

13.12.600 Habitat protection standards.

A. The provisions of this section apply in the regulatory floodplain. Activities listed herein must meet all federal, state, and city of Shoreline requirements.

B. Native Vegetation.

1. The site plan required in SMC 13.12.700(D) shall show existing native vegetation.
2. In the riparian habitat zone, native vegetation shall be left undisturbed, except as provided in SMC 13.12.700(B)(3) and (C).
3. Outside the riparian habitat zone, removal of native vegetation shall not exceed 35 percent of the surface area of the portion of the site in the regulatory floodplain. Native vegetation in the riparian habitat zone portion of the property can be counted toward this requirement.
4. If the proposed project does not meet the criteria of subsections (B)(2) and (B)(3) of this section, a habitat impact assessment shall be conducted pursuant to subsection F of this section and, if necessary, a habitat mitigation plan shall be prepared and implemented pursuant to subsection G of this section.

C. Floodway Standards.

1. In addition to the other requirements of this chapter, a project to develop in the floodway as delineated pursuant to SMC 13.12.300(C)(5), (C)(6), or (E)(5) shall meet the following criteria:

a. The applicant shall provide a certification by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development would not result in any increase in flood levels during the occurrence of the base flood discharge.

b. Construction or reconstruction of residential structures is prohibited within designated floodways, except for the following. The following exceptions must meet all other requirements in this chapter, including subsection (C)(1)(a) of this section:

i. Repairs, reconstruction, or improvements to a residential structure which do not increase the ground floor area, providing the cost of which does not exceed 50 percent of the market value of the structure either (A) before the repair or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by a local code enforcement official and which are the minimum necessary to assure safe living conditions, or to an historic structure, may be excluded from the 50 percent calculations;

ii. Repairs, replacement, reconstruction, or improvements to substantially damaged residential dwellings other than farmhouses that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-076; or

iii. Repairs, reconstruction, or improvements to residential structures identified as historic structures that do not increase the building's dimensions.

2. In riverine special flood hazard areas where a floodway has not been delineated pursuant to SMC 13.12.300(C)(5), (C)(6), or (E)(5), the applicant for a project to develop in the SFHA shall provide a certification by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development and all other past or future similar developments would not cumulatively result in an increase of flood levels during the occurrence of the base flood discharge by more than 0.01 feet.

D. Compensatory Storage. New development shall not reduce the effective flood storage volume of the regulatory floodplain. A development proposal shall provide compensatory storage if grading or other activity eliminates any effective flood storage volume. Compensatory storage shall:

1. Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, “equivalent elevation” means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;
2. Be hydraulically connected to the source of flooding; and
3. Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before the flood season begins.
4. The newly created storage area shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.

E. Alteration of Watercourses.

1. In addition to the other requirements in this section, an applicant for a project that will alter or relocate a watercourse shall also submit a request for a conditional letter of map revision (CLOMR), where required by the Federal Emergency Management Agency. The project will not be approved unless FEMA issues the CLOMR (which requires ESA consultation) and the provisions of the letter are made part of the permit requirements.
2. The director shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
3. Maintenance shall be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system shall be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.

F. Habitat Impact Assessment. Unless allowed under SMC 13.12.700(B) and (C), a permit application to develop in the regulatory floodplain shall include an assessment of the impact of the project on federal, state or locally protected species and habitat, water quality and aquatic and riparian habitat. The assessment shall be performed by a qualified professional as defined by SMC 20.20.042 who is approved by the city or under contract to the city. The assessment shall be:

1. A biological evaluation or biological assessment developed per 50 CFR 402.12 to initiate federal interagency consultation under Endangered Species Act Section 7(a)(2); or
2. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or
3. Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or
4. An assessment prepared in accordance with Floodplain Habitat Assessment and Mitigation Draft Regional Guidance, 2011, FEMA Region 10. The assessment shall determine if the project would adversely affect:
 - a. Species that are federal, state, or local listed as threatened or endangered,
 - b. The primary constituent elements for critical habitat, when designated,
 - c. Essential fish habitat designated by the National Marine Fisheries Service,
 - d. Fish and wildlife habitat conservation areas,
 - e. Other protected areas and elements necessary for species conservation.

G. Habitat Mitigation Plan.

1. If the assessment conducted under subsection F of this section concludes the project is expected to have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the applicant shall provide a plan to mitigate those impacts, in accordance with Floodplain Habitat Assessment and Mitigation Draft Regional Guidance, 2011, FEMA Region 10.

a. If the USFWS or NMFS issues an incidental take permit under Section 10 ESA, or biological opinion under this section, the permit can be considered to qualify as a plan to mitigate those impacts.

b. If the project is located outside the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures so that indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, large woody debris, etc.) are mitigated such that equivalent or better habitat protection is provided.

c. No new stream crossings are allowed outside the protected area unless approval has been obtained as stated in subsection (G)(1)(a) of this section.

d. If the project is located in the protected area, the mitigation plan shall stipulate avoidance measures as are needed to ensure that there is no adverse effect during any phase of the project.

2. The plan's habitat mitigation activities shall be incorporated into the proposed project. The floodplain development permit shall be based on the redesigned project and its mitigation components.

3. As required in SMC 13.12.700(E), the building official shall not issue a certification of use or a certificate of occupancy until all work identified in the habitat assessment and mitigation plan has been completed or the applicant has provided the necessary assurance that unfinished portions of the project will be completed, in accordance with SMC 13.12.700(E)(2). [Ord. 641 § 7 (Exh. A), 2012]

13.12.700 Permits.

A. Floodplain Development Permit.

1. For all applicable development within the regulatory floodplain, a floodplain development permit shall be obtained before construction or development occurs.

2. Activities allowed by SMC Title 20, Shoreline Development Code, are allowed, provided they meet all the other requirements of this chapter, including the analysis required in SMC 13.12.600(C) and the habitat impact assessment required under SMC 13.12.600(F), a floodplain development permit is issued, and all other federal, state, and local requirements are met.

3. A floodplain development permit is a Type A permit administered according to SMC 20.30.040, except that the director shall approve extensions beyond 180 days following complete application and following issuance.

4. All activities within the regulatory floodplain must meet all applicable federal, state, and local requirements.

B. Partial Permit Exemption. The following activities require a floodplain development permit and are allowed in the regulatory floodplain without the analysis required in SMC 13.12.600(C) or the habitat impact assessment required under SMC 13.12.600(F), providing all other requirements are met, including federal, state, and local requirements:

1. Repair or remodeling of an existing structure, if the repair or remodeling is not a substantial improvement, or a repair of substantial damage.

2. Expansion of an existing structure that is no greater than 10 percent beyond its existing footprint; provided, that the repairs or remodeling is not a substantial improvement, or a repair of substantial damage. This measurement is counted cumulatively from September 22, 2011. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow.

3. Activities with the sole purpose of creating, restoring, or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas, provided the activities do not include structures, grading, fill, or impervious surfaces.
4. Development of open space and recreational facilities, such as parks and trails, that do not include structures, fill, impervious surfaces or removal of more than five percent of the native vegetation on that portion of the property in the regulatory floodplain.
5. Repair to on-site septic systems provided the ground disturbance is the minimal necessary.
6. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property consistent with the requirements of SMC 20.80.030(A).

C. Permit Exemptions. Activities that do not meet the definition of “development” in SMC 13.12.105 are allowed in the regulatory floodplain and do not require a floodplain development permit. The following are examples of activities not considered development or “manmade changes to improved or unimproved real estate”:

1. Routine maintenance of landscaping that does not involve grading, excavation, or filling;
2. Removal of noxious weeds and replacement of nonnative vegetation with native vegetation provided no earth movement occurs;
3. Removal of hazard trees consistent with the requirements of SMC 20.50.310(A)(1) or SMC 20.80.030(H);
4. Normal maintenance of structures, such as reroofing and replacing siding, provided such work does not qualify as a substantial improvement;
5. Normal maintenance of above-ground utilities and facilities, such as replacing downed power lines and utility poles;
6. Normal street and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not including expansion of paved areas;
7. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility are allowed in the regulatory floodplain without need for a floodplain development permit. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor;
8. Normal maintenance, operation or repair of publicly improved recreation areas as long as any such activity does not include expansion of uses and/or facilities into a previously unimproved portion of the regulatory floodplain and is consistent with the standards of Chapter 20.80 SMC, Critical Areas, best available science or adaptive management plans as recognized by the city; and
9. Site investigative work and studies necessary for preparing land use applications.

D. Floodplain Development Permit Application. Application for a floodplain development permit shall be made on forms furnished by the director and shall include all of the following that are applicable:

1. Assessment of the impact on those factors that contribute to increased flood hazard and degradation of habitat. If the assessment concludes that the project will cause an adverse effect outside the protected area, the permit will be denied unless the project impacts are mitigated (avoided, rectified or compensated).
2. A description of the extent to which a stream, lake, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development.
3. Documentation that the applicant will apply for all necessary permits required by federal and state law. The application shall include written acknowledgment that the applicant understands that the final certification of use or certificate of occupancy will be issued only if the applicant provides copies of the required federal and

state permits or letters stating that a permit is not required. The floodplain permit is not valid if those other permits and approvals are not obtained prior to any ground disturbing work or structural improvements.

4. Acknowledgment by the applicant that representatives of any federal or state unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

5. Site plan(s), meeting city criteria and showing:

- a. The nature, location, dimensions, and elevations of the property in question;
- b. Names and location of all lakes, water bodies, waterways and drainage facilities within 300 feet of the site;
- c. The elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available. Elevation datum shall be the North America Vertical Datum of 1988 (NAVD 1988) with conversions provided as needed;
- d. The boundaries of the regulatory floodplain, SFHA, floodway, riparian habitat zone, and channel migration area, delineated in accordance with SMC 13.12.300;
- e. The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities and roads;
- f. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;
- g. All wetlands and the required buffers;
- h. The riparian habitat zone for all development proposals within 300 feet of any stream or shoreline;
- i. Designated fish and wildlife habitat conservation areas, and habitat areas identified for conservation or protection under state, federal or local laws or regulations, for example the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Growth Management Act, Shorelines Management Act, or Priority Habitat and Species List;
- j. Existing native vegetation and proposed revegetation.

6. If the proposed project involves grading, excavation, or filling, the site plan shall include proposed post-development terrain at one-foot contour intervals within the SFHA.

7. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged structure that will be elevated, the application shall include the flood protection elevation for the building site and the proposed elevations of the following:

- a. The top of bottom floor, including basement, crawl space, or enclosure floor;
- b. The top of the next higher floor;
- c. The bottom of the lowest horizontal structural member (in V zones only);
- d. The top of the slab of an attached garage;
- e. The lowest elevation of machinery or equipment servicing the structure;
- f. The lowest adjacent (finished) grade next to structure;
- g. The highest adjacent (finished) grade next to structure;
- h. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support.

8. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry floodproofed, the application shall include the FPE for the building site and the elevation in relation to the datum of the effective FIRM to which the structure will be dry floodproofed, along with a certification by a registered professional engineer or licensed architect that the dry floodproofing methods meet the floodproofing criteria in SMC 13.12.500(B).

9. The proposed project must be designed and located so that new structural flood protection is not needed.

E. Certificate of Occupancy.

1. The building official shall not issue a certificate of occupancy or final building permit for a new or substantially improved structure or an addition until:

a. The permittee provides a properly completed elevation or floodproofing certificate showing finished construction data as required by SMC 13.12.800(A);

b. All work identified in a mitigation plan required by SMC 13.12.600(F) and (G) has been completed according to the plan's schedule;

c. The permittee provides copies of all required federal, state, and local permits noted in the permit application per subsection (D)(3) of this section;

d. All other provisions of this chapter have been met.

2. The director may accept a financial guarantee, in an amount determined by the director, to ensure completion of portions of the project following issuance of the certification of use or certificate of occupancy. [Ord. 641 § 7 (Exh. A), 2012]