

**Chapter 18.55
CRITICAL AREAS**

Sections:

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

18.55.510 Critical areas report – Habitat Management Plan.

Article XV. Fish and Wildlife Habitats of Importance – Performance Standards

18.55.520 Performance standards – General requirements.

18.55.530 Performance standards – Specific habitats.

Article XIII. Fish and Wildlife Habitats of Importance – Designation

18.55.500 Designation of fish and wildlife habitats of importance.

A. Fish and wildlife habitats of importance are those habitat areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. In the City, habitats of importance meet any of the following criteria:

1. Documented presence of *species* listed by the federal government or the State of Washington as *endangered*, or threatened or sensitive; or
2. Great blue heron rookeries or active nesting trees; or
3. Pileated woodpecker breeding habitat as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species Program Class 1 wetlands as defined in these regulations; or
4. Biodiversity areas and corridors as mapped by the Washington Department of Fish and Wildlife in its Priority Habitats and Species Program; or Type 1 streams as defined in these regulations.
5. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292) Federal Bald and Golden Eagle Protection Act; or

6. Anadromous fish habitat; or

7. Habitat for species nominated and approved by the City per KMC 18.55.500.C.

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

C. The *City* may accept and consider nominations by Kenmore residents or property owners for habitat areas and *species* to be designated as fish and wildlife habitats of importance. Nominations will be accepted by the city manager on an annual basis and will be considered for approval by the City Council following a public hearing on the nomination. ~~Guidelines for nomination are available from the city manager.~~ Information to be included with a nomination request includes:

1. Specific geographic boundaries and list of species proposed, including a list of functions;
2. Rationale for nomination based on best available science, including the viability of the population in Kenmore and the contribution to biodiversity;
3. Causes for vulnerability, including a description of activities that compromise these areas, as well as a list of proposed management and protection measures;
4. Regulatory gaps regarding protection of the habitat or species; and
5. Non-environmental impacts affecting the habitat area and species (e.g., legal, cultural, recreational, and economic significance).

Article XIV. Fish and Wildlife Habitats of Importance – Report Requirements

18.55.510 Critical areas report – Habitat Management Plan.

~~Requirements for *critical areas* reports for fish and wildlife habitats of importance are available from the city manager.~~ A. Habitat Management Plan. A habitat management plan is required when ~~the *priority habitats* and *species* available maps or natural heritage program maps provided by the City,~~ or other information, indicate the presence of fish and wildlife habitats of importance areas with which critical species listed as *endangered* or *threatened* under federal or State law have a primary association.

1. All habitat management plans shall be prepared by a *qualified professional* and are encouraged to be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical *species* listed as *endangered* or *threatened* shall be approved by the Department of Fish and Wildlife.

2. Habitat Management Plan Content Requirements. Based on the characteristics of the site and information submitted by the applicant, the city manager may require that all or a portion of the following be included in a habitat management plan. Requirements for habitat management plans are available from the city manager. Plans also shall include:

a. A map drawn to scale or survey showing the following information:

(1) All lakes, ponds, streams, and wetlands on, or adjacent to, the subject property, including the name (if named), ordinary high water mark of each, and the stream type or wetland class consistent with this chapter.

(2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the City.

(3) The location of any observed evidence of use by a listed species.

ba. An analysis of how the proposed development activities will affect the fish and wildlife habitats of importance and listed species of importance.

cb. Provisions to reduce or eliminate the impact of the proposed development activities on any fish and wildlife habitats of importance and listed species. An analysis of mitigation sequencing per KMC 18.55.210, including a mitigation plan.

dc. The habitat management plan should also address Consideration of the following issues:

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

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

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

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

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

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

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

d. Discussion of how the project complies with published Washington Department of Fish and Wildlife management recommendations for the species' habitat, if available.

3. When bald eagle habitat is the only potential fish and wildlife habitat of importance on a site, applicants may self-certify that they are in compliance with the Federal Bald and Golden Eagle Protection Act by submitting a document generated online through the U.S. Fish and Wildlife Service's *Bald and Golden Eagle Permit Recommendation Tool*. Washington Department of Fish and Wildlife no longer maps bald eagle nest sites, so applicants would complete the certification based on their knowledge of their site and local conditions. The *City* may review the *applicant's* certificate and require modification if more accurate information or updated standards for protection are available.

4. The applicant may combine a habitat management plan with any studies required by other laws and regulations (e.g. a Biological Assessment or Biological Evaluation).

Article XV. Fish and Wildlife Habitats of Importance – Performance Standards

18.55.520 Performance standards – General requirements.

A. Habitat Management Plan. A habitat management plan is required when the *priority habitats* and species maps or natural heritage program maps provided by the *City*, or other information, indicate the presence of areas with which critical *species* listed as *endangered* or *threatened* under federal or State law have a primary association.

1. All habitat management plans shall be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical *species* listed as *endangered* or *threatened* shall be approved by the Department of Fish and Wildlife.

2. Habitat Management Plan Content Requirements. Based on the characteristics of the *site* and information submitted by the *applicant*, the *city manager* may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the following information:

(1) All lakes, ponds, *streams*, and *wetlands* on, or adjacent to, the subject property, including the name (if named), *ordinary high water mark* of each, and the *stream type* or *wetland class* consistent with this chapter.

~~(2) The location and description of the fish and wildlife habitats of importance on the subject property, as well as any potential fish and wildlife habitats of importance within 200 feet of the subject property as shown on maps maintained by the City.~~

~~(3) The location of any observed evidence of use by a listed species.~~

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

~~c. Provisions to reduce or eliminate the impact of the proposed development activities on any fish and wildlife habitats of importance and listed species.~~

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

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

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

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

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

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

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

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

GA. Buffers.

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer areas* for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer widths* shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife.

2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife in a permit or in its management recommendations, or by another state or federal agency with expertise in the species or its habitat, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

B. *Alterations* shall not degrade the *functions and values* of habitat. ~~Fish and w~~Wildlife habitat areas of importance may be altered only if the proposed *alteration* of the habitat or the *mitigation* proposed does not degrade the quantitative and qualitative *functions and values* of the habitat. Fish habitat areas of importance may be altered only when necessary to install water-dependent developments that are mitigated consistent with this chapter and the Title 16 KMC (Shoreline Management), when applicable. ~~All new structures and land alterations shall be prohibited from habitat areas of importance, except in accordance with this chapter.~~

C. *Nonindigenous* species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a fish and wildlife habitat ~~area~~ of importance unless authorized by a State or federal permit or approval.

D. *Mitigation* shall result in contiguous habitat. When feasible, m~~Mitigation~~ sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a *mitigation* plan that is part of an approved *critical areas* report to minimize the isolating effects of *development* on habitat areas, so long as *mitigation* of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

E. *Mitigation* shall achieve equivalent or greater biological functions. *Mitigation* of *alterations* to habitat areas of importance shall achieve equivalent or greater biologic functions and shall include *mitigation* for adverse impacts upstream or downstream of the *development proposal* site. *Mitigation* shall address each function affected by the *alteration* to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the *best available science*. Any approval of *alterations* or impacts to a fish and wildlife habitat of importance shall be supported by the *best available science*. Special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, as required by WAC 365-195-900 through 365-195-925.

~~G. Buffers.~~

1. Establishment of *Buffers*. The *city manager* shall require the establishment of *buffer areas* for activities in, or adjacent to, fish and wildlife habitats of importance, when needed to protect fish and wildlife habitats of importance. *Buffers* shall consist of an undisturbed area of *native vegetation*, or areas identified for *restoration*, established to protect the integrity, *functions and values* of the affected habitat. *Buffer enhancement* may be required. Required *buffer widths* shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the State Department of Fish and Wildlife.
2. Seasonal Restrictions. When a *species* is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions, as determined by the Washington State Department of Fish and Wildlife, may apply. Larger *buffers* may be required and activities may be further restricted during the specified season.

18.55.530 Performance standards – Specific habitats.

A. *Endangered, Threatened, and Sensitive Species*.

1. No *development* shall be allowed within a fish and wildlife habitat of importance or *buffer* with which State or federally *endangered, threatened, or sensitive species* have a primary association except as otherwise approved through this chapter. For fish habitat of importance on lands regulated under the Kenmore shoreline master program, development also must meet the use and development requirements of the Kenmore shoreline master program.
2. Whenever activities are proposed adjacent to a fish and wildlife habitat of importance with which State or federally *endangered, threatened, or sensitive species* have a primary association, such area shall be protected through the application of protection measures in accordance with a *critical areas* report prepared by a *qualified professional* and approved by the *City*. Approval for *alteration* of land adjacent to the fish and wildlife habitat of importance or its *buffer* shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.
3. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC [232-12-292](#)). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a *qualified professional*. Activities are adjacent to bald eagle sites when they are within 800 feet of an active nest, or within a quarter mile (2,640 feet) of an active nest and in a shoreline foraging area. The *City* shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not

occur prior to approval of the habitat management plan by the City and the Washington State Department of Fish and Wildlife.

BA. Great Blue Heron Rookery.

1. A *buffer* equal to the distance of a 900656-foot radius measured from the outermost nest *tree* in the rookery will be established around an active rookery. This area will be maintained in *native vegetation*. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the *buffer* excludes the area south of the north edge of the State Route 522 right-of-way and west of the east edge of the 73rd Avenue NE right-of-way.
2. Between January 1st and July 31st, no *clearing, grading* or land disturbing activity shall be allowed within 900656 feet of the rookery unless approved by the City and Washington State Department of Fish and Wildlife. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the area south of the north edge of the State Route 522 right-of-way and west of the east edge of 73rd Avenue NE right-of-way is excluded.
3. Approval of permits for activities within the heron rookery *buffer* shall not occur prior to the approval of a habitat management plan by the City and the Washington State Department of Fish and Wildlife.

CB. *Anadromous Fish.*

1. All activities, *uses*, and *alterations* proposed to be located in waterbodies used by *anadromous fish* or in areas that affect such water bodies shall give special consideration to the preservation and *enhancement* of *anadromous fish habitat*, including, but not limited to, adhering to the following standards:
 - a. Activities shall be timed to occur only during the allowable work window as designated by the Washington State Department of Fish and Wildlife for the applicable *species*;
 - b. Applicant must demonstrate that a) an alternative alignment or location for the activity is not feasible;
 - c. The activity is designed so that it will provide an overall improvement in not degrade the functions or values of the *fish habitat* or other *critical areas*; and
 - d. Any impacts to the functions or values of the *anadromous fish* habitat *conservation area* are mitigated in accordance with an approved *critical areas report* *habitat management plan*.

2. Structures that prevent the migration of *salmonids* shall not be allowed in the portion of water bodies currently or historically used by *anadromous fish*. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed. See also KMC 18.55.420.C.

~~3. Fills, when authorized by the City's shoreline management master program, shall not adversely impact *anadromous fish* or their habitat or shall mitigate any *unavoidable impacts*, and shall only be allowed for a *water-dependent use*.~~