for reasonable use of the property, considering the character and scale of neighboring development.

D. **Priority.** When multiple critical areas and critical area buffers may be affected by the application, the decision making authority should consider exceptions to critical areas ~~standards~~ regulations that occur in the following order of priority with number 5 having the highest protection:

1. Geologic hazard area buffers;

2. Wetland buffers;

3. ~~Stream buffers;~~

4. Fish and wildlife habitat conservation area buffers (excluding wetlands); and

5. Geological hazard areas, wetlands, ~~stream~~, and fish and wildlife habitat conservation critical areas protection standards in the order listed above in items 1 through 4. (Ord. 641 § 4 (Exh. A), 2012; Ord. 352 § 1, 2004; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(L), 2000. Formerly 20.80.120.).

20.30.353 Master development plan.

B. **Decision Criteria.** A master development plan shall be granted by the City only if the applicant demonstrates that:

1. The project is designated as either campus or essential public facility in the Comprehensive Plan and Development Code and is consistent with goals and policies of the Comprehensive Plan.

2. The master development plan includes a general phasing timeline of development and associated mitigation.

3. The master development plan meets or exceeds the current ~~regulations for critical areas~~ regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II, if critical areas or their buffers are present or project is within the shoreline jurisdiction.

4. The proposed development uses innovative, aesthetic, energy efficient and environmentally sustainable architecture and site design (including low impact development stormwater systems and substantial tree retention) to mitigate impacts to the surrounding neighborhoods.

5. There is either sufficient capacity and infrastructure (e.g., roads, sidewalks, bike lanes) in the transportation system (motorized and nonmotorized) to safely support the development proposed in all future phases or there will be adequate capacity and infrastructure by the time each phase of development is completed. If capacity or infrastructure must be increased to support the proposed master development plan, then the applicant must identify a plan for funding their proportionate share of the improvements.

6. There is either sufficient capacity within public services such as water, sewer and stormwater to adequately serve the development proposal in all future phases, or there will be adequate capacity available by the time each phase of development is completed. If capacity must be increased to support the proposed master development plan, then the applicant must identify a plan for funding their proportionate share of the improvements.

7. The master development plan proposal contains architectural design (including but not limited to building setbacks, insets, facade breaks, roofline variations) and site design standards, landscaping, provisions for open space and/or recreation areas, retention of significant trees, parking/traffic management and multimodal transportation standards that minimize conflicts and create transitions between the proposal site and adjacent neighborhoods and between institutional uses and residential uses.

8. The applicant shall demonstrate that proposed industrial, commercial or laboratory uses will be safe for the surrounding neighborhood and for other uses on the campus.

C. **Amendments.** Minor amendments to an approved master development plan may be approved by the Director if the amendment meets the development standards and criteria applicable to the zoning and requirements set forth in this section. Minor amendments include any revision or modification of the previously approved master development plan that would result in any one or more of the following:

1. An increase in the square footage of any proposed building or structure by 10 percent or less; or
2. A change of 15 percent or less in the number of new parking spaces, parking spaces created by restriping existing parking areas and/or a combination of both except for an increase in parking spaces for bicycles or electric vehicles; or
3. A change in the original phasing timeline for mitigation of the master development plan; or
4. Changes to building placement when located outside of the required setbacks and any required setbacks buffers for critical areas; or
5. A cumulative increase in impervious surface of 10 percent or less or a cumulative decrease in tree cover of 10 percent or less; or
6. Other specific changes as noted in the master development plan.

Major amendments are changes that exceed the thresholds for a minor amendment or were not analyzed as part of an approved master development plan. Major amendments to an approved master development plan shall be processed as a new master development plan.

F. **Early Community Input.** Applicants are encouraged to develop a community and stakeholders consensus-based master development plan. Community input is required to include soliciting input from stakeholders, community members and any other interested parties with bubble diagrams, diagrammatic site plans, or conceptual site plans. The meeting notice shall be provided at a minimum to property owners located within 1,000 feet of the proposal, the neighborhood chair as identified by the Shoreline Office of Neighborhoods (note: if a proposed development is within 1,000 feet of adjacent neighborhoods, those chairs shall also be notified), and to the City of Shoreline Planning and Community Development Services Department. Digital audio recording, video recording, or a court reporter transcription of this meeting or meetings is required at the time of application. The applicant shall provide an explanation of the comments of these entities to the City regarding the incorporation (or not) of these comments into the design and development of the proposal.

20.30.355 Development agreement (Type L).

C. **Decision Criteria.** A development agreement (general development agreement and development agreements in order to increase height above 70 feet) may be granted by the City only if the applicant demonstrates that:

1. The project is consistent with goals and policies of the Comprehensive Plan. If the project is located within a subarea plan, then the project shall be consistent with the goals and policies of the subarea plan.
2. The proposed development uses innovative, aesthetic, energy efficient and environmentally sustainable architecture and site design.
3. There is either sufficient capacity and infrastructure (e.g., roads, sidewalks, bike lanes) in the transportation system (motorized and nonmotorized) to safely support the development proposed in all future phases or there will be adequate capacity and infrastructure by the time each phase of development is completed. If capacity or infrastructure must be increased to support the proposed development agreement, then the applicant must identify a plan for funding their proportionate share of the improvements.
4. There is either sufficient capacity within public services such as water, sewer and stormwater to adequately serve the development proposal in all future phases, or there will be adequate capacity available by the time each phase of development is completed. If capacity must be increased to support the proposed

development agreement, then the applicant must identify a plan for funding their proportionate share of the improvements.

5. The development agreement proposal contains architectural design (including but not limited to building setbacks, insets, facade breaks, roofline variations) and site design standards, landscaping, provisions for open space and/or recreation areas, retention of significant trees, parking/traffic management and multimodal transportation improvements and other features that minimize conflicts and create transitions between the proposal site and property zoned R-4, R-6, R-8 or MUR-35'.
6. The project is consistent with the standards of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II.

Subchapter 7.

Subdivisions

20.30.370 Purpose.

Subdivision is a mechanism by which to divide land into lots, parcels, sites, plots, or tracts, for the purpose of sale. The purposes of subdivision regulations are:

- A. To regulate division of land into two or more lots or tracts;
- B. To protect the public health, safety and general welfare in accordance with the State standards;
- C. To promote effective use of land;
- D. To promote safe and convenient travel by the public on streets and highways;
- E. To provide for adequate light and air;
- F. To facilitate adequate provision for water, sewerage, stormwater drainage, parks and recreation areas, sites for schools and school grounds and other public requirements;
- G. To provide for proper ingress and egress;
- H. To provide for the expeditious review and approval of proposed subdivisions which conform to development standards and the Comprehensive Plan;
- I. To adequately provide for the housing and commercial needs of the community;
- J. To protect environmentally sensitive critical areas and their buffers as designated by in the critical area overlay districts chapter, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II;
- K. To require uniform monumenting of land subdivisions and conveyance by accurate legal description. (Ord. 695 § 1 (Exh. A), 2014; Ord. 238 Ch. III § 8(b), 2000).

20.30.410 Preliminary subdivision review procedures and criteria.

The short subdivision may be referred to as a short plat – Type B action.

The formal subdivision may be referred to as long plat – Type C action.

Time limit: A final short plat or final long plat meeting all of the requirements of this chapter and Chapter 58.17 RCW shall be submitted for approval within the time frame specified in RCW 58.17.140.

Review criteria: The following criteria shall be used to review proposed subdivisions:

A. Environmental.

1. Where environmental resources exist, such as trees, streams, ~~ravines~~ geologic hazards, or wildlife habitats, the proposal shall be designed to fully implement the goals, policies, procedures and standards of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, and the tree conservation, land clearing, and site grading standards sections.
2. The proposal shall be designed to minimize grading by using shared driveways and by relating street, house site and lot placement to the existing topography.
3. Where conditions exist which could be hazardous to the future residents of the land to be divided, or to nearby residents or property, such as floodplains, ~~steep slopes~~ landslide hazards, or unstable soil or geologic conditions, a subdivision of the hazardous land shall be denied unless the condition can be permanently corrected, consistent with subsections (A)(1) and (2) of this section, Chapter 20.80 SMC Critical Areas, and Chapter 13.12 SMC, Floodplain Management.

Subchapter 8.

Environmental Procedures

20.30.560 Categorical exemptions – Minor new construction.

The following types of construction shall be exempt, except when: 1) undertaken wholly or partly on lands covered by water; 2) a rezone is requested; or 3) any license governing emissions to the air or discharges to water is required.

- A. The construction or location of:
 - 1. Any residential structures up to 30 dwelling units.
 - 2. A multifamily structure with up to 60 dwelling units.
- B. The construction of an office, school, commercial, recreational, service or storage building with 30,000 square feet of gross floor area, and with associated parking facilities designed for 90 automobiles.
- C. The construction of a parking lot designed for 90 automobiles. This exemption includes stand-alone parking lots
- D. Any landfill or excavation of 1,000 cubic yards throughout the total lifetime of the fill or excavation not associated with an exempt project in subsection A, B or C of this section and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder. (Ord. 660 § 1 (Exh. 1), 2013; Ord. 591 § 1 (Exh. A), 2010; Ord. 324 § 1, 2003; Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(h), 2000).

Comment [jn36]: Definition of “lands covered by water” proposed in SMC 20.20 based on state definition. Wetlands are lands covered by water so any alteration in a wetland is subject to SEPA, whether or not there is open standing water.

No changed proposed here, included for information only.

Subchapter 9.
Code Enforcement

20.30.730 General provisions.

- A. For the purposes of this subchapter, any person who causes or maintains a code violation and the owner, lessor, tenant or other person entitled to control, use, or occupancy of property where a code violation occurs shall be identified as the responsible party and shall be subject to enforcement action as provided in this subchapter.

However, if a property owner affirmatively demonstrates that the action which resulted in the violation was taken without the owner's knowledge or consent by someone other than the owner or someone acting on the owner's behalf, that owner shall be responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances, as determined by the Director. Should the responsible party not correct the violation, after service of the notice and order, civil penalties and abatement costs may be assessed.

- B. It shall be the responsibility of any person identified as a responsible party to bring the property into a safe and reasonable condition to achieve compliance. Payment of fines, applications for permits, acknowledgment of stop work orders and compliance with other remedies does not substitute for performing the corrective work required and having the property brought into compliance to the extent reasonably possible under the circumstances. The date set for compliance in the notice and order takes precedence over any date established for the expiration of any required permit(s) and will be subordinate only to written extension of the notice and order.
- C. The responsible parties have a duty to notify the Director of any actions taken to achieve compliance. A violation shall be considered ongoing until the responsible party has come into compliance and has notified the Director of this compliance, and an official inspection has verified compliance and all assessed penalties and costs have been paid to the City.
- D. The procedures set forth in this subchapter are not exclusive, specifically the provisions in [SMC 20.80.130](#) apply to code enforcement of violations of Chapter 20.80 SMC, Critical Areas. These procedures shall not in any manner limit or restrict the City from remedying or abating code violations in any other manner authorized by law. (Ord. 669 § 1 (Exh. A), 2013; Ord. 515 § 1, 2008; Ord. 406 § 1, 2006; Ord. 391 § 4, 2005; Ord. 238 Ch. III § 10(b), 2000).

Comment [jn37]: Cross reference added to new CAO code enforcement section.

20.30.770 Enforcement provisions.

- A. **Infraction.** Whenever the Director has determined that a code violation has occurred, the Director may issue a Class 1 civil infraction, or other class of infraction specified in the particular ordinance violated, to any responsible party, according to the provisions set forth in Chapter 7.80 RCW.
- B. **Misdemeanor.** Any person who willfully or knowingly causes, aids or abets a code violation by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine not to exceed \$1,000 and/or imprisonment in the County jail for a term not to exceed 90 days. Each week (seven days) such violation continues shall be considered a separate misdemeanor offense. A misdemeanor complaint or notice of infraction may be filed as an alternative, or in addition, to any other judicial or administrative remedy provided in this subchapter or by law or other regulation.
- C. **Suspension, Revocation or Limitation of Permit.**
1. The Director may suspend, revoke or limit any permit issued whenever:
 - a. The permit holder has committed a code violation in the course of performing activities subject to that permit;
 - b. The permit holder has interfered with the Director in the performance of his or her duties relating to that permit;

Comment [jn38]: New critical areas code enforcement provisions work together with this section.

- c. The permit was issued in error or on the basis of materially incorrect information supplied to the City; or
 - d. Permit fees or costs were paid to the City by check and returned from a financial institution marked nonsufficient funds (NSF) or cancelled.
2. Such suspension, revocation or modification shall be carried out through the notice and order provisions of this subchapter and shall be effective upon the compliance date established by the notice and order. Such revocation, suspension or cancellation may be appealed to the Hearing Examiner using the appeal provisions of this subchapter. Notwithstanding any other provision of this subchapter, the Director may immediately suspend operations under any permit by issuing a stop work order.

D. Civil Penalties.

1. A civil penalty for violation of the terms and conditions of a notice and order shall be imposed in the amount of \$500.00. The total initial penalties assessed for notice and orders and stop work orders pursuant to this section shall apply for the first 14-day period following the violation of the order, if no appeal is filed. The penalties for the next 14-day period shall be 150 percent of the initial penalties, and the penalties for the next 14-day period and each such period or portion thereafter shall be double the amount of the initial penalties.
2. Any responsible party who has committed a violation of the provisions of Chapter 20.50 SMC, General Development Standards (tree conservation, land clearing and site grading standards), or Chapter 20.80 SMC, Critical Areas, will not only be required to restore unlawfully removed trees or damaged critical areas, insofar as that is possible and beneficial, as determined by the Director, but will also be required to pay civil penalties in addition to penalties under subsection (D)(1) of this section, for the redress of ecological, recreation, and economic values lost or damaged due to the violation. Civil penalties will be assessed according to the following factors:
 - a. Inside critical areas and required buffers, an amount determined pursuant to SMC 20.80.130(E); or
 - b. Outside of critical areas, An amount determined to be equivalent to the economic benefit that the responsible party derives from the violation measured as the total of:
 - i. The resulting increase in market value of the property; and
 - ii. The value received by the responsible party; and
 - iii. The savings of construction costs realized by the responsible party as a result of performing any act in violation of the chapter; and
 - bc. A penalty of \$2,000 if the violation has severe ecological impacts, including temporary or permanent loss of resource values or functions.
3. An additional penalty of \$2,000 if the violation was deliberate, the result of knowingly false information submitted by the property owner, agent, or contractor, or the result of reckless disregard on the part of the property owner, agent, or their contractor. The property owner shall assume the burden of proof for demonstrating that the violation was not deliberate.
4. A repeat violation means a violation of the same regulation in any location within the City by the same responsible party, for which voluntary compliance previously has been sought or any enforcement action taken, within the immediate preceding 24-consecutive-month period, and will incur double the civil penalties set forth above.
5. Under RCW 59.18.085, if, after 60 days from the date that the City first advanced relocation assistance funds to displaced tenants, the landlord does not repay the amount of relocation assistance advanced by the City, the City shall assess civil penalties in the amount of \$50.00 per day for each tenant to whom the City has advanced a relocation assistance payment.

Comment [jn39]: Cross reference added to penalties section to replace existing language with new provisions for violations in critical areas.

6. The responsible parties have a duty to notify the Director of any actions taken to achieve compliance with the notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the responsible party has come into compliance with the notice and order and has notified the Director of this compliance, and an official inspection has verified compliance and all assessed penalties and costs have been paid to the City.
7. a. Civil penalties will be waived by the Director or will be reimbursed to the payer by the Director, with the concurrence of the Administrative Services Director, under the following documented circumstances:
 - i. The notice and order were issued in error; or
 - ii. The civil penalties were assessed in error; or
 - iii. Notice failed to reach the property owner due to unusual circumstances.
- b. Civil penalties accrued under subsection (D)(1) of this section will be reduced by the Director to 20 percent of accrued penalties if voluntary compliance is achieved and the City is reimbursed its reasonable staff and professional costs incurred in enforcing the notice and order.

E. Abatement.

1. All public nuisances are subject to abatement under this subchapter.
2. **Imminent Nuisance and Summary Abatement.** If a condition, substance, act or nuisance exists which causes a condition, the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for the abatement, shall be given to the person responsible for the property and the violation as soon as reasonably possible after the abatement. The Director shall make the determination of a condition, substance, act or other occurrence constituting an imminent nuisance requiring summary abatement. Costs, both direct and indirect, of the abatement may be assessed as provided in this chapter.
3. In the case of such unfit dwellings, buildings, structures, and premises or portions thereof, the Director, as an alternative to any other remedy provided in this subchapter, may abate such conditions by demolition, repair, removal, or securing the site and have abatement costs collected as taxes by the King County Treasury pursuant to SMC 20.30.775. If an occupied rental dwelling or its premises are declared unfit and required to be vacated by a notice and order, and the landlord fails to pay relocation assistance as set forth in RCW 59.18.085, the City shall advance relocation assistance funds to eligible tenants in accordance with RCW 59.18.085.

- F. Additional Enforcement Provisions.** The enforcement provisions of this section are not exclusive, and may be used in addition to other enforcement provisions authorized by the Shoreline Municipal Code or by State law, including filing for injunctive relief or filing of a civil action. (Ord. 669 § 1 (Exh. A), 2013; Ord. 631 § 1 (Exh. 1), 2012; Ord. 581 § 1 (Exh. 1), 2010; Ord. 466 § 2, 2007; Ord. 406 § 1, 2006; Ord. 391 § 4, 2005; Ord. 251 § 2(D), 2000; Ord. 238 Ch. III § 10(c), 2000. Formerly 20.30.740).

Chapter 20.40

Zoning and Use Provisions

Sections:

Subchapter 3. Index of Supplemental Use Criteria

20.40.230 Affordable housing.

Subchapter 3.

Index of Supplemental Use Criteria

20.40.230 Affordable housing.

- A. Provisions for density bonuses for the provision of affordable housing apply to all land use applications, except the following which are not eligible for density bonuses: (a) the construction of one single-family dwelling on one lot that can accommodate only one dwelling based upon the underlying zoning designation, (b) provisions for accessory dwelling units, and (c) projects which are limited by the critical areas ~~requirements regulations,~~ Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II.

Chapter 20.50

General Development Standards

Sections:

Subchapter 1. Dimensions and Density for Development

20.50.020 Dimensional requirements.

20.50.040 Setbacks – Designation and measurement.

Subchapter 5. Tree Conservation, Land Clearing and Site Grading Standards

20.50.290 Purpose.

20.50.300 General requirements.

20.50.310 Exemptions from permit.

20.50.320 Specific activities subject to the provisions of this subchapter.

20.50.330 Project review and approval.

20.50.350 Development standards for clearing activities.

20.50.360 Tree replacement and site restoration.

NOTE: Items highlighted grey are included for information only. No revisions proposed in these sections and they will not be included in the final critical areas update ordinances.

Subchapter 1.

Dimensions and Density for Development

20.50.020 Dimensional requirements.

Comment [jn40]: Section included for information only. No changes proposed.

B. Base Density Calculation. The base density for an individual site shall be calculated by multiplying the site area (in acres) by the applicable number of dwelling units. When calculation results in a fraction, the fraction shall be rounded to the nearest whole number as follows:

1. Fractions of 0.50 and above shall be rounded up except for lots less than 14,400 square feet in R-6 zones. See Exception (7) to Table 20.50.020(1).
2. Fractions below 0.50 shall be rounded down.

Example #1 – R-6 zone, 2.3 acres site: $2.3 \times 6 = 13.8$
The base density for this site would be 14 dwelling units.

Example #2 – R-24 zone, 2.3 acres site: $2.3 \times 24 = 55.2$
The base density for the site would be 55 dwelling units.

Example #3 – R-6 zone, 13,999-square-foot site: $(13,999/43,560 = .3214 \text{ acres})$ so $.3214 \times 6 = 1.92$. The base density for single-family detached dwellings on this site would be one unit.

Example #4 – R-6 zone, 14,400-square-foot site $(14,400/43,560 = .331 \text{ acres})$ so $.331 \times 6 = 1.986$. The base density for the site would be two units.

C. All areas of a site may be used in the calculation of base density, except that submerged lands shall not be credited toward base density calculations.

Comment [jn41]: Submerged lands differ in definition to lands covered by water and requires an area of open water that creates an ordinary high water mark. So this technically excludes areas like Puget Sound tidelands, streams, and private portions of open water wetlands from the base density calculation. Privately owned wetlands with open water currently only exist on one property on Echo Lake and a few on Hidden Lake (which may change if the lake is eliminated). **Section included for reference only. No changes proposed and will not be included in final ordinance.**

D. When a lot is divided by a zone boundary, the following rules shall apply:

1. When a lot contains both residential and nonresidential zoning, the zone boundary between the zones shall be considered a lot line for determining permitted building height and required setbacks on the site.
2. When a lot contains residential zones of varying density, the following shall apply:
 - a. Any residential density transfer within the lot shall be allowed from the portion with the lesser residential density to that of the greater residential density.
 - b. Residential density transfer from the higher density zone to the lower density zone may be allowed only when:
 - The transfer enhances the efficient use of needed infrastructure;
 - The transfer contributes to preservation of critical areas, or other natural features; and
 - The transfer does not result in significant adverse impacts to adjoining lower-density properties.

Example: A development site is 3.8 acres. 1.5 acres is zoned R-12 and 2.3 acres is zoned R-24. The base density for the R-12 portion: $1.5 \times 12 = 18$ dwelling units, for the R-24 portion: $2.3 \times 24 = 55.2$ rounded to 55 dwelling units. The overall base density for the site is $18 + 55 = 73$ dwelling units. (Ord. 706 § 1 (Exh. A), 2015; Ord. 695 § 1 (Exh. A), 2014; Ord. 682 § 1 (Exh. A), 2014; Ord. 654 § 1 (Exh. 1), 2013; Ord. 560 § 4 (Exh. A), 2009; Ord. 536 § 1, 2009; Ord. 531 § 1 (Exh. 1), 2009; Ord. 500 § 1, 2008; Ord. 462 § 1, 2006; Ord. 439 § 1, 2006; Ord. 352 § 1, 2004; Ord. 299 § 1, 2002; Ord. 293 §§ 1,2, 2001; Ord. 266 § 1, 2001; Ord. 238 Ch. V § 1(B-1), 2000).

20.50.040 Setbacks – Designation and measurement.

F. **Allowance for Optional Aggregate Setback.** For lots with unusual geometry, flag lots with undesignated setbacks, or site conditions, such as ~~steep slopes~~ critical areas, an existing cluster of significant trees, or other unique natural or historic features that should be preserved without disturbance, the City may reduce the individual required setbacks, however, the total of setbacks shall be no less than the sum of the minimum front yard, rear yard, and side yards setbacks. In order to exercise this option, the City must determine that a public benefit is gained by relaxing any setback standard. The following criteria shall apply:

1. No rear or side yard setback shall be less than five feet.
2. The front yard setback adjacent to street shall be no less than 15 feet in R-4 and R-6 and 10 feet in all other zones. (See Exception 20.50.070(1).)

Subchapter 5.

Tree Conservation, Land Clearing and Site Grading Standards

20.50.290 Purpose.

The purpose of this subchapter is to reduce the environmental impacts of site development while promoting the reasonable use of land in the City by addressing the following:

- A. Prevention of damage to property, harm to persons, and environmental impacts caused by excavations, fills, and the destabilization of soils;
- B. Protection of water quality from the adverse impacts associated with erosion and sedimentation;
- C. Promotion of building and site planning practices that are consistent with the City's natural topography and vegetative cover;
- D. Preservation and enhancement of trees and vegetation which contribute to the visual quality and economic value of development in the City and provide continuity and screening between developments;
- E. Protection of critical areas from the impacts of clearing and grading activities;
- F. Conservation and restoration of trees and vegetative cover to reduce flooding, the impacts on existing drainageways, and the need for additional stormwater management facilities;
- G. Protection of anadromous fish and other native animal and plant species through performance-based regulation of clearing and grading;
- H. Retention of tree clusters for the abatement of noise, wind protection, and mitigation of air pollution;
- I. Rewarding significant tree protection efforts by granting flexibility for certain other development requirements;
- J. Providing measures to protect trees that may be impacted during construction;
- K. Promotion of prompt development, effective erosion control, and restoration of property following site development; and
- L. Replacement of trees removed during site development in order to achieve a goal of no net loss of tree cover throughout the City over time. (Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(A), 2000).

20.50.300 General requirements.

- A. Tree cutting or removal by any means is considered a type of clearing and is regulated subject to the limitations and provisions of this subchapter.
- B. All land clearing and site grading shall comply with all standards and requirements adopted by the City of Shoreline. Where a Development Code section or related manual or guide contains a provision that is more restrictive or specific than those detailed in this subchapter, the more restrictive provision shall apply.
- C. Permit Required. No person shall conduct clearing or grading activities on a site without first obtaining the appropriate permit approved by the Director, unless specifically exempted by SMC 20.50.310.
- D. When clearing or grading is planned in conjunction with development that is not exempt from the provisions of this subchapter, all of the required application materials for approval of tree removal, clearing and rough grading of the site shall accompany the development application to allow concurrent review.
- E. A clearing and grading permit may be issued for developed land if the regulated activity is not associated with another development application on the site that requires a permit.

- F. Replacement trees planted under the requirements of this subchapter on any parcel in the City of Shoreline shall be regulated as protected trees under SMC 20.50.330(D).
- G. Any disturbance to vegetation within critical areas and their corresponding buffers is subject to the procedures and standards contained within the critical areas chapter of the Shoreline Development Code, Chapter 20.80 SMC, Critical Areas, in addition to the standards of this subchapter. The standards which result in the greatest protection of the critical areas shall apply. (Ord. 640 § 1 (Exh. A), 2012; Ord. 406 § 1, 2006; Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(B), 2000).

20.50.310 Exemptions from permit.

- A. **Complete Exemptions.** The following activities are exempt from the provisions of this subchapter and do not require a permit:
1. Emergency situation on private property involving danger to life or property or substantial fire hazards.
 - a. **Statement of Purpose.** Retention of significant trees and vegetation is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees and vegetation, especially in critical areas and their buffers.
 - b. For purposes of this section, "Director" means the Director of the Department and his or her designee.
 - c. In addition to other exemptions of SMC 20.50.290 through 20.50.370, a request for the cutting of any tree that is an active and imminent hazard such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines or structures, or are uprooted by flooding, heavy winds or storm events. After the tree removal, the City will need photographic proof or other documentation and the appropriate application approval, if any. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.
 2. Removal of trees and/or ground cover by the City and/or utility provider in situations involving immediate danger to life or property, substantial fire hazards, or interruption of services provided by a utility. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.
 3. Installation and regular maintenance of public utilities, under direction of the Director, except substation construction and installation or construction of utilities in parks or environmentally sensitive critical areas.
 4. Cemetery graves involving less than 50 cubic yards of excavation, and related fill per each cemetery plot.
 5. Removal of trees from property zoned NB, CB, MB and TC-1, 2 and 3, and MUR-70' unless within a critical area of critical area buffer.
 6. Removal and restoration of vegetation within critical areas or their buffers consistent with the provisions of SMC 20.80.030(E) or removal of tree consistent with SMC 20.80.030(G). Within City-owned property, removal of noxious weeds or invasive vegetation as identified by the King County Noxious Weed Control Board in a wetland buffer, stream buffer or the area within a three-foot radius of a tree on a steep slope is allowed when:
 - a. ~~Undertaken with hand labor, including handheld mechanical tools, unless the King County Noxious Weed Control Board otherwise prescribes the use of riding mowers, light mechanical cultivating equipment, herbicides or biological control methods; and~~

Comment [jn42]: Edits made to cross reference these exemptions with CA exemptions for consistency about when a permit is required because activity is in a critical area.

- ~~b. Performed in accordance with SMC 20.80.085, Pesticides, herbicides and fertilizers on City-owned property, and King County best management practices for noxious weeds and invasive vegetation; and~~
- ~~c. The cleared area is revegetated with native vegetation and stabilized against erosion in accordance with the Department of Ecology 2005 Stormwater Management Manual for Western Washington; and~~
- ~~d. All work is performed above the ordinary high water mark and above the top of a stream bank; and~~
- ~~e. No more than 3,000 square feet of soil may be exposed at any one time.~~

B. **Partial Exemptions.** With the exception of the general requirements listed in SMC 20.50.300, the following are exempt from the provisions of this subchapter, provided the development activity does not occur in a critical area or critical area buffer. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:

1. The removal of up to a maximum of six significant trees (excluding trees greater than 30 inches DBH per tree) in accordance with Table 20.50.310(B)(1) (see Chapter 20.20 SMC, Definitions).

Table 20.50.310(B)(1) – Exempt Trees

Lot size in square feet	Number of trees
Up to 7,200	3
7,201 to 14,400	4
14,401 to 21,780	5
21,781 and above	6

2. The removal of any tree greater than 30 inches DBH, or exceeding the numbers of trees specified in the table above, shall require a clearing and grading permit (SMC 20.50.320 through 20.50.370).
3. Landscape maintenance and alterations on any property that involves the clearing of less than 3,000 square feet, or less than 1,500 square feet if located in a special drainage area, provided the tree removal threshold listed above is not exceeded. (Ord. 706 § 1 (Exh. A), 2015; Ord. 695 § 1 (Exh. A), 2014; Ord. 640 § 1 (Exh. A), 2012; Ord. 581 § 1 (Exh. 1), 2010; Ord. 560 § 4 (Exh. A), 2009; Ord. 531 § 1 (Exh. 1), 2009; Ord. 434 § 1, 2006; Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(C), 2000).

20.50.320 Specific activities subject to the provisions of this subchapter.

All activities listed below must comply with the provisions of this subchapter. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:

- A. The construction of new residential, commercial, institutional, or industrial structures or additions.
- B. Earthwork of 50 cubic yards or more. This means any activity which moves 50 cubic yards of earth, whether the material is excavated or filled and whether the material is brought into the site, removed from the site, or moved around on the site.
- C. Clearing of 3,000 square feet of land area or more or 1,500 square feet or more if located in a special drainage area.
- D. Removal of more than six significant trees from any property.
- E. Any clearing, or grading, or other land disturbing activity within a critical area or buffer of a critical area unless otherwise exempt from the provisions of this subchapter in SMC 20.50.310.

Comment [jn43]: Revised for consistency with existing and proposed exemptions.

- F. Any change of the existing grade by four feet or more.
- G. Repealed by Ord. 640.
- H. Any land surface modification not specifically exempted from the provisions of this subchapter.
- I. Development that creates new, replaced or a total of new plus replaced impervious surfaces over 1,500 square feet in size, or 500 square feet in size if located in a landslide hazard area or special drainage area.
- J. Any construction of public drainage facilities to be owned or operated by the City.
- K. Any construction involving installation of private storm drainage pipes 12 inches in diameter or larger.
- L. Any modification of or construction which affects a stormwater quantity or quality control system. (Does not include maintenance or repair to the original condition.)
- M. Applicants for forest practice permits (Class IV – general permit) issued by the Washington State Department of Natural Resources (DNR) for the conversion of forested sites to developed sites are also required to obtain a clearing and grading permit. For all other forest practice permits (Class II, III, IV – special permit) issued by DNR for the purpose of commercial timber operations, no development permits will be issued for six years following tree removal. (Ord. 640 § 1 (Exh. A), 2012; Ord. 531 § 1 (Exh. 1), 2009; Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(D), 2000).

20.50.330 Project review and approval.

- A. Review Criteria. The Director shall review the application and approve the permit, or approve the permit with conditions; provided, that the application demonstrates compliance with the criteria below.
 - 1. The proposal complies with SMC 20.50.340 through 20.50.370, or has been granted a deviation from the Engineering Development Manual.
 - 2. The proposal complies with all standards and requirements for the underlying permit.
 - 3. If the project is located in a critical area or buffer, or has the potential to impact a critical area, the project must comply with the critical areas ~~standards~~ regulations, Chapter 20.80 SMC, or Shoreline Master Program, SMC Title 20, Division II.
 - 4. The project complies with all requirements of the Engineering Development Manual and SMC 13.10.200, Surface Water Management Code and adopted standards.
 - 5. All required financial guarantees or other assurance devices are posted with the City.
- B. Professional Evaluation. In determining whether a tree removal and/or clearing is to be approved or conditioned, the Director may require the submittal of a professional evaluation and/or a tree protection plan prepared by a certified arborist at the applicant's expense, where the Director deems such services necessary to demonstrate compliance with the standards and guidelines of this subchapter. Third party review of plans, if required, shall also be at the applicant's expense. The Director shall have the sole authority to determine whether the professional evaluation submitted by the applicant is adequate, the evaluator is qualified and acceptable to the City, and whether third party review of plans is necessary. Required professional evaluation(s) and services may include:
 - 1. Providing a written evaluation of the anticipated effects of proposed construction on the viability of trees on a site;
 - 2. Providing a hazardous tree assessment;
 - 3. Developing plans for, supervising, and/or monitoring implementation of any required tree protection or replacement measures; and/or

4. Conducting a post-construction site inspection and evaluation.
- C. Conditions of Approval. The Director may specify conditions for work at any stage of the application or project as he/she deems necessary to ensure the proposal's compliance with requirements of this subchapter, critical area standards regulations, Chapter 20.80 SMC, or Shoreline Master Program, SMC Title 20, Division II, the Engineering Development Manual, the adopted stormwater management regulations, and any other section of the Shoreline Development Code, or to protect public or private property. These conditions may include, but are not limited to, hours or seasons within which work may be conducted, or specific work methods.
- D. Designation of Protected Trees.
1. For the following areas, the retention and planting plan and any application and permit plans shall show all trees designated for protection: areas designated as "protected trees," "native growth protection areas," "sensitive critical areas," "sensitive critical area buffers," or such other designation as may be approved by the Director. Protected vegetation, including protected trees, shall not be modified, harmed or removed except as provided in this subchapter.
 2. The Director may require that protected trees be permanently preserved within a tract, easement or other permanent protective mechanism. When required, the location, purpose, and limitation of these protected areas shall be shown on the face of the deed, plat, binding site plan, or similar document and shall be recorded with the King County Department of Recorder's Office and Elections or its successor. The recorded document shall include the requirement that the protected areas shall not be removed, amended or modified without the written approval of the City.
- E. Preconstruction Meeting Required. Prior to the commencement of any permitted clearing and grading activity, a preconstruction meeting shall be held on-site with the permittee and appropriate City staff. The project site shall be marked in the field as follows:
1. The extent of clearing and grading to occur;
 2. Delineation and protection with clearing limit fencing of any critical areas and critical area buffers;
 3. Trees to be removed and retained; and
 4. Property lines. (Ord. 631 § 1 (Exh. 1), 2012; Ord. 531 § 1 (Exh. 1), 2009; Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(E), 2000).

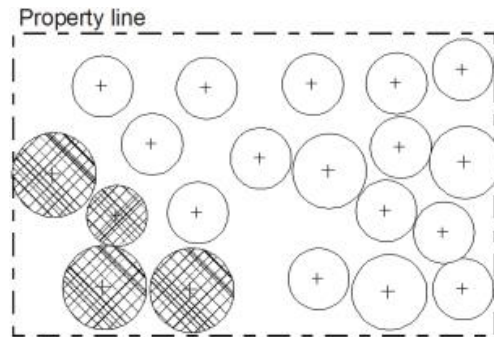
Comment [jn44]: Update of terms, not previously revised.

Comment [jn45]: Added to ensure that clearing limit fencing is installed to protect clearing limits prior to preconstruction inspection.

20.50.350 Development standards for clearing activities.

- A. No trees or ground cover shall be removed from critical area or buffer unless the proposed activity is consistent with the critical area standards.
- B. Minimum Retention Requirements. All proposed development activities that are not exempt from the provisions of this subchapter shall meet the following:
1. At least 20 percent of the significant trees on a given site shall be retained, excluding critical areas, and critical area buffers, or
 2. At least 30 percent of the significant trees on a given site (which may include critical areas and critical area buffers) shall be retained.
 3. Tree protection measures ensuring the preservation of all trees identified for retention on approved site plans shall be guaranteed during development through the posting of a performance bond equal to the value of the installation and maintenance of those protection measures.
 4. The minimum amount of trees to be retained cannot be removed for a period of 36 months and shall be guaranteed through an approved maintenance agreement.

- The Director may require the retention of additional trees to meet the stated purpose and intent of this title, as required by the critical areas ~~standards regulations~~, Chapter 20.80 SMC, or Shoreline Master Program, SMC Title 20, Division II, or as site-specific conditions demand using SEPA substantive authority.



LEGEND


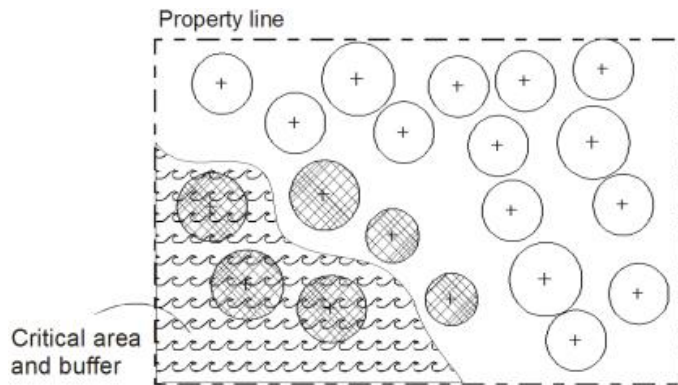
 Indicates trees to be retained

Figure 20.50.350(B)(1): Demonstration of the retention of 20 percent of the significant trees on a site containing no critical areas.



LEGEND


 Indicates significant trees to be retained

Figure 20.50.350(B)(2): Demonstration of the retention of 30 percent of the significant trees on a site containing a critical area.

Exception 20.50.350(B):

- The Director may allow a reduction in the minimum significant tree retention percentage to facilitate

preservation of a greater number of smaller trees, a cluster or grove of trees, contiguous perimeter buffers, distinctive skyline features, or based on the City's concurrence with a written recommendation of an arborist certified by the International Society of Arboriculture and approved by the City that retention of the minimum percentage of trees is not advisable on an individual site.

2. *In addition, the Director may allow a reduction in the minimum significant tree retention percentage if all of the following criteria are satisfied: The exception is necessary because:*
 - *There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.*
 - *Strict compliance with the provisions of this Code may jeopardize reasonable use of property.*
 - *Proposed vegetation removal, replacement, and any mitigation measures are consistent with the purpose and intent of the regulations.*
 - *The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.*
3. *If an exception is granted to this standard, the applicant shall still be required to meet the basic tree replacement standards identified in SMC 20.50.360 for all significant trees removed beyond the minimum allowed per parcel without replacement and up to the maximum that would ordinarily be allowed under SMC 20.50.350(B).*
4. *In addition, the applicant shall be required to plant four trees for each significant tree removed that would otherwise count towards the minimum retention percentage. Trees replaced under this provision shall be at least 12 feet high for conifers and three inches in caliper if otherwise. This provision may be waived by the Director for restoration enhancement projects conducted under an approved vegetation management plan.*

C. **Incentives for Higher Levels of Tree Protection.** The Director may grant reductions or adjustments to other site development standards if the protection levels identified in subsection (B) of this section are exceeded. On a case-by-case review, the Director shall determine the balance between tree protection that exceeds the established minimum percentage and variations to site development requirements. If the Director grants adjustments or reductions to site development standards under this provision, then tree protection requirements shall be recorded on the face of the plat, as a notice to title, or on some other legal document that runs with the property. Adjustments that may be considered are:

1. Reductions or variations of the area, width, or composition of required open space and/or landscaping;
2. Variations in parking lot design and/or any access driveway requirements;
3. Variations in building setback requirements;
4. Variations of grading and stormwater requirements.

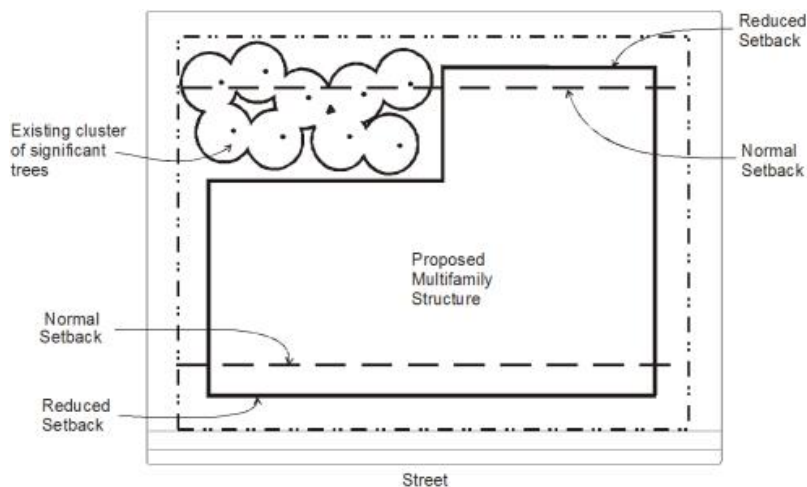
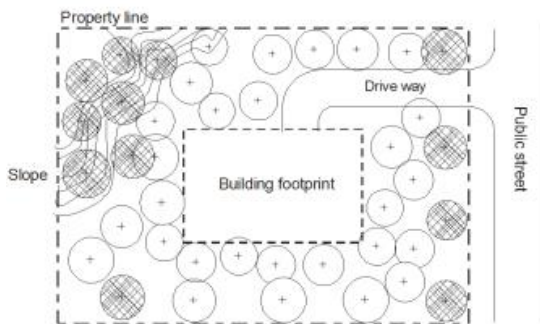


Figure 20.50.350(C): Example of aggregate setback to preserve a cluster of significant trees.



- D. Site Design. Site improvements shall be designed and constructed to meet the following:
1. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.
 2. Site improvements shall be designed to give priority to protection of trees with the following characteristics, functions, or location:
 - Existing stands of healthy trees that have a reasonable chance of survival once the site is developed, are well shaped to withstand the wind and maintain stability over the long term, and will not pose a threat to life or property.
 - Trees which exceed 50 feet in height.
 - Trees and tree clusters which form a continuous canopy.
 - Trees that create a distinctive skyline feature.
 - Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness.
 - Trees providing habitat value, particularly riparian habitat.
 - Trees within the required yard setbacks or around the perimeter of the proposed development.
 - Trees having a significant land stability function.
 - Trees adjacent to public parks, open space, and sensitive critical area buffers.
 - Trees having a significant water-retention function.
 3. Building footprints, parking areas, roadways, utility corridors and other structures shall be designed and located with a consideration of tree protection opportunities.
 4. The project grading plans shall accommodate existing trees and avoid alteration to grades around existing significant trees to be retained.
 5. Required open space and recreational space shall be designed and located to protect existing stands of trees.

6. The site design and landscape plans shall provide suitable locations and adequate area for replacement trees as required in SMC 20.50.360.
7. In considering trees for protection, the applicant shall avoid selecting trees that may become hazardous because of wind gusts, including trees adjacent to utility corridors where falling trees may cause power outages or other damage. Remaining trees may be susceptible to blow downs because of loss of a buffer from other trees, grade changes affecting the tree health and stability and/or the presence of buildings in close proximity.
8. If significant trees have been removed from a closed, forested situation, an adequate buffer of smaller trees shall be retained or planted on the fringe of such significant trees as determined by a certified arborist.
9. All trees located outside of identified building footprints and driveways and at least 10 feet from proposed structures shall be considered as eligible for preservation. However, all significant trees on a site shall be considered when calculating the minimum retention percentage.

DO THIS



LEGEND

-  Appropriately retained trees - in clusters on a slope and along the street
-  Trees proposed for removal

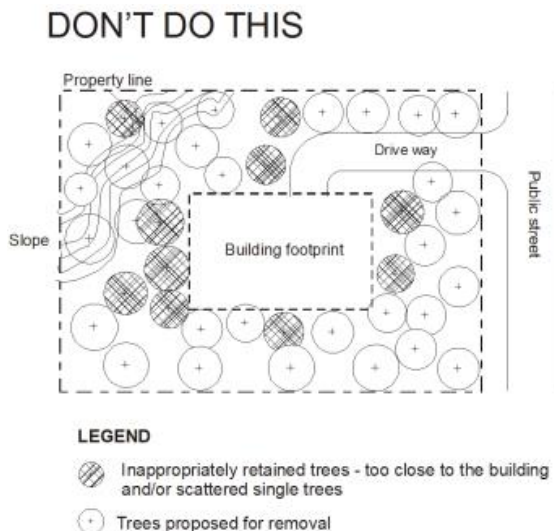


Figure 20.50.350(D): Example of the application of tree retention site design standards. Appropriate retention of a cluster of trees on a slope and frontage trees are shown above. Inappropriate retention of scattered single trees and trees near structures are shown below.

- E. Cutting and Pruning of Protected Trees. Trees protected under the provisions of this section shall not be topped. Pruning and maintenance of protected trees shall be consistent with best management practices in the field of arboriculture, such as the American National Standard for Tree Care Operations – Tree, Shrub, and Other Wood Plant Maintenance- Standard Practices (ANSI A300) or similar, and further the long-term health of the tree. Excessive pruning, including topping, stripping, or imbalances, shall not be allowed unless necessary to protect life and property. Protected trees may be pruned to enhance views including methods such as windowing, interlimbing, or skirting up, when completed by a qualified professional arborist and consistent with best management practices.
- F. Landmark Trees. Trees which have been designated as landmark trees by the City of Shoreline because they are 30 inches or larger in diameter or particularly impressive or unusual due to species, size, shape, age, historical significance and/or are an outstanding row or group of trees, have become a landmark to the City of Shoreline or are considered specimens of their species shall not be removed unless the applicant meets the exception requirements of subsection (B) of this section. The Director shall establish criteria and procedures for the designation of landmark trees. (Ord. 640 § 1 (Exh. A), 2012; Ord. 406 § 1, 2006; Ord. 398 § 1, 2006; Ord. 238 Ch. V § 5(G), 2000).

Comment [jn46]: Many jurisdictions in the region require compliance with this ANSI A300. The ISA also has guidelines they have developed for their members that are based on the ANSI standards. Both require organizational memberships to be able to access the specific standards so staff is recommending adding them as examples of best practices rather than requiring specific adherence to these standards.

Comment [jn47]: Proposed language to allow for pruning within critical areas for health of tree and to allow for view through the tree without excessive pruning or topping.

20.50.360 Tree replacement and site restoration.

- A. Plans Required. Prior to any tree removal, the applicant shall demonstrate through a clearing and grading plan, tree retention and planting plan, landscape plan, critical area ~~report protection and~~ mitigation or restoration plans, or other plans acceptable to the Director that tree replacement will meet the minimum standards of this section. Plans shall be prepared by a qualified person or persons at the applicant’s expense. Third party review of plans, if required, shall be at the applicant’s expense.
- B. The City may require the applicant to relocate or replace trees, shrubs, and ground covers, provide erosion control methods, hydroseed exposed slopes, or otherwise protect and restore the site as determined by the Director.
- C. Replacement Required. Trees removed under the partial exemption in SMC 20.50.310(B)(1) may be removed

per parcel with no replacement of trees required. Any significant tree proposed for removal beyond this limit should be replaced as follows:

1. One existing significant tree of eight inches in diameter at breast height for conifers or 12 inches in diameter at breast height for all others equals one new tree.
2. Each additional three inches in diameter at breast height equals one additional new tree, up to three trees per significant tree removed.
3. Minimum size requirements for trees replaced under this provision: deciduous trees shall be at least 1.5 inches in caliper and evergreens six feet in height.

Exception 20.50.360(C):

1. *No tree replacement is required when the tree is proposed for relocation to another suitable planting site; provided, that relocation complies with the standards of this section.*
 2. *The Director may allow a reduction in the minimum replacement trees required or off-site planting of replacement trees if all of the following criteria are satisfied:*
 - *There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.*
 - *Strict compliance with the provisions of this Code may jeopardize reasonable use of property.*
 - *Proposed vegetation removal, replacement, and any mitigation measures are consistent with the purpose and intent of the regulations.*
 - *The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.*
 3. *The Director may waive this provision for site restoration or enhancement projects conducted under an approved vegetation management plan.*
- D. The Director may require that a portion of the replacement trees be native species in order to restore or enhance the site to predevelopment character.
- E. The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock.
- F. Replacement of removed trees with appropriate native trees at a ratio determined by the Director will be required in critical areas.
- G. The Director may consider smaller-sized replacement plants if the applicant can demonstrate that smaller plants are more suited to the species, site conditions, and to the purposes of this subchapter, and are planted in sufficient quantities to meet the intent of this subchapter.
- H. All required replacement trees and relocated trees shown on an approved permit shall be maintained in healthy condition by the property owner throughout the life of the project, unless otherwise approved by the Director in a subsequent permit.
- I. Where development activity has occurred that does not comply with the requirements of this subchapter, the requirements of any other section of the Shoreline Development Code, or approved permit conditions, the Director may require the site to be restored to as near preproject original condition as possible. Such restoration shall be determined by the Director and may include, but shall not be limited to, the following:
1. Filling, stabilizing and landscaping with vegetation similar to that which was removed, cut or filled;

2. Planting and maintenance of trees of a size and number that will reasonably assure survival and that replace functions and values of removed trees; and
 3. Reseeding and landscaping with vegetation similar to that which was removed, in areas without significant trees where bare ground exists.
- J. Significant trees which would otherwise be retained, but which were unlawfully removed or damaged or destroyed through some fault of the applicant or their representatives shall be replaced in a manner determined by the Director.
- K. **Performance Assurance.**
1. The Director may require a performance bond for tree replacement and site restoration permits to ensure the installation of replacement trees, and/or compliance with other landscaping requirements as identified on the approved site plans.
 2. A maintenance bond shall be required after the installation of required site improvements and prior to the issuance of a certificate of occupancy or finalization of permit and following required landscape installation or tree replacement. The maintenance bond and associated agreement shall be in place to ensure adequate maintenance and protection of retained trees and site improvements. The maintenance bond shall be for an amount not to exceed the estimated cost of maintenance and protection measures for a minimum of 36 months or as determined by the Director.
 3. The Director shall exempt individual single-family lots from a maintenance bond, except where a clearing violation has occurred or tree replacement is located within critical areas or critical area buffers.
- L. **Monitoring.** The Director may require submittal of periodic monitoring reports as necessary to ensure survival of replacement trees. The contents of the monitoring report shall be determined by the Director.
- M. **Discovery of Undocumented Critical Areas.** The Director may stop work authorized by a clearing and grading permit if previously undocumented critical areas are discovered on the site. The Director has the authority to require additional studies, plans and mitigations should previously undocumented critical areas be found on a site. (Ord. 640 § 1 (Exh. A), 2012; Ord. 406 § 1, 2006; Ord. 398 § 1, 2006; Ord. 299 § 1, 2002; Ord. 238 Ch. V § 5(H), 2000).

Chapter 20.80

Critical Areas

Sections:

Subchapter 1. Critical Areas – General Provisions

Comment [jn48]: Reorganized for clarity and consistency. Double strike through or double underlined show moved sections.

- 20.80.010 Purpose.
- ~~20.80.025~~20.80.015 Applicability.
- ~~20.80.045~~20.80.020 Relationship to other regulations.
- 20.80.025 Critical areas maps.
- ~~20.80.025~~ Applicability.
- 20.80.030 Exemptions.
- 20.80.040 ~~Partial exemptions~~ Allowed activities.
- 20.80.045 Critical areas preapplication meeting.
- ~~20.80.070~~20.80.050 Alteration of critical areas.
- ~~20.80.080~~ Alteration or development of critical areas – Standards and criteria.
- ~~20.80.060~~ Best available science.
- ~~20.80.100~~20.80.070 Classification and rating of critical areas.
- ~~20.80.110~~20.80.080 Critical areas reports required - Requirements.
- 20.80.082 Mitigation plan requirements.
- ~~20.80.045~~ Relationship to other regulations.
- ~~20.80.050~~ Notice to title.
- ~~20.80.060~~ Permanent field marking.
- ~~20.80.070~~ Alteration of critical areas.
- ~~20.80.080~~ Alteration or development of critical areas – Standards and criteria.
- 20.80.085 Pesticides, herbicides and fertilizers on City-owned property.
- 20.80.090 Buffer areas.
- ~~20.80.050~~20.80.100 Notice to title.
- ~~20.80.060~~20.80.110 Permanent field marking.
- ~~20.80.100~~ Classification and rating of critical areas.
- ~~20.80.110~~ Critical areas reports required.
- 20.80.120 Financial guarantee requirements.
- 20.80.130 Unauthorized critical area alterations and enforcement.

Subchapter 1.

Critical Areas – General Provisions

20.80.010 Purpose.

- A. The purpose of this chapter is to establish supplemental standards for the protection of critical areas in compliance with the provisions of the Washington Growth Management Act of 1990 (Chapter 36.70A RCW) and consistent with the goals and policies of the Shoreline Comprehensive Plan in accordance with the procedures of Chapter 20.30 SMC.
- B. By identifying and regulating development and alterations to critical areas and their buffers, it is the intent of this chapter to:
1. Protect the public from injury, loss of life, property damage or financial losses due to flooding, erosion, landslide, seismic events, or soils subsidence or steep slope failure;
 2. Protect unique, fragile and valuable elements of the environment;
 3. Reduce cumulative adverse environmental impacts to water quality, wetlands, streams and other aquatic resources, fish and wildlife habitat, steep slopes landslide hazards and other geologically unstable features and prevent the overall net loss of the area, functions, and values of wetlands, streams and other fish and wildlife habitat areas and their buffers;
 4. Ensure the long-term protection of ground and surface water quality;
 5. Alert members of the public, including appraisers, assessors, owners, potential buyers, or lessees, to the development limitations of critical areas and their required buffers;
 6. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA) and the City's Environmental Procedures (Chapter 20.30 SMC, Subchapter 8); and comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and its implementing rules;
 7. Establish standards and procedures that are intended to protect environmentally critical areas while accommodating the rights of property owners to use their property in a reasonable manner; and
 8. Provide for the management of critical areas to maintain their functions and values and to restore degraded ecosystems. (Ord. 641 § 5 (Exh. A), 2012; Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(A), 2000).

C. 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 or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

20.80.0215 Applicability.

- A. Unless explicitly exempted, the provisions of this chapter shall apply to all lands, all land uses, development activity and all structures and facilities within all zoning designations in the City of Shoreline, whether or not a permit or authorization is required. All persons within the City shall comply with the 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 without first assuring compliance 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.

Comment [jn49]: Subchapter reorganized to group related general provisions together for clarity and consistency.

Comment [jn50]: This reference indicates administrative procedures are in 20.30 rather than included specifically in the CAO. Authority is granted for all of Title 20 in Chapter 20.10.

Comment [jn51]: Identified as gap in existing critical area regulations. Required by the state to have goal of no net loss.

Comment [jn52]: Suggested provision from Commerce example code for direction on application/interpretation of the Chapter.

D. The provisions of this chapter shall apply to any forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and WAC Title 222. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(E), 2000. Formerly 20.80.050.)

20.80.04520 Relationship to other regulations.

A. These critical area regulations shall apply as an overlay and in addition to zoning, land use, and other regulations established by the City of Shoreline. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to the environmentally critical areas shall apply.

B. Areas characterized by particular critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. ~~Wetlands, for example, may be defined and regulated according to the provisions for fish and wildlife habitat conservation areas contained in this chapter, as well as provisions regulating wetlands.~~ In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply.

C. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as necessary and locally adopted.

D. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements (for example, Shoreline Substantial Development Permits, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(K), 2000. Formerly 20.80.110.)

Comment [jn53]: Moved. Formerly 20.80.045. Provisions for concurrency with SEPA and compliance with other regulations added based on Commerce example code for clarity.

20.80.0205 Critical areas maps.

A. The approximate location and extent of identified critical areas within the City's planning area are shown on the critical areas maps adopted as part of this chapter, including but not limited to the maps identified in sections SMC 20.80.222, 20.80.272 and 20.80.322. These maps shall be used for informational purposes only to assist property owners and other interested parties. Boundaries and locations indicated on the maps are generalized. Critical areas and their buffers may occur within the City which have not previously been mapped.

B. The actual presence or absence, type, extent, boundaries, and classification of critical areas shall be identified in the field by a qualified professional, and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria or standards of this chapter, the criteria and standards shall prevail.

C. The critical areas maps shall be periodically updated by the City and shall reflect any permit activity, results of special studies and reports reviewed and approved by the City, amendments to the Comprehensive Plan Environmental Natural Environment Element, and Department identified errors and corrections. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(D), 2000. Formerly 20.80.040.)

Comment [jn54]: Added reference to new mapping sections and corrected Comprehensive Plan element reference. Section number changed for reorganization.

~~20.80.025 Applicability.~~

~~A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses and within all zoning designations in the City of Shoreline. All persons within the City shall comply with the 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 without first assuring compliance with the requirements of this chapter.~~

~~C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation~~

Comment [jn55]: Moved to 20.80.015.

~~of the applicant to comply with the provisions of this chapter.~~

~~D. The provisions of this chapter shall apply to any forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and WAC Title 222. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2002; Ord. 228 Ch. VIII § 1(E), 2000. Formerly 20.80.050.)~~

20.80.030 Exemptions.

Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area or critical area buffer shall meet the purpose and intent of SMC 20.80.010 and shall consider on-site alternatives that avoid or minimize impacts. 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 that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. The following activities shall be exempt from the provisions of this chapter, but are not exempt from applicable permits:

Comment [jn56]: Moved from former subsection N below and additional language added based on Commerce example code. Applies to all exemptions of this section.

Comment [jn57]: Clarification to reduce confusion.

A. **Emergencies.** Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the City as soon as possible. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The City shall confirm that an emergency exists and determine what, if any, additional applications and/or measures shall be required to protect the environment consistent with the provisions of this chapter, and to repair any damage to a preexisting resource. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of SMC 20.80.130 Unauthorized critical area alterations and enforcement shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and other mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and restoration/mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Mitigation activities must be initiated under permit within one (1) year of the date of the emergency:

Comment [jn58]: This is currently policy but not explicitly included in current code. Language from Commerce example code. Restoration is one type of mitigation. Mitigation

B. **Utility Operation, Maintenance, Repair, or Replacement.** Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by the City of Shoreline, which approves the new location of the facilities;
3. Replacement, operation, repair, modification or installation or construction in an improved City road right-of-way or City-authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;
4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the City of Shoreline, which approves the new location of the facilities; ~~and~~
5. Replacement, operation, repair, modification, relocation, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City-authorized private roadway; and

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6. Repair and maintenance of existing private connections to public utilities and private stormwater management facilities consistent with best practices. Revegetation of disturbed areas is required to be native vegetation, unless the existing, non-native vegetation is re-established with no change to type or extent.
- C. Roadway Operation, Maintenance, Repair, or Replacement. Maintenance, operation, repair, modification or replacement of publicly improved roadways or City authorized private roadway, and associated stormwater drainage systems as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way and does not alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
- D. Recreation Areas Operation, Maintenance, Repair, or Replacement. Maintenance, operation, ~~or repair,~~ modification, or replacement of existing publicly improved recreation areas as long as any such activity does not involve the expansion of uses and/or facilities and existing improvements into a previously unimproved portion of a preexisting area critical areas or required buffers. Maintenance, operation, and repair, modification, and replacement of publicly improved recreation areas within designated fish and wildlife habitat areas shall be permitted if all activities are performed consistent with the development standards of this chapter, best available science or adaptive management plans as recognized by the City. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
- E. ~~Activities affecting isolated Type IV wetlands which are individually smaller than 1,000 square feet;~~
- F. ~~Activities occurring in areas which may be considered small steep slopes (areas of 40 percent slope or greater with a vertical elevation change of up to, but not greater than 20 feet), such as berms, retaining walls, excavations and small natural slopes, and activities on steep slopes created through prior legal grading activity may be exempted based upon City review of a soils report prepared by a qualified geologist or geotechnical engineer which demonstrates that no adverse impact will result from the exemption;~~
- GE. Minor Conservation and Enhancement. Minor conservation and enhancement of critical areas that does not alter the location, dimensions or size of the critical area or buffer, and results in improvement of the critical area functions, including the following invasive species removal activities:
1. Within City-owned property, removal of noxious weeds or invasive vegetation as identified by the Washington State or King County Noxious Weed Control Boards in a wetland buffer, stream a fish and wildlife habitat conservation area or its buffer or a geologic hazard area (excluding very high risk landslide hazard areas and their buffers), or the area within a three-foot radius of a tree on a steep slope in a very high risk landslide hazard area and buffer is allowed when:
 - a. Undertaken with hand labor, including handheld mechanical tools, unless the Washington State or King County Noxious Weed Control Boards otherwise prescribes the use of riding mowers, light mechanical cultivating equipment, herbicides or biological control methods; and
 - b. Performed in accordance with SMC 20.80.085, Pesticides, herbicides and fertilizers on City-owned property, and King County best management practices for noxious weeds and invasive vegetation; and
 - c. The cleared area is revegetated with native vegetation and stabilized against erosion in accordance with the Department of Ecology 2005 adopted Stormwater Management Manual for Western Washington; and
 - d. All work is performed above the ordinary high water mark and above the top of a stream bank; and
 - e. No more than 3,000 square feet of soil may be exposed at any one time; or
 2. Within private property, removal of noxious weeds or invasive vegetation as identified by the

Comment [jn59]: Provision added to facilitate repair and maintenance of existing private utility connections and facilities that are located within critical areas or critical area buffers.

Comment [jn60]: Updated for consistency with best practices and Commerce example code.

Comment [jn61]: Section revised at request of parks department to include modification and replacement similar to utilities and right-of-way exemptions above.

Comment [jn62]: Provision is not consistent with BAS and confusing because these slopes allow alteration similar to Moderate to High Risk Landslide Hazard areas. Exemption still requires critical area report. Replaced with revision to classifications of landslide hazard areas in SMC 20.80.220(B)

Comment [jn63]: Moved from SMC 20.50.310(A)(6). Replaced with cross reference for exemption of these activities from site development or clearing and grading permit requirements.

Washington State or King County Noxious Weed Control Boards in a wetland buffer, a fish and wildlife habitat conservation area or its buffer or a geologic hazard area (excluding very high risk landslide hazard areas and their buffers), or the area within a three-foot radius of a tree in a very high risk landslide hazard area and buffer is allowed when:

- a. Undertaken with hand labor, including hand-held mechanically tools, unless the Washington State or King County Noxious Weed Control Board otherwise prescribe the use of riding mowers, light mechanical cultivating equipment, herbicides, or biological control methods with permit approval from the City for the alternate treatment methods;
 - b. Not more than 500 square feet of area may be cleared, as calculated cumulatively over one (1) year, on private property without a permit and critical area report prepared by a qualified professional;
 - c. All removed plant material shall be taken away from the site and disposed of appropriately;
 - d. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds or the King County Noxious Weed List must be handled and disposed of according to best practices appropriate to that species and approved by the City when permit review is applicable; and
 - f. Revegetation with appropriate native species at natural densities is required in conjunction with removal of invasive plant species and stabilized against erosion in accordance with the adopted Stormwater Manual; or
3. Vegetation management consistent with a previously approved critical area mitigation, restoration, remediation, or enhancement plan that requires ongoing maintenance and vegetation management beyond final inspection and the required monitoring period for the permitted project;

~~HF.~~ **Active Hazard Trees.** Removal of active or imminent hazardous trees in accordance with SMC 20.50.310(A)(1)(c);

~~IG.~~ **Nonimminent Hazard Trees.** Removal of not active or imminent hazardous trees in accordance with the following:

1. For hazardous circumstances that are not active or imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks, a permit exemption request form must be submitted by the property owner together with a risk assessment tree evaluation form prepared by a qualified professional arborist as defined in SMC 20.20.042. Both the permit exemption request form and risk assessment tree evaluation form shall be provided by the Director;
2. The permit exemption request form shall include a grant of permission for the Director and/or ~~his~~ qualified professionals under contract with the City to enter the subject property to evaluate the circumstances. Attached to the permit exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist or professional forester;
3. No permit exemption request shall be approved until the Director reviews the submitted forms and conducts a site visit. The Director may ~~direct that a peer review~~ require third party review of the request be performed by a qualified professional under contract with the City at the applicant's cost expense, and may require that the subject tree(s) and vegetation be cordoned off with yellow warning tape during the review of the request for exemption;
4. Approval to cut or clear trees may only be given upon recommendation of the ~~City approved~~ qualified professional arborist that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, sidewalks, improved utility corridors, or access for emergency vehicles and any trail as proposed by the property owner and approved by the Director for purposes of this section;
5. The Director shall authorize only such alteration to existing trees and vegetation as may be necessary to

eliminate the hazard and shall condition authorization on means and methods of removal necessary to minimize environmental impacts, including replacement of any significant trees. The arborist shall include an assessment of whether a portion of the tree suitable for a snag for wildlife habitat may safely be retained. All work shall be done utilizing hand-held implements only, unless the property owner requests and the Director approves otherwise in writing. The Director may require that all or a portion of cut materials be left on site;

6. The trees shall be replaced within one year consistent with the provisions of SMC 20.50.360. Where nonsignificant trees are approved for removal as hazardous, replacement shall be one tree for each tree removed. Replacement tree may be planted at a different, nearby location if it can be determined that the planting in the same location would create a new hazard or potentially damage the critical area; and

7. If a tree to be removed provides priority habitat, such as an eagle perch, a qualified professional shall be consulted to determine timing and methods of removal that will minimize and mitigate impacts.

Comment [jn64]: Provisions 6 and 7 recommended to offset cumulative adverse impacts to critical areas consistent with BAS, while still allowing for removal of hazardous trees without extensive permitting and critical area report requirements. The language proposed is modified from City of Edmonds code.

~~H.~~ **Site Investigation.** Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies;

~~K.~~ **Passive Outdoor Activities.** When it can be demonstrated that there will be no undue adverse effect, the following activities may be allowed within critical areas and their buffers: educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water recreation-related activities, bicycling and hiking, that will not have an undue adverse effect on the critical area;

~~L.~~ **Normal Maintenance.** Normal and routine maintenance and operation of existing landscaping and gardens, provided they comply with all other regulations in this chapter including pruning, beneficial to the tree, of protected trees consistent with SMC 20.50.350(E);

~~M.~~ **Minor Activities.** Minor activities not mentioned above and determined by the City to have minimal impacts to a critical area;

~~N.~~ Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area should meet the purpose and intent of SMC 20.80.010 and should consider on-site alternatives that avoid or minimize impacts; and

Comment [jn65]: Applies to all exemptions so moved to beginning of 20.80.030.

~~O.~~ **Utility Mitigation Projects.** Mitigation projects related to utilities construction in critical areas or their buffers. (Ord. 640 § 1 (Exh. A), 2012; Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(G), 2000. Formerly 20.80.070.).

20.80.040 ~~Partial exemptions~~ Allowed activities.

A. ~~The following are exempt from the provisions of this chapter except for the notice to title provisions and the flood hazard area provisions, if applicable. **Critical Area Report.** Activities allowed under this section shall have been reviewed and permitted or approved by the City/county or other agency with jurisdiction, but do not require submittal of a separate critical area report, unless such submittal was required previously for the underlying permit. The Director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this Chapter to protect critical areas.~~

B. **Best Management Practices.** All allowed activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. **Allowed Activities.** The following activities are allowed:

1. **Modifications to Existing Structures within Critical Areas.** Structural modification of, addition to, maintenance, repair, or replacement of legally nonconforming structures consistent with SMC 20.30.280, ~~except single detached residences, in existence before November 27, 1990,~~ which do not meet the building setback or buffer requirements for wetlands, streams fish and wildlife habitat conservation areas, or steep slope geologic hazard areas if the modification, addition, replacement or related activity does not increase the existing building height, footprint of the structure, or area of hardscape lying within the ~~above described building setback area,~~ sensitive critical area or buffer. Where nonconforming structures that are partially located within critical areas or their buffers additions are allowed with a critical area report delineating the critical area(s) and required buffers showing that the addition is located entirely outside the critical area or buffer;
- ~~2. 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 steep slope 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 750 square feet over that existing before November 27, 1990, and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is within the critical area, extend farther into the critical area; and~~
- ~~3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.~~
2. **Demolition.** Demolition of structures located within critical areas or their buffers subject to approval of a stormwater pollution prevention plan consistent with the adopted stormwater manual and clearing limits that will adequately protect the critical area.
- ~~B3.~~ **Permit Requests Subsequent to Previous Critical Area Review.** A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter, except for the notice to title provisions, as applicable if:
 - ~~1a.~~ The City of Shoreline has previously reviewed all critical areas on the site; and
 - ~~2b.~~ There is no material change in the development proposal since the prior review; and
 - ~~3c.~~ There is no new information available which may alter previous critical area review of the site or a particular critical area; and
 - ~~4d.~~ The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years have lapsed since the issuance of that permit or approval; and
 - ~~5e.~~ The prior permit or approval, including any conditions, has been complied with. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(H), 2000. Formerly 20.80.080.).

20.80.045 Critical areas preapplication meeting.

- A. A preapplication meeting, pursuant to SMC 20.30.080, is required prior to submitting an application for development or use of land or prior to starting a development activity or use of the land that may be regulated by the provisions of this Chapter unless specifically exempted in SMC 20.80.030.
- B. A determination may be provided through the preapplication meeting regarding whether critical area reports are required, and if so what level of detail and what elements may be necessary for the proposed project. This determination does not preclude the Director from requiring additional critical area report information during the review of the project. After a site visit and review of available information for the preapplication meeting the Director may determine:

Comment [jn66]: Section added to support and clarify the existing requirement in SMC 20.30.080 for preapplication meetings when a critical area might be impacted.

Comment [jn67]: This section is added based on Commerce example code as means for applicant to find out what the critical area report requirements for a project would be. Intended to support the new provisions in 20.80.080. Other jurisdictions have a preliminary Critical Area Identification process required prior to any development permits. These provisions come from that process, without requiring an additional review/approval process.

1. **No Critical Areas Present.** If the Director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the Director shall determine that the critical area review is complete and note in the preapplication meeting summary letter the reasons that no further review is required.
2. **Critical Areas Present, But No Impact.** If the Director determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the Director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
 - a. There will be no alteration of the critical area or buffer;
 - b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this Chapter; and
 - c. The proposal is consistent with other applicable regulations and standards.

A summary of this analysis and the findings shall be included in the preapplication meeting summary letter and any staff report or decision on the underlying permit.
3. **Critical Areas May Be Affected by Proposal.** If the Director determines that a critical area or areas may be affected by the proposal, then the Director shall notify the applicant that a critical area report(s) must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report. Additionally, the Director may indicate the sections or report types that must be included in the critical report(s) consistent with SMC 20.80.080.

20.80.0750 Alteration of critical areas.

- A. Critical areas shall be maintained in their natural state or current legally established condition, including undisturbed, native vegetation to maintain the functions, values, resources, and public health and safety for which they are protected. Alteration of critical areas, including their established buffers, may only be permitted subject to the criteria and standards in this chapter, and compliance with any Federal and/or State permits required. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(A), 2000. Formerly 20.80.160.)

~~20.80.080 Alteration or development of critical areas – Standards and criteria.~~

- B. ~~This section applies to mitigation required with all critical areas reviews, approvals, and enforcement pursuant to this eChapter. This section is supplemented with specific measures under subchapters for particular critical areas. Mitigation for specific development proposals may include a combination of the measures below. The ~~proponent~~ applicant for a project involving critical areas shall avoid, minimize and mitigate the impacts to the critical areas through actions that occur in the following priority sequence:~~
- ~~A1. Avoiding the impact altogether by not taking a certain action or parts of actions;~~
 - ~~B2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;~~
 - ~~C3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~
 - ~~D4. Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the action;~~
 - ~~E5. Compensating for the impact by replacing or providing substitute resources or environments; and/or~~
 - ~~E6. Monitoring, measuring and reporting the impact to the ~~Planning~~ Director and taking appropriate corrective measures. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(B), 2000. Formerly 20.80.170.)~~

20.80.060 Best available science.

- A. Protect Functions and Values of Critical Areas With Special Consideration to Anadromous Fish.** Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and required buffers and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, where applicable.
- B. Best Available Science to be Consistent With Criteria.** The best available science is that scientific information, obtained through a valid scientific process, that is 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 WAC 365-195-925 and RCW 36.70A.172.
- C. Characteristics of a Valid Scientific Process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas and buffers. To determine whether information received during the permit review process is reliable scientific information, the Director shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:
- 1. Peer Review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;
 - 2. Methods.** The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;
 - 3. Logical Conclusions and Reasonable Inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;
 - 4. Quantitative Analysis.** The data have been analyzed using appropriate statistical or quantitative methods;
 - 5. Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and
 - 6. References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.
- D. Nonscientific Information.** Nonscientific information, such as anecdotal observations, non-expert opinion, and hearsay, may supplement scientific information, but it is not an adequate substitute for valid and available scientific information.
- E. Absence of Valid Scientific Information.** Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the Director shall:
- 1. Take a "precautionary or a no-risk approach,"** that strictly limits development and land use activities until

Comment [jn68]: New section. Incorporation of best available science required in both formulation of regulations and in review of specific proposals. Inclusion of code language articulating requirements for demonstrating best available science is used strengthens reliability of critical area reports and clarity of what meets requirements for BAS incorporation. Proposed code is slightly modified from Commerce example code.

Language regarding special consideration to anadromous fish is a state mandate and is required in consideration of best available science for any critical area type.

the uncertainty is sufficiently resolved; and

2. Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
 - a. Include secure funding for the research component of the adaptive management program;
 - b. Change course based on the results and interpretation of new information that resolves uncertainties; and
 - c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries.

20.80.4070 Classification and rating of critical areas.

Comment [jn69]: Moved. Formerly 20.80.100.

To promote consistent application of the standards and requirements of this chapter, critical areas within the City of Shoreline shall be rated or classified according to their characteristics, function and value, and/or their sensitivity to disturbance. Classification of critical areas shall be determined by the City using the following tools:

- A. Application of the criteria contained in these regulations;
- B. Consideration of the ~~technical~~ critical area reports submitted by qualified professionals in connection with applications subject to these regulations; and
- C. Review of maps adopted pursuant to this chapter. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(E), 2000. Formerly 20.80.200.)

20.80.4080 Critical areas reports required - Requirements.

- A. If uses, activities, or developments are proposed within, adjacent to, or are likely to impact critical areas or their buffers, an applicant shall provide ~~site-specific information and analysis~~ critical area report(s) as determined by the City. Critical area reports for two or more types of critical areas must meet the report requirements for each type of critical area. The expense of preparing the critical area report(s) shall be borne by the applicant. ~~The site specific information must be obtained by expert investigation and analysis. This provision is not intended to expand or limit an applicant's other obligations under WAC 197-11-100. Such site specific reviews shall be performed by qualified professionals, as defined by SMC 20.20.042, who are approved by the City or under contract to the City.~~
- B. **Preparation by Qualified Professional.** Critical area report(s) shall be prepared by qualified professional(s) as defined in SMC 20.20.042, with the required training and experience specific to the type(s) of critical area(s) present consistent with the requirements of SMC 20.80.240, 20.80.290, and 20.80.340. Proof of licensing, credentials, and resume of the qualified professional(s) preparing the report must be submitted for review by the City to determine if the minimum qualifications are met.
- C. **Third Party Review of Critical Area Reports.** Review of required critical area reports by a qualified professional under contract with or employed by the City will be required by the Director, at the applicant's expense, in any of the following circumstances:
 1. The project requires a critical area reasonable use permit, critical area special use permit, or shoreline variance application; or
 2. Third party review is specifically required by the provisions of this chapter for the critical area(s) or critical area buffer(s) potentially being impacted; or
 3. When the Director determines such services are necessary to demonstrate compliance with the standards

and guidelines of this Chapter.

D. **Best Available Science.** Critical area reports shall use standards for best available science in SMC 20.80.060. The critical areas report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Chapter.

E. **Critical Area Report Types or Sections.** Critical area reports may be met in stages through multiple reports or combined in one report. A critical area report may include one or more of the following sections or report types depending on the information required by the director and the extent of the potential critical area impacts. The scope and location of the proposed project will determine which report(s) alone or combined are sufficient to meet the critical area report requirements for the impacted critical area type(s). The typical sequence of potentially required sections or reports that may in part or in combination fulfill the requirements of this section include:

1. **Reconnaissance.** Reconnaissance or identification report documenting the existence, general location, and type of critical areas in the vicinity (within 300 feet for wetlands and fish and wildlife habitat conservation areas and within 200 feet for geologic hazards, shorelines, flood plains, and aquifer recharge areas) of a project site;
2. **Delineation.** Delineation or mapping report documenting the extent, boundaries, rating or classification, and applicable standard buffers of critical areas where the project area could potentially impact the critical area or its buffer including an assessment of the characteristics of or functions and values of the critical area and buffers identified;
3. **Analysis.** Analysis of the proposal and impact assessment report documenting the potential project impacts to the critical area and buffers including a discussion of the efforts taken to avoid, minimize, or reduce potential impacts to those areas;
4. **Mitigation or Restoration.** Mitigation plan or report documenting the potential impacts and mitigation measures designed to meet the requirements of this Chapter in SMC 20.80.082 Mitigation plan requirements and for the specific critical areas impacted, including but not limited to adjustments to required buffer sizes, best practices to minimize impacts, and critical area or buffer enhancement, restoration, or preservation plans. Mitigation plans may be called restoration plans if they are used to remediate violations or to voluntarily restore critical areas and buffers legally altered or impacted due to proximity to development, but the restoration is not required for a proposed development project; and
5. **Maintenance and Monitoring.** Maintenance, monitoring, and contingency plan documenting the goals of the mitigation proposed, performance standards for success, monitoring methods and reporting schedule, maintenance methods and schedule, and contingency actions.

F. **Minimum Report Contents.** At a minimum critical area reports shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
 - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be altered; and
 - b. A description of the proposed stormwater pollution prevention plan for the development and consideration of impacts to drainage alterations;
3. The dates, names, and qualifications of the qualified professional(s) preparing the report and documentation of any fieldwork performed on the site;

4. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, and buffers within the vicinity of the proposed project area (within 300 feet for wetlands and fish and wildlife habitat conservation areas and within 200 feet for geologic hazards, shorelines, flood plains, and aquifer recharge areas);
5. A statement specifying the accuracy of the report and all assumptions made and relied upon;
6. A description of the methodologies used to conduct the critical areas investigation, including references;
7. An assessment of the probable impacts to the critical areas resulting from the proposed development of the site;
8. A description of reasonable efforts made to apply mitigation sequencing pursuant to SMC 20.80.050, Alteration of critical areas, to avoid, minimize, and mitigate impacts to critical areas;
9. Plans for adequate mitigation, as needed and allowed, to offset any critical areas impacts, in accordance with subsection J below and the corresponding mitigation sections of this Chapter and including a discussion of the applicable development standards and cost estimates for determination of financial guarantee requirements.
10. Report requirements specific to each critical area type as indicated in the corresponding sections of this Chapter;

G. **Existing reports.** Unless otherwise provided, a critical areas report may incorporate, be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. At the discretion of the director, reports previously compiled or submitted as part of a proposal for development may be used as a critical areas report to the extent that the requirements of this section and the report requirements for each specific critical area type are met. Critical areas reports shall be considered valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

I. Modifications to report requirements.

1. **Limitations to Study Area.** The director may limit the required geographic area of the critical areas report as appropriate if:
 - a. The applicant, with assistance from the city of Shoreline, cannot obtain permission to access properties adjacent to the project area; or
 - b. The proposed activity will affect only a limited part of the subject site.
2. **Modifications to Required Contents.** The applicant may consult with the Director prior to or during preparation of the critical areas report to obtain approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.
3. **Additional Information Requirements.** The Director may require additional information to be included in the critical areas report when determined to be necessary to the review of the proposed activity in accordance with this title. Additional information that may be required includes, but is not limited to:
 - a. Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
 - b. Grading and drainage plans; and
 - c. Information specific to the type, location, and nature of the critical area. (Ord. 581 § 1 (Exh. 1).

2010; Ord. 515 § 1, 2008; Ord. 406 § 1, 2006; Ord. 398 § 1, 2006).

20.80.082 Mitigation plan requirements.

When mitigation is required, the applicant shall submit for approval by the City a mitigation plan as part of the critical area report. The mitigation plan shall include:

A. Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

1. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed.

B. Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained at the end of the required monitoring period and whether or not the requirements of this Chapter have been met.

C. Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

1. The proposed construction sequence, timing, and duration;
2. Grading and excavation details;
3. Erosion and sediment control features;
4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
5. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

D. Monitoring Program. The mitigation plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5, and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

E. Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

F. Cost Estimates. The mitigation plan shall include cost estimates that will be used by the City to calculate the amounts of financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with SMC 20.80.120 Financial guarantee requirements.

~~20.80.045 Relationship to other regulations.~~

Comment [jn70]: Moved to 20.80.020.

~~A. These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the City of Shoreline. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to the environmentally critical areas shall apply.~~

~~B. Areas characterized by particular critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. Wetlands, for example, may be defined and regulated according to the provisions for fish and wildlife habitat conservation areas contained in this chapter, as well as provisions regulating wetlands. In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply. (Ord. 298 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(K), 2000. Formerly 20.80.110.)~~

~~20.80.050 Notice to title.~~

Comment [jn71]: Revision based on commerce example code and in response to comments from property owners wishing they knew a property had a critical area on it before purchase.

~~A. To inform subsequent purchasers of real property of the existence of critical areas, when development is permitted in an identified critical area or its associated buffer, a notice to title applicable to the property shall be filed with the King County Department of Records. The notice shall state that critical areas or buffers have been identified on 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. This notice shall not be required for development by a public agency or public or private utility when:~~

- ~~1. Within a recorded easement or right of way; or~~
- ~~2. On the site of a permanent public facility.~~

~~B. Subdivisions, short subdivisions, development agreements, and binding site plans shall establish a separate tract (a critical areas tract) as a permanent protective measure for wetlands, streams, fish and wildlife habitat, landslide hazard areas and their buffers. The plat or binding site plan for the project shall clearly depict the critical areas tract, and shall include all of the subject critical area and any required buffer, as well as additional lands, as determined by the developer. Restrictions to development within the critical area tract shall be clearly noted on the plat or plan. Restrictions shall be consistent with this chapter for the entire critical area tract, including any additional areas included voluntarily by the developer. Should the critical area tract include several types of critical areas, the developer may wish to establish separate critical areas tracts. (Ord. 298 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(M), 2000. Formerly 20.80.120.)~~

~~20.80.060 Permanent field marking.~~

~~A. All critical areas tracts, easements or dedications shall be clearly marked on the site using permanent markings, placed every 200 feet, which include the following text:~~

~~*This area has been identified as a <<INSERT TYPE OF CRITICAL AREA>> by the City of Shoreline. Activities, including clearing and grading, removal of vegetation, pruning, cutting of trees or shrubs, planting of nonnative species, and other alterations may be prohibited. Please contact the City of Shoreline Department of Development (206) 546-1811 for further information.*~~

~~B. It is the responsibility of the landowner to maintain and replace if necessary all permanent field markings. (Ord. 298 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(N), 2000. Formerly 20.80.140.)~~

~~20.80.070 Alteration of critical areas.~~

Comment [jn72]: Moved to 20.80.050

~~Alteration of critical areas, including their established buffers, may only be permitted subject to the criteria in this chapter, and compliance with any Federal and/or State permits required. (Ord. 298 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(A), 2000. Formerly 20.80.160.)~~

~~20.80.080 Alteration or development of critical areas Standards and criteria~~

Comment [jn73]: Moved to 20.80.055

~~This section applies to mitigation required with all critical areas reviews, approvals and enforcement pursuant to this chapter. This section is supplemented with specific measures under subchapters for particular critical areas. The proponent for a project involving critical areas shall avoid, minimize and mitigate the impacts to the critical areas through actions that occur in the following sequence:~~

- ~~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;~~
- ~~C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~
- ~~D. Reducing or eliminating the impact over time through 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, measuring and reporting the impact to the Planning Director and taking appropriate corrective measures. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(D), 2000. Formerly 20.80.170.)~~

20.80.085 Pesticides, herbicides and fertilizers on City-owned property.

Pesticides, herbicides and fertilizers which have been identified by State or Federal agencies as harmful to humans, wildlife, or fish, shall not be used in a City-owned riparian corridor, shoreline habitat or its buffer, wetland or its buffer, except as allowed by the Director for the following circumstances:

- A. When the Director determines that an emergency situation exists where there is a serious threat to public safety, health, or the environment and that an otherwise prohibited application must be used as a last resort.
- B. Compost or fertilizer may be used for native plant revegetation projects in any location.
- C. Limited pesticide and herbicide use may be applied pursuant to the King County Noxious Weed Control Board best management practices specific to the species needing control when that is determined to be the best method of control for the location. (Ord. 398 § 1, 2006)

Comment [jn74]: Reference to best management practices added at request of Parks Department. Sometimes correctly applied chemical treatment is the most effective and least impactful method for removal.

20.80.090 Buffer areas.

The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to critical areas. In all cases the standard buffer (i.e., ~~the maximum buffer required by the City~~) shall apply unless the Director determines that no net loss of functions and values will occur or the Director determines that additional buffer width is necessary to ensure no net loss of functions and values consistent with the provisions of this chapter and the recommendations of a qualified professional. The purpose of the buffer shall be to protect the integrity, function, value and resource of the subject critical area, and/or to protect life, property and resources from risks associated with development on unstable or critical lands. Buffers shall consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. If the buffer area has previously been disturbed, it shall be revegetated pursuant to an approved planting mitigation or restoration plan. Buffers shall be protected during construction by placement of a temporary barricade if determined necessary by the City, on-site notice for construction crews of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls. Restrictive covenants or conservation easements may be required to preserve and protect buffer areas. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(C), 2000. Formerly 20.80.180.)

Comment [jn75]: Revision based on commerce example code and in response to comments from property owners wishing they knew a property had a critical area on it before purchase.

~~20.80.050100 Notice to title~~

- A. Notice to Title. A notice to title is required when development is permitted on any property containing a critical area or buffer. The purpose is to inform subsequent purchasers of real property of the existence of critical areas and associated buffers, when development is permitted in an identified critical area or its associated buffer, a notice to title applicable to the property shall be prepared by the City and filed by the property

Comment [jn76]: Notice to Title is currently required ONLY when development is permitted within a critical area or its buffer, which is a very small number of properties. The proposed revision would require a notice on title any time a permit is issued for development on a property where there is a critical area or buffer on the property. Alternately, the threshold could be when a critical area report is required, or when specific types of development are proposed.

owner with the King County Department of Recorder's Office. The notice shall state that critical areas or buffers have been identified on 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. This notice shall not be required for development by a public agency or public or private utility when:

1. Within a recorded easement or right-of-way; or
2. On the site of a permanent public facility.

B. Critical Area Tract. Subdivisions, short subdivisions, development agreements, and binding site plans shall establish a separate tract (a critical areas tract) as a permanent protective measure for wetlands, streams, fish and wildlife habitat conservation areas, and landslide hazard areas and their buffers. The plat or binding site plan for the project shall clearly depict the critical areas tract, and shall include all of the subject critical area and any required buffer, as well as additional lands, as determined by the developer. Restrictions to development within the critical area tract shall be clearly noted on the plat or plan. Restrictions shall be consistent with this chapter for the entire critical area tract, including any additional areas included voluntarily by the developer. Should the critical area tract include several types of critical areas, the developer may wish to establish separate critical areas tracts.

C. Native Growth Protection Area. Unless otherwise required in this Chapter, native growth protection area (NGPA) easements shall be recorded on title for all affected parcels prior to issuance of the site development or building permit when two (2) or more dwelling units and/or nonresidential development are proposed on one parcel to delineate and protect those contiguous wetlands, fish and wildlife habitat conservation, and landslide hazard critical areas and their buffers. NGPA easements shall be required on a property where no subdivision, short subdivision, development agreement, or binding site plan is proposed or required. The easement to be recorded shall clearly depict the critical area and the limits of the NGPA easement and shall include all of the subject critical area(s) and any required buffer(s). Restrictions to development within the NGPA easement shall be clearly noted in the easement and shall include the following:

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. Modifications and Waivers. Where the standards in this chapter allow for development within the identified critical areas, the Director may modify the language or dimensions of the required critical area tract or native growth protection area easement for consistency with the extent of the development to be permitted.

E. The applicant shall submit proof that the notice has been recorded on title before the City approves any development permit for the property or, in the case of subdivisions, short subdivisions, binding site plans, master plans, or development agreements, at or before recording (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(M), 2000. Formerly 20.80.130.).

20.80.060110 Permanent field marking.

A. All critical areas tracts, easements, ~~or~~ and dedications, or as recommended by a qualified professional, shall be clearly marked on the site using permanent markings, placed every 300 feet, which include the following text:

This area has been identified as a <<INSERT TYPE OF CRITICAL AREA>> by the City of Shoreline Designated Critical Area. Activities, including clearing and grading, removal of vegetation, pruning, cutting of trees or shrubs, planting of nonnative species, and other alterations may be prohibited. Help protect and care for this area. Please contact the City of Shoreline Department of Development (206) 546-1811 for further information with questions or concerns.

~~B. It is the responsibility of the landowner to maintain and replace if necessary all permanent field markings. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(N), 2000. Formerly 20.80.140.)~~

~~**20.80.100 Classification and rating of critical areas.**~~

Comment [jn77]: Moved to 20.80.070.

~~To promote consistent application of the standards and requirements of this chapter, critical areas within the City of Shoreline shall be rated or classified according to their characteristics, function and value, and/or their sensitivity to disturbance. Classification of critical areas shall be determined by the City using the following tools:~~

~~A. Application of the criteria contained in these regulations;~~

~~B. Consideration of the technical reports submitted by qualified professionals in connection with applications subject to these regulations; and~~

~~C. Review of maps adopted pursuant to this chapter. (Ord. 398 § 1, 2006; Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(E), 2000. Formerly 20.80.200.)~~

~~**20.80.110 Critical areas reports required.**~~

Comment [jn78]: Moved to 20.80.080.

~~If uses, activities or developments are proposed within critical areas or their buffers, an applicant shall provide site specific information and analysis as determined by the City. The site specific information must be obtained by expert investigation and analysis. This provision is not intended to expand or limit an applicant's other obligations under WAC 197-11-400. Such site specific reviews shall be performed by qualified professionals, as defined by SMC 20.20.042, who are approved by the City or under contract to the City. (Ord. 581 § 1 (Exh. 1), 2010; Ord. 515 § 1, 2008; Ord. 406 § 1, 2006; Ord. 398 § 1, 2006).~~

~~**20.80.120 Financial guarantee requirements.** Financial guarantees and associated Performance Agreements or Maintenance/Defect/Monitoring agreements shall be required for projects with required mitigation or restoration of impacts to critical areas or critical area buffers consistent with the following:~~

Comment [jn79]: Provision added based on City of Edmonds bonding regulations and modified from current requirements in SMC 20.80.250(G)(2) and other similar existing requirements for other types of critical areas.

~~A. A Performance agreement and bond or other acceptable financial guarantee is required from the applicant when mitigation required pursuant to a development proposal is not completed prior to final permit approval, such as final plat approval or final building inspection. The amount of the performance bond(s) shall equal 125 percent of the cost of the mitigation project (after City mobilization is calculated).~~

~~B. A Performance agreement and bond or other acceptable financial guarantee is required from the applicant when restoration is required for remediation of a critical area violation. The amount of the performance bond(s) shall equal 125 percent of the cost of the mitigation project (after City mobilization is calculated).~~

~~C. A Maintenance/Defect/Monitoring agreement and bond or other acceptable financial guarantee is required to ensure the applicant's compliance with the conditions of the approved mitigation plan pursuant to a development proposal or restoration plan for remediation of a violation. The amount of the maintenance bond(s) shall equal 25 percent of the cost of the mitigation project (after City mobilization is calculated) in addition to the cost for monitoring for a minimum of five years. The monitoring portion of the financial guarantee may be reduced in proportion to work successfully completed over the period of the bond. The bonding period shall coincide with the monitoring period.~~

~~**20.80.130 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 development, and order restoration measures at the owner's or other responsible party's expense to remediate the impacts of the violation of provisions of this Chapter.~~

~~B. **Requirement for Restoration Plan.** All development shall remain stopped until a restoration plan is prepared by the responsible party and an approved permit is issued by the City. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the~~

minimum requirements described in subsection (C). The Director may, at the responsible party's expense, seek expert advice, including but not limited to third party review by a qualified professional under contract with the City, in determining if the plan meets the minimum performance standards for restoration. Submittal, review, and approval of required restoration plans for remediation of violations of Chapter 20.80 SMC, Critical Areas shall be completed through a site development permit application process.

Comment [jn80]: The City may want to consider creation of a separate remediation permit for review of plans that correct for code violations to facilitate application of code enforcement provisions. This is outside the scope of the CAO update process this year. Current permit process for restoration of violations is currently adapted internally from the generic site development permit application.

C. Minimum Performance Standards for Restoration.

1. For alterations to aquifer recharge areas, flood hazard areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

a. The pre-violation structural and functional values of the affected critical areas and buffers shall be restored, including water quality and habitat functions;

b. The pre-violation soil types and configuration shall be replicated;

c. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically, or pre-violation, found on the site in species types, sizes, and densities. The pre-violation functions and values should be replicated at the location of the alteration; and

d. Information demonstrating compliance with the requirements in Section 20.80.082 Mitigation Plan Requirements and the applicable mitigation sections for the affected type(s) of critical area(s) and their buffer(s) shall be submitted to the Director with a complete site development permit application.

2. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

a. The hazard shall be reduced to a level equal to, or less than, the pre-violation hazard;

b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

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

E. Penalties. Any responsible party violating of any of the provisions of this Chapter shall be subject any applicable penalties per SMC 20.30.770 plus the following:

1. A square footage cost of three dollars (\$3.00) per square foot of impacted critical area and critical area buffer; and

2. A per tree penalty in the amount of \$3,000 per non-significant tree and \$9,000 per significant tree for trees removed from a critical area or critical area buffer in violation of the provisions of this Chapter.

Comment [jn81]: Suggested language based on proposed code language developed by the City of Edmonds. Easier to determine than determining the economic value of the ecological functions and values impacted, but still proportional to the area impacted. City of Edmonds consultant for their CAO update provided basis for value of \$3.00 per square foot impacted in 2015 BAS Addendum. Penalties for tree removal in critical areas added based on current tree removal penalties used in Edmonds.