

**Chapter 18.55
CRITICAL AREAS**

Sections:

Article I. Purpose and General Provisions

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

Article II. Best Available Science

- 18.55.110 Best available science.**

Article III. Applicability, Exemptions, and Exceptions

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

Article IV. Critical Areas Report

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

Article V. Unauthorized Alterations and Enforcement

18.55.230 Unauthorized critical area alterations and enforcement.

Article VI. General Critical Area Protective Measures

18.55.250 Notice on title.

18.55.260 Critical area tracts.

18.55.270 Building setbacks.

18.55.280 Bonds to ensure mitigation, maintenance, and monitoring.

18.55.290 Critical area inspections.

Article VII. Wetlands – Designation and Rating

18.55.300 Designation and rating of wetlands.

Article VIII. Wetlands – Additional Report Requirements

18.55.310 Critical areas report.

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

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

18.55.325 Buffer Width Alterations.

18.55.330 Performance standards – Mitigation requirements.

Article I. Purpose and General Provisions

18.55.010 Purpose and goals.

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

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

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

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

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

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

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

18.55.020 Authority.

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

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

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

18.55.030 Relationship to other regulations.

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

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

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

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

E. Compliance with the provisions of this chapter does not constitute compliance with other federal, State, and local regulations and permit requirements that may be required (for example, shoreline substantial development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife *hydraulic project approval* (HPA), Army Corps of Engineers *Section 404 permits*, and National Pollution ~~tenant~~ Discharge Elimination System (NPDES) permits). The *applicant* is responsible for complying with these requirements, apart from the process established in this chapter.

18.55.040 Administrative procedures.

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

18.55.050 Fees.

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

18.55.070 Administrative rules.

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

18.55.080 Interpretation.

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

18.55.090 Jurisdiction – Critical areas.

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

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

1. *Wetlands* as designated in KMC [18.55.300](#), Designation and rating of *wetlands*;
2. *Streams and lakes* as designated in KMC [18.55.400](#), Designation and rating of *streams and lakes*;
3. Fish and wildlife habitats of importance as designated in KMC [18.55.500](#), Designation of fish and wildlife habitats of importance;
4. *Geologically hazardous areas* as designated in KMC [18.55.610](#), Designation of *geologically hazardous areas*; and
5. Frequently flooded areas as designated in KMC [18.55.7005](#), [Frequently flooded areas and flood damage prevention hazard areas](#); and
6. [Critical aquifer recharge areas and groundwater as designated in KMC 18.55.800, Critical aquifer recharge areas and groundwater.](#)

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

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

1. On a *site* immediately adjoining a *critical area*;
2. A distance equal to or less than the required *critical area buffer* width and building *setback*;
3. A distance equal to or less than [one-half mile \(2,640 feet\) 660 feet](#) from a bald eagle nest;

4. A distance equal to or less than **900656** feet from the closest nest of a heron rookery; or
5. Within the floodway, *floodplain* or channel migration zone.

18.55.100 Protection of critical areas.

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

Article II. Best Available Science

18.55.110 Best available science.

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

Article III. Applicability, Exemptions, and Exceptions

18.55.120 Applicability.

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

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

chapter includes compliance with the requirements of the shoreline master program as well as with the requirements of this chapter.

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

18.55.130 Mapping.

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

B. The following maps identify ~~known~~**potential** *critical areas* located in the *City*:

1. *Wetlands and Streams.*

a. *City* stream and wetland inventory;

b. ~~King County critical areas map folio.~~ Washington State Department of Fish and Wildlife Priority Habitats and Species online mapping system.

c. Washington State Department of Fish and Wildlife SalmonScape online mapping system; and

d. Washington State Department of Natural Resources water type maps.

2. *Fish and Wildlife Habitats of Importance.*

a. Washington State Department of Fish and Wildlife ~~Priority Habitats and Species maps~~ Priority Habitats and Species online mapping system;

b. Washington State Department of Natural Resources ~~official water type reference maps, as amended;~~

c. Washington State Department of Fish and Wildlife SalmonScape online mapping system;

d. ~~de.~~ Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington State Conservation Commission; and

e. ~~ed.~~ Washington State Department of Natural Resources State natural area preserves and natural resource conservation area maps.

3. *Geologically Hazardous Areas.*

a. City geologically hazardous areas inventory;

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

cb. U.S. Geological Survey landslide hazard and seismic hazard maps Washington State Department of Natural Resources Geologic Information Portal;

cd. Washington State Department of Natural Resources seismic hazard maps for Western Washington liquefaction susceptibility map for King County; and

ed. Washington State Department of Natural Resources slope stability maps.

4. *Flood Hazard Areas.*

a. City stream and wetland inventory; and

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

5. Critical Aquifer Recharge Areas and Groundwater.

a. City map of aquifer susceptibility.

18.55.140 Signs and fencing of critical areas.A. *Signs.*

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

Permanent *signs* shall be made of a metal face and attached to a metal post, or another material of equal durability. *Signs* must be posted at an interval of every 50 feet. If the length of the *lot* is 50

feet or less, one *sign* per *lot* is required. The *sign* must be maintained by the property owner in perpetuity. *Signs* must be placed in a visible location and remain visible throughout any future site *development*. The *signs* shall include the *City's* logo and shall be worded as follows or with alternative language approved by the *city manager* based on specifications available from the *City*:

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

B. Fencing.

1. The *city manager* shall condition any permit or authorization issued pursuant to this chapter to require the *applicant* to install a permanent *fence* at the edge of the ~~critical area and~~ *buffer* associated with a stream, lake, wetland, or fish and wildlife habitat of importance, when fencing will prevent future impacts to ~~the habitat conservation area~~ ecological function. When the *buffer* is in a legally altered state and is permitted to remain in that condition, the fencing may be placed at the upland edge of any properly functioning portion of the *buffer*. The *city manager* may also waive the requirement for a fence if the applicant can demonstrate that a fence would interfere with current, legal public access or use.
2. A required permanent fence may be:
 - a. The *applicant* shall be required to install a permanent natural Untreated wood, split-rail, or fence around the *critical area* and *buffer*.
 - b. Dense vegetation using native material appropriate for the ecoregion. Vegetation shall be maintained at a minimum height of 3 feet, with thorny species incorporated to deter intrusion.
3. Fencing installed shall be designed so as to not interfere with *species* migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.
4. Fencing is not required for single-family residential *lots* where subdivision is not proposed.

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

18.55.150 Exemptions.

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

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

1. Activities, including routine maintenance, involving artificial drainage features intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features;
2. Normal and routine maintenance, operation and reconstruction of existing roads, *streets*, utilities and associated rights-of-way and *structures*; provided, that reconstruction of any *structures* may not increase the *impervious surface* area or remove flood storage capacity;
3. Normal maintenance and repair, and reconstruction or remodeling of residential or commercial *structures*, or legal preexisting and ongoing *uses* of the *site*; provided, that reconstruction of any *structures* may not increase the previously approved *building* footprint;
4. *Site* investigative work and studies necessary for preparing site development or modification plans and use applications, including soils tests, water quality studies, wildlife studies and similar tests and investigations, where such activities do not require construction of new roads or significant amounts of excavation; and provided, that any disturbance of the *critical area* shall be the minimum necessary to carry out the work or studies and disturbed areas shall be immediately restored;
5. Educational activities, scientific research, and passive outdoor recreational activities, including but not limited to interpretive field trips, and birdwatching, and previous trails for hiking, that will not have a significant adverse effect on the *critical area*;
6. *Emergency* activities necessary to prevent an immediate threat to public health, safety, property or welfare; provided that the *critical areas* shall be restored, rehabilitated, or replaced at the responsible party's expense to prior condition or better within one year of the activity. The restoration, rehabilitation, and/or replacement of the *critical area* is limited to that area impacted by the prevention effort; this section does not require the responsible party to restore, rehabilitate or replace *critical areas* damaged by natural disaster;

7. Minor activities not mentioned above and determined by the *city manager* to have minimal impacts to a *critical area*; and

8. Existing and ongoing agricultural activities, including farm pond maintenance, provided that they implement applicable Best Management Practices (BMPs) and minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.

~~8. Installation, construction, replacement, repair or alteration of utilities and their associated facilities, lines, pipes, mains, equipment or appurtenances in improved *City street* rights-of-way.~~

B. Operation, Maintenance or Repair. Operation, maintenance or repair of existing *structures*, infrastructure improvements, utilities, public or *private* roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the *critical area* or *buffer* and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.

C. Modification to Existing *Structures*.

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

2. Structural modification of, addition to, or replacement of *structures*, except single detached residences, in existence before November 27, 1990, which do not meet the building *setback* or *buffer* requirements for *wetlands*, *streams* or *landslide hazard areas* if modification, addition, replacement or related activity does not increase the existing footprint of the *structure* lying within the above-described building *setback* area, *critical area* or *buffer*.

D. Activities within the Improved Right-of-Way. Repair, replacement, modification, installation, or construction of *utility facilities*, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a *City*-authorized *private* roadway, except those activities that alter a *wetland* or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Improved rights-of-way

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

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

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

18.55.160 Exception – Public agency and/or utility.

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

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

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

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

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

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

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

1. *There is no other feasible location for the proposed development with less adverse impact on the critical area or buffer.*
2. There is no other *practical alternative* to the proposed *development* with less impact on the *critical areas* or *buffer*. "*Practical alternatives*" include but are not limited to:
 - a. Location outside of the *critical area* and its *buffer*;
 - b. Pursuit and exhaustion of other administrative code modifications or exceptions including but not limited to: front yard setback modifications at KMC 18.30.190; modifications of minimum parking standards in KMC 18.40; and allowances for nonconforming uses in KMC 18.100;
3. The application of this chapter would unreasonably restrict the ability to provide *public agency* or *utility* services to the public;
4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;
5. The *development proposal* protects and mitigates impacts to the *critical area functions and values* consistent with *best available science*;
6. The *development proposal* achieves no net loss of *critical area functions and values*;

7. Mitigation sequencing through KMC 18.55.210 has been demonstrated in the *critical areas* report, along with a demonstration of the how the *public agency* or *utility* will provide mitigation using a watershed approach;

8. Development activities involve the least intrusion into and disruption of the *critical area* necessary while fulfilling a public purpose and need;

9. The proposal is consistent with a *public agency* or *utility* system plan, capital facilities plan, master plan, program, or policy that has been the subject of a public review process; and

10. The proposal is consistent with the general purpose and intent of the City's comprehensive plan and adopted development regulations.

F. Approval conditions. Conditions for approval of a *public agency* or *utility* exception shall include, at a minimum:

1. Conformance with the development standards and mitigation plans identified in the approved *critical areas* report; and

2. Appropriate best management practices, as described in this chapter and in other science-based documents, including but not limited to the Washington State Department of Commerce Critical Areas Guidebook, as amended, sources of science by State agencies with expertise, and standard conditions of approval published by federal agencies.

18.55.170 Variances – Buffer widths and building setbacks.

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

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

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

1. Special circumstances

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

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

i. Location out of the critical area buffer;

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

2. Necessary for rights or use:

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

b. New public agency development proposals: Such variance is necessary for a public agency proposal to fulfil a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities plan, system plan, or other master plan that has been subject to a public review process which commonly includes an evaluation of alternative sites; and

3. The granting of such buffer width or building setback *variance* will not be materially detrimental to the public welfare or injurious to the property or improvement; and

4. The granting of the buffer width or building setback *variance* will not significantly impact the subject *critical area*; and

5. The decision to grant the *variance* includes the *best available science* and gives special consideration to conservation or protection measures necessary to preserve or enhance *anadromous fish habitat*; and

6. The granting of the *variance* is consistent with the general purpose and intent of the *City's* comprehensive plan and adopted development regulations.

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

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

F. Time Limit.

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

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

18.55.180 Exception – Reasonable use.

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

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

a. **Reasonable Use**

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

ii. New *public agency development* proposals: The *applicant* demonstrates that the application of this chapter would interfere with a *public agency* proposal to fulfill a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities

plan, system plan, or other master plan that has been subject to an alternative site evaluation and public review process;

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

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

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

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

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

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

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

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

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

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

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

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

E. *Time Limit*.

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

Article IV. Critical Areas Report

18.55.190 Critical areas reports – Requirements.

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

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

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

18.55.200 Mitigation requirements.

A. The *applicant* shall avoid all impacts that degrade the *functions and values* of *critical areas* **unless there is no practicable alternative**. Unless otherwise provided in this chapter, if *alteration* to the *critical area* is unavoidable, all adverse impacts to or from *critical areas* and *buffers* resulting from a *development*

proposal or *alteration* shall be mitigated in accordance with an approved *critical areas* report and SEPA documents.

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

18.55.210 Mitigation sequencing.

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

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for the impact by replacing or providing substitute resources or environments; and/or
- F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

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

18.55.220 Mitigation plan requirements.

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

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

Article V. Unauthorized Alterations and Enforcement

18.55.230 Unauthorized critical area alterations and enforcement.

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

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

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

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

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

E. *Monitoring.* *Monitoring* shall be required for five years unless otherwise determined by the *city manager*. A performance and/or maintenance bond of 125 percent of the estimated cost of restoring the *functions and values* of the *critical area* shall be posted to assure that all work or actions are satisfactorily

completed **or and** maintained in accordance with the approved plans, specifications, permit or approval requirements, and applicable regulations, and to **as en**sure that all work or actions will be completed.

Article VI. General Critical Area Protective Measures

18.55.250 Notice on title.

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

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

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

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

18.55.260 Critical area tracts.

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

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

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

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

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

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

18.55.270 Building setbacks.

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

18.55.280 Bonds to ensure mitigation, maintenance, and monitoring.

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

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

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

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

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

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

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

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

18.55.290 Critical area inspections.

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

Article VII. Wetlands – Designation and Rating

18.55.300 Designation and rating of wetlands.

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

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

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

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

(1) Documented habitat for federal or State listed *endangered* or *threatened* fish, animal, or plant species; or

(2) Wetlands listed as high quality habitats in the Natural Heritage Information System; or

(3) Wetlands with irreplaceable ecological functions, including sphagnum bogs and fens or natural forested swamps; or

(4) Wetlands of exceptional local significance, specifically those wetlands proximal to and influenced by the main stem of Swamp Creek, the Sammamish River, or Lake Washington.

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

(1) Wetlands that have significant functions that may not be adequately replicated through creation or restoration; or

(2) Wetlands associated with Type 2 or 3 streams; or

(3) Wetlands greater than one acre in size; or

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

(5) Wetlands containing a forested wetland class.

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

1. Category I. Category I wetlands are:

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

b. Bogs;

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

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

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

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

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

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

C. Buffer Areas.

1. The establishment of *buffer* areas shall be required for all development proposals and activities in or adjacent to *wetland* areas. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *critical area*, and/or to protect life, property and resources from risks associated with development on unstable or critical lands.

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

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

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

F. Wetland Buffers:

14. Wetland buffers shall be established as follows:

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

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

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> Direct lights away from wetland
Noise	<ul style="list-style-type: none"> Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants limiting use of pesticides within 150 ft of wetland Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> Retrofit stormwater detention and treatment for roads and existing adjacent development Prevent channelized flow from lawns that directly enters the buffer Use Low Impact Development techniques
Change in	<ul style="list-style-type: none"> Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces

Disturbance	Required Measures to Minimize Impacts
water regime	and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate <i>buffer edge</i> and to discourage disturbance using vegetation appropriate for the ecoregion • Place <i>wetland</i> and its <i>buffer</i> in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

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

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

38. Increased *Wetland Buffer Widths*. The *city manager* shall require increased *buffer widths* in accordance with the recommendations of a *qualified professional biologist* and the *best available science* on a case-by-case basis when a larger *buffer* is necessary to protect *wetland functions and values* based on *site-specific characteristics*. This determination shall be based on one or more of the following criteria:

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

ED. Limited Exemptions. Class 3 wetlands less than 1,000 square feet may be exempted from the provisions of KMC 18.55.300 to 18.55.330 and may be altered by filling or dredging if the City

determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.

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

a. The *wetland* is not associated with riparian areas or their *buffers*;

b. The *wetland* is not associated with shorelines of the state or their associated *buffers*;

c. The *wetland* is not part of a *wetland* mosaic;

d. The *wetland* does not score 6 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology); and

e. The *wetland* does not contain a Fish and Wildlife Habitat of Importance as identified in 18.55.500.

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

a. Criteria 1.a through 1.e of this subsection, and

b. The *wetland* does not contain federally listed species or their critical habitat.

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

Article VIII. Wetlands – Additional Report Requirements

18.55.310 Critical areas report.

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

Article IX. Wetlands – ~~Performance Standards~~ Allowed Uses and Alterations**18.55.320 ~~Performance standards – General requirements~~ Allowed Uses.**

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

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

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

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

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

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

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

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

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

Walkway and trail surfaces in buffers shall be made of pervious materials and shall be a maximum of 5 feet wide. Where private walkways and trails must cross a wetland to reach a permitted water access structure, such as a dock, or a pedestrian bridge over an associated waterbody, the walkway or trail must be a raised boardwalk supported by piles that allow free movement of water beneath the structure;

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

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

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

d. Wildlife viewing structures; and

e. Fishing access areas; and

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

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

18.55.325 Buffer Width Alterations.

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

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

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

~~(1).~~ Additional protection to the *wetland* will be provided through implementation of a *buffer enhancement* plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.55.330 Performance standards – Mitigation requirements.

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

B. *Mitigation for Lost Functions and Values.* *Mitigation* actions shall address functions affected by the *alteration* to achieve functional equivalency or improvement, and shall provide similar *wetland functions* as those lost except when:

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

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

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

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

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

1. There are no reasonable on-site or in-*subdrainage-basin* opportunities, or on-site and in-*subdrainage-basin* opportunities do not have a high likelihood of success due to development pressures or adjacent land *uses*, or on-site *buffers* or connectivity is inadequate;
2. Off-site *mitigation* has a greater likelihood of providing equal or improved *wetland functions* than the impacted *wetland*; and
3. Off-site locations shall be in the same *subdrainage basin* unless established regional or watershed goals for water quality, flood or conveyance, habitat or other *wetland functions* have been established and strongly justify location of *mitigation* at another *site*.

F. *Mitigation* Timing. Where feasible, *mitigation* or *restoration* projects shall be completed prior to activities that will disturb *wetlands*. In all other cases, *mitigation* shall be completed immediately following disturbance and prior to use or occupancy of the activity or *development*. Construction of *mitigation* projects shall be timed to reduce impacts to existing wildlife and flora.

G. *Mitigation* Ratios.

1. Acreage Replacement Ratios. The following ratios shall apply to creation or *restoration* that is *in-kind*, on-site, the same **class category**, timed prior to or concurrent with *alteration*, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized *alterations*; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a State-certified *wetland mitigation bank*. The first number specifies the acreage of replacement *wetlands* and the second specifies the acreage of *wetlands* altered.

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

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

Standard Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation¹	Enhancement²
Category I (Mature Forested)	6:1	12:1	24:1

Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1
Buffer	1:1	1:1	1:1

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

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

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

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

3. Decreased Replacement Ratio.

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

(1) The *applicant's* qualified *biologist* provides documentation that increases the certainty of success of the proposed *wetland restoration* or creation. At a minimum, this documentation shall include ground water *monitoring* in the area of proposed *restoration* or creation in the

early growing season over a sufficient period of time to determine that there is a high probability of creating or restoring *wetlands* in that location; or

(2) Proposed *mitigation* will result in a higher functioning *wetland* (higher class) relative to the functions of the *wetland* being impacted; or

(3) The *mitigation* is successfully installed for a period of one year prior to the *wetland* being impacted. Successful installation shall be determined by a qualified *biologist*.

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

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

H. *Wetlands Enhancement as Mitigation.* ~~4.~~ Impacts to *wetlands* may be mitigated by *enhancement* of existing significantly degraded *wetlands*. *Applicants* proposing to enhance *wetlands* must produce a *critical areas* report that identifies how *enhancement* will increase the functions of the degraded *wetland* and how this increase will adequately mitigate for the loss of *wetland* area and function at the impact *site*. An *enhancement* proposal must also show whether existing *wetland functions* will be reduced by the *enhancement* actions.

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

I. *Mitigation Banking.* ~~The City may consider and approve *mitigation banking* as a form of compensatory *mitigation* for *wetland* impacts when the provisions of this chapter require *mitigation* and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of *critical area functions and values* when compared to on-site *mitigation*; provided, that all of the following criteria are met:~~

~~1. Banks shall only be used when they provide significant ecological benefits including long term conservation of *critical areas*, important *species*, habitats, and when they are consistent with the City comprehensive plan and create a viable alternative to the piecemeal *mitigation* for individual project impacts to achieve ecosystem-based conservation goals. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:~~

- a. The bank is certified under state rules;
- b. The *city manager* determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

3.

- 2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule (Chapter 173-700 WAC) or as revised, and (Chapter 90.84 RCW) and the federal *mitigation banking* guidelines as outlined in the Federal Register Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain State and federal certification. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
- 3. Preference shall be given to *mitigation banks* that implement *restoration* actions that have been identified formally by an adopted shoreline *restoration* plan or the Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Chinook Salmon Conservation Plan. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

J. *In Lieu Fee Programs*. To aid in the implementation of off-site mitigation, the City may develop an in-lieu fee (ILF) program or allow participation in an ILF program, such as King County's Mitigation Reserves Program. ILF programs shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

- 1. The city manager determines that it would provide environmentally appropriate compensation for the proposed impacts.
- 2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved ILF program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale. A one-year extension to this requirement may be granted by the *city manager* if the need for additional mitigation because of possible temporal loss is evaluated and addressed.

5. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the ILF program.

6. Credits from an approved ILF program may be used to compensate for impacts located within the service area specified in the approved ILF instrument.

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

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

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

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

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

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