

TOWN OF WOODWAY
COUNCIL MEETING AGENDA

23920 113th Place W. | Woodway, WA 98020

TUESDAY, JANUARY 21, 2020
7:00 P.M.

- 7:00 P.M. Call to Order, Flag Salute, Roll Call
- 7:00 P.M. I Oath of Office
- 7:05 P.M. II Proposed Changes to Woodway Municipal Code
- 16.10: Environmentally Critical Areas
 - 16.12: Tree Preservation
 - 16.08: Clearing and Grading
- 8:05 P.M. III Approval of Payments –*2019 Claims, January 21, 2020 Claims*
- 8:10 P.M. IV Approval of Minutes – January 6, 2020
- 8:15 P.M. Audience Comments*
- 8:20 P.M. V Council Reports
- 8:25 P.M. VI Mayor’s Report
- 8:30 P.M. VII Town Administrator’s Report
- 8:35 P.M. VIII Designation of Representatives to Regional Organizations
- 8:45 P.M. IX Regular Meeting Time
- 8:50 P.M. X Resolution 2020-418: Sales and Use Tax for Affordable and Supportive Housing
- 9:00 P.M. Audience Comments*
- 9:05 P.M. General Council Discussion-Choice of Subjects
- 9:10 P.M. Adjournment

** Audience comments only during the time specified. Council Deliberations will not be interrupted for audience comment. Citizens desiring comment time in excess of five minutes should contact the mayor to schedule presentation time. Council agendas are subject to change before or during the council meetings upon motion. Anyone with a disability requiring special accommodations should contact the Town Clerk's Office at Town Hall or call (206)542-4443 before 1:00 p.m. the Thursday preceding the Council Meeting. For TDD relay service, call (206)587-5500, or outside the Seattle area #1-800-833-6388.*

MEMORANDUM

TO: Town Council
FROM: Eric Faison, Town Administrator
SUBJECT: Code Updates – Environmentally Critical Areas, Trees, Clearing and Grading
DATE: 1/21/2020
CC: Carla Nichols, Mayor

Background

A couple years ago, we began a chapter by chapter review of our Municipal Code. Staff identified various provisions that needed updating in several chapters. However, given workloads and the complexity of some of the needed revisions, those chapters have not yet made it to Council for review and approval.

Last Fall, two residents came to the mayor and staff with a proposal to make the tree code more flexible to allow for stabilization work on the bluff. As we have done with other residents who have requested code changes, staff encouraged them to identify specific code revisions, so that we could better understand their request and provide a recommendation to Council. We received the residents' proposed code revisions in mid-October, and they provided a briefing to Council and the Planning Commission at a special meeting later that month.

Subsequently, after staff conducted an initial review of the proposal, it became apparent that a much more detailed review of the Town's Code would be required to accommodate their request and to address the issues raised by the proposal on a Town-wide basis. Specifically, the project quickly morphed to include revisions to the Clearing & Grading and Environmentally Critical Areas chapters of the Code, in addition to the Tree Preservation chapter.

In your packet, you'll find draft updated versions of our Environmentally Critical Areas Code, Tree Preservation Code, and Clearing & Grading Code. The proposed changes to these chapters are extensive, particularly with regard to the Tree Preservation Code. As a result, I have highlighted in yellow a few of the more important provisions that we'll go over Tuesday night.

Substantively, most of the changes recommend by staff were discussed with Council at a meeting last month. While there have been a lot of revisions since that meeting, the fundamental intent pretty much remains the same. As a result, this meeting might be more of an update for the Planning Commission than for Council.

Environmentally Critical Areas

The first thing that we noticed in review of our Environmentally Critical Areas regulations is that under WMC 16.10.620(B)(1), alterations to geologic hazard areas are allowed for purposes of slope stabilization. Under subsection .620(B)(2), proposals to make such alterations are reviewed under the “applicable sections” of the code. However, none of the Town’s “applicable sections” provide for approval of an applicable permit. Moreover, there is no corresponding provision allowing slope stabilization work on the immediately adjacent geologic hazard buffer.

We have corrected these oversights. We also clarified that ordinary yard maintenance can be conducted within the buffer pursuant to an exemption in 16.10.050(A)(8), for those properties (particularly along Dogwood) where substantial portions of their property fall within the critical area buffer. Under 16.10.610, we are adding a map to help residents generally identify the location of the steep slope buffer.

Tree Preservation and Management

The Tree Preservation Code has been substantially changed to provide more flexibility. We started with a focus on the purpose and intent – particularly the desire to preserve and enhance existing natural vegetation, preserve the visual appearance of the Town, and to preserve wildlife habitat. In this regard, we focused on preservation of critical areas and the wooded streetscape along the Town’s rights of way.

We limited the number of trees that can be removed within setbacks adjacent to the Town’s rights-of-way. But we eliminated restrictions on the use of maintenance tree removal allocations and replacement requirements within the side and rear yard setbacks. We also addressed some concerns related to exceptional trees and hedges.

The tree removal options available as a result of this revision are largely broken down into three categories.

1. Through a standard tree permit, the applicant can remove the number of trees allocated by zone for annual maintenance. For example, in the R-87 zone, it would be eight trees per year. For lots greater than two acres, the applicant can remove an additional four trees per additional acre.
2. Through a revised version of our existing Resolution by Agreement, the applicant can remove two years’ worth of routine maintenance trees. This provision also allows other types of simple agreements.
3. The new Tree Management Plan is a type of agreement between an applicant and the Town that allows us to address tree removal proposals, from simple to complex, where proposed removals/replacements don’t fit the structure provided under the standard tree permit but is otherwise consistent with the overall intent of the code. The purpose of this

section is to provide maximum flexibility, given the variety of properties within the Town and to allow for a variety of creative options that might exist to preserve and enhance the Town's character and environment.

We increased restrictions on tree removals within a portion of the Estates that have experienced significant subsurface water problems. The number of tree removals is limited to only one per year in these areas, and additional removals are only allowed with a Tree Management Plan – where an applicant will have to demonstrate with technical analysis that removals will not be a problem. This area of the Estates also will be governed by more restrictive replacement provisions.

Council still needs to decide whether to exempt red alders from the restrictions on removal of exceptional trees WMC 16.12.020(I), and decide what limitations are appropriate for topping of conifers.

Clearing & Grading

Of particular note with regard to the Clearing & Grading Code is the steep slope buffer map that we have attached as the last page of this portion of your packet. We have previously shown you this map and have noted that we need to update our Comprehensive Plan to reflect our identified critical areas and their buffer. The attached map was created by our geotechnical engineers using available LIDAR maps.

The map shows the location of the steep slope critical area, the minimum 50-foot buffer from the top of the steep slope, and the applicable buffer (which is 50 feet or the height of the steep slope, whichever is greater). Because the applicable buffer in many cases encompasses the majority, and in some cases (such as along Dogwood) the entirety of some lots, we made provisions to allow ordinary yard maintenance work outside of the critical area, and a little more extensive work in the area more than 50 feet from the top of the steep slope. Any work done in this area is technically prohibited or would require geotechnical analysis under our current code.

The most significant changes to the Clearing & Grading code are the provisions intended to mirror the new Tree Management Plan provision in the Tree Code, through the creation of a "Clearing and Grading Management Plan." These changes can be found at WMC 16.08.160. Like the Tree Management Plan, this section is primarily intended to allow an applicant to enter into an agreement with the Town to do major work in the critical area or the 50-foot buffer, or to do a major project that will take longer than 18 months to complete. Also like the Tree Management Plan, the type and scope of the project will dictate the complexity of the application/approval process.

Lastly, also of significance is a change to the grading provisions of 16.08.140(B)(1)(d)(i). With this change, we are proposing to limit the amount of fill that can be placed on a site, so as to prohibit the building up of a site to establish a new, unnatural grade. We are still working on

determining what we will allow in terms of the maximum allowable fill depth. Tentatively, we have established a limit of 24 inches.

Conclusion

We have made substantial progress and are almost done. However, we still have several areas that we need to work on. We anticipate finalizing the draft this week.

We then will need to evaluate how the code would be implemented administratively. This work includes creating sample applications and identifying appropriate fees. We anticipate completing this last piece of work in time for a potential Council decision on February 18.

If Council is comfortable with the overall substance of this draft and the plan of action, we will notify the public of an open house that we would hold for an hour before the Council meeting on February 3, with the opportunity for public comment at that meeting. There also will be an opportunity for public comment on February 18.

CHAPTER 16.10: ENVIRONMENTALLY CRITICAL AREAS

Sections:

- 16.10.010 Purpose and intent.
- 16.10.020 Definitions.
- 16.10.030 Applicability--Regulated activities.
- 16.10.040 Procedural provisions.
- 16.10.050 Exemptions.
- 16.10.060 Conforming and nonconforming structures.
- 16.10.070 Reasonable use provision.
- 16.10.080 Environmentally critical areas maps.
- 16.10.090 Surface water study areas.
- 16.10.100 Relationship to other regulations.
- 16.10.110 Proposed development.
- 16.10.120 Permit process and application requirements.
- 16.10.130 Classification and rating of environmentally critical areas.
- 16.10.140 Buffer areas.
- 16.10.150 Buffer width variances.
- 16.10.160 Alteration or development of environmentally critical areas--Standards and criteria.
- 16.10.170 General mitigation standards.
- 16.10.180 Other appropriate mitigation actions.
- 16.10.190 Mitigation standards, criteria, and plan requirements.
- 16.10.200 Performance standards for mitigation planning.
- 16.10.210 Approved mitigation projects--Signature.
- 16.10.220 Approved mitigation projects--Contingency planning.
- 16.10.230 Mitigation monitoring and maintenance--General standards.
- 16.10.300 Classification and rating of wetlands.
- 16.10.310 Wetland buffers.
- 16.10.320 Alteration of wetlands--Performance standards.
- 16.10.330 Wetland mitigation performance standards.
- 16.10.340 Wetland mitigation monitoring and maintenance.
- 16.10.400 Classification and rating of streams.
- 16.10.410 Stream buffers.
- 16.10.420 Alteration of streams and stream buffers.
- 16.10.430 Stream mitigation performance standards.
- 16.10.500 Classification and rating of fish and wildlife habitats.
- 16.10.510 Fish and wildlife habitat area buffers.
- 16.10.520 Alteration of fish and wildlife habitat areas.
- 16.10.530 Fish and wildlife habitat area mitigation performance standards.
- 16.10.540 Fish and wildlife habitat area mitigation monitoring and maintenance.
- 16.10.600 Classification and rating of geologic hazard areas.
- 16.10.610 Geologic hazard area buffers.
- 16.10.620 Alteration of geologic hazard areas.
- 16.10.630 Geologic hazard area performance standards.
- 16.10.640 Geological hazard area report--Required information.
- 16.10.650 Geologic hazard area mitigation monitoring and maintenance.
- 16.10.700 Classification and rating of aquifer recharge and wellhead protection areas.
- 16.10.710 Alteration of aquifer recharge and wellhead protection areas.
- 16.10.720 Aquifer recharge and wellhead protection area performance standards.

16.10.010 PURPOSE AND INTENT.

- A. The Town Council finds that the Town contains certain areas that can be identified and characterized as environmentally sensitive or critical. Such areas within the Town include wetlands, streams, fish and wildlife habitat, geologic hazards, aquifer recharge and wellhead protection areas, and associated environmentally critical area buffers.
- B. The Town finds that unregulated development patterns may in some cases result in natural disasters that threaten public health and safety, and that by preventing development on certain environmentally critical areas, the Town can better maintain public health, safety, and welfare by avoiding natural disasters such as slides and flooding that threaten life and property. In addition, through the prevention of disturbances to environmentally critical areas and their buffers that may result in degradation, erosion, or damages to protective vegetation, and by preserving features that provide for clean water, fisheries habitat including near-shore habitat, and wildlife habitat, the Town can help maintain a positive ecological balance that provides for the immediate and long-term public welfare. This chapter is intended to preserve the Town's important environmental features while allowing development to occur if compatible with and in consideration of these environmentally critical areas.
- C. The classification and designation of these environmentally critical areas is intended to ensure the conservation and protection of environmentally critical areas from loss or degradation, and to restrict land uses and development that are incompatible with environmentally critical areas. It is the intent of this chapter to designate and protect environmentally critical areas.
- D. The Town finds that these essential environmentally critical areas perform a variety of valuable and beneficial biological and physical functions that benefit the Town and its residents. The Town further finds that the functions of environmentally critical areas include the following:
 1. Wetland Areas. Wetlands and their associated buffers help to maintain water quality; store and convey stormwater and floodwater; recharge groundwater; provide important fish and wildlife habitat; and provide valuable functions for recreation, education, scientific study, and aesthetic appreciation. Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for fish and wildlife; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.
 2. Stream Areas. Streams and their associated buffers provide important fish and wildlife habitat and corridors; help to maintain water quality; store and convey stormwater and floodwater; recharge groundwater; and serve a valuable function for recreation, education, scientific study, and aesthetic appreciation.
 3. Fish and Wildlife Habitat Areas. Identification, preservation and protection of fish and wildlife habitat areas provide opportunities for food, cover, nesting, breeding, and movement for fish and wildlife within the Town; maintain and promote diversity of species and habitat within the Town; coordinate habitat protection with elements of the Town's established open space corridors wherever possible; help to maintain air and water quality; control erosion; serve a valuable function for recreation, education, scientific study, and aesthetic appreciation; and contribute to the established character of the Town.
 4. Geologic Hazard Areas. Geologic hazard areas include lands that are affected by natural processes that make them susceptible to landslides, seismic activity, and severe erosion, especially bluff and ravine areas.
 5. Aquifer Recharge and Wellhead Protection Areas. Aquifer recharge and wellhead protection areas provide a source of potable water and contribute to stream discharge during periods of low water flow. Aquifer recharge and wellhead protection areas have been identified that are susceptible to contamination through potential infiltration of pollutants through the soil to groundwater. The primary purpose of aquifer recharge and wellhead protection area regulations is to protect critical aquifer recharge and wellhead protection areas by avoiding land use activities that pose the potential for aquifer contamination; and to minimize impacts to significant recharge areas and to surface water

habitat that is dependent on groundwater recharge through the application of strict performance standards.

- E. This chapter of the Woodway Municipal Code contains standards, guidelines, criteria, and requirements intended to identify, analyze, preserve, and mitigate potential impacts to the Town's environmentally critical areas and to enhance and restore degraded resources, such as wetlands, streams and fish and wildlife habitat, where possible. The standards, guidelines, and criteria have been established using "best available science." The intent of these regulations is to avoid impacts to environmentally critical areas. In appropriate circumstances, impacts to specified environmentally critical areas resulting from regulated activities may be minimized, rectified, reduced, and/or compensated for, consistent with the requirements of this chapter and best available science.
1. It is the further intent of this chapter to:
 - a. Provide standards, guidelines, and criteria to guide application of these environmentally critical areas goals and policies when considered with other goals and policies of the Woodway Municipal Code and comprehensive plan including those pertaining to natural features and environmental protection;
 - b. Serve as a basis for exercise of the Town's substantive authority under the State Environmental Policy Act (SEPA) and the Town's SEPA rules (Chapter 16.04);
 - c. Comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and implementing rules; and
 - d. Coordinate environmental review and permitting of proposals to avoid duplication and delay. (Ord. 09-503 § 1(Exh. A(part)): Ord. 00-387 § 1(part), 2000)

16.10.020 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

- "Alteration" means any human-induced change in an existing condition of an environmentally critical area or its buffer. Alterations include but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the environmentally critical area or its buffer.
- "Applicant" means the person, party, firm, corporation, or other entity that proposes any activity that could affect a wetland, stream, fish and wildlife habitat, or other critical area.
- "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs (Chapter 173-160 WAC).
- "Aquifer recharge area" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).
- "Aquifer susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.
- "Aquifer vulnerability" is the combined effect of susceptibility to contamination and the presence of potential contaminants.
- "Artificially created wetland" means wetlands created through purposeful human action from non-wetland sites, such as irrigation and drainage, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

"Best available science," in the context of environmentally critical areas protection, means a valid scientific process that produces reliable information useful in understanding the consequences of a local government's regulatory decisions consistent with the criteria in WAC 365-195-905.

"Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitat;
3. Control site runoff, spillage, leaks, sludge, or water disposal, or drainage from raw material.

"Buffer (buffer zone)" means the area adjacent to the outer boundaries of critical areas including wetlands, habitat conservation areas such as streams and marine shorelines, and/or landslide hazard areas that separates and protects critical areas from adverse impacts associated with adjacent land uses.

"Clearing" means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site that exposes the earth's surface of the site.

"Creation" means the producing or forming of a wetland or stream through artificial means from an upland (dry) site.

"Critical habitat" or "critical fish and wildlife habitat" means habitat areas associated with threatened, endangered, or environmentally critical species of plants, fish, or wildlife and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term. Such areas are documented with reference to lists, categories, and definitions of species promulgated by the Washington Department of Fish and Wildlife (nongame data system special animal species) as identified in WAC 232-12-011 or 232-12-014 and in the priority habitat species lists compiled in compliance with WAC 365-190-080; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service. Critical habitat also includes the following types of areas:

1. Regionally rare native fish and fish and wildlife habitat (i.e., one of five or fewer examples of the habitat type within the county);
2. Category I wetlands as defined in these regulations;
3. Documented commercial and/or recreational shellfish beds managed by the Washington Department of Fisheries;
4. Class I streams as defined in these regulations;
5. State nature area preserves or natural resource conservation areas identified by state law and managed by the Department of Natural Resources; and
6. Naturally occurring ponds stocked with game fish by government or tribal entities; and naturally occurring ponds of greater than one acre and less than twenty acres in area with cover of submerged aquatic vegetation, shrubs, or trees not exceeding fifty percent of the area of surface water, and whose maximum depth does not exceed 6.6 feet.

Critical habitat does not include artificially created habitat and/or habitat created by purposeful human action, including but not limited to landscape amenities, detention facilities, grass-lined swales, and open space areas.

"Department" means the Town Department of Planning.

"Development" means any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivisions and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development; clearing

activity; fill and grade work; activity conditionally allowed; building or construction; tree removal; revocable encroachment permits; and septic approval.

"Earth" or "earth material" means naturally occurring rock, soil, stone, sediment, or a combination thereof.

"Emergency activities" are those activities that require immediate action within a time too short to allow full compliance with this chapter due to an unanticipated and imminent threat to public health, safety, or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this chapter. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

"Enhancement" means:

1. For wetlands, the improvement of an existing viable wetland or buffer, such as by increasing plant diversity, increasing fish and wildlife habitat, installing environmentally compatible erosion controls, or removing non-indigenous plant or animal species; or
2. For streams and fish and wildlife habitat, the improvement of an existing habitat or an existing stream or associated buffer such as by modifying the channel or substrate, increasing riparian plant density or structural diversity, installing environmentally compatible erosion controls, or removing non-indigenous plant or animal species.

"Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"Excavation" means the mechanical removal of earth material.

"Exotic" means any species of plant or animal that is foreign (i.e., not native to the Puget Sound area).

"Fill" or "fill material" means a deposit of earth material placed by human or mechanical (machine) means.

"Filling" means the act of transporting or placing (by any manner or mechanism) fill materials from, to, or on any soil surface, sediment surface, or other fill materials.

"Fish and wildlife habitat areas" are areas important for maintaining species in suitable habitats within their natural geographic distribution so that isolated populations are not created.

"Fish and wildlife report" means a report prepared by a qualified consultant who evaluated plant communities and fish and wildlife functions and values on a site, consistent with the format and requirements established by this chapter.

"Geologically hazardous areas" means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.

"Grading" means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

"Ground water" means all water that exists beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates, or otherwise moves (Chapter 90.44 RCW).

"Habitat" or "fish and wildlife habitat" means areas that provide food, protective cover, nesting, breeding, or movement for fish and wildlife.

"Habitat buffer" means an area surrounding a defined fish and wildlife habitat or wetland that reduces adverse impacts to habitat/wetland functions from adjacent development or other activities or uses; the area between a fish and wildlife habitat or wetland and the upland that serves as a transition zone.

"Habitat management" means management of land to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created.

"Habitat map" means maps of plant cover types/communities used to indicate the potential presence of fish and wildlife species.

"Hydric soil" means a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Washington State Wetland Identification and Delineation Manual (RCW 36.70A.175).

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

"Hydraulic project approval" (HPA) means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.

"Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle compared to natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces may include, but are not limited to, rooftops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water. Impervious surfaces do not include surfaces created through proven low impact development techniques.

"Infiltration" means the downward entry of water into the immediate surface of soil.

"In-kind mitigation" means replacement of environmentally critical areas with substitute environmentally critical areas whose characteristics closely approximate those destroyed or degraded by a regulated activity.

"Intentionally created streams" means streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals.

"Isolated wetland" means wetlands that are not hydrologically connected to other surface water features, either by aboveground flows or shallow subsurface water features.

"Lake" means a naturally or artificially created body of deep (generally greater than 6.6 feet) open water that persists throughout the year. A lake is larger than a pond, greater than one acre in size, equal to or greater than 6.6 feet in depth, and has less than thirty percent aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark with the stream where the stream enters the lake.

"Mitigation" means and includes:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations pursuant to activities undertaken during the life of the action;
5. Compensating for the impact by replacing or providing substitute resources or environments.

While monitoring without additional actions is not considered mitigation for the purposes of these regulations, it may be a part of a comprehensive mitigation program.

"Monitoring" means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of such systems and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the

purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

"Native vegetation" means vegetation that is indigenous to the area in question.

"No net loss" means the maintenance of the aggregate total of the Town's environmentally critical area functions and values as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

"Ordinary high water mark" means that mark that will be found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute. In any area where neither can be found, the top of the channel bank shall be substituted.

"Out-of-kind mitigation" means replacement of environmentally critical areas with substitute environmentally critical areas whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

"Outside edge of the buffer" means the edge of the buffer that is the farthest distance from the critical area being protected by the buffer.

"Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants after development, construction, or restoration.

"Pond" means a naturally existing body of standing water, which exists on a year-round basis and occurs in a depression of land or expanded portion of a stream.

"Priority species" or "priority fish and wildlife species" means fish and wildlife species of concern due to their population status and sensitivity to habitat alteration, as identified by the Washington Department of Fish and Wildlife.

"Qualified professional consultant" means a professionally trained and/or certified fish and wildlife or stream biologist, ecologist, or other professional with expertise in the scientific disciplines necessary to identify, evaluate, and manage habitat and streams. This term also means a professionally licensed civil engineer with a practice as a geotechnical engineer or a licensed engineering geologist with expertise in the engineering and behavior of earth materials.

"Qualified wetland specialist" means a professionally trained and/or certified wetlands biologist or wetlands ecologist.

"Recharge" means the process involved in the absorption and addition of water from the unsaturated zone to ground water.

"Regulated activity" means activities occurring in or near and/or potentially affecting environmentally critical areas or buffers that are subject to the provisions of this chapter. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, construction or reconstruction, driving pilings, obstructing, shading, clearing, or harvesting.

"Rehabilitation" means the establishment of a viable environmentally critical area from a previously filled or degraded environmentally critical area.

"Restoration" means the reestablishment of a viable environmentally critical area from a previously filled or degraded environmentally critical areas wetland site.

"Riparian corridor" or "riparian zone" means the area adjacent to a water body (stream, lake, or marine water) that contains vegetation that influences the aquatic ecosystem, near-shore area, and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and

terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding, and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

"Site" means any parcel or combination of contiguous parcels where a project is being proposed.

"Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

"Stream beds" are areas where surface water produces a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock, channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. Streams do not include intentionally created streams, including irrigation and drainage ditches, grass-lined swales, and canals, except manmade streams that have been created as mitigation or that provide critical habitat for fish.

"Stream buffer area" means a naturally vegetated and undisturbed, enhanced, or revegetated zone surrounding a natural, restored, or newly created stream that is an integral part of a stream ecosystem, and protects a stream from adverse impacts to the integrity and value of a stream.

"Stream report" means a report prepared by a qualified consultant that evaluates stream functions and values, consistent with the format and requirements established by this chapter.

"Structural diversity" means the relative degree of diversity or complexity of vegetation in a habitat area as indicated by the stratification or layering of different plant species; the spacing or pattern of vegetation.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Substrate" means the soil, sediment, decomposing organic matter, or combination of those located on the bottom surface of the wetland.

"Temporary erosion control" means on-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

"Wetland" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

"Wetland delineation" means a procedure performed by a wetland specialist to determine the area of a wetland and to define the boundary between a wetland and adjacent uplands.

"Wetland determination" means a report prepared by a qualified wetland specialist to determine the area of a wetland and to define the boundary between a wetland and adjacent uplands.

"Wetland functions and values" means the beneficial biological, physical, and other purposes generally served by wetlands, including but not limited to helping to maintain water quality, storing and conveying stormwater and floodwater, recharging groundwater, providing fish and wildlife habitat, and serving as areas for recreation, education, scientific study, and aesthetic enjoyment. (Ord. 19-600 § 1 (part)(Exh.

C.2(Att. 2(1)), 2019; Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.340)

16.10.030 APPLICABILITY--REGULATED ACTIVITIES.

- A. The applicability of this chapter is triggered by submittal of an application for a development permit to the Town, including but not limited to application for a building permit, clearing and grading, tree removal pursuant to a forest management permit, zoning, subdivision, and special use.
- B. The provisions of this chapter shall apply to any activity which otherwise requires a permit or approval from the Town, that has a potential to impact an environmentally critical area or its established buffer unless otherwise exempt. Such activities include but are not limited to:
 - 1. Removing, excavating, grading, disturbing, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;
 - 2. Destroying or altering vegetation through clearing, grading, harvesting, shading, or planting vegetation that would detrimentally alter the character or function of an environmentally critical area or its established buffer;
 - 3. Dumping, discharging, or filling with any material;
 - 4. Draining, flooding, or disturbing the water level or water table;
 - 5. Driving pilings or placing obstructions;
 - 6. Constructing, reconstructing, demolishing, or altering the size of any structure or infrastructure that results in disturbance of an environmentally critical area or its established buffer, or the addition of any impervious surface coverage to a site;
 - 7. Activities that result in significant changes in physical or chemical characteristics of water sources, including, but not limited to, water temperature, quantity, and pollutants; and
 - 8. Any other activity that has a potential to significantly adversely impact an environmentally critical area or established buffer not otherwise exempt from the provisions of this chapter.
- C. To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of this chapter: clearing and grading; tree removal pursuant to a forest management permit; subdivision or short subdivision; building permit; rezone; shoreline substantial development; shoreline conditional use permit; variance; planned unit development and binding site plan review; special use; and any other permits leading to the development or alteration of land.
- D. Proponents of non-project actions, including but not limited to legislative zone changes, annexations, and the adoption of plans and programs, may be required to perform any studies or evaluations required by this chapter using methodologies and at a level of detail appropriate to the action proposed, as part of the non-project action review. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.020)

16.10.040 PROCEDURAL PROVISIONS.

- A. Interpretation and Conflicts. Any question regarding interpretation of these regulations shall be resolved pursuant to the procedures set forth in Section 14.04.020.
- B. Penalties and Enforcement. Compliance with these regulations and penalties for their violation shall be enforced pursuant to the procedures set forth in Chapter 14.56.
- C. Appeals from Permit Decisions. Appeals from permit decisions shall be governed by the procedures set forth in Chapter 2.60. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.320)

16.10.050 EXEMPTIONS.

Notwithstanding the procedural exemptions provided by this section, an exempt activity occurring in an environmentally critical area or its associated buffer shall meet the purpose and intent of Section 16.10.010 and the proponent shall consider on-site alternatives that avoid or minimize significant adverse impacts.

- A. The following activities shall be exempt from the procedural requirements of this chapter:

1. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features; except wetlands, streams, ditches or swales created as mitigation or replacement or that provide critical habitat for salmonid fishes;
 2. Activities occurring in areas of forty percent slope or greater when the forty percent slope area has a vertical elevation change of not more than fifteen feet may be exempted based upon Town review of a soils report prepared by a state licensed geologist or geotechnical engineer which demonstrates that no significant adverse impact will result from the activity;
 3. Normal and routine maintenance, operation, and reconstruction of existing roads, streets, utilities, and associated rights-of-way and structures; provided, that reconstruction of any facilities may not increase the impervious area or reduce stormwater conveyance;
 4. Normal maintenance and repair, reconstruction, or remodeling of residential, institutional, or commercial structures, or legal pre-existing and on-going uses of the site; provided, that reconstruction or remodeling of any structures may not increase the previous approved building footprint;
 5. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies, fish and wildlife studies, and similar tests and investigations; provided, that any disturbance of the environmentally critical area shall be the minimum necessary to carry out the work or studies;
 6. Educational activities, scientific research, and outdoor recreational activities that will not have an adverse effect on the environmentally critical area, including but not limited to interpretive field trips, bird-watching, and use of trails for horseback riding, bicycling, and hiking;
 7. Alterations in response to emergencies which threaten the public health, safety, and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the Town immediately. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The Town shall confirm that an emergency exists and determine what, if any, additional applications and/or measures shall be required to protect the environment, consistent with the provisions of this chapter, and to repair any damage to a pre-existing resource;
 8. Normal and routine maintenance and operation of existing landscaping and gardens located outside a critical area:
 - a. Provided that no chemicals or fertilizers may be used in wetland, stream or high significance/high susceptibility aquifer recharge area buffers;
 - b. Shall use appropriate soil stabilization and erosion control measures to minimize soil erosion; and
 - c. Shall comply with all other regulations in this chapter, or other applicable Town codes;
 9. Construction of trails, according to the following criteria: constructed of permeable or semi-permeable materials, designed to minimize impact on the environmentally critical area, located within the outer half of the environmentally critical buffer area, and of a maximum trail surface width of five feet;
 10. Minor activities, such as the installation of a fence or fence posts not mentioned above and determined by the Town Engineer and/or Town Planner to have minimal impacts to an environmentally critical area;
 11. Installation, construction, replacement, repair, or alteration of utilities and their associated facilities, lines, pipes, mains, equipment, or appurtenances in improved Town road rights-of-way;
 12. Activities associated with or carried out in accordance with federal, state, and local regulations and requirements governing provision of construction, maintenance, repair, operation, and protection of public water supply and distribution facilities.
- B. With the exception of subsections (A)(7), (8), (9), and (10) of this section, and normal maintenance and repair of residential and commercial structures as in subsection (A)(4) of this section, no property owner

or other entity shall undertake exempt activities prior to providing ten days' notice to the Town. In case of any question as to whether a particular activity is exempt from the procedural requirements of this section, the Town's determination shall prevail and shall be confirmed in writing within ten days of receipt of the owner's or applicant's letter. Those activities falling under subsection (A)(7) of this section shall provide telephone or written communication to the Town within forty-eight hours of the activity notifying that such emergency activity was taken. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 01-412 § 1 (Exh. 1 (part)), 2001; Ord. 00-387 § 1(part), 2000. Formerly 16.10.030)

16.10.060 CONFORMING AND NONCONFORMING STRUCTURES.

- A. Otherwise conforming structures, located in an environmentally critical area buffer but not in an environmentally critical area, which are destroyed through an act of nature, fire, or other nonintentional, accidental means shall be allowed to be reconstructed to the configuration that existed prior to the damage within twelve months. Reconstruction of the structure shall not further encroach into the buffer area or increase the building footprint. Mitigation provisions consistent with the standards of this chapter may be required.
- B. If a nonconforming structure located within an environmentally critical area is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged; provided, that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.070 REASONABLE USE PROVISION.

- A. The standards and regulations of this chapter are not intended, and shall not be construed or applied in a manner, to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner (Chapter 2.56) that strict application of these standards would deny all reasonable economic use of its property, development may be permitted subject to appropriate conditions.
- B. An applicant for relief from strict application of these standards shall demonstrate the following:
 - 1. No reasonable use with less impact on the environmentally critical area and the buffer is feasible and reasonable; and
 - 2. There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, change in use, reductions in density, application of the buffer width variance and buffer averaging provisions, and similar factors; and
 - 3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected environmentally critical areas; and
 - 4. All reasonable mitigation measures have been implemented or assured; and
 - 5. The inability to derive reasonable economic use is not the result of the applicant's actions.
- C. Permits that require reasonable use consideration will require notice and hearings consistent with the process included in Title 14A. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.330)

16.10.080 ENVIRONMENTALLY CRITICAL AREAS MAPS.

- A. The approximate location and extent of environmentally critical areas within the Town's planning area are shown on the environmentally critical areas maps adopted as part of this chapter. These maps shall be used as a general guide only for the assistance of property owners and other interested parties; boundaries are generalized. The actual type, extent and boundaries of environmentally sensitive areas shall be determined in the field by a qualified consultant according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the environmentally critical area location or designation shown on the Town's maps and the criteria or standards of this section, the criteria and standards shall prevail. The Town shall strive to continuously update these maps, as new information becomes available, in order to ensure accuracy.

- B. Mapping of Geologically Hazardous Areas. The approximate location and extent of geologically hazardous areas are shown on the environmentally critical areas maps. In addition, resources providing information on the location and extent of geologically hazardous areas in the Town include:
1. Washington Department of Ecology Coastal Zone Atlas (for marine bluffs);
 2. U.S. Geological Survey geologic maps, landslide hazard maps, and seismic hazard maps;
 3. Washington State Department of Natural Resources seismic hazard maps for Western Washington;
 4. Washington State Department of Natural Resources slope stability maps;
 5. National Oceanic and Atmospheric Administration tsunami hazard maps; and
 6. Federal Emergency Management Administration flood insurance maps.
- C. The critical areas inventory and the resources cited above are to be used as a guide for the Town, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.040)

16.10.090 SURFACE WATER STUDY AREAS.

Several areas within the Town are characterized by seasonal surface water inundation and/or have been designated for stormwater easements. These areas are included on the ESA maps as "Surface Water Study Areas." They are not designated as environmentally critical areas; however, due to the presence of surface water, these areas may include areas that may be designated as environmentally critical. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.045)

16.10.100 RELATIONSHIP TO OTHER REGULATIONS.

- A. These environmentally critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the Town. In the event of any conflict between these regulations and any other regulations of the Town, the regulations which provide greater protection to the environmentally critical areas shall apply.
- B. Areas characterized by particular environmentally critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some environmentally critical areas. Wetlands, for example, may be defined and regulated according to the wetland, fish and wildlife habitat, and stream area provisions of this chapter. In the event of any conflict between regulations for particular environmentally critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.050)

16.10.110 PROPOSED DEVELOPMENT.

Development proposed in environmentally critical areas or their associated buffers shall incorporate and reflect the performance standards contained in Sections 16.10.200, 16.10.330, 16.10.430, 16.10.530, 16.10.630, 16.10.640, and 16.10.720. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.220)

16.10.120 PERMIT PROCESS AND APPLICATION REQUIREMENTS.

- A. Preapplication Conference. All applicants are encouraged to meet with the Town prior to submitting an application subject to this section. The purpose of this meeting shall be to discuss the Town's environmentally critical area requirements, processes and procedures; to review any conceptual site plans prepared by the applicant; to identify potential impacts to environmentally sensitive areas and appropriate mitigation measures; and to generally inform the applicant of any federal or state regulations applicable to the subject environmentally critical area. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the Town.
- B. Application Requirements.
1. Exemptions. The Town requires that all landowners requesting a permit for development, who will be working within an environmentally critical area, even if the work may be determined to be exempt, fill

out an environmentally critical area worksheet and register for an environmentally critical area exemption permit. There is no fee for an environmentally critical area exemption permit.

2. Environmentally Critical Areas Report Contents. Reports and studies required to be submitted by this chapter shall contain the information indicated in this chapter applicable to each environmentally sensitive area.

C. Consultant Qualifications and Town Review.

1. All reports and studies required of the applicant by this chapter shall be prepared by a qualified consultant as that term is defined in this chapter. The Town may, at its discretion, retain a qualified consultant to review and confirm the applicant's reports, studies and plans. Consultant costs for this review shall be the responsibility of the applicant. Advance deposits shall be collected to cover estimated costs.
2. Best Available Science. The critical areas report shall use scientifically valid methods and studies in the analysis of critical areas 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 title.

- D. Permit Process. This chapter does not create a requirement to obtain a separate environmentally critical areas permit for development proposals. The Town shall consolidate and integrate the review and processing of environmentally critical areas aspects of proposals with other land use and environmental considerations and approvals. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.060)

16.10.130 CLASSIFICATION AND RATING OF ENVIRONMENTALLY CRITICAL AREAS.

To promote consistent application of the standards and requirements of this chapter, environmentally critical areas within the Town shall be rated or classified according to their characteristics, functions and values, and/or their sensitivity to disturbance based on consideration of the following factors:

- A. Maps adopted pursuant to this chapter;
- B. Application of the criteria contained in these regulations; and
- C. Consideration of the technical reports submitted by qualified consultants in connection with applications subject to these regulations. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 07-485 § 2, 2008; Ord. 00-387 § 1(part), 2000. Formerly 16.10.070)

16.10.140 BUFFER AREAS.

- A. The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to environmentally critical areas. The purpose of the buffer shall be to protect the integrity, function, value and resource of the subject environmentally sensitive area, and/or to protect life, property and resources from risks associated with development on unstable or environmentally critical lands. Buffers shall consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. If the site has previously been disturbed, the buffer area shall be revegetated pursuant to an approved planting plan. Buffers shall be protected during construction by placement of a temporary barricade outside the buffer area, on-site notice for construction crews of the presence of the environmentally critical area, and implementation of appropriate erosion and sedimentation controls, including review and approval of a temporary erosion and sedimentation control plan ("TESC"). Permanent field markings, restrictive covenants and/or dedication of conservation easements may be required to preserve and protect buffer areas.
- B. Required buffer widths shall reflect the sensitivity of the particular environmentally 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 environmentally critical area. Buffers or setbacks shall be measured as follows:
 1. Wetland Buffers. Horizontally in all directions from the wetland edge as delineated and marked in the field using the current version of the adopted wetland manual, as per Section 16.10.020.

2. Stream Buffers. Horizontally landward from the ordinary high water mark, as determined using State Department of Ecology guidelines.
3. Critical Landslide Hazard Area Buffers (High Hazard and Very High Hazard). From the top and toe and, where applicable, from the point where the top meets the toe. Building setbacks, per Section 14.08.300, shall be measured to the nearest point of the outside edge of the designated buffer. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 07-485 § 3, 2008; Ord. 00-387 § 1(part), 2000. Formerly 16.10.080)

16.10.150 BUFFER WIDTH VARIANCES.

Required buffers shall not deny all reasonable use of property. A variance from buffer width requirements may be granted by the Town subject to the variance criteria set forth in Chapter 14.50 and upon a showing by the applicant that:

- A. Such buffer width 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; and
- B. 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 in the same zoning district, and which support the granting of a variance from the buffer width requirements; and
- C. The granting of such buffer width variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and
- D. The granting of the buffer width variance will not impact the subject environmentally critical area; and
- E. The granting of a request for buffer width variance may include requirements to prepare and implement a buffer enhancement plan, or to otherwise enhance, restore or replace environmentally critical areas and their buffers consistent with the standards of this chapter. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.130)

16.10.160 ALTERATION OR DEVELOPMENT OF ENVIRONMENTALLY CRITICAL AREAS--STANDARDS AND CRITERIA.

Alteration and development of environmentally critical areas within the Town may only be permitted subject to the standards and criteria of this chapter. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.140)

16.10.170 GENERAL MITIGATION STANDARDS.

All impacts to environmentally critical areas and/or their buffers shall be mitigated. Mitigation actions by an applicant or property owner shall occur in the following sequence:

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- C. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and/or
- E. Compensating for the impact by replacing or providing substitute resources or environments. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.150)

16.10.180 OTHER APPROPRIATE MITIGATION ACTIONS.

Where impacts cannot be avoided, and the applicant has exhausted feasible design alternatives, the applicant or property owner shall seek to implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this chapter. In an individual case, these actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and/or implementation of the performance standards listed in this chapter. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.160)

16.10.190 MITIGATION STANDARDS, CRITERIA AND PLAN REQUIREMENTS.

- A. Mitigation Performance Standards. Significant adverse impacts to environmentally critical area functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in Section 16.10.170. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:
1. All feasible and reasonable measures will be taken to reduce impacts and losses to the environmentally critical area, or to avoid impacts where avoidance is required by these regulations; and
 2. The restored, created or enhanced environmentally critical area or buffer will demonstrate similar functions, values and characteristics as the environmentally critical area or buffer area it replaces; and
 3. In the case of wetlands, streams and critical habitat, no overall net loss will occur in wetland or stream functions and values.
- B. Location and Timing of Mitigation.
1. Mitigation shall occur in the most ecologically beneficial location, whether that is on site or off site. In addition, mitigation may be allowed through an approved mitigation bank.
 2. On-site, in-kind mitigation shall be provided except when the applicant demonstrates, and the Town concurs, that greater functional and habitat value can be achieved through on-site, out-of-kind mitigation.
 3. Only when it is determined by the Town that subsection (B)(2) of this section is inappropriate and impractical shall off-site, out-of-kind mitigation be considered.
 4. When wetland or stream mitigation is permitted by these regulations on site or off site, the mitigation project shall occur near an adequate water supply (river, stream, groundwater) with a hydrologic connection to the environmentally critical area to ensure successful development or restoration. The proposed restoration project shall demonstrate no adverse impacts to the hydrologic source.
 5. Any agreed-upon mitigation proposal shall be completed concurrently with project construction, unless a phased schedule, that assures completion prior to occupancy, has been approved by the Town. Phased construction shall require bonding consistent with review and approval by the Town.
 6. Wetland acreage replacement ratios shall be as specified in Section 16.10.320(E).
 7. Restored or created streams, where permitted by these regulations, shall be an equivalent or higher stream value or function than the altered stream. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.230)

16.10.200 PERFORMANCE STANDARDS FOR MITIGATION PLANNING.

The performance standards in Sections 16.10.330, 16.10.430, 16.10.530, 16.10.630, and 16.10.720 and the applicable standards contained in Sections 16.10.110, 16.10.160 through 16.10.190, 16.10.320, 16.10.420, 16.10.520, 16.10.620, and 16.10.710 shall be incorporated into mitigation plans submitted to the Town for impacts to environmentally critical areas. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.240)

16.10.210 APPROVED MITIGATION PROJECTS--SIGNATURE.

On completion of construction, any approved mitigation project must be signed off by the applicant's qualified consultant and approved by the Town. Approval by the Town will indicate that the construction has been completed as planned. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.290)

16.10.220 APPROVED MITIGATION PROJECTS--CONTINGENCY PLANNING.

Approved mitigation projects shall implement the monitoring and contingency planning requirements of Sections 16.10.230, 16.10.340, 16.10.540, and 16.10.650. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.300)

16.10.230 MITIGATION MONITORING AND MAINTENANCE--GENERAL STANDARDS.

- A. The Town shall have the authority to require that compensatory mitigation projects be monitored annually for at least five years to establish that performance standards have been met. Required monitoring reports

shall be submitted annually during the monitoring period to document milestones, successes, problems, and contingency actions of the compensatory mitigation. The Town may reduce the monitoring timeframe to three years for minor mitigation projects involving critical area or buffer revegetation or vegetation enhancement, but not for projects involving wetland creation, wetland restoration, stream restoration, or other activities that require manipulation of soils or water. All mitigation areas shall be maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the Town.

1. The Town shall have the authority to extend the monitoring period, require corrective measures, and/or require additional monitoring reports beyond the initial monitoring period for any project that does not meet the performance standards identified in the mitigation plan, or does not provide adequate replacement for the functions and values of the impacted critical area.
 2. Mitigation sites shall be permanently protected by a deed restriction or other protective covenant specified by the Town.
- B. Mitigation Assurance. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the mitigation, monitor the site, and make corrections if the project fails to meet projected goals. The Town may require the following to ensure that the mitigation is fully functional:
1. The applicant shall post a mitigation surety in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs.
 2. The surety shall be in the form of an assignment of funds or other means approved by the Town.
 3. Surety authorized by this section shall remain in effect until the Town determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the Town for a period 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. Surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than twenty-five percent of the construction cost.
 4. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.
 5. 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, or monitoring.
 6. 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 thirty days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default and the Town may demand payment of any financial guarantees or require other action authorized by Town code or any other law.
 7. Any funds recovered pursuant to this section shall be used to complete the required mitigation. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.300 CLASSIFICATION AND RATING OF WETLANDS.

Wetlands shall be identified in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the Town meeting the criteria in the approved wetland delineation manual and applicable regional supplements, regardless of any formal identification, are hereby designated critical areas and shall be subject to the provisions of this chapter.

- A. The approximate location and extent of known or suspected wetlands are shown on the Town's adopted critical area maps as contained within the environmental element of the comprehensive plan. These maps shall be used as a guide for the Town, applicants, and/or property owners, and may be updated as new wetlands are identified. The exact location of a wetland boundary shall be determined through field

investigation by a qualified professional applying the approved federal wetland delineation manual and applicable regional supplements, methods and procedures.

- B. Wetlands shall be rated and regulated according to the categories defined by the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, October 2014) as revised, which contains the definitions and methods for determining whether the criteria below are met.
1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring twenty-three 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: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between twenty and twenty-two points).
 3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between sixteen and nineteen points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between one-tenth and one acre. Wetlands scoring between sixteen and nineteen 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 sixteen points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. 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. Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.
- D. All wetlands shall be regulated and subject to the provisions of this chapter regardless of size, except that Category IV wetlands less than one thousand square feet shall be exempt from this chapter if a critical area report prepared pursuant to this chapter demonstrates all of the following:
1. The wetland does not provide suitable habitat for amphibian species; and
 2. The wetland does not possess unique characteristics that would be difficult to replicate through standard mitigation practices. (Ord. 19-600 § 1 (part)(Exh. C.2(Att. 2(2,3) (part)), 2019: Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.310 WETLAND BUFFERS.

- A. Wetland buffer areas shall be established for all development proposals and activities adjacent to wetlands to protect the integrity, function, and value of the wetland. The Department shall determine appropriate buffer widths based upon the approved critical area report. Wetland buffers shall be measured perpendicular to the wetland edge as marked in the field and shall not include wetlands. Except as otherwise permitted by this chapter, buffers shall consist of an undisturbed area of native vegetation.
- B. The standard buffer widths required by this chapter shall presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the existing vegetation is inadequate, then the buffer width shall be increased or the buffer planted or enhanced to maintain or improve the buffer functions. The following standard buffer width requirements are established as the minimum buffer width:

1. For wetlands that score six points or more for habitat function, the buffers in Table 16.10.310(1) can be used if both of the following criteria are met:
 - a. A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. (The latest definitions of priority habitats and their locations are available on the WDFW web site at: <https://wdfw.wa.gov/species-habitats>.) 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. Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 16.10.310(1) may be used with the required measures in Table 16.10.310(2) alone.
 - b. The measures in Table 16.10.310(2) are implemented, where applicable, to minimize the impacts of the adjacent land uses.
2. For wetlands that score three to five habitat points, only the measures in Table 16.10.310(2) are required for the use of Table 16.10.310(1).
3. The buffer widths in Table 16.10.310(1) assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

**Table 16.10.310(1) Wetland Buffer Requirements for Western Washington
if Table 16.10.310(2) is Implemented and a Corridor Provided**

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	75	110	225
Category I: Bogs and Wetlands of High Conservation Value	190		225
Category I: Forested	75	110	225
Category I: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
Category II: Based on score	75	110	225
Category II: Estuarine and Coastal Lagoons	110 (buffer width not based on habitat scores)		
Category III (all)	60	110	225
Category IV (all)	40		

**Table 16.10.310(2)
(All measures are required if applicable to a specific proposal)**

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

	<ul style="list-style-type: none"> 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 Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> Use best management practices to control dust

**Table 16.10.310(3) Wetland Buffer Requirements for Western Washington
if Table 16.10.310(2) is NOT Implemented or Corridor NOT provided**

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	100	150	300
Category I: Bogs and Wetlands of High Conservation Value	250		300
Category I: Forested	100	150	300
Category I: Estuarine and Coastal Lagoons	200 (buffer width not based on habitat scores)		
Category II: Based on score	100	150	300
Category II: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
Category III (all)	80	150	300
Category IV (all)	50		

- C. The Town shall have the authority to average buffer widths on a case-by-case basis where a qualified professional demonstrates to the Town's satisfaction that all the following criteria are met:
1. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
 2. The buffer averaging does not reduce the functions or values of the wetland;
 3. The portion of the buffer reduced through buffer averaging is less than twenty-five percent of the total buffer length on a project site;
 4. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and
 5. The buffer width is not reduced to less than fifty percent of the standard width, except that no buffer dimension shall be less than twenty-five feet.
- D. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the Department that buffer requirements of this chapter are met. Field marking shall remain until all construction and clearing phases are completed and final approval has been granted by the Town.

- E. Structures shall be set back a minimum of ten feet from the buffer edge such that construction activities and outdoor living areas do not infringe upon the required buffer edge.
- F. Impervious surfaces shall not be constructed in wetland buffers except as expressly provided for in this chapter.
- G. The Director shall have the authority to reduce the width of the standard buffer on a case-by-case basis if all of the following criteria are met:
 1. The buffer is adjacent to a critical area that is being significantly restored through a Town-approved mitigation plan that has regional benefit to critical area functions as determined by the Director.
 2. A critical area report has been submitted to the Town that demonstrates the reduced buffer will protect the functions and value of the critical area being restored.
 3. The reduced buffer shall be clearly described in any applicable SEPA, MDNS, or EIS document and shall be subject to review and comment by the public agencies with jurisdiction. (Ord. 19-600 § 1 (part)(Exh. C.2(Att. 2(3)(part))), 2019: Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.090)

16.10.320 ALTERATION OF WETLANDS--PERFORMANCE STANDARDS.

- A. All activities and uses shall be prohibited in wetlands and wetland buffers except as expressly provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands and buffers. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of wetlands shall be permitted only in accordance with an approved critical area report and mitigation plan. The burden of proof shall be on the applicant.
- B. All significant adverse impacts to wetland functions and values and to associated buffers shall be avoided. Where such impacts cannot be avoided, the applicant shall implement appropriate compensatory mitigation according to the provisions of Sections 16.10.230, 16.10.340, 16.10.540, and 16.10.650.
- C. Alteration of Category I wetlands is prohibited.
- D. Alteration of Category II, III, and IV wetlands may be permitted in accordance with an approved critical area report and mitigation plan, and only when the applicant demonstrates that:
 1. The basic project purpose cannot reasonably be accomplished without the wetland alteration; and
 2. There are no reasonable or practical alternatives to the alteration, including without limitation on-site design or acquisition of additional area.
- E. Wetland Mitigation Ratios. When creating or enhancing wetlands, the following acreage replacement ratios shall be used:

Table 16.10.320(1)

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation only	Enhancement only
Category IV	1.5:1	3:1	6:1
Category III	2:1	4:1	8:1
Category II	3:1	6:1	12:1
Category I: Based on functions	4:1	8:1	16:1
Category I: Mature and old-growth forest	6:1	12:1	24:1
Category I: High conservation value/bog	Not considered possible	Not considered possible	Not considered possible

(Ord. 19-600 § 1 (part)(Exh. C.2(Att. 2(3))), 2019: Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.170)

16.10.330 WETLAND MITIGATION PERFORMANCE STANDARDS.

A. Grading plans shall meet the following standards:

1. Existing and proposed on-site elevations and grades shall be shown in both plan and cross-section view at a contour interval of one foot or less.
2. Grading plans shall depict site access, staging, and stockpiling areas.
3. Stockpiling should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in accordance with Town clearing and grading standards, unless otherwise approved by the Town.
4. Plans shall be stamped by a licensed engineer.

B. The planting plan shall address the following design standards:

1. A planting plan shall be submitted to the Town for review and approval. The wetland mitigation design and planting plans shall use a hydrogeomorphic (HGM) type and water regime that are appropriate within the landscape setting of the project. Plants indigenous to the region (not introduced or foreign species) shall be used.
2. Plants adaptable to a broad range of water depths shall be used.
3. Plants should be commercially available or available from local sources.
4. Plant species high in food and cover value for fish and wildlife shall be used.
5. Mostly perennial species should be planted.
6. Committing significant areas of the site to species that have questionable potential for successful establishment shall be avoided.
7. Plant selection must be approved by a qualified consultant.
8. Plans shall be stamped by a state-registered landscape architect.
9. Planting instructions shall be submitted which describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
10. Controlled release fertilizer shall be applied (if required) at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process).
11. An irrigation system shall be installed, if necessary, for the initial establishment period.

C. Wetland design and construction shall be consistent with Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans, as amended, and the following:

1. All construction specifications and methods shall be approved by a qualified consultant and the Town.
2. Construction management shall be provided by a qualified consultant. On-going work on site shall be inspected by the Town. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.250)

16.10.340 WETLAND MITIGATION MONITORING AND MAINTENANCE.

A. All wetland mitigation projects shall be monitored in accordance with Sections 16.10.230, 16.10.340, 16.10.540, and 16.10.650 for a period necessary to establish that performance standards have been met. The Town shall have the authority to extend the monitoring period for up to ten years and require additional monitoring reports when any of the following conditions apply:

1. The project does not meet the performance standards identified in the mitigation plan.
2. The project does not provide adequate replacement for the functions and values of the impacted critical area.
3. The project involves establishment of forested plant communities, which require longer time for establishment.

B. Monitoring reports shall be submitted annually for the first three years following construction and at the completion of years five, seven, and ten if applicable to document milestones, successes, problems, and contingency actions of the compensatory mitigation. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.400 CLASSIFICATION AND RATING OF STREAMS.

Streams shall be designated Class I, Class II, Class III, and Class IV according to the criteria in this section. When more than one stream class is present in alternating segments on the property in question, it will be classified according to the stream class that is more restrictive.

- A. "Class I streams" are those streams identified as shorelines of the state under the Snohomish County shoreline master program, adopted by reference by the Town, as amended and as defined in Chapter 90.58 RCW.
- B. "Class II streams" are those natural streams that are not classified as Class I streams and are either perennial or intermittent and have one of the following characteristics:
 - 1. Salmonid fish use;
 - 2. Potential for salmonid fish use or benefit; or
 - 3. Significant recreational value.
- C. "Class III streams" are those natural streams with perennial (year-round) or intermittent flow and are not used by salmonid fish and have no potential to be used by salmonid fish, but which contribute water to streams or water bodies used by threatened or endangered species.
- D. "Class IV streams" are those streams and natural drainage swales with perennial or intermittent flow with channel width less than two feet taken at the ordinary high water mark, that are not used by salmonid fish and which are not hydrologically connected to water bodies used by threatened or endangered species.
- E. "Intentionally created streams" are those manmade streams purposefully created, and do not include streams created as mitigation. Purposeful creation must be demonstrated to the Town through documentation, photographs, statements, and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales, and canals. Intentionally created streams are excluded from regulation under this section, except manmade streams that provide or contribute to critical habitat for anadromous fish and/or threatened or endangered species. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.410 STREAM BUFFERS.

- A. The following buffers are established for streams:

Stream Class	Standard Buffer Width (feet)	Minimum Buffer Width (feet)
Class I	250	150
Class II	100	75
Class III	75	25
Class IV	50	25
Lakes and ponds	50	25 (see Section 16.10.510(B))

- B. The standard buffer width will be established unless the applicant can demonstrate one or both of the following:
 - 1. The proposed use and/or activities are considered low impact, and meet the following conditions:
 - a. The site layout includes no parking, outdoor storage or use of any kind of machinery between building and buffer;
 - b. Use does not involve usage or storage of chemicals;
 - c. Passive areas are located adjacent to buffer; and
 - d. Stream and buffer protections are incorporated into the site design; these may include use of landscaping features, berms, fences, water quality protections and other measures which preserve the character and function of the stream and its buffer.
 - 2. Stream and buffer enhancement is implemented through the review and adoption of an approved buffer enhancement plan (BEP). The buffer enhancement plan should include but is not limited to the following applicable provisions:

- a. Removal of fish barriers to restore accessibility to anadromous fish;
 - b. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan;
 - c. Enhancement of fish and wildlife habitat structures that are likely to be used by fish and wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and/or heron nesting areas;
 - d. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value;
 - e. Create a surface channel where a stream was previously culverted or piped;
 - f. Remove or modify existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities;
 - g. Upgrade and enhance retention/detention facilities or other drainage facilities.
- C. No structures or improvements shall be permitted within the stream buffer area, except as provided in Section 16.10.420.
- D. The Town may extend the width of the buffer on the basis of site-specific analysis when necessary to comply with a basin plan adopted by the Town in accordance with county or regional plans to preserve endangered or threatened species.
- E. Stream buffer widths may be modified by averaging buffer widths as set forth herein.
- 1. Buffer width averaging shall be allowed only where the applicant demonstrates to the Town that the stream contains variations in sensitivity due to existing physical characteristics, that lower intensity land uses would be located adjacent to areas where buffer width is reduced, and that the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging. Buffer averaging shall not result in the buffer width being reduced by more than twenty-five percent of the required buffer as set forth in the table in subsection A of this section and in no case may the buffer be less than twenty-five feet in width.
 - 2. A buffer enhancement plan (BEP) may be required if buffer averaging is proposed.
- F. When a development permit is required, and the Town finds permanent preservation necessary to achieve the objectives of this chapter, the Town may require a regulated stream and its associated buffer to be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the Town. In this case, the location and limitations associated with the stream and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with Snohomish County.
- G. When a development permit is required, buffers shall be permanently marked by green metal fence posts in a manner acceptable to the Town with one-inch by two-foot rebar buried beside each post. The number of post/rebar markers shall be sufficient to indicate the boundary of the buffer and the minimum shall be two. The approximate location of the posts based on measurements shall be shown on a site plan that shall be recorded with Snohomish County. It shall be the responsibility of the property owner to maintain, and if necessary reestablish, these permanent markers. (Ord. 12-535 § 1 (part), 2012; Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.100)

16.10.420 ALTERATION OF STREAMS AND STREAM BUFFERS.

- A. Relocation of a Class I or II stream to facilitate general site design, driveway access, or building location will not be allowed. Relocation of a class III or IV stream may take place only as part of an approved mitigation or rehabilitation plan that will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream.
- B. Stream crossings may be allowed, where necessary, provided such crossings shall only occur as near to perpendicular with the water body as possible. Roads shall not run parallel to the water body unless specific mitigation measures are incorporated to prevent impacts to the stream and riparian habitat.

- C. Road bridges shall be designed in accordance with the WDFW Design of Road Culverts for Fish Passage (May 2003) and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings 2001, or as updated.
- D. Bridges shall be used to cross Class I streams.
- E. Culverts are allowable only in Class II, III and IV streams and when a hydraulic project approval has been issued and found to be consistent with the Design of Road Culverts for Fish Passage (May 2003) by WDFW.
- F. The Town may require that a stream be removed from a culvert as a condition of approval or the culvert reconstructed to the standards of this chapter, unless the culvert is not detrimental to fish habitat or water quality or removal and/or replacement is deemed detrimental to fish or fish and wildlife habitat or water quality.
- G. Clearing and grading within stream and buffer areas shall require the issuance of a clearing and grading permit issued by the Town and shall comply with the following performance standards:
 - 1. Allowed only during the dry season (typically April/May through September or as designated by the Town).
 - 2. Appropriate erosion and sediment control measures shall be used, and when possible the soil duff layer shall remain undisturbed.
 - 3. Where feasible, disturbed topsoil shall be redistributed to other areas of the site; provided, that this shall not constitute unauthorized fill. Areas shall be revegetated as needed to stabilize the site.
 - 4. The moisture-holding capacity of the topsoil shall be maintained by minimizing soil compaction or by reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
- H. Stream bank stabilization and protection may be permitted subject to the following:
 - 1. Natural hydraulic processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of stream substrate, or eliminate or reduce sediment supply from feeder bluffs.
 - 2. Stream protection shall comply with state hydraulic project approval requirements.
 - 3. No adverse impact to fish or wildlife habitat areas or associated wetlands will occur.
 - 4. No alteration of juvenile fish migration corridors will occur.
 - 5. No net loss of riparian habitat function will occur.
 - 6. Nonstructural measures, such as placing or relocating the development further from the stream bank, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - 7. Stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable hydraulic permit issued by WDFW.
- I. Stormwater management facilities, such as infiltration trenches, but not detention and treatment ponds or vaults, may be allowed within the outer fifty percent of the standard buffer, provided:
 - 1. There is no other feasible location for the stormwater conveyance with less impact on critical areas or buffer;
 - 2. The stormwater facility is designed according to Town standards and the discharge water meets state and local water quality standards;
 - 3. Vegetation shall be maintained and if necessary added adjacent to all stormwater conveyance channels to reduce erosion, filter out sediments, and provide shade.
- J. Stormwater conveyance or discharge facilities such as dispersion trenches and outfalls may encroach into the inner fifty percent of the buffer on a case-by-case basis when the Town determines that due to topographic or other physical constraints there are no other feasible locations for these facilities in the outer buffer area.
- K. On-site sewage disposal systems may be permitted when accessory to an approved residential structure for which there is no nearby public sanitary sewer system to connect to and when operated and maintained in

accordance with other Town provisions; provided, that adverse effects on water quality and slope stability are avoided.

- L. Structures other than access roads, bridges, culverts, stormwater conveyance and management facilities, bank stabilization, and on-site sewage systems shall not be allowed in streams or stream buffers except as follows:
1. When the structure is part of an approved stream rehabilitation or mitigation plan; or
 2. For construction of new roads and utilities, and accessory structures, when no feasible alternative location exists; or
 3. Construction of trails, according to the following criteria:
 - a. Constructed of permeable or semipermeable materials; or
 - b. Designed to minimize impact on the stream system; or
 - c. Of a maximum trail surface width of five feet (see Section 16.10.050(A)(9)), and located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the stream; or
 4. Construction of footbridges; or
 5. Construction of interpretive facilities and informational signs.
- M. On-site sewage disposal systems may be permitted when accessory to an approved residential structure for which it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with other Town provisions; provided, that adverse effects on water quality and slope stability are avoided. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.180)

16.10.430 STREAM MITIGATION PERFORMANCE STANDARDS.

- A. Grading plans shall meet the following standards:
1. Existing and proposed on-site elevations and grades shall be shown in both plan and cross-section view at a contour interval of one foot or less.
 2. Grading plans shall depict site access, staging, and stockpiling areas.
 3. Stockpiling should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in accordance with Town clearing and grading standards, unless otherwise approved by the Town.
 4. Plans shall be stamped by a licensed engineer.
- B. The planting plan shall address the following design standards:
1. A planting plan shall be submitted to the Town for review and approval. Plants indigenous to the region (not introduced or foreign species) shall be used.
 2. Plants adaptable to a broad range of water depths shall be used.
 3. Plants should be commercially available or available from local sources.
 4. Plant species high in food and cover value for fish and wildlife shall be used.
 5. Mostly perennial species should be planted.
 6. Committing significant areas of the site to species that have questionable potential for successful establishment shall be avoided.
 7. Plant selection must be approved by a qualified consultant.
 8. Plans shall be stamped by a state-registered landscape architect.
 9. Planting instructions shall be submitted which describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
 10. Controlled release fertilizer shall be applied (if required) at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process).
 11. An irrigation system shall be installed, if necessary, for the initial establishment period. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.500 CLASSIFICATION AND RATING OF FISH AND WILDLIFE HABITATS.

Fish and wildlife habitat classification includes those areas that meet any of the following criteria:

- A. The documented presence of species proposed or listed by the federal government or state of Washington as endangered, threatened, environmentally critical, monitor or priority;
- B. State priority habitats and areas associated with state priority species;
- C. Commercial and recreational shellfish areas;
- D. Kelp and eelgrass beds;
- E. Surf smelt, Pacific herring, and Pacific sand lance spawning areas;
- F. Naturally occurring ponds under twenty acres in size;
- G. Naturally occurring lakes over twenty acres and other waters of the state, including marine waters, and waters planted with game fish by a government or tribal entity;
- H. Natural area preserves and natural resource conservation areas;
- I. Heron rookeries or raptor nesting trees;
- J. Category I and II wetlands and their buffers as defined in these regulations;
- K. Class I and II streams and their buffers, as defined in these regulations;
- L. Priority species and habitats as identified in the Town comprehensive plan;
- M. Areas of previously undisturbed native vegetation and/or stands of significant trees that provide a corridor between any of the critical fish and wildlife habitat areas listed in this section. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.510 FISH AND WILDLIFE HABITAT AREA BUFFERS.

- A. Buffer widths for critical habitat areas shall be based on consideration of the following factors: species recommendations of the Washington State Department of Fish and Wildlife; recommendations contained in the fish and wildlife study submitted by a qualified consultant; and the nature and intensity of land uses and activities occurring on the site and on adjacent sites.
- B. Lakes and ponds shall have a standard buffer of fifty feet. The Town may reduce the buffer to twenty-five feet when doing so will not adversely affect the functions and values of the lake or pond.
- C. Low impact uses and activities which are consistent with the purpose and function of the critical habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat area. Examples of uses and activities which may be permitted in appropriate cases include pervious or semi-pervious trails, viewing platforms, stormwater management facilities such as grass-lined swales, and utility easements; provided, that any impacts to the buffer resulting from permitted facilities shall be mitigated.
- D. When a development permit is required, and the Town finds permanent preservation necessary to achieve the objectives of this chapter, the Town may require critical habitat areas and their associated buffers to be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the Town. The location and limitations associated with the critical habitat and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with Snohomish County. (Ord. 12-535 § 1 (part), 2012; Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.110)

16.10.520 ALTERATION OF FISH AND WILDLIFE HABITAT AREAS.

Alterations to fish and wildlife habitat areas shall be prohibited, except as allowed in Section 16.10.070, Reasonable use provision. No habitat alteration will be allowed that will result in a take of a state or federally listed threatened or endangered species. Any alteration permitted subject to the reasonable use provisions shall be required to meet the performance and mitigation standards of these regulations. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.190)

16.10.530 FISH AND WILDLIFE HABITAT AREA MITIGATION PERFORMANCE STANDARDS.

- A. Relevant performance standards from Sections 16.10.330 and 16.10.430, as determined by the Town, shall be incorporated into habitat area mitigation plans.
- B. The following additional mitigation measures shall be reflected in mitigation planning:

1. Consider habitat in site planning and design and ensure that no habitat alteration will be allowed that will result in a take of a state or federally listed threatened or endangered species;
2. Locate buildings and structures in a manner that preserves and avoids all adverse impacts to important habitat areas;
3. Integrate retained habitat into open space and landscaping;
4. Consolidate habitat and vegetated open space in contiguous blocks;
5. Locate habitat contiguous to other habitat open space or landscaped areas to contribute to a continuous system or corridor that provides connections to adjacent habitat areas;
6. Use native species in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat or buffers;
7. Emphasize heterogeneity and structural diversity of vegetation in landscaping;
8. Preserve significant trees, preferably in groups, consistent with the tree preservation ordinance and with achieving the objectives of these standards. (Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.260)

16.10.540 FISH AND WILDLIFE HABITAT AREA MITIGATION MONITORING AND MAINTENANCE.

The Town shall have authority to require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with Sections 16.10.230, 16.10.340, 16.10.540, and 16.10.650 to ensure and document that the goals and objectives of the mitigation are met. The frequency and duration of the monitoring shall be based on the specific needs of the project as determined by the Town. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.600 CLASSIFICATION AND RATING OF GEOLOGIC HAZARD AREAS.

Geologic hazard areas shall be classified according to the criteria in this section.

- A. Critical Erosion Hazard Areas. Critical erosion hazard areas are lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) as having severe or very severe erosion hazards.
- B. Landslide Hazard Areas. Landslide hazard areas are classified as moderate, high, and very high. High and very high are considered critical landslide hazard areas and require a buffer in accordance with Section 16.10.140. Definitions of classifications are as follows:
 1. Moderate Hazard. Areas with slopes between fifteen percent and forty percent and that are underlain by soils that consist largely of sand, gravel, or glacial till;
 2. High Hazard. Areas with slopes between fifteen percent and forty percent that are underlain by soils consisting largely of silt and clay or by soils that have sand over clay;
 3. Very High Hazard. Areas with slopes steeper than fifteen percent with zones of emergent water (e.g., springs or groundwater seepage), areas of landslide deposits regardless of slope, and all areas sloping forty percent or steeper.
 4. A slope is delineated by establishing its toe and top (as defined in Figure 1 of this section) and is measured by averaging the inclination over at least 10 feet of vertical relief or twenty-five feet of horizontal distance. Benches, steps, and variations in gradient shall be incorporated into a larger slope if they do not meet criteria defining toe and/or top depicted in Figure 1 of this section (see also Figure 2 at the end of this section). If the toe or top of a slope is located off of a subject property, then the location of the toe or top shall be delineated two hundred horizontal feet from the property boundary or at its natural location, whichever is closer to the subject parcel (see Figure 2 at the end of this section).
- C. Seismic Hazard Areas. Seismic hazard areas are lands that, due to a combination of soil and groundwater conditions, are subject to severe risk of ground shaking, subsidence, or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), or have a shallow groundwater table.

Figure 1

Simple Slope Calculation

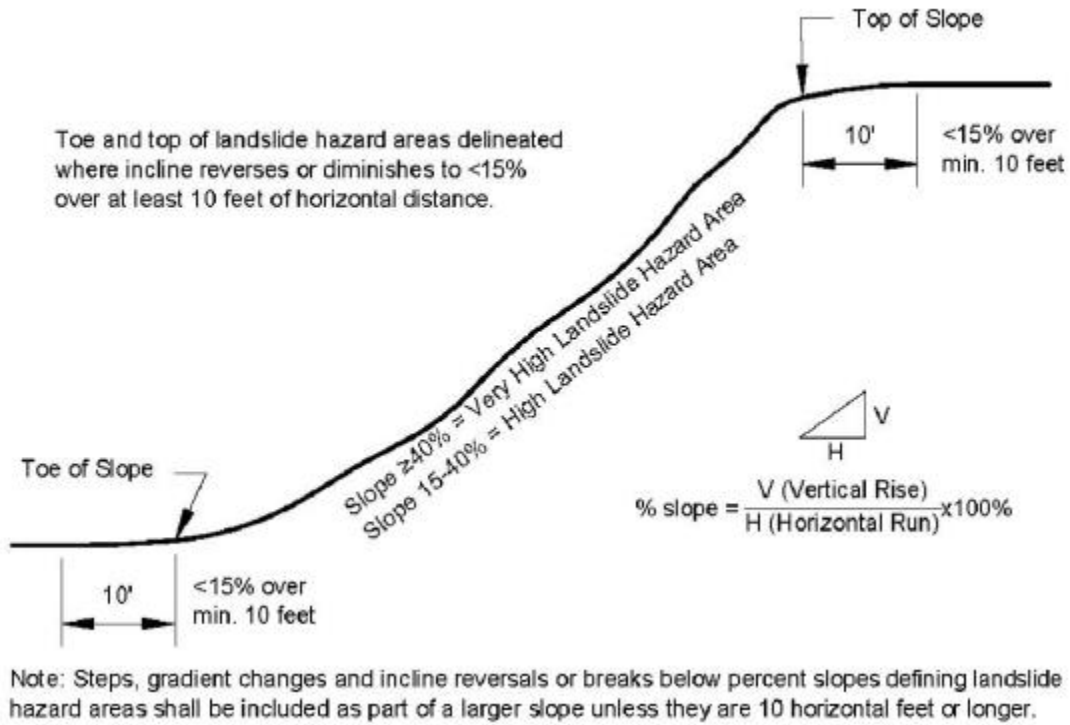
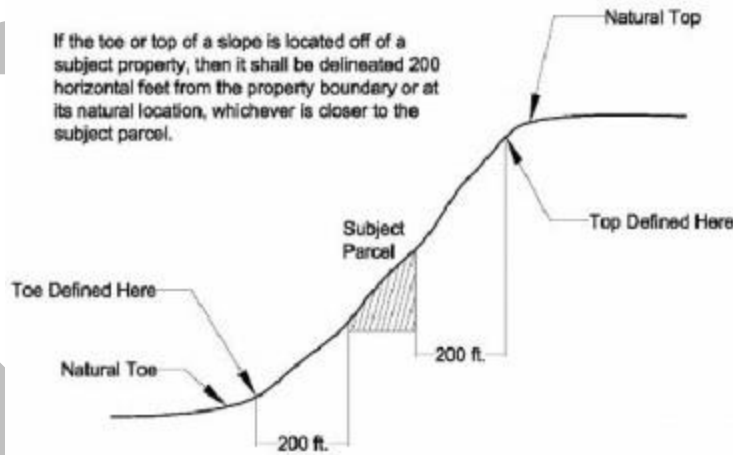


Figure 2

Slopes Extending Off Lots



(Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.610 GEOLOGIC HAZARD AREA BUFFERS.

A. Required buffer widths for geologic hazard areas shall reflect the sensitivity of the hazard area and 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 area. In determining the appropriate buffer width, the Town shall consider the recommendations contained in a geotechnical report required by these regulations and prepared by a licensed geotechnical engineer or engineering geologist retained by the applicant. As identified in Figure 3, the Town has created a map of steep slopes

within the Town and their associated prescriptive buffers for high hazard and very high hazard landslide areas. Based on the location of the proposed development, the Director may require a topographic survey to determine the location of the geologic hazard area and its associated buffer.

- B. For high hazard and very high hazard landslide areas, the standard buffer shall be fifty feet from all edges of the landslide hazard area or the horizontal distance equal to the height of the landslide hazard area, whichever is greater. Larger buffers may be required as needed to eliminate or minimize the risk to people and property based on a geotechnical report prepared by a qualified professional.
- C. Landslide hazard area buffers may be reduced to a minimum of fifteen feet when technical studies by a licensed geotechnical engineer or engineering geologist demonstrate that the reduction will not increase the risk of the hazard to people or property on or off site.
- D. Alterations, other than tree removal, within geologic hazard area buffers for the purposes of stabilization are permitted, when such hazard area poses a risk to private property or existing development, as confirmed by the Town's qualified professional geotechnical engineer or engineering geologist.
- E. Tree removal within geologic hazard area buffers shall comply with Chapter 16.12.
- F. When a development permit is required, and the Town finds permanent preservation necessary to achieve the objectives of this chapter, the Town may require landslide hazard areas and their associated buffers to be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the Town. The location and limitations associated with the critical landslide hazard and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with Snohomish County.
- G. For proposed subdivision plats, the total area contained within the designated hazard area and buffer shall not be included in calculating the lot yield of the subject parcel; provided, that the created buildable lots meet the minimum lot area requirements of the applicable zoning district and Title 13, Subdivisions. (Ord. 13-549 § 1 (Exh. C.3), 2013; Ord. 12-535 § 1 (part), 2012; Ord. 09-503 § 1 (Exh. A(part)), 2009; Ord. 00-387 § 1(part), 2000. Formerly 16.10.120)

16.10.620 ALTERATION OF GEOLOGIC HAZARD AREAS.

- A. The Town shall approve, condition, or deny proposals in a geologic hazard area as appropriate based upon the effective mitigation of risks posed to property, health, and safety. The objective of mitigation measures shall be to render a site containing a critical geologic hazard as safe as one not containing such hazard. Conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied unless it is subject to reasonable use as provided in 16.10.070.
- B. Very High Landslide Hazard Areas.
 - 1. Development shall be prohibited in very high landslide hazards areas except for the installation and construction of:
 - a. Public and private drainage conveyance facilities;
 - b. Public streets;
 - c. Utilities, excluding natural gas, petroleum, and other potentially hazardous utilities;
 - d. Alterations within a very high landslide hazard area for the purposes of stabilization, when such hazard area poses risk to private property or existing development, as confirmed by the Town's qualified professional geotechnical engineer or engineering geologist.
 - 2. Proposals allowed by the above exceptions shall be reviewed based upon the nature of the proposal per the procedures and criteria in this chapter and the applicable sections of this code, i.e., clearing and grading (stormwater) projects shall be reviewed under the procedures of the stormwater chapter, structures shall be reviewed under the procedures of the building/zoning chapters, etc. All proposals

for development or alterations within very high landslide hazard areas shall be subject to the criteria below:

- a. Stormwater conveyance pipes shall be permitted in geologic hazard areas only when the applicant demonstrates that no other practical alternative is available. The pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.
 - b. The proposed street and/or utility is identified in a plan adopted by the Town Council, such as the comprehensive plan, capital facility plan, transportation improvement plan or other utility facility plan. As new or amended plans are prepared and adopted, streets and utilities shall be located to avoid impact to very high landslide hazard areas. Where no reasonable alternative to locating in very high landslide hazard areas exists, review and approval of the plan shall include a discussion of alternatives and rationale for planning streets and utilities in very high landslide hazard areas.
 - c. Alternative locations which avoid impact to very high landslide hazard areas are evaluated and are determined to be functionally infeasible.
 - d. There is a geotechnical evaluation to identify the risks of damage from the proposal, both on site and off site, to ascertain that the proposal will not increase the risk of occurrence of the potential geologic hazard; and to identify measures to eliminate or reduce risks, both on site and off site, which should be implemented as conditions of approval.
 - e. Alterations within very high landslide hazard areas for purposes of slope stabilization shall only be allowed to the extent necessary to address existing conditions that pose risk to private property or existing development. Existing conditions that pose risk may include active or potential landslides that result in loss of ground, endangerment of existing structures or utilities, or significant erosion. Slope stabilization within very high landslide hazard areas may not be used as a means of reducing landslide hazard buffers for new development as otherwise required by this chapter.
 - f. When no alternative exists, the impact shall be minimized by limiting the magnitude of the proposed construction to the extent possible. Any impacts shall be rectified by repairing, rehabilitating, restoring, replacing, or providing substitute resources consistent with the mitigation and performance standards contained in Sections 16.10.190 and 16.10.200.
- C. Moderate and High Landslide Hazards. Alterations proposed to moderate and high landslide hazards or their buffers shall be evaluated by a qualified professional through the preparation of the geotechnical report. However, for proposals that include no development, construction, or impervious surfaces, the Town, in its sole discretion, may waive the requirement for a geotechnical report. The recommendations contained within the geotechnical report shall be incorporated into the alteration of the landslide hazard area or their buffers.
- D. The geotechnical engineer and/or geologist preparing the report shall provide assurances that the risk of damage from the proposal, both on site and off site, is minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential landslide hazard, and that measures to eliminate or reduce risks have been incorporated into the report's recommendations.
- E. Seismic Hazard Areas.
- The applicant shall conduct an evaluation of seismic site response and liquefaction potential, including sufficient subsurface exploration to provide a site coefficient (S) for use in the static lateral force procedure described in the International Building Code or International Residential Code.
- F. When development is permitted in geologic hazard areas by these regulations, the Town may require an applicant and/or its licensed geotechnical engineer to provide assurances that may include the following:
1. A letter under seal from a licensed geotechnical engineer or engineering geologist shall be recorded with Snohomish County that states that, in the engineer's or engineering geologist's professional opinion, all needed surface and subsurface soil explorations have been completed, a thorough review has been made of public records, and all needed analysis has been completed such that if the

engineer's or engineering geologist's recommendations are followed any recommended structure will be as safe on the site containing the critical geologic hazard as it would be on a site not containing such hazard and that the use of the site according to the engineer's or engineering geologist's recommendations will not increase the likelihood of damage to neighboring properties;

2. A legal statement shall be recorded and noted on the face of the deed and on any new plat, executed in a form satisfactory to the Town, which characterizes the site as being located in a geologic hazard area, and which states there may or may not be risks associated with development of such site, and which references the engineer's or engineering geologist's recorded letter required by the prior subsection; and
 3. A covenant between the owner(s) of the property and the Town prior to issuance of any permit or approval. The covenant shall not be required where the permit or approval is for work done by the Town. The covenant shall be tailored to the specific types of risks presented, shall be signed by the owner(s) of the property, shall be notarized, shall run with the land, shall be recorded with the Snohomish County Recorder's Office at the expense of the owner, and shall include, but need not be limited to, the following:
 - a. A legal description of the property;
 - b. A description of the geologic hazard area;
 - c. As relevant to the property condition, commitment by the owner to maintain features of the site in such condition and such manner as will prevent harm to the public, to residents of the property, to nearby property, to streets, alleys and drainage facilities, from the activities to be done pursuant to the permit and from the related changes to the site, and to indemnify the Town and its officers, employees, contractors and agents from any claims arising from the failure of the owner to comply with the commitment;
 - d. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
 - e. The application date, type, and number of the permit or approval for which the covenant is required; and
 - f. A waiver and release of any right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the Town and its officers, employees, contractors, and agents by reason of or arising out of issuance of the permit or approval by the Town for the development on the property, or arising out of any inspection, statement, assurance, delay, act or omission by or on behalf of the Town related to the permit or approval or the work done thereunder, and agreeing to defend and indemnify the Town and its officers, employees, contractors and agents for any liability, claim or demand arising out of any of the foregoing or out of work done or omitted by or for the owner, except in each case only for such losses, claims or demands that directly result from the sole negligence of the Town.
 4. A bond, guarantee, or other assurance device reviewed and approved by the Town to cover the cost of monitoring, maintenance, and any necessary corrective actions.
- G. Stormwater conveyance and groundwater collection and conveyance facilities may be allowed to encroach into geological hazard areas on a case-by-case basis and upon geotechnical evidence that there are no other practical locations for these facilities and that the installation of such facilities will not detrimentally affect adjacent properties or ecosystems. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.200)

16.10.630 GEOLOGIC HAZARD AREA PERFORMANCE STANDARDS.

- A. Relevant performance standards from Sections 16.10.330, 16.10.430, and 16.10.530, as determined by the Town, shall be incorporated into mitigation plans.
- B. The following additional performance standards shall be reflected in proposals within geologic hazard areas:

1. Geotechnical studies shall be prepared by a qualified professional. An environmentally critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard. Critical areas studies and reports on geologically hazardous areas shall be subject to independent review;
2. Construction methods shall reduce or not adversely affect geologic hazards;
3. Site planning should minimize disruption of existing topography and natural vegetation;
4. Impervious surface coverage should be minimized;
5. Disturbed areas should be replanted as soon as feasible pursuant to an approved landscape plan;
6. Clearing and grading regulations as set forth by the Town shall be followed;
7. Use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded slopes;
8. Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction;
9. Undevelopable geologic hazard areas larger than one-half acre shall be placed in a separate tract; provided, this requirement does not make the lot nonconforming;
10. A monitoring program, reviewed and approved by the Town, shall be prepared for construction activities permitted in geologic hazard areas;
11. Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion;
12. The development will not increase or concentrate surface water discharge or sedimentation to adjacent sites beyond pre-development conditions;
13. The development will not decrease slope stability on the development site or on adjacent sites;
14. Structures and improvements shall be located, and clustered if appropriate, to preserve the most critical portion of the site and its natural landforms and vegetation;
15. All subdivision activity proposed in landslide and critical erosion hazard areas and associated buffers is subject to the following:
 - a. Land that is located wholly within an erosion or landslide hazard area or its buffer may not be subdivided. Land located partially within an erosion or landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the erosion or landslide hazard and its buffer;
 - b. Access roads and utilities may be permitted within the erosion or landslide hazard area and associated buffers if the director determines based on an approved critical area report and mitigation plan that the road will not increase the risk to adjacent sites and that no other feasible alternative exists;
16. Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within landslide and erosion hazard areas and related buffers;
17. Public roads, bridges, utilities and trails shall be allowed. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.270)

16.10.640 GEOLOGIC HAZARD AREA REPORT--REQUIRED INFORMATION.

A geologic hazard area report shall include, at a minimum, the following information:

- A. Aerial extent of the proposed project or activity, including all lands within two hundred feet of such proposed project or activity.
- B. Geologic Hazards Assessment. An environmentally critical areas report for a geologically hazardous area shall contain an assessment of geologic hazards including the following site- and proposal-related information at a minimum:
 1. Site and Construction Plans. The report shall include a copy of the site plans for the proposal showing:

- a. The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within two hundred feet of, or that are likely to impact the proposal;
 - b. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
 - c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and
 - d. Clearing limits.
2. Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rocks of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
 - a. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
 - b. A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site-specific measurements, tests, investigations, or studies that support the identification of geologically hazardous areas; and
 - c. A description of the vulnerability of the site to seismic and other geologic events.
 3. Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties.
 4. Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
- C. Incorporation of Previous Study. Where a valid environmentally critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required environmentally critical areas report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.
- D. Mitigation of Long-Term Impacts. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the preexisting conditions following abandonment of the activity. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.650 GEOLOGIC HAZARD AREA MITIGATION MONITORING AND MAINTENANCE.

The Town shall have authority to require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with Sections 16.10.230, 16.10.340, 16.10.540, and 16.10.650 to ensure and document that the goals and objectives of the mitigation are met. The frequency and duration of the monitoring shall be based on the specific needs of the project as determined by the Town. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.700 CLASSIFICATION AND RATING OF AQUIFER RECHARGE AND WELLHEAD PROTECTION AREAS.

The classification of aquifer recharge and wellhead protection areas shall be based on the criteria established in WAC 365-190-080(2), including the categories of low, medium and high significance. Classification depends on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, and presence of municipal water wellhead areas, as follows:

- A. Low Significance/Low Susceptibility Recharge Areas. Upland areas underlain by soils consisting largely of silt, clay, or glacial till;
- B. Medium Significance/Moderate Susceptibility Recharge Areas. Upland areas underlain by soils consisting largely of sand and gravel;
- C. High Significance/High Susceptibility Recharge Areas. Wellhead protection areas and areas underlain by soils consisting largely of sand and gravel in which there is a predominantly downward or lateral component to groundwater flow, and which serve as a source of drinking water. (Ord. 09-503 § 1 (Exh. A(part)), 2009)

16.10.710 ALTERATION OF AQUIFER RECHARGE AND WELLHEAD PROTECTION AREAS.

- A. The following land uses and activities shall be prohibited in critical (high significance/high susceptibility) aquifer recharge and wellhead protection areas:
 - 1. Land uses and activities that involve the use, storage, transport, or disposal of significant quantities of chemicals, substances, or materials that are toxic, dangerous, or hazardous, as those terms are defined by state and federal regulations;
 - 2. On-site community sewage disposal systems;
 - 3. Underground storage of chemicals;
 - 4. Petroleum pipelines;
 - 5. Solid waste landfills;
 - 6. Activities that substantially divert, alter, or reduce the flow of surface or ground waters, or otherwise adversely affect aquifer recharge;
 - 7. Other activities that the Town determines would significantly degrade groundwater quality and/or reduce the recharge to aquifers currently or potentially used as a significant source of base flow to a regulated stream. The determination must be made based on credible scientific information.
- B. Medium or Low Significance Recharge Areas. Development within medium or low significance aquifer recharge and wellhead protection areas, as those terms are defined in these regulations, shall implement the mitigation standards contained in Sections 16.10.190 through 16.10.220, 16.10.330, 16.10.430, 16.10.530, 16.10.630, and 16.10.720. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.210)

16.10.720 AQUIFER RECHARGE AND WELLHEAD PROTECTION AREA PERFORMANCE STANDARDS.

Any uses or activities located in aquifer recharge and wellhead protection areas of medium or high significance that involve the use, storage, transport, or disposal of significant quantities of chemicals, substances, or materials that are toxic, dangerous, or hazardous, as those terms are defined by state and federal regulations, shall comply with the following additional standards:

- A. Development within aquifer recharge and wellhead protection areas of high significance, as that term is defined in these regulations, shall prepare a materials management plan for review and approval by the Town, which shall implement the following measures:
 - 1. Development should be clustered and impervious surfaces limited where possible;
 - 2. Underground storage of chemicals, substances, or materials that are toxic, hazardous, or dangerous is discouraged;
 - 3. Any chemicals, substances, or materials that are toxic, hazardous, or dangerous shall be segregated and stored in receptacles or containers that meet state and federal standards;
 - 4. Storage containers shall be located in a designated, secured area that is paved and able to contain leaks and spills, and surrounded by a dike;
 - 5. Secondary containment devices shall be constructed around storage areas that are sufficient to prevent the spread of any spills, and a monitoring system shall be implemented;
 - 6. A written operations plan shall be developed, including procedures for loading/unloading liquids and for training of employees in proper materials handling;

7. An emergency response/spill clean-up plan shall be prepared and employees properly trained in reacting to accidental spills;
 8. Any aboveground storage tanks shall be located within a diked area on an impervious surface. The tanks shall include overfill protection systems and positive controls on outlets to prevent uncontrolled discharges;
 9. No waste liquids or chemicals of any kind shall be discharged to storm sewers; and
 10. All development shall implement best management practices (BMPs) for water quality, as approved by the Town, such as biofiltration swales and use of oil-water separators, and BMPs appropriate to the particular use proposed.
- B. In addition to the management plan addressed in subsection A of this section, a hydrological report for aquifer recharge areas shall, at a minimum, include the following additional site and proposal related information:
1. Available information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
 2. Groundwater depth, flow direction, and gradient based on available information;
 3. Currently available data from wells;
 4. Best management practices proposed to be used;
 5. Ground water monitoring plan provisions;
 6. Discussion of the effects of the proposed project on the ground water quality and quantity, including predictive evaluation of ground water withdrawal effects on nearby wells and surface water features and predictive evaluation of contaminant transport based on potential releases to ground water. (Ord. 09-503 § 1 (Exh. A(part)), 2009: Ord. 00-387 § 1(part), 2000. Formerly 16.10.280)

CHAPTER 16.12: TREE PRESERVATION AND MANAGEMENT

Sections:

- 16.12.010 Purpose and intent.
- 16.12.020 Definitions.
- 16.12.030 Applicability.
- 16.12.040 Permit required.
- 16.12.050 Exemptions.
- 16.12.060 Prohibited tree removal and topping.
- 16.12.070 Permit application and application expiration.
- 16.12.080 Application review.
- 16.12.090 Permit expiration.
- 16.12.100 Permit fee.
- 16.12.110 Inspections.
- 16.12.120 Replacement tree requirements.
- 16.12.130 Provisions for emergency hazard tree removal.
- 16.12.140 Provisions for hazard tree removal.
- 16.12.150 Provisions for routine property maintenance.
- 16.12.160 Provisions for tree topping.
- 16.12.170 Provisions for land development activities.
- 16.12.180 Resolution by Agreement.
- 16.12.190 Tree Management Plan.
- 16.12.200 Performance and maintenance bonds.
- 16.12.210 Enforcement and penalties.
- 16.12.220 Appeals.

16.12.010 PURPOSE AND INTENT.

It is the purpose and intent of this chapter to:

- A. Implement the Town's comprehensive plan goals and the policies of the conservation element including the goal "to preserve and enhance existing natural vegetation and encourage the addition of native drought-tolerant species to developed areas while eliminating invasive plant species";
- B. Preserve, maintain, and protect the visual appearance and natural wooded character of the Town;
- C. Preserve wildlife habitat, and to reduce the impacts of development on storm drainage and water resources;
- D. Preserve trees in buffers, trees in setback areas adjacent to public rights-of-way, and those trees that have been determined by the Director to be an exceptional tree as defined in this chapter;
- E. Enhance tree protection efforts and promote site planning and horticultural practices consistent with reasonable use of property;
- F. Provide guidance to property owners conducting routine tree management activities;
- G. Enhance the quality of the Town's natural environment during land development activities;
- H. Prohibit clear cutting of the Town's urban forest;
- I. Allow removal of hazardous trees that would harm the Town's residents or property; and
- J. Preserve and enhance the Town's urban canopy. (Ord. 05-452 § 1(part), 2005)

16.12.020 DEFINITIONS.

As used in this chapter:

- A. "Certified Arborist" means an individual:
 - 1. With related training and three years of experience to demonstrate competency in arboriculture and
 - 2. Who holds one of the following credentials:
 - a. American Society of Consulting Arborists (ASCA) Registered Consulting Arborist; or

- b. International Society of Arboriculture (ISA) Certified Arborist with
 - i. An Associate Degree and/or
 - ii. A minimum of 2 years of college-level credit and/or
 - iii. 120 Continuing Education Units.
- B. "Coppicing" is a tree management technique that encourages growth or re-sprouting from the roots or stump, and requires repeatedly cutting stems to near ground level once they have reached the desired size.
- C. "Critical areas" or "Critical area buffers" are those areas defined in and governed by Chapter 16.10. See Chapter 16.10 for regulations related to critical areas or their buffers referenced in sections of this chapter.
- D. "Critical root zone" means the area around a tree requiring protection, as determined by an arborist; generally, the area surrounding a tree trunk at a distance equal to one foot for every inch of tree diameter.
- E. "Developed lot, tract or parcel" means any share, portion or division of real property, whether developed or partially developed with a structure requiring a building permit.
- F. "Diameter" means a straight line passing through the center of a tree from side to side measured at 4.5 feet above grade (DBH). The methodology to compute the diameter shall be the circumference of the tree at that point divided by 3.1416.
- G. "Director" means the Public Works Director, or his or her designee.
- H. "Emergency hazard tree removal" means removal of a tree located on private property with a structural defect and/or disease that has an Imminent likelihood of failure as defined in the ISA Basic Tree Risk Assessment and is in proximity to a target with ISA Basic Tree Risk Assessment risk rating of High or Extreme or as determined by the Director.
- I. "Exceptional tree" means a tree that has been determined by the Director to be worthy of long-term retention because of its unique combination of size, species, age, location, and health. All trees, **except red alder or other species listed as exempt in Section 16.12.050**, with a diameter of 30 inches or greater are Exceptional Trees.
- J. "Hazard tree" means a tree with a structural defect and/or disease that has a Probable or Imminent likelihood of failure as defined in the ISA Basic Tree Risk Assessment and is in proximity to a target with ISA Basic Tree Risk Assessment risk rating of High or Extreme, as determined by the Director.
- K. **"Hedge tree" means a tree in a group or row of similar tree type that has been maintained to a maximum height of 30 feet.**
- L. "Land development activity" means any activity requiring permits or other approvals for the purposes of land clearing, grading/land modification, subdivisions or short subdivisions, an increase in lot coverage, or the construction or alteration of any building, utility or improvement.
- M. "Permit" shall mean, unless otherwise noted, the tree permit or Tree Management Permit; see "tree permit" and "Tree Management Permit".
- N. "Pollarding" is a specialty pruning technique in which a tree with a large-maturing form is kept relatively short. Normally starting on a young tree, internodal cuts are made at a chosen height, resulting in the development of callus knobs at the cut height. Requires regular (usually every one to three years) removal of the sprouts arising from the callus knobs.
- O. "Replacement tree" means any tree that is planted that meets the criteria in
 - 1. Section 16.12.120 and
 - 2. Section 16.12.150 or 16.12.170, whichever is relevant, or
 - 3. An approved Resolution by Agreement or Tree Management Plan
- P. "Resolution by Agreement" is an agreement between the Town and the applicant for the short-term maintenance, management, preservation, replacement, and/or enhancement of trees. A Resolution by Agreement is administered through an approved tree permit pursuant to Section 16.12.180.
- Q. "Routine property maintenance" means any work on a developed lot, tract or parcel that results in the loss of a tree but is not associated with any other permit application.

- R. "Target" means people, property (including all public roadways), or activities that could be injured, damaged, or disrupted by a tree failure. Targets are assessed according to the ISA Basic Tree Risk Assessment criteria.
- S. "Topping" means removing no more than 30% of the total height of a tree. Removal of suckers and broken, split, dead or diseased tops or branches is not considered tree removal or topping.
- T. "Tree" means a tree with a trunk of eight inches or more in diameter.
- U. "Tree Management Plan" is an agreement between the Town and the applicant for the long-term maintenance, management, preservation, replacement, and/or enhancement of trees and tree communities.
- V. "Tree Management Permit" is a tree permit administering a Tree Management Plan approved pursuant to Section 16.12.190.
- W. "Tree permit" means the permit granted by the Town to remove or top a tree(s).
- X. "Tree removal" means the removal of a tree, through direct or indirect actions, including, but not limited to:
 1. Clearing;
 2. Cutting or pruning that causes irreversible damage to roots or trunks;
 3. Poisoning;
 4. Destroying structural integrity;
 5. Filling, excavation, grading, or trenching in the critical root zone of a tree that has the potential to cause irreversible damage to the tree; and/or
 6. Removing more than 30% of the total height of the tree
- Y. "Undeveloped lot, tract or parcel" means any share, portion or division of real estate on which no structure requiring a building permit exists and which may be further developed or subdivided in accordance with the Town's zoning regulations. For the purposes of this chapter, lots, tracts or parcels that are in the process of being developed with an approved development permit are considered undeveloped.
- Z. "Year" means a twelve-month period beginning on the day a tree permit is issued by the Town. (Ord. 05-452 § 1(part), 2005)

16.12.030 APPLICABILITY.

- A. The provisions of this chapter shall apply to the removal of tree(s) from any private lot, parcel, or tract within the corporate limits of the Town of Woodway.
- B. Except for trees exempted under section 16.12.050, no person, corporation or other entity shall engage in any act of tree removal, as defined in this chapter, without first obtaining a tree permit approved by the Town.
- C. Tree permits shall apply to the land parcel and are not specific to the applicant/individual.
- D. Trees located on property owned by the Town of Woodway are not subject to the regulations in this chapter and may only be removed as authorized by the Town of Woodway. (Ord. 05-452 § 1(part), 2005)

16.12.040 PERMIT REQUIRED.

- A. A permit is required for removal or topping of a tree(s) alone or in conjunction with a use requiring an approved development application, unless the tree to be removed is included in the exemptions listed in 16.12.050.

16.12.050 EXEMPTIONS.

The removal of any of the following species with hand labor and light equipment when located outside of a critical area is exempt from tree permit and replacement requirements in this chapter:

- A. English laurel (*Prunus laurocerasus*) and other laurel species;
- B. English holly (*Ilex aquifolium*);
- C. Hedge trees;
- D. Any species on the Washington State or Snohomish County Noxious Weed List;
- E. Nonnative cultivated fruit trees, including, but not limited to:

1. Apple (*Malus sp.*)
2. Pear (*Pyrus sp.*)
3. Cherry (*Prunus sp.*)
4. Plum (*Prunus sp.*)
5. Peach (*Prunus sp.*)
6. Apricot (*Prunus sp.*)
7. Nectarine (*Prunus sp.*). (Ord. 09-510 § 1, 2009: Ord. 05-452 § 1(part), 2005)

16.12.060 PROHIBITED TREE REMOVAL AND TOPPING.

Tree removal and topping are prohibited in each of the following circumstances:

- A. Without receiving an approved permit, unless such activity is exempt. Residents are encouraged to notify the Director before removing exempt trees; prior notification can help avoid confusion about allowable removal.
- B. On those specific portions of lots, tracts or parcels that contain critical areas and their associated buffers unless:
 1. The tree to be removed is a hazard tree as defined in Section 16.12.020; or
 2. The removal is authorized under Chapter 16.10; or
 3. The removal and/or topping is authorized as part of a Tree Management Plan as set forth in Section 16.12.190. (Ord. 09-506 § 1 (Exh. A(part)), 2009: Ord. 05-452 § 1(part), 2005)

16.12.070 PERMIT APPLICATION AND APPLICATION EXPIRATION.

- A. Application for a permit under this chapter shall:
 1. Be on forms provided by the Town;
 2. Include payment of permit review fees as set forth in Section 3.32.010; and
 3. Grant permission for Town inspectors to enter the property during:
 - a. Town review of the permit;
 - b. The life of the permit to ensure compliance with all applicable codes and conditions; and
 - c. Any required maintenance or monitoring period.
- B. Permit applications submitted for review under this chapter shall expire twelve months after the date of filing a complete application. The Director may extend the application thirty days upon request of the applicant. The Director may extend the life of an application further if any of the following conditions exist:
 1. A related permit review is in progress; provided the applicant has submitted a complete, timely response to Town requests or the Director determines that unique or unusual circumstances exist that warrant additional time for such response, and the Director determines that the review is proceeding in a timely manner toward a final Town decision; or
 2. Litigation against the Town or applicant is in progress, the outcome of which may affect the validity or the provisions of any permit issued pursuant to such application.

16.12.080 APPLICATION REVIEW.

- A. The Director shall review the completed application and determine if the application demonstrates compliance with or can be conditioned to satisfy the following criteria:
 1. The proposal is consistent with the purposes of this chapter set forth in Section 16.12.010
 2. A proposal for tree removal within a critical area or its associated buffer shall comply with regulations of Chapter 16.10.
 3. A proposal for tree removal within designated shoreline setback areas shall comply with the additional requirements of the Town of Woodway Shoreline Master Program.
 4. All additional criteria listed in specific sections of this chapter, as applicable.

- B. The Director may consult with a Certified Arborist to peer review the applicant’s submitted arborist report. The applicant must reimburse the Town for any related costs that the Town incurs in processing this permit, including, but not limited to, arborist consultation.
- C. Approval or denial.
 - 1. For Emergency Hazard Tree Removal:
 - a. If the application demonstrates compliance with this chapter and other applicable regulations, or can be conditioned to comply, the Director shall approve the permit.
 - b. If the application does not demonstrate compliance, or cannot be conditioned to comply, the applicant and/or other responsible person shall be subject to the penalty provisions of this chapter and code.
 - 2. For all removal or topping other than Emergency Hazard Tree Removal:
 - a. If the application demonstrates compliance with this chapter and other applicable regulations, or can be conditioned to comply, the Director shall approve the permit
 - b. If the application does not demonstrate compliance, or cannot be conditioned to comply, the Director shall deny the permit.

16.12.090 PERMIT EXPIRATION

- A. A tree permit issued under the provisions of this chapter shall be valid for one year following the date of permit issuance, after which it cannot be renewed, extended, or in any way applied in a cumulative manner to any future year. Trees removed under an approved Resolution by Agreement are governed by the tree permit regulations.
- B. A Tree Management Permit shall be valid for the time period approved by the Director in the Tree Management Plan and, when applicable, shall match the term of the associated Clearing and Grading Management Permit.

16.12.100 PERMIT FEE.

Permits issued under this chapter are subject to fees as set forth in Section 3.32.010.

16.08.110 INSPECTIONS.

- A. Inspections. The Director is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.
- B. Access.
 - 1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Director has reasonable cause to believe that a violation of this chapter is occurring or has occurred, the Director may enter the person’s property at reasonable times after notice to and with the permission of the property owner. This provision shall not be interpreted to limit the Town’s rights under any easement, license, or right arising from a public right-of-way.
 - 2. Failure to permit entry or inspection may result in the following actions or consequences:
 - a. The Town may at its sole option seek a search warrant from a court of competent jurisdiction.
 - b. If it is later determined that a violation of this chapter has occurred, the violation shall be assumed to have been occurring from the date of the Town’s original request and to have continued until discovered by the Town. Each and every day shall be a separate violation. This presumption may be overcome by the presumed violator only by clear and convincing evidence that the violation began at a later date.

16.12.120 REPLACEMENT TREE REQUIREMENTS.

Tree removal activities that require tree replacement shall be subject to the following:

- A. Trees removed from critical area buffers, or the setback areas of lots, tracts or parcels adjacent to public rights-of-way shall be replaced in the same critical area buffer or setback area as approved by the Director in a Resolution by Agreement or Tree Management Plan.
- B. All replacement trees shall be installed within six months of initial tree removal.
- C. Replacement trees shall be at least three feet in height, as measured from the grade at installation except for replacement trees on properties shown on Figure A, in critical area buffers, and in setback areas adjacent to public rights-of-way, which shall be six feet in height
- D. Replacement trees must be a native species with similar or better growth characteristics, canopy cover, and/or habitat value, as approved by the Director.
- E. Replacement trees shall remain in a healthy condition for a minimum of five years after installation. Any replacement tree that is unhealthy within five years of planting must be replaced with a new replacement tree, with the same requirement for continued health and replacement.
- F. The Director shall have the right to inspect the health and condition of replacement trees at any time within five years of installation.
- G. Replacement trees shall not be installed in easements for public facilities or utilities. (Ord. 05-452 § 1(part), 2005)

16.12.130 PROVISIONS FOR EMERGENCY HAZARD TREE REMOVAL.

Emergency hazard tree removal may be done immediately but shall require a tree permit application to be filed with the Town within fourteen days of the removal.

- A. Tree Permit Application. The applicant shall include on the permit application:
 - 1. A site plan showing the location of the trees that were removed.
 - 2. Proof of imminent likelihood of failure that may include:
 - a. Photographs of the tree and surrounding area prior to removal.
 - b. A report by a Certified Arborist attesting to the tree’s imminent likelihood of failure.
- B. Application Review.

In addition to the review criteria and procedure outlined in 16.12.080, applications for emergency hazard tree removal shall meet the requirements for emergency hazard tree removal as defined in Section 16.12.020.

- C. Inspection. The Director, in the course of review of the permit application, may inspect the tree stump(s) after removal.
- D. Maximum Tree Removal.
 - 1. Emergency hazard tree removal does not apply toward the maximum tree removal allowed per year in Table 1 of Section 16.12.150.
 - 2. Removal of exceptional trees is allowed under the emergency hazard tree removal provisions.
- E. Exemption from Tree Replacement.
 - 1. Emergency hazard tree removals are exempt from tree replacement requirements, unless the property is in the area shown on Figure A.
 - 2. Emergency hazard tree removals on property shown on Figure A shall be replaced at a rate of three replacement trees for each tree removed. The replacement trees must meet the criteria listed in 16.12.120.

16.12.140 PROVISIONS FOR HAZARD TREE REMOVAL.

- A. Tree Permit Application. The applicant shall include on the permit application:
 - 1. A site plan showing the location of the trees to be removed.
 - 2. Proof of hazard that may include:
 - a. Photographs of the tree and surrounding area.

- b. A report by a Certified Arborist that:
 - i. The tree meets the definition of a hazard tree per Section 16.12.020;
 - ii. The hazard cannot be eliminated with reasonable and proper arboricultural practices
 - iii. The target cannot reasonably be removed.

B. Application Review.

In addition to the review criteria and procedure outlined in 16.12.080, applications for hazard tree removal shall demonstrate compliance with the following criteria:

- a. The tree to be removed meets the definition of a hazard tree per Section 16.12.020;
- b. The hazard cannot be eliminated with reasonable and proper arboricultural practices; and
- c. The target cannot reasonably be removed.

C. Inspection. The Director may inspect the tree(s) identified for removal.

D. Maximum Tree Removal.

- 1. Hazard tree removal does not apply toward the maximum tree removal allowed per year in Table 1 of Section 16.12.150.
- 2. Removal of exceptional trees is allowed under the hazard tree provisions.

E. Exemption from Tree Replacement.

- 1. Hazard tree removals are exempt from tree replacement requirements unless the property is in the area shown on Figure A.
- 2. Hazard tree removals on property shown on Figure A shall be replaced at a rate of three replacement trees for each tree removed. The replacement trees must meet the criteria listed in 16.12.120.

16.12.150 PROVISIONS FOR ROUTINE PROPERTY MAINTENANCE.

A. Tree Permit Application. The applicant shall include on the permit application:

- 1. A site plan showing the property setbacks and the location of the tree(s) to be removed;
- 2. The size and species of the tree(s) to be removed;
- 3. The size, species, and location of replacement trees.

B. Application Review.

In addition to the review criteria and procedure outlined in 16.12.080, applications for Routine Property Maintenance tree removal shall demonstrate compliance with the following criteria:

- 1. The proposal is consistent with the tree replacement requirements of this section and Section 16.12.120;
- 2. The proposal will not likely result in harm to sensitive flora or fauna species listed as endangered, threatened, sensitive, and candidate species and priority habitats by the state of Washington Department of Fish and Wildlife, or listed as threatened or endangered under the federal Endangered Species Act;
- 3. The proposed tree removal is not prohibited by Section 16.12.060 (B);

C. Inspection. The Director may inspect the tree(s) identified for removal.

D. Directional Felling. Directional felling of trees shall be used to avoid damage to trees designated for retention.

E. Maximum Tree Removal. Table 1 of this section lists the total number of trees that may be removed in any one year. Note: A Tree Management Permit is required for all tree removal on properties in the R-43 zone district identified in Figure A.

Table 1

Maximum Number of Removed Trees per Zone District

A.	B.	C.
Zone District	Maximum # of Trees That May Be Removed/Year*	Maximum # of Trees That May Be Removed in Setback Areas Adjacent to Public Rights-of-Way per /Year
UR	Two	Only allowed under a Resolution by Agreement or Tree Management Permit
R-14.5	Two	Only allowed under a Resolution by Agreement or Tree Management Permit
R-43	For all tree removal on properties identified in Figure A: One All other R-43 zoned lots: Three	For all tree removal on properties identified in Figure A: One All other R-43 zoned lots: Two
R-87	Eight	Two

1. The number of trees in column B also includes trees in setback areas listed in column C.
2. Additional tree removal.
 - a. Parcels in the UR, R-14.5, and R-43 zone districts that are at least one hundred percent greater in size than the minimum lot size of the zone district in which the parcel is located or parcels in the R-87 zone district that are larger than 2 acres may increase the number of trees that can be removed and shall be replaced.
 - b. For the UR, R-14.5, and R-43 properties, the specific number of removed trees shall correspond to the quantities listed in Table 1 of this section for the zone district with the minimum lot area that most closely approximates the subject parcel’s lot size.
 - c. For R-87 properties larger than 2 acres, an additional four trees may be removed for each additional full acre, rounded to the nearest whole acre.
 - d. The calculation of parcel area under this Subsection shall exclude Puget Sound and critical areas. The calculation shall include the associated critical area buffers.
3. To combine allowable tree removal or replacement on adjacent lots under common ownership, see Section 16.12.190, Tree Management Plan.
4. Removal of exceptional trees for Routine Property Maintenance is only allowed under an approved Resolution by Agreement or Tree Management Permit.
5. If a tree proposed for removal is located on a property line, the owners of the subject properties shall submit with the tree permit application their agreement as to which property the tree and any required replacement is assigned.
6. Dead trees must be included in the permit application, but do not count toward the maximum allowable tree removal listed above.

F. Tree Replacement Requirements.

1. Replacement trees are subject to the criteria in Section 16.12.120.
2. The number of required replacement trees shall equal to at least fifty percent of the number of trees removed per year. When fifty percent equals less than a whole number, the number of replacement trees shall be rounded up to the next whole number.
3. Exemptions from Replacement. Removal of dead trees conducted under an approved tree permit are exempt from tree replacement requirements. (Ord. 09-506 § 1 (Exh. A(part)), 2009; Ord. 05-452 § 1(part), 2005)

16.12.160 PROVISIONS FOR TREE TOPPING.

A. Permit Application. A tree permit is required for all trees to be topped. The applicant shall include on the permit application:

1. A site plan showing the location of the tree(s) to be topped;
2. The size and species of the tree(s) to be topped;

B. Application Review.

In addition to the review criteria and procedure outlined in 16.12.080, applications for tree topping shall demonstrate that the proposal will not likely result in harm to sensitive flora or fauna species listed as endangered, threatened, sensitive, and candidate species and priority habitats by the state of Washington Department of Fish and Wildlife, or listed as threatened or endangered under the federal Endangered Species Act.

C. Inspection. The Director shall inspect all trees that are to be topped before and after the topping.

D. Maximum Tree Topping.

1. Tree topping does not apply toward the maximum tree removal allowed per year in Table 1 of section 16.12.150.
2. Topping of exceptional conifer trees is only allowed under an approved Tree Management Permit.
3. Tree topping in setback areas adjacent to public rights-of-way is only allowed under an approved Resolution by Agreement or Tree Management Permit.

16.12.170 PROVISIONS FOR LAND DEVELOPMENT ACTIVITIES.

A. Tree Permit Application. Applicants proposing to remove trees in conjunction with a land development activity shall submit, concurrent with the development application, a tree removal plan or other map that includes the following information:

1. Graphic scale and north arrow;
2. Vicinity map and property address;
3. Location of all existing and proposed improvements;
4. Location and delineation of slopes greater than fifteen percent, wetlands and water courses, or other areas, with any associated buffer areas, as required by Chapter 16.10, and any open areas and associated buffers;
5. Public roads and rights-of-way;
6. Property line boundaries and setback lines;
7. Location, size, species, and critical root zone of all trees, within the area to be impacted, including an indication or schedule of which trees will be retained, removed and/or replaced;
8. Location and design of proposed protective barrier for all retained trees; and
9. Location, species and size of all replacement trees to be planted.

B. Application Review.

In addition to the review criteria and procedure outlined in 16.12.080, applications for Land Development tree removal shall demonstrate compliance with the following criteria:

1. The proposal is consistent with the tree replacement requirements of this section and Section 16.12.120 of this chapter;
2. The proposal will not likely result in harm to sensitive flora or fauna species listed as endangered, threatened, sensitive, and candidate species and priority habitats by the State of Washington Department of Fish and Wildlife, or listed as threatened or endangered under the federal Endangered Species Act;
3. That the proposal will not likely result in negative impacts to soil or hydrology of the site and adjacent properties;

4. When there are feasible and prudent location alternatives on-site for proposed building structures or other site improvements, viable wooded areas and trees are to be preserved. This may require site redesign, including, but not limited to: redesign of streets, sidewalks, stormwater facilities, utilities; changing the shape and size of the parking lot; reducing or limiting proposed site grading; and changing the location of driveways, buildings or building lots; provided, however, that no yard setback variance shall be granted in order to comply with the provisions of this section;
 5. The proposed tree removal is not prohibited by Section 16.12.060 (B);
- C. Inspection. The Director may inspect the tree(s) identified for removal.
- D. Tree Assessment and Standards.
1. Trees to be preserved must be healthy, wind-firm, and appropriate to the site at their mature size, as identified by an arborist.
 2. Trees growing in a grove or part of a stand must be considered part of group when determining retention potential.
 3. Declaration of hazard tree(s) must meet the criteria outlined in Section 16.12.140(B) of this chapter.
 4. The arborist must determine the critical root zone to establish the limits of disturbance around the trees to be retained on-site and include proper tree protection standards that shall be incorporated into grading, demolition and other appropriate site plans.
 5. The arborist must include discussion of any off-site trees or adjacent trees which could be adversely affected by the proposed activity and the proposed mitigation for such impact.
 6. The Director may require additional information to support findings and conclusions, and that can include soil or diagnostic testing, photographs of claimed disease/defect, or another professional opinion paid for by the applicant.
- E. Tree Protection During Construction. Prior to initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities pursuant to the following standards:
1. Placing Materials Near Trees. No person may conduct any activity within the protected area of any tree designated to remain, including, but not limited to, parking equipment, placing solvents, storing building material and soil deposits, dumping concrete washout and locating burn holes.
 2. Objects on Trees. During construction, no person shall attach any object to any tree designated for protection.
 3. Protective Barrier. Before development, land clearing, filling or any land alteration for which a tree removal permit is required, the applicant:
 - a. Shall erect and maintain readily visible temporary protective tree fencing constructed of chain link and to a height of at least four feet. This protective tree fence shall be placed along the outer edge and completely surrounding the protected area of all retained trees or groups of trees, as determined by an arborist. Other types of fencing may be authorized by the Director;
 - b. Shall install highly visible signs spaced no further than fifteen feet along the entirety of the protective tree fence. The signs must be approved by the Town and shall state at a minimum "TREE PROTECTION AREA, ENTRANCE RESTRICTED" and shall reference the appropriate code and provide the current Public Works Department phone number to report violations;
 - c. Shall prohibit excavation or compaction of earth or other potentially damaging activities within the barriers;
 - d. Shall maintain the protective barriers in place until the Director authorizes their removal or a final certificate of occupancy is issued, whichever occurs first;
 - e. Shall ensure that any landscaping done in the protected zone subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
 4. Additional Protection. In addition to the above, the Director may require the following:

- a. Cover with mulch to a depth of at least six inches or with plywood or similar material the areas adjoining the critical root zone of a tree in order to protect roots from damage caused by heavy equipment;
- b. Minimize root damage by excavating a two-foot deep trench, at edge of critical root zone, to cleanly sever the roots of trees to be retained;
- c. Have corrective pruning performed on protected trees in order to avoid damage from machinery or building activity;
- d. Maintain trees throughout construction period by watering and fertilizing.

F. Grade.

1. The grade shall not be elevated or reduced within the critical root zone of trees to be preserved without the Director's authorization. The Director may allow coverage of up to one-half of the area of the tree's critical root zone with light soils (no clay) to the minimum depth necessary to carry out grading or landscaping plans, if it will not imperil the survival of the tree. Aeration devices may be required to ensure the tree's survival.
2. If the grade adjacent to a preserved tree is raised such that it could slough or erode into the tree's critical root zone, it shall be permanently stabilized to prevent suffocation of the roots.
3. The applicant shall not install an impervious surface within the critical root zone of any tree to be retained without the authorization of the Director. The Director may require specific construction methods and/or use of aeration devices to ensure the tree's survival and to minimize the potential for root-induced damage to the impervious surface.
4. To the greatest extent practical, utility trenches shall be located outside of the critical root zone of trees to be retained. The Director may require that utilities be tunneled under the roots of trees to be retained if the Director determines that trenching would significantly reduce the chances of the tree's survival.
5. Trees and other vegetation to be retained shall be protected from erosion and sedimentation. Clearing operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, shrubs, ground cover and stumps shall be maintained on the individual lots, where feasible. Where not feasible, appropriate erosion control practices shall be implemented pursuant to current adopted Storm Water Management Manual.

G. Directional Felling. Directional felling of trees shall be used to avoid damage to trees designated for retention.

H. Additional Requirements. The Director may require additional tree protection measures.

I. Maximum Tree Removal.

1. Trees removed from the following locations do not apply toward the maximum tree removal allowed as listed below:
 - a. Within the proposed building footprint;
 - b. Within 25 feet of the proposed building footprint for buildings 120 square feet or larger;
 - c. Within the footprint of the driveway or pedestrian access to the proposed building; and
 - d. Within utility easements.

2. A Tree Management Permit is required for all tree removal on properties in the R-43 zone district identified in Figure A.

3. Developed lots. For redevelopment projects on previously developed lots, tracts, or parcels, trees to be removed outside the areas listed in Section 16.12.170 (I) (1) above apply toward the maximum tree removal allowed in Table 1 of Section 16.12.150.
4. Undeveloped lots. Tree removal for development projects on undeveloped lots, tracts or parcels shall not exceed five percent of the trees located outside of the areas listed in Section 16.12.170 (I) (1) above.

5. Tree removal in setback areas adjacent to public rights-of-way is only allowed under an approved Resolution by Agreement or Tree Management Permit.
6. Removal of exceptional trees for Land Development is only allowed under an approved Resolution by Agreement or Tree Management Permit.
7. Dead trees must be included in the permit application, but do not count toward the maximum allowable tree removal listed above.

J. Tree Replacement Requirements

1. Developed lots. Trees removed from previously developed lots shall be replaced according to the requirements in Section 16.12.150 (F) unless the trees to be removed are included in the exemptions listed in Subsection 3 below.
2. Undeveloped lots.
 - a. Replacement trees are subject to the criteria in Section 16.12.120.
 - b. Removal of trees from an undeveloped lot requires a one for one replacement unless the trees to be removed are included in the exemptions listed in Subsection 3 below.
3. Exemptions from Replacement. The following activities conducted under an approved land development permit are exempt from tree replacement:
 - a. Removal of hazard trees;
 - b. Removal of dead trees;
 - c. The removal of trees within the proposed building footprint for buildings 120 square feet or larger and extending 25 feet in all directions. (Ord. 09-506 § 1 (Exh. A(part)), 2009; Ord. 05-452 § 1(part), 2005)

16.12.180 RESOLUTION BY AGREEMENT.

- A. If a property owner wishes to remove or replant trees outside the provisions of this chapter, they may request a Resolution by Agreement. The Public Works Director, in the Director's sole discretion, may enter into a Resolution by Agreement, subject to the following criteria:
 1. Where circumstances exist rendering compliance with the provisions of this chapter impractical;
 2. Where such compliance would create unnecessary hardships to the owner of land or buildings; or
 3. When the Director finds that an alternative tree replacement plan would be consistent with the general purpose and intent of the tree preservation code.
 4. The property is not shown on Figure A. Those properties are only eligible for a Tree Management Permit, not a Resolution by Agreement.
- B. The agreement may include, but is not limited to, the following:
 1. The number of trees allowed to be removed in one year under the provisions of Sections 16.12.150 and 16.12.170 (I) (3) may be increased when the additional removal would enhance the overall health and safety of the trees that remain.
 - a. Two years' total tree removal is allowed under a Resolution by Agreement.
 - i. The agreement shall prohibit future tree removal for the number of years that would have elapsed had the trees been removed pursuant to the code.
 - a. Example: In the R-87 zone district, 8 trees per year may be removed under the routine property maintenance provisions. If a removal and replacement agreement allowed 16 trees to be removed in one year, no further tree removal would be allowed for 2 years following the issuance of the permit.
 - b. Removal of more than two years' total trees requires an approved Tree Management Permit.

2. Replacement tree species may be substituted in areas where a different tree species would be better suited for the location.
 3. Alternate replacement tree locations may be approved.
 4. One Exceptional Tree may be removed every five years.
 - a. The Director may approve only one Exceptional Tree removal every five years under a Resolution by Agreement.
 - b. Removal of more than one Exceptional Tree every five years requires an approved Tree Management Permit.
 5. Removal & replacement of trees from setbacks adjacent to public rights-of-way:
 - a. Removal: In the UR & R-14.5 zone districts, one tree may be removed every 3 years.
 - b. Replacement:
 - i. Trees removed from setbacks adjacent to public rights-of-way shall be replaced at a 1:1 ratio.
 - ii. The replacement tree must meet the criteria listed in 16.12.120.
 - c. Removal of more three than the maximum allowable listed in Subsection 5a above requires an approved Tree Management Permit.
 6. Removal and replacement of trees in a geologic hazard area buffer
 - a. Removal
 - i. Removal of a tree in a geologic hazard area buffer shall comply with the maximum tree removal allowed under 16.12.150 Table 1.
 - ii. A proposal to remove trees within 50 feet of the top of the steep slope shall require an approved Tree Management Permit.
 - b. Replacement
 - i. Trees removed from geologic hazard area buffers shall be replaced at a rate of three replacement trees for each tree removed.
 - ii. The replacement tree must meet the criteria listed in 16.12.120.
- C. By entering into the removal and replacement agreement, the property owner waives the right to a hearing before the Examiner under this chapter or any other appeal regarding the agreement.

16.12.190 TREE MANAGEMENT PLAN

- A. A property owner may request a Tree Management Permit to administer an approved Tree Management Plan if they propose to remove or replant trees:
 1. Where circumstances exist rendering compliance with the provisions of this chapter impractical; or
 2. Where specific circumstances pose a risk to property, health, or safety; or
 3. Where such compliance would create unnecessary hardships to the owner of land or buildings; or
 4. When the Director finds that an alternative tree replacement plan would be consistent with the general purpose and intent of the tree preservation code; or
 5. When the trees and/or vegetation to be removed are in a critical area or associated buffer; or
 6. When a Tree Management Plan will allow greater improvements to existing conditions from an environmental or public health and safety perspective; or
 7. When a property is located within the area shown on Figure A.
- B. A Tree Management Permit and Plan shall be required under circumstances that include, but are not limited to:
 1. When the proposed tree removal and replacement:
 - a. Includes more than two years' total tree removal; or

- b. Will take place in a critical area or associated buffer within 50 feet of the top of the steep slope; or
- c. Includes trees on adjacent properties under common ownership; or
- d. Exceeds removal of one Exceptional Tree every five years; or
- e. Is located on a property within the area shown on Figure A.

2. Topping of exceptional conifers is allowed only under Subsection 16.12.190 (A) (2)

- C. By entering into the Tree Management Plan, the property owner waives the right to a hearing before the Examiner under this chapter or any other appeal regarding the agreement.
- D. Tree Management Permit Application. The applicant's permit application shall include a Tree Management Plan that meets the definition in Section 16.12.020, demonstrates consistency with the review criteria listed in Subsection F below, and includes the following:
 - 1. A detailed map and associated narratives outlining the boundaries of the Tree Management Plan, existing conditions within each treatment area, including but not limited to staging areas and maintenance trails, and the purpose and objectives of each proposed treatment. Tree Management Plans may cross property boundaries under common ownership and can establish discrete treatment areas for critical areas subject to the requirements of Chapter 16.10.
 - 2. A timeline for tree-related activity in each treatment area, including tree removal, tree pruning, coppicing, vegetation replacement, and maintenance.
 - 3. The size, species, condition, and location of the tree(s) to be removed. Any exceptional trees proposed for removal must be identified.
 - 4. The size, species, and location of replacement vegetation. To the extent allowed by site-specific conditions, the replacement vegetation in critical areas shall utilize a mix of native species intended to increase habitat value and structural diversity. In addition, within critical erosion or landslide hazard areas or their associated buffers, replacement vegetation shall be selected that supports soil and slope stability.
 - 5. Temporary erosion and sediment control details, if applicable. Tree removal operations shall be conducted to expose the smallest practical area of soil to erosion. To control erosion, existing vegetation not proposed for removal shall be retained when feasible.
 - 6. Description of proposed control and removal of species on the Washington State or Snohomish County Noxious Weed List.
 - 7. Proof of compliance with the regulations in Chapter 16.10 if the plan proposes tree removal in critical areas or their associated buffers.
 - 8. The Director may require Geotechnical and/or Soils Reports if the proposed tree removal includes areas within critical areas or their associated buffers.
 - 9. A description of other factors influencing Tree Management Plan design.
- E. If any clearing and grading work is included in the proposal, a separate clearing and grading permit or Clearing and Grading Management Permit must be obtained. When a proposed activity requires both a Clearing and Grading Management Permit and a Tree Management Permit, the plans shall be integrated into a single set of documents that address the requirements of Chapter 16.08, Chapter 16.12, and, if applicable, Chapter 16.10.
- F. Application Review.
 - 1. In addition to the review criteria and procedure outlined in 16.12.080, applications for Tree Management Permits shall demonstrate compliance with the following criteria:
 - a. The proposal will minimize, to the extent possible, harm to sensitive flora or fauna species listed as endangered, threatened, sensitive, and candidate species and priority habitats by the State of Washington Department of Fish and Wildlife, or listed as threatened or endangered under the federal Endangered Species Act.
 - b. The proposed tree removal is not prohibited by Section 16.12.060 (B).

c. Trees identified for protection are appropriately safeguarded.

2. Conditions imposed by the Director may include but are not limited to the following:

- a. Owners may have the right to maintain and inspect the area covered by the approved and implemented Tree Management Plan after the monitoring period has ended. The Director may include a time limit on this condition.
- b. All areas governed by a Tree Management Plan shall be maintained and managed to prevent degradation and ensure protection of the replanted areas subject to field verification by the Town.

G. Permit Issuance.

1. Upon permit approval and prior to permit issuance, the applicant may be required to submit a copy of their contract with a certified arborist for yearly monitoring as outlined in Subsection H below, to be paid for by the applicant. The contract must specify that the arborist will:
 - a. Perform annual site visits for the term of the permit and submit a report outlining the status of the approved plan activities to the Director each year during the project term.
 - b. Perform annual site visits for the duration of the required monitoring period. Yearly monitoring reports, as outlined in Subsection H below, shall be due to the Town within 30 days of the anniversary of the permit issuance date.
2. Before the permit may be issued, the applicant must pay all fees as set forth in Section [3.32.010](#), including reimbursement of any reasonable related costs that the Town incurs in processing this permit, including, but not limited to, peer review of submitted application materials or arborist consultation.

H. Monitoring.

The Town shall have the authority to require that Tree Management Plans be monitored during plan implementation and annually after the project is completed to establish that performance standards and conditions have been met.

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the Tree Management Plan, monitor the site, and make corrections if the project fails to meet projected goals.
2. Monitoring reports shall document milestones, successes, problems, and contingency actions of implementing the Tree Management Plan.
3. The Town shall have the authority to extend the monitoring period, require corrective measures, and/or require additional monitoring reports beyond the initial monitoring period for any project that does not meet the performance standards identified in the Tree Management Plan, or does not provide adequate replacement for the functions and values of an impacted critical area.
4. The Town shall have the authority to enter the property with one-week's notice by mail to the property owner to inspect the elements of the Tree Management Plan at any time during the monitoring period. Notice shall be effective two days after the date of postmark.

I. Maximum Tree Removal: The limitations on maximum tree removal allowed per year in Table 1 of Section 16.12.150 do not apply to a Tree Management Permit. Tree removal is only limited by terms and conditions of the applicant's Tree Management Plan and Permit. The maximum tree removals in Table 1 shall govern all routine property maintenance removals outside the area included in the Tree Management Plan.

J. Vegetation Replacement Requirements. Replacement vegetation approved under a Tree Management Permit does not need to comply with the replacement requirements in Section 16.12.120.

K. Inspection. The Director may enter the property to conduct inspections related to all elements of the plan during the permit and maintenance period.

- L. Directional Felling. Directional felling of trees shall be used to avoid damage to trees designated for retention.
- M. Amendments. Amendments to the approved Tree Management Plan may only be made with approval of the Director.
- N. Recording of Tree Management Plan.

The Director may require recording of the Tree Management Plan. If recording is required, the following shall apply:

1. Within 30 days of Tree Management Permit issuance or before the approved work begins, whichever is sooner, the applicant shall record a notice of the plan with the Snohomish County Recorder’s Office and return the original or a conformed copy to the Town. If the Town does not receive the recorded document within 40 days of permit issuance, the permit approval shall be suspended until the document is received.
2. The property owner requesting the Tree Management Permit and all subsequent owners are bound by the Tree Management Permit and its associated Tree Management Plan until a “Completion of Tree Management Plan” document is recorded with the Snohomish County Recorder’s Office.

O. Completion of Tree Management Plan.

After the successful completion of the required monitoring and/or maintenance period and upon approval by the Director, the applicant can request that the Town prepare a “Completion of Tree Management Plan” document. The applicant shall record the document with the Snohomish County Recorder’s Office and return the original or a conformed copy to the Town within 30 days of recording.

16.12.200 PERFORMANCE AND MAINTENANCE BONDS.

- A. When the expected cost of tree replacement exceeds five thousand dollars, the Director may require a performance bond to be posted to secure the applicant’s compliance with the conditions of the permit approval. The performance bond shall be equal to one hundred twenty-five percent of the estimated cost of tree replacement of the property, including labor, as determined by the Director. The contingency is added to cover mobilization, prevailing wages, oversight, and other such costs to represent the full cost to the Town to complete the replacement tree installation should the applicant fail to do so. (Ord. 05-452 § 1(part), 2005)
- B. The Director may waive this requirement where the Director reasonably determines that the project poses minimal risk of drainage or erosion contributions to downstream waters, to neighboring properties, public properties, the public.
- C. Performance bonds for permits issued under this Chapter shall be valid for the duration of the permit.
- D. A one-time bond reduction of the performance bond may be granted upon request by the applicant. Upon request, the Director will conduct an inspection to estimate the percent completion of the project. Project completion will be based on the approved plans and replacement cost estimate. No more than eighty-five percent of the original bond may be released under this provision.
- E. A maintenance bond is required to be posted after final inspection to ensure the survival of the newly planted trees. The amount of the bond is calculated as fifteen percent of the original performance bond amount. The maintenance bond must be in place before the Town will release the performance bond.
 1. A maintenance bond for a tree permit shall be for a period of five years from the date of final construction approval.
 2. A maintenance bond for a Tree Management Permit shall be for the time period approved by the Director in the Tree Management Plan and, when applicable, shall match the term of the associated Clearing and Grading Management Permit.
- F. The Town of Woodway accepts standard bonds and dedicated frozen fund accounts for guaranteeing performance and maintenance. Other types of guarantees may also be approved by the Director.
- G. Bond Release.

1. Performance Bond. This bond cannot be released until all planting has been completed and approved and a maintenance bond as required in the permit conditions has been secured. Once these items are complete, the applicant must submit a written request to the Town to release the performance bond. The Town will then submit a written authorization for release of the performance bond to the bonding company or bank.
 2. Maintenance Bond. This bond will be released only upon satisfactory completion of the designated maintenance or monitoring period. The holder shall provide a request for an inspection no more than thirty days prior to bond expiration. The replacement trees shall be inspected by the Director and written notice will be provided to the applicant that either the trees are healthy and the maintenance bond can be released, or specify which trees have not survived and need to be replaced before bond release.
- H. Any failure to satisfy requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty days after it is due or comply with other provisions of an approved Tree Management Plan shall constitute a default and the Town may demand payment of any financial guarantees or require other action authorized by Town code or any other law.
- I. Any funds recovered pursuant to this section shall be used to complete the required mitigation.
- J. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.

16.12.210 ENFORCEMENT AND PENALTIES.

- A. Failure to submit an application for a tree permit shall be a violation under Chapters 1.12 and 1.14 of this code and may be subject to the penalties and enforcement proceedings contained therein.
- B. Removal or topping of a tree inconsistent with this chapter shall be a violation and shall require the property owner to replace the removed or topped tree(s) at a ratio of three replacement trees to each one removed tree, and result in a penalty, assessed against the property owner, in the amount of one thousand dollars assessed for each tree that is damaged, destroyed or removed. Each tree removed or topped shall constitute a separate violation. An amount equal to the appraised value of the removed tree(s), as determined by the Director utilizing the industry standard trunk formula method in the current edition of the Guide for Plant Appraisal, may be added to the penalty for each violation. If the diameter of the removed tree is unknown, the diameter size used shall be the diameter of the remaining stump at the cut.
- C. Penalties associated with the unauthorized removal of a tree located on property owned by the Town of Woodway shall be assessed against the person, corporation, or other entity engaged in such tree removal.
- D. Stop work orders may be issued by the Director whenever there is a violation. The posting of the stop work order on the site shall be deemed adequate notice of the order. A failure to comply with a stop work order shall constitute a separate violation of Section 1.14 of this code. (Ord. 09-502 § 1, 2009; Ord. 05-452 § 1(part), 2005)

16.12.220 APPEALS.

- A. Any decision to approve, condition, or deny a permit under this chapter may be appealed to the Hearing Examiner according to and as part of the appeal procedure outlined in Chapter 2.60.
- B. Prior to processing the appeal, the appeal fee, as set forth in Section 3.32.010 shall be submitted to the Town
- C. Timely filing of an appeal shall stay the effect of order, permit, decision determination or other action related to the removal of any tree being appealed until the appeal is disposed of by the Hearing Examiner or withdrawn.
- D. The Hearing Examiner shall give substantial weight to the Director's decision and the burden of showing that the Director's decision was clearly erroneous shall be upon the appellant. (Ord. 05-452 § 1(part), 2005)

CHAPTER 16.08 CLEARING AND GRADING

Sections:

- 16.08.010 Title of ordinance.
- 16.08.020 Purpose.
- 16.08.030 Definitions.
- 16.08.040 Applicability.
- 16.08.050 Responsibility for administration.
- 16.08.060 Severability.
- 16.08.070 Permit required.
- 16.08.080 Exemptions.
- 16.08.090 Permit application and application expiration.
- 16.08.100 Application review.
- 16.08.110 Permit expiration.
- 16.08.120 Permit fee.
- 16.08.130 Inspections.
- 16.08.140 Grading standards.
- 16.08.150 Provisions for emergency clearing and grading work.
- 16.08.160 Clearing and Grading Management Plan
- 16.08.170 Performance and maintenance bonds.
- 16.08.180 Compliance and enforcement.
- 16.08.190 Appeals.

16.08.010 TITLE OF ORDINANCE.

The ordinance codified in this chapter shall be known and may be cited as the "clearing and grading ordinance" of the Town. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.020 PURPOSE.

These regulations are adopted for the following purposes and the Public Works Director, or his or her designee, shall consider such purposes as criteria or standards for the issuance of clearing and grading permits under this chapter:

- A. To promote and protect the public health, safety and general welfare of the citizens of the Town of Woodway, Washington, through the regulation of clearing and grading activities;
- B. To establish administrative procedures for issuance of permits, approval of plans, and inspection of land clearing and grading operations;
- C. To minimize adverse stormwater impacts generated by the removal of vegetation and alteration of landforms;
- D. To protect water quality from the adverse impacts associated with erosion and sedimentation;
- E. To protect critical areas from adverse clearing and grading activities;
- F. To promote land development practices, such as low impact development, that:
 - 1. Provide for managing surface water runoff on site,
 - 2. Are consistent with the Town's natural topographical and vegetational features,
 - 3. Result in minimal disturbance to the Town's vegetative cover and soils, and
 - 4. Reduce degradation of all watercourses;
- G. To preserve and enhance the Town's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and groundcover;
- H. To retain clusters of trees, shrubs and other groundcover as buffer zones for the abatement of noise, for protection from wind, to reduce air pollution, and to act as a stormwater runoff filter to protect natural watercourses and wetlands;
- I. To maximize property values through the preservation of trees and groundcover consistent with the provisions of Chapter 16.12 of this code, Tree Preservation and Management;

- J. To ensure prompt development, restoration and replanting after clearing, landfill or grading procedures; to effectively control erosion/sedimentation and surface water runoff velocities during and after clearing, landfill or grading procedures;
- K. To implement the goals and objectives of the Washington State Environmental Policy Act; and
- L. To provide penalties for the violation of this chapter. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.030 DEFINITIONS.

For the purposes of this chapter, the following shall mean:

- A. "Air pollution" means the presence of contaminants in air in concentrations that prevent the normal dispersive ability of the air and that interfere directly or indirectly with human health, safety, comfort or the full use and enjoyment of property.
- B. "Applicant" means the person, party, firm, corporation, or other entity seeking a clearing and grading permit approval from the Town of Woodway.
- C. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Department of Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.
- D. "Bench" means a relatively level step excavated or constructed on the face of a graded slope surface for drainage and maintenance purposes.
- E. "Buffer" or "buffer zone" means the area adjacent to the outer boundaries of critical areas including wetlands, habitat conservation areas such as streams and marine shorelines, and/or landslide hazard areas that separate and protect critical areas from adverse impacts associated with adjacent land uses by providing:
 - 1. Protection of slope stability;
 - 2. Attenuation of runoff;
 - 3. Reduction of landslide hazard risks;
 - 4. Shading, input of organic debris and coarse sediments to streams;
 - 5. Additional area for variations in stream or wetland boundaries; and
 - 6. Habitat for wildlife and protection from harmful intrusion.
- F. "Civil engineer" means an engineer who is licensed as a professional engineer in the branch of civil engineering by the State of Washington.
- G. "Clearing" means the cutting, killing, grubbing, removal or degradation of vegetation, including vegetation with a trunk less than 8 inches DBH, or other organic material by physical, mechanical, chemical or any other similar means.
- H. "Clearing and Grading Management Plan" is an agreement between the Town and the applicant for the long-term maintenance, management, preservation, and enhancement of property, as approved by the Director.
- I. "Clearing and Grading Management Permit" is a clearing and grading permit administering a Clearing and Grading Management Plan approved pursuant to Section 16.08.160.
- J. "Clearing and grading permit" shall mean the written approval of the Town of Woodway to proceed with the act of clearing property within the Town limits of Woodway. Such permit includes the form itself and any associated plans and/or conditions of approval.
- K. "Compaction" means the densification of a fill by mechanical means.
- L. "Critical areas" or "Critical area buffers" are those areas defined in and governed by Chapter 16.10. See Chapter 16.10 for regulations related to critical areas or their buffers referenced in sections of this chapter.
- M. "Cutting" means the severing of a main trunk or stem with an intent to destroy the vegetation, or the removal of more than twenty-five percent of the total vegetative height.
- N. "Design manual" shall mean the version of the Washington State Department of Ecology Stormwater Manual adopted in Section 11.02.020.

- O. "Developed lot, tract or parcel" means any share, portion or division of real property, whether developed or partially developed, with a structure requiring a building permit.
- P. "Development" shall mean any activity that requires Federal, State, or local approval for the use or modification of land or its resources. These activities include, but are not limited to:
1. Subdivisions and short subdivisions;
 2. Binding site plans;
 3. Planned unit developments;
 4. Variances;
 5. Shoreline substantial development;
 6. Clearing activity;
 7. Excavation;
 8. Embankment;
 9. Fill and grade work;
 10. Converting fallow land or undeveloped land to agricultural purposes;
 11. Activity conditionally allowed;
 12. Building or construction; and
 13. Septic approval.
- Q. "Development area" shall mean an area where the movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) and/or a change in the existing soil topography occurs as a result of an applicant's development plans.
- R. "Director" means the Public Works Director, or his or her designee.
- S. "Drainage plan" means a plan for receiving, handling and transporting surface water or groundwater runoff within the subject property.
- T. "Dry season" shall mean the months of May through September.
- U. "Earth material" means any rock, natural soil or any combination thereof.
- V. "Ecology" shall mean the Washington State Department of Ecology.
- W. "Emergency clearing and grading work" shall mean
1. Work to reduce the imminent risk to life or primary residence created by a wildfire or landslide hazard; or
 2. Work to remove debris from a public or railroad right-of-way after a natural disaster.
- X. "Engineering geologist" shall mean a professional currently licensed in the State of Washington as an engineering geologist.
- Y. "Erosion" shall mean the wearing away of the land surface as the result of the movement of wind, water or ice.
- Z. "Excavation" shall mean the removal of material such as earth, sand, gravel, rock, or asphalt.
- AA. "Fill" shall mean earth, sand, gravel, rock, asphalt, compost, wood or wood chips or other solid material used to increase the ground surface elevation or to replace excavated material.
- BB. "Filling" shall mean the act of placing fill material on any soil surface, natural vegetative covering, or other fill material to raise the ground elevation or to replace excavated material.
- CC. "Geotechnical engineer" shall mean a professional engineer currently registered in the State of Washington, qualified due to experience and education in the practice of geotechnical engineering.
- DD. "Grade" means the elevation of the ground surface.
1. "Existing grade" means the grade before grading.
 2. "Finish grade" means the final grade of the site that conforms to the approved grading plan.
 3. "Rough grade" means the stage at which the grade approximately conforms to the approved plan.
- EE. "Grading" means any excavation, filling, or removing of the duff layer, or combination thereof.
- FF. "Groundcover" means plants such as salal, ferns, mosses, grasses or other types of vegetation which normally cover the ground but does not include trees.

- GG. "Groundwater" means all water that exists beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the State, whatever may be the geological formation or structure in which such water stands or flows, percolates, or otherwise moves (Chapter 90.44 RCW).
- HH. "Groundwater runoff" means that part of the groundwater that is discharged into a stream or as a spring or seepage water.
- II. "Grubbing" shall mean the act of removing vegetation by the roots.
- JJ. "Hard surface" shall mean an impervious surface, a pervious pavement, or a green roof.
- KK. "Impervious" shall mean a hard surface area (e.g., driveway or rooftop) that prevents or impedes the entry of water into the soil, thus causing water to run off the surface in greater quantities or at an increased rate of flow, as defined in Section 11.02.010.
- LL. "Land disturbing activity" shall mean any activity that results in movement of earth, or a change in the existing soil cover and/or the existing soil topography. Land disturbing activities include, but are not limited to, grubbing, grading, filling, and excavation.
- MM. "Light equipment" means hand-held tools and construction equipment, such as line trimmers, handsaws, wheelbarrows, and post-hole diggers.
- NN. "Low impact development (LID)" shall mean a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.
- OO. "Material" shall mean earth, sand, rock, asphalt, compost, garbage, wood or wood chips or other solid material.
- PP. "Mechanical earth-moving equipment" shall mean motorized equipment used for clearing, earth moving, trenching, paving or excavation.
- QQ. "Pervious" shall mean soil or other material that allows the infiltration or passage of water or other liquids.
- RR. "Permit" shall mean, unless otherwise noted, the clearing and grading permit or Clearing and Grading Management Permit; see "clearing and grading permit" and "Clearing and Grading Management Permit".
- SS. "Removal" shall mean the actual destruction or causing the effective destruction through damaging, poisoning, or other direct or indirect actions resulting in the death of a tree or groundcover.
- TT. "Replaced impervious surface":
1. For structures, means the removal and replacement of impervious surfaces down to the foundation.
 2. For other impervious surfaces, means the removal down to bare soil or base course and replacement.
- UU. "Routine vegetation maintenance" shall mean pruning, weeding, planting annuals, mowing turf lands and groundcover management that is undertaken by a person in connection with the normal maintenance and repair of property. This definition does not include felling or topping of trees.
- VV. "Person" means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner of a premises or as the owner's agent.
- WW. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- XX. "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity or ice and has come to rest on the earth's surface either above or below sea level.
- YY. "Sedimentation" means the process or action of deposit sediment.
- ZZ. "Site" means a single lot, or parcel of land with two or more contiguous lots, that are under common ownership or documented legal control, used as a single parcel for a development proposal in order to calculate compliance with the standards and regulations of this chapter. For purposes of this definition:
1. "Documented legal control" includes fee simple or leasehold rights, or an easement, or any combination thereof, which allows uses associated with the overall development proposal; and

2. Lots that are separated only by a public road right-of-way shall be considered to be contiguous.
- AAA. "Shorelines" means those lands defined as shorelines in the State Shoreline Management Act of 1971.
- BBB. "Storm drainage system" means publicly owned facilities, including the Town's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- CCC. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
- DDD. "Stormwater facility" means a device or system constructed for stormwater runoff quantity control or water quality improvement including but not limited to: rain gardens or other bioretention facilities; infiltration facilities; detention pipes, vaults, or ponds; and oil/water separators.
- EEE. "Stormwater pollution prevention plan" means a document that identifies sources of pollution or contamination at a site and describes the best management practices, activities, and actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
- FFF. "Stream" means surface waters carried in defined channels or beds, intermittently or perennially, excluding irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial streams, unless used by salmonids or to convey surface water naturally occurring prior to the alteration of the land. A defined channel or bed shall constitute an area which demonstrates clear evidence of passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. A channel or bed need not contain water year-round, but should show evidence of annual intermittent flow to meet the requirements of this definition.
- GGG. "Town" means the Town of Woodway, Washington.
- HHH. "Tree" means a tree with a trunk of eight inches or more in diameter.
- III. "Tree removal" means the removal of a tree, through direct or indirect actions, including, but not limited to:
1. Clearing;
 2. Cutting or pruning that causes irreversible damage to roots or trunks;
 3. Poisoning;
 4. Destroying structural integrity; and/or
 5. Filling, excavation, grading, or trenching in the critical root zone of a tree that has the reasonable potential to cause irreversible damage to the tree.
- JJJ. "Undeveloped lot, tract or parcel" means any share, portion or division of real estate on which no structure requiring a building permit exists and which may be further developed or subdivided in accordance with the Town's zoning regulations.
- KKK. "Vegetation" means any and all organic plant life growing at, below or above the soil surface.
- LLL. "Waters of the State" includes those waters as defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and "waters of the State" as defined in Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington.
- MMM. "Waterbody" means a surface water feature, whether standing or flowing, including, but not limited to, sounds, lakes, ponds, rivers, streams, and creeks including waters of the State.
- NNN. "Wet season" shall mean the period of the year between October first and April thirtieth. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.040 APPLICABILITY.

- A. The provisions of this chapter shall apply to clearing and grading work performed on any private lot, parcel, or tract within the corporate limits of the Town of Woodway.
- B. Except for work exempted under Section 16.08.080, no person, corporation or other entity shall engage in any clearing and grading work, as defined in this chapter, without first obtaining a permit approved by the Town.

16.08.050 RESPONSIBILITY FOR ADMINISTRATION.

The Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting in the beneficial interest of or in the employ of the Town. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.060 SEVERABILITY.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.070 PERMIT REQUIRED.

- A. A permit is required when a project exceeds any of the following thresholds and is not specifically exempted in Section 16.08.080:
 - 1. Any clearing, grading and land disturbing activities located within environmentally critical areas and/or their buffers unless the work will take place in a geologic hazard area buffer that is more than 50 feet from the top of the steep slope, in which case, the thresholds below apply.
 - 2. Clearing one-quarter acre or greater.
 - 3. Grading over fifty cubic yards.
 - 4. Land disturbing activities of seven thousand square feet or greater.
 - 5. Installation of new, replaced, or total of new plus replaced hard surfaces of two thousand square feet or greater (zero threshold in Woodway Highlands neighborhood).
 - 6. Converting three-quarter acre, or more, of native vegetation to lawn or landscaped area.
 - 7. Converting two and one-half acres or more of native vegetation to pasture.
 - 8. Installing any drainage system that conveys water off site or creates a new connection to the Town's stormwater system.
 - 9. Clearing and grading activities associated with the following:
 - a. Road and street improvements;
 - b. Plats and short plats.
 - 10. Clearing and grading on undeveloped lots
- B. A permit may be issued under the provisions of this chapter as a stand-alone permit or can be reviewed in conjunction with a land use or building permit application.
- C. All permit reviews under this chapter will include review for compliance with the Town's drainage code, Chapter 11.02.
- D. Nothing herein shall exempt an applicant or property owner from obtaining a tree permit as required by Chapter 16.12. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.080 EXEMPTIONS.

- A. A clearing and grading permit is not required for any of the following activities:
 - 1. Clearing and grading required for installation of public improvements by the Town of Woodway.
 - 2. Excavations for the study of soil and ground water conditions. Excavations in critical areas or their associated buffers shall be governed by Chapter 16.10.

3. Roadway repairs and overlays within public street rights-of-way for the purpose of maintaining the pavement on existing paved roadways associated with public utility installations. However, a right-of-way permit may be required in accordance with Section 12.04.020.
 4. Any exempt activity listed in Section 16.10.050;
- B. A clearing and grading permit is not required for any of the following activities when located outside a critical area:
1. Routine vegetation maintenance for the purposes of common property landscaping, gardening, and/or utility maintenance.
 2. Removal of the following vegetation with hand labor and light equipment:
 - a. Any species on the Washington State or Snohomish County Noxious Weed List;
 - b. English ivy (*Hedera helix*);
 - c. English laurel (*Prunus laurocerasus*) and other laurel species;
 - d. English holly (*Ilex aquifolium*);
 - e. Himalayan blackberry (*Rubus armeniacus*);
 - f. Evergreen blackberry (*Rubus laciniatus*); and
 - g. Nonnative cultivated fruit trees including, but not limited to, apple (*Malus sp.*), pear (*Pyrus sp.*), cherry (*Prunus sp.*), plum (*Prunus sp.*), peach (*Prunus sp.*), apricot (*Prunus sp.*), and nectarine (*Prunus sp.*).
- C. A clearing and grading permit is not required within a critical area buffer if the activity will be farther than 50 feet from the top of the steep slope for any of the following activities:
1. Routine driveway, and walkway, or trail maintenance, provided such maintenance:
 - a. Does not increase hard surface area;
 - b. Does not change more than 2,000 square feet of the surface material;
 - c. Changes the surface material from impervious to pervious; and
 - d. Is not associated with a larger common plan of development that, if combined with the routine maintenance, would require a permit.
 2. Installation of temporary or permanent dewatering wells.
- D. A Clearing and grading permit is not required for any of the following activities unless in a critical area or its associated buffer:
1. Clearing and/or grading when necessary to address an immediate fire hazard.
 2. Removal of dead or diseased groundcover. The property owner shall be required to remove any dead or diseased groundcover which constitutes a public hazard.
 3. Routine vegetation maintenance and permitted removal of trees or groundcover on developed lots for the purposes of common property landscaping, gardening and/or utility maintenance; provided, that such activities do not exceed any of the following thresholds:
 - a. Fifty cubic yards of grading;
 - b. Ten thousand eight hundred ninety square feet (one-quarter acre) of clearing;
 - c. Seven thousand square feet disturbed ground (includes grubbing).
 4. Routine driveway and walkway maintenance, provided such maintenance:
 - a. Does not increase hard surface area by more than two thousand square feet of new plus replaced hard surface (Replaced hard surface includes a change in material);
 - b. Is not associated with a larger common plan of development that, if combined with the routine maintenance, would require a permit.
 5. The removal of the following vegetation with hand labor and light equipment:
 - a. Any species on the Washington State or Snohomish County Noxious Weed List;

- b. English ivy (*Hedera helix*);
 - c. English laurel (*Prunus laurocerasus*) and other laurel species;
 - d. English holly (*Ilex aquifolium*);
 - e. Himalayan blackberry (*Rubus armeniacus*);
 - f. Evergreen blackberry (*Rubus laciniatus*); and
 - g. Nonnative cultivated fruit trees including, but not limited to, apple (*Malus sp.*), pear (*Pyrus sp.*), cherry (*Prunus sp.*), plum (*Prunus sp.*), peach (*Prunus sp.*), apricot (*Prunus sp.*), and nectarine (*Prunus sp.*).
6. Installation and maintenance of public utilities, after approval of the route by the Director.
 7. Clearing, grading, filling, sandbagging, diking, ditching, or similar work during or after periods of extreme weather or other emergency conditions which have created situations such as toxic releases, flooding, or high fire danger that present an immediate danger to life or property.
 8. Routine drainage maintenance of existing, constructed stormwater drainage facilities located outside of a protected area, including, but not limited to, detention/retention ponds, wetponds, sedimentation ponds, constructed drainage swales, water quality treatment facilities, such as filtration systems, and regional storm facilities that are necessary to preserve the water quality treatment and flow control functions of the facility. This exemption does not apply to any expansion and/or modification to already excavated and constructed stormwater drainage facilities.
 9. Installation of temporary or permanent dewatering wells.
- E. Exemptions as described by Subsections B(1) and D(1), (2), or (3) above shall not apply to any clearing which includes the use of heavy equipment (e.g., , trackhoe, etc.), nor shall it be construed to eliminate the requirements of permits obtained before clearing for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities or buildings.
- F. The exemptions from the requirement to obtain a clearing and grading permit, as provided in this section, do not exempt an applicant or property owner from obtaining other permits required by the Town of Woodway Municipal Code, including but not limited to tree permits as required by Chapter 16.12. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.090 PERMIT APPLICATION AND APPLICATION EXPIRATION.

- A. Application for a permit under this chapter shall:
1. Be on forms provided by the Town;
 2. Include payment of permit review fees as set forth in Section 3.32.010; and
 3. Grant permission for Town inspectors to enter the property during:
 - a. Town review of the permit;
 - b. The life of the permit to ensure compliance with all applicable codes and conditions; and
 - c. Any required maintenance or monitoring period.
- B. Permit applications submitted for review under this chapter shall expire twelve months after the date of filing a complete application. The Director may extend the application thirty days upon request of the applicant. The Director may extend the life of an application further if any of the following conditions exist:
1. A related permit review is in progress; provided the applicant has submitted a complete, timely response to Town requests or the Director determines that unique or unusual circumstances exist that warrant additional time for such response, and the Director determines that the review is proceeding in a timely manner toward a final Town decision; or
 2. Litigation against the Town or applicant is in progress, the outcome of which may affect the validity or the provisions of any permit issued pursuant to such application. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.100 APPLICATION REVIEW.

- A. The Director shall review the completed application and determine if the application demonstrates compliance with or can be conditioned to satisfy the following criteria:
 1. The proposal is consistent with the purposes of this chapter set forth in Section 16.08.020
 2. The proposal is consistent with the requirements of Section 16.08.140. Not all requirements may apply to applications submitted under the Clearing and Grading Management Permit provisions.
 3. A proposal for development within a critical area or its associated buffer shall comply with regulations of Chapter 16.10.
 4. A proposal for development within designated shoreline setback areas shall comply with the additional requirements of the Town of Woodway Shoreline Master Program
 5. All additional criteria listed in specific sections of this chapter, as applicable.
- B. Approval or denial.
 1. For Emergency clearing and grading work:
 - a. If the application demonstrates compliance with this chapter and other applicable regulations, or can be conditioned to comply, the Director shall approve the permit.
 - b. If the application does not demonstrate compliance, or cannot be conditioned to comply, the applicant and/or other responsible person shall be subject to the penalty provisions of this chapter and code.
 2. For all work other than Emergency clearing and grading work:
 - a. If the application demonstrates compliance with this chapter and other applicable regulations, or can be conditioned to comply, the Director shall approve the permit.
 - b. If the application does not demonstrate compliance, or cannot be conditioned to comply, the Director shall deny the permit. (Ord. 17-579 § 10, 2017; Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.110 PERMIT EXPIRATION.

- A. A clearing and grading permit issued under the provisions of this code shall expire eighteen months from the date of issue. One six-month extension may be granted by the Director upon written request. The fee for a permit extension shall be equal to one-half the original permit fee as set forth in Section 3.32.010.
- B. A Clearing and Grading Management Permit shall be valid for the time period approved by the Director in the Clearing and Grading Management Plan and, when applicable, shall match the term of the associated Tree Management Permit. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.120 PERMIT FEE.

Permits issued under this chapter are subject to fees as set forth in Section 3.32.010. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.130 INSPECTIONS.

- A. Inspections. The Director is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.
- B. Access.
 1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Director has reasonable cause to believe that any land, building, structure, premises, or portion thereof is being used in violation with this chapter, the Director may enter the person's property at reasonable times after notice to and with the permission of the property owner. This provision shall not be interpreted to limit the Town's rights under any easement, license, or right arising from a public right-of-way.
 2. Failure to permit entry or inspection may result in the following actions or consequences:
 - a. The Town may at its sole option seek a search warrant from a court of competent jurisdiction.

- b. If it is later determined that a violation of this chapter has occurred, the violation shall be assumed to have been occurring from the date of the Town's original request and to have continued until discovered by the Town. Each and every day shall be a separate violation. This presumption may be overcome by the presumed violator only by clear and convincing evidence that the violation began at a later date. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.140 GRADING STANDARDS.

- A. Grading activities in a critical area or its associated buffer shall comply with Chapter 16.10.
- B. The following standards shall be applicable to all grading activities other than those in a critical area or its associated buffer:
 1. Cuts and fills shall conform to the following standards unless otherwise approved by the Director:
 - a. A slope of cut and fill surfaces shall not be steeper than is safe for both the intended use and soil type and shall not exceed a slope ratio of two horizontal to one vertical.
 - b. All disturbed areas including faces of cuts and fill slopes shall be prepared and maintained to control erosion.
 - c. The ground surface shall be prepared to receive fill by removing unsuitable material such as concrete slabs, tree stumps, brush, miscellaneous debris and other materials as determined by the Director.
 - d. Fill material shall consist of earthen material, organic material or recycled or reprocessed or other materials that are not categorized as dangerous waste under WAC Title [173](#) and that were produced originally from an earthen or organic material. The following standards apply:
 - i. Fill material shall have a maximum depth of less than twelve inches, unless a geotechnical analysis allows for greater fill depth, in which case the maximum depth shall be twenty-four (24) inches;
 - ii. Recycled concrete shall be free of rebar and other materials that may pose a safety or health hazard;
 - iii. Recycled asphalt shall not be used in areas subject to exposure to seasonal or continual perched ground water, in a critical aquifer recharge area or over a sole-source aquifer; and
 - iv. Recycled materials that have not been reprocessed to meet the definition of common borrow shall be intermixed with well-graded, natural, earthen materials in sufficient quantities and of a suitable size to assure filling of all voids and to assure that the fill can be compacted to ninety percent of the maximum density.
 - e. Provisions shall be made to:
 - i. Prevent any surface water or seepage from damaging the cut face of any excavation or the sloping face of a fill; and
 - ii. Address any surface water that is or might be concentrated to a natural watercourse as a result of a fill or excavation in accordance with the design manual.
 - f. Benches and any swales or ditches on benches shall be designed in accordance with the design manual.
 - g. Except when adjacent property owners agree in writing, the tops and toes of cut and fill slopes shall be set back from property boundaries and structures as far as necessary:
 - i. For the safety of the adjacent properties;
 - ii. For adequacy of foundation support;
 - iii. To prevent damage resulting from water runoff or erosion of the slopes; and
 - iv. To preserve the permitted uses on the adjacent properties.
 - h. All fill used for structural purposes shall be engineered and compacted to accommodate the proposed use.

2. Access roads to grading sites shall be:
 - a. Maintained and located to the satisfaction of the Director to minimize problems of dust, mud and traffic circulation; and
 - b. Located where the permanent access to the site is proposed in the permit application to minimize site disturbance.
3. Signs warning of hazardous conditions, if determined by the Director to exist on a particular site, shall be affixed at locations as required by the Director.
4. Where required by the Director, to protect life, limb and property, temporary construction fencing shall be installed with lockable gates that must be closed and locked when not working on the site. The fence shall be no less than six feet in height and the fence material shall have no opening larger than two inches.
5. Rocks, dirt, mud, vegetation and any other materials used or produced on site in the course of permitted activities shall not be spilled onto or otherwise left on public roadways or any off-site property not specifically authorized as a receiving site under a valid permit.
6. The duff layer and native topsoil shall be retained in an undisturbed state to the maximum extent practicable. Any duff layer or topsoil removed during grading shall be stockpiled on site in a designated, controlled area not adjacent to public resources and critical areas. The material shall be reapplied to other portions of the site where feasible.
7. Except as otherwise provided in Subsection B(2) of this section, areas that have been cleared and graded shall have the soil moisture holding capacity restored to that of the original undisturbed soil native to the site to the maximum extent practicable. The soil in any area that has been compacted or that has had some or all of the duff layer or underlying topsoil removed shall be amended to mitigate for lost moisture-holding capacity. The amendment shall take place between May first and October first.
 - a. The soil amendment shall meet criteria established in BMP T5.13 of the design manual.
 - b. The soil amendment requirement does not apply to areas that at project completion are covered by an impervious surface, are constructed as a functional part of an approved drainage facility, or engineered as structural fill or slope. (Ord. 17-579 § 9, 2017; Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.150 PROVISIONS FOR EMERGENCY CLEARING AND GRADING WORK.

Emergency clearing and grading work may be done immediately but shall require the homeowner to notify the Town in writing within one week that emergency work was started and to file a permit application with the Town within six weeks of the start of emergency work.

- A. Permit Application. The applicant shall include on the permit application:
 1. A site plan showing the location of the emergency clearing and grading work.
 2. Description of work completed or to be performed.
- B. Permit Processing. The Town will expedite permitting for failed and dangerous conditions including but not limited to flooding, slope failures, and fire damage.
- C. Application Review.

In addition to the review criteria and procedure outlined in 16.08.100, applications for emergency clearing and grading work shall:

1. Meet the requirements for emergency clearing and grading work as defined in Section 16.08.030.
 2. Substantially comply with the grading standards in Section 16.08.140.
- D. Inspection. The Director shall inspect the site consistent with Section 16.08.130.

16.08.160 CLEARING AND GRADING MANAGEMENT PLAN

- A. A property owner may request a Clearing and Grading Management Permit to administer an approved Clearing and Grading Management Plan if they propose to perform clearing and grading work:
1. Where circumstances exist rendering compliance with the provisions of this chapter impractical; or
 2. Where specific circumstances pose a risk to property, health, or safety; or
 3. Where such compliance would create unnecessary hardships to the owner of land or buildings; or
 4. When a property owner wishes to perform clearing and grading work in a critical area or buffer (other than those activities specifically exempted under Section 16.08.080 or 16.10.050)
- B. A Clearing and Grading Management Permit and Plan shall be required under circumstances that include, but are not limited to, the following:
1. When the proposed clearing and grading work:
 - a. Will take place in a critical area or associated buffer unless specifically exempted under Section 16.08.080 or 16.10.050; or
 - b. Includes work on adjacent properties under common ownership; or
 - c. Will take longer than 18 months to complete.
- C. By entering into the Clearing and Grading Management Plan, the property owner waives the right to a hearing before the Examiner under this chapter or any other appeal regarding the agreement.
- D. Clearing and Grading Management Permit Application. The applicant's permit application shall include a Clearing and Grading Management Plan that meets the definition in Section 16.08.030, demonstrates consistency with the review criteria listed in Section 16.08.100, and includes the following:
1. A detailed map and associated narratives outlining necessary information including but not limited to:
 - a. The boundaries of the Clearing and Grading Management Plan;
 - b. Existing conditions within each plan area, including a general description of vegetation and topography;
 - c. Proposed staging areas and trails; and
 - d. The purpose and objectives of each proposed treatment. Treatment of critical areas is subject to the requirements of Chapter 16.10.
 2. A timeline for activity in each treatment area, including site work, vegetation replacement, and maintenance.
 3. Temporary erosion and sediment control details. Clearing and grading operations shall be conducted to expose the smallest practical area of soil to erosion. To control erosion, existing vegetation not proposed for removal shall be retained.
 4. Description of proposed control and removal of species on the Washington State or Snohomish County Noxious Weed List.
 5. Proof of compliance with the regulations in 16.10 if the plan proposes clearing and grading work in critical areas or their associated buffers
 6. A description of other factors influencing Clearing and Grading Management Plan design.
- E. If any tree removal is included in the proposal, a separate tree permit or Tree Management Permit must be obtained. When a proposed activity requires both a Clearing and Grading Management Permit and a Tree Management Permit, the plans shall be integrated into a single set of documents that address the requirements of Chapter 16.08, Chapter 16.12, and, if applicable, Chapter 16.10.
- F. Application Review.
1. In addition to the review criteria and procedure outlined in 16.08.100, applications for Clearing and Grading Management Permits shall demonstrate compliance with the following criteria:
 - a. The proposal will minimize, to the extent possible, harm to sensitive flora or fauna species listed as endangered, threatened, sensitive, and candidate species and priority habitats by the State of

Washington Department of Fish and Wildlife, or listed as threatened or endangered under the federal Endangered Species Act.

b. Trees and vegetation identified for protection are appropriately safeguarded.

2. The Director may impose Conditions that include but are not limited to the following:

- a. Depending on site conditions, the Director may require geotechnical or other monitoring during the maintenance period to be paid for by the applicant.
- b. The Director may allow trail maintenance beyond the maintenance bond period.
- c. The Director may require a trail design, including trail location, grade, and surface materials, that minimizes the impact on the site.
- d. The Director may require phased implementation of the plan.
- e. The Director may require special inspection reports by qualified licensed professionals during the construction period.
- f. The Director may require that all areas governed by a Clearing and Grading Management Plan shall be maintained and managed to prevent degradation and ensure protection of the replanted areas subject to field verification by the Town.

G. Permit Issuance.

1. Upon permit approval and prior to permit issuance, the applicant may be required to submit a copy of their contract with a certified or licensed professional for monitoring as outlined in Subsection H below, to be paid for by the applicant. The contract must specify that the certified or licensed professional will:
 - a. Perform site inspections during project construction and submit a report outlining the status of the approved plan activities to the Director as conditioned in the approved permit.
 - b. Perform annual site inspections for the duration of the required monitoring period. Yearly monitoring reports, as outlined in Subsection H below, shall be due to the Town within 30 days of the anniversary of the permit issuance date.
2. Before the permit may be issued, the applicant must pay all fees as set forth in Section 3.32.010, including reimbursement of any reasonable related costs that the Town incurs in processing this permit, including, but not limited to, peer review of submitted application materials.

H. Monitoring.

The Town shall have the authority to require that Clearing and Grading Management Plans be monitored during project construction and annually after the project is completed to establish that performance standards and conditions have been met.

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the Clearing and Grading Management Plan, monitor the site, and make corrections if the project fails to meet projected goals.
2. Monitoring reports shall document milestones, successes, problems, and contingency actions of implementing the Clearing and Grading Management Plan.
3. The Town shall have the authority to extend the monitoring period, require corrective measures, and/or require additional monitoring reports beyond the initial monitoring period for any project that does not meet the performance standards identified in the Clearing and Grading Management Plan, or does not provide adequate replacement for the functions and values of an impacted critical area.
4. The Town shall have the authority to enter the property with one-week's notice by mail to the property owner to inspect the elements of the Clearing and Grading Management Plan at any time during the monitoring period. Notice shall be effective two days after the date of postmark.

I. Inspection. The Director may inspect the site consistent with Section 16.08.130.

J. Amendments. Amendments to the approved Clearing and Grading Management Plan may only be made with approval of the Director.

K. Recording of Clearing and Grading Management Plan.

The Director may require recording of the Clearing and Grading Management Plan. If recording is required, the following shall apply:

1. Within 30 days of Clearing and Grading Management Permit issuance or before the approved work begins, whichever is sooner, the applicant shall record a notice of the plan with the Snohomish County Recorder's Office and return the original or a conformed copy to the Town. If the Town does not receive the recorded document within 40 days of permit issuance, the permit approval shall be suspended until the document is received.
2. The property owner requesting the Clearing and Grading Management Permit and all subsequent owners are bound by the Clearing and Grading Management Permit and its associated Clearing and Grading Management Plan until a "Completion of Clearing and Grading Management Plan" document is recorded with the Snohomish County Recorder's Office.

L. Completion of Clearing and Grading Management Plan.

After the successful completion of the required monitoring and/or maintenance period and upon approval by the Director, the applicant can request that the Town prepare a "Completion of Clearing and Grading Management Plan" document. The applicant shall record the document with the Snohomish County Recorder's Office and return the original or a conformed copy to the Town within 30 days of recording.

16.08.170 PERFORMANCE AND MAINTENANCE BONDS.

- A. A performance bond is required to be posted by the owner, developer, or contractor prior to commencing construction for all construction projects that require a permit under this chapter to ensure all required site and public improvements are completed prior to final construction approval and subsequent certificate of occupancy.
- B. Typical items covered under the performance bond include public and private improvements as follows:
 1. Storm drainage system (conveyance, treatment, detention, retention, etc.);
 2. Temporary and permanent erosion and sediment control;
 3. Grading and surfacing including walls and rockeries;
 4. Restoration and mitigation (after final construction approval, restoration and mitigation are subject to monitoring and maintenance in accordance with Chapter 16.10).
- C. The Director may waive this requirement where the Director reasonably determines that the project poses minimal risk of drainage or erosion contributions to downstream waters, neighboring properties, public properties, or the public.
- D. Performance bonds for permits issued under this chapter shall be valid for the duration of the permit.
- E. Performance bonds shall be in the amount identified in the chart below:

Approved Construction Cost Estimate	Bond Amount
<\$50,000	200% of approved estimate
\$50,000 to \$100,000	175% of approved estimate
\$100,001 to \$200,000	150% of approved estimate
>\$200,000	125% of approved estimate

- F. Either the engineer's cost estimate or contractor's bid shall be reviewed and approved by the Director for purposes of approving the estimated construction cost and bond contingency.
 1. The estimated construction cost shall include the full cost (labor, material, equipment, supervision, overhead, profit, etc.) of all required private and public sitework improvements including mitigation and landscaping as shown on the grading, drainage, erosion control, landscape, and mitigation plans.
 2. All estimates or bids shall be itemized and must include material, quantities, units, and total unit price.

3. For subdivisions, the estimate or bid must indicate the private and public improvements separately.
 4. The contingency is added to cover mobilization, prevailing wages, oversight, and other such costs to represent the full cost to the Town to complete the construction/installation or required site improvements should the applicant fail to do so.
- G. A one-time bond reduction of the performance bond may be granted upon request by the applicant. Upon request, the Director will conduct an inspection to estimate the percent completion of the project. Project completion will be based on the approved plans and construction cost estimate. No more than eighty-five percent of the original bond may be released prior to final construction approval.
- H. A maintenance bond is required to be posted after final construction approval to ensure the maintenance of the public and private improvements (as described in Subsection A of this section) and to guarantee against defects of workmanship and materials. The amount of the bond is calculated as fifteen percent of the original performance bond amount. The maintenance bond must be in place before the Town will release the performance bond.
1. A maintenance bond for a clearing and grading permit shall be for a period of two years from the date of final construction approval.
 2. A maintenance bond for a Clearing and Grading Management Permit shall be for the time period approved by the Director in the Tree Management Plan and, when applicable, shall match the term of the associated Clearing and Grading Management Permit.
- I. The Town of Woodway accepts standard bonds and dedicated frozen fund accounts for guaranteeing performance and maintenance. Other types of guarantees may also be approved by the Director.
- J. Bond Release.
1. Performance Bond. This bond cannot be released until all bonded site work improvements have been completed and approved and a maintenance bond has been secured. Once these items are complete, the applicant must submit a written request to the Town to release the performance bond. The Town will then submit a written authorization for release of the performance bond to the bonding company or bank.
 2. Maintenance Bond. This bond will be released only upon satisfactory completion of the designated maintenance period. The holder shall provide a request for an inspection no more than thirty days prior to bond expiration. The bonded improvements shall be inspected by the Director and written notice will be provided to the applicant that either the improvements are approved and maintenance bond can be released, or that additional work is necessary for approval before bond release. (Ord. 17-578 § 1 (Exh. F (part)), 2017)
- K. Any failure to satisfy requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty days after it is due or comply with other provisions of an approved Tree Management Plan shall constitute a default and the Town may demand payment of any financial guarantees or require other action authorized by Town code or any other law.
- L. Any funds recovered pursuant to this section shall be used to complete the required mitigation.
- M. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.

16.08.180 COMPLIANCE AND ENFORCEMENT.

- A. Failure to submit an application for a clearing and grading permit shall be a violation under Chapters 1.12 and 1.14 of this code and may be subject to the penalties and enforcement proceedings contained therein.
- B. Penalties associated with unauthorized clearing and grading work on property owned by the Town of Woodway shall be assessed against the person, corporation, or other entity engaged in such clearing and grading work.
- C. Stop work orders may be issued by the Director whenever there is a violation. The posting of the stop work order on the site shall be deemed adequate notice of the order. A failure to comply with a stop work

order shall constitute a separate violation of Section 1.14 of this code. (Ord. 17-578 § 1 (Exh. F (part)), 2017)

16.08.190 APPEALS.

- A. Any decision to approve, condition, or deny a permit under this chapter may be appealed to the Hearing Examiner according to and as part of the appeal procedure outlined in Chapter 2.60.
- B. Prior to processing the appeal, the appeal fee, as listed in Section 3.32.010, shall be submitted to the Town.
- C. Timely filing of an appeal shall stay the effect of order, permit, decision determination or other action related to the removal of any tree being appealed until the appeal is disposed of by the Hearing Examiner or withdrawn.
- D. The Hearing Examiner shall give substantial weight to the Director's decision and the burden of showing that the Director's decision was clearly erroneous shall be upon the appellant.



9/17/18

0 600 1,200 Feet

Report Title
Steep Slope Buffer Area

Figure X-X

Town of Woodway
 Washington

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TOWN OF WOODWAY
CLAIMS APPROVAL

“I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims.”

Clerk Treasurer

The following transactions are approved for 2019 payment:

Claims checks #12953 through 12964, and EFT transaction #1959\$12,895.35

This 31st day of December 2019.

Mayor

Councilmember

Councilmember

Councilmember

*The three largest charges on the credit card bill are:

1. Vehicle Fuel: \$428.70 (PD – \$123.61, PW - \$305.09)
2. Postage (general and stormwater): \$330.00
3. Travel expense – BIAS Conference airfare – H. Napolitano: \$161.60

This credit card bill is partially with the 2019 claims and partially with the 2020 claims



TOWN OF WOODWAY
CLAIMS APPROVAL

“I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims.”

Clerk Treasurer

The following transactions are approved for 2020 payment:

Claims checks #12965 through 12973.....\$56,066.43

This 21st day of January 2020.

Mayor

Councilmember

Councilmember

Councilmember

*The three largest charges on the credit card bill are:

1. Vehicle Fuel: \$428.70 (PD – \$123.61, PW - \$305.09)
2. Postage (general and stormwater): \$330.00
3. Travel expense – BIAS Conference airfare – H. Napolitano: \$161.60

This credit card bill is partially with the 2019 claims and partially with the 2020 claims

**TOWN OF WOODWAY
COUNCIL MEETING MINUTES**

23920 113th Place W. | Woodway, WA 98020

MONDAY, JANUARY 6, 2020
7:00 P.M.

Members Present	<input checked="" type="checkbox"/> Mayor Carla Nichols	<input type="checkbox"/> Councilmember Mike Quinn
	<input checked="" type="checkbox"/> Councilmember Elizabeth Mitchell	<input checked="" type="checkbox"/> Councilmember Brian Bogen
	<input checked="" type="checkbox"/> Councilmember Tom Whitson	<input type="checkbox"/>
Staff & Guests Present	<input checked="" type="checkbox"/> Town Administrator Eric Faison	<input checked="" type="checkbox"/> Clerk-Treasurer Heidi Napolitano
	<input type="checkbox"/> Public Works Director Terry Bryant	<input type="checkbox"/>
	<input type="checkbox"/> Police Chief Doug Hansen	<input type="checkbox"/>

AGENDA ITEMS	COMMENTS & DISCUSSION	ACTION/ FOLLOW-UP
Call to Order, Flag Salute, Roll Call	Mayor Nichols called the meeting to order at 7:15 p.m. Councilmember Quinn had an excused absence.	
I - Oaths of Office	Clerk-Treasurer Napolitano administered the oath of office to Councilmember Elizabeth Mitchell.	
Amend the Agenda	<i>Councilmember Mitchell</i> moved to add two agenda items: a discussion with Senator Jesse Salomon before the approval of payments and reviewing/approving the December 20, 2019 minutes after the approval of payments. <i>Councilmember Whitson</i> seconded the motion.	The motion passed unanimously.
Added Agenda Item – Discussion with Senator Jesse Salomon	Items discussed: <ul style="list-style-type: none"> • Staffing in the Senator’s office and for the senate in general. • Major bills from his first year in office, including abolishing the death penalty. • Salmon restoration. • Voter-approved initiatives. • I-976 (changes to car tab fees) and planning for the initiative to be implemented. 	

AGENDA ITEMS	COMMENTS & DISCUSSION	ACTION/ FOLLOW-UP
Added Agenda Item – Discussion with Senator Jesse Salomon, Continued	<ul style="list-style-type: none"> • Bills in the upcoming session including <ul style="list-style-type: none"> ○ Growth management act changes; ○ Land use application vesting; ○ Annexation; ○ Possibly raising the 1% property tax increase cap or tying it to the inflation rate; ○ Climate change-related amendments to the Comprehensive Plan regulations; and ○ Water rights being purchased and resold by third parties. • Senator Salomon’s committee assignments for the upcoming session. 	Senator Salomon was encouraged to return to Woodway when his schedule permits.
II - Approval of Payments	<p><i>Councilmember Whitson</i> moved to approve the 2019 Claims Checks #12934 through 12940 and EFT transaction #1949 totaling \$3,890.84. <i>Councilmember Bogen</i> seconded the motion.</p> <p><i>Councilmember Mitchell</i> moved to approve the January 6, 2020 Claims Checks #12941 through 12952 totaling \$43,002.69. <i>Councilmember Whitson</i> seconded the motion. It was noted that the Town’s entire fee for insurance coverage is paid in one lump sum in January of each year.</p> <p><i>Councilmember Mitchell</i> moved to approve the December 2019 Payroll EFT Transactions #1857 through 1919, 1921 through 1923, 1925, 1926, 1946, 1947, and Check #12933 totaling \$70,542.22. <i>Councilmember Whitson</i> seconded the motion.</p>	<p>The motion passed unanimously.</p> <p>The motion passed unanimously.</p> <p>The motion passed unanimously.</p>
Added Agenda Item – Approval of Minutes – December 20, 2019	<p><i>Councilmember Whitson</i> moved to approve the minutes of the December 20, 2019 Council meeting. <i>Councilmember Mitchell</i> seconded the motion.</p>	<p>The motion passed unanimously.</p>
Audience Comments	<p>None.</p>	
III - Council Reports	<p>None.</p>	

AGENDA ITEMS	COMMENTS & DISCUSSION	ACTION/ FOLLOW-UP
IV – Mayor’s Report	<ol style="list-style-type: none"> 1. The Council discussed who would like to be a representative to the Snohomish County Cities association. Councilmember Mitchell, the previous representative, was unable to continue and asked if someone else could attend the upcoming meeting. No one was available. 2. Upcoming e-newsletter from the mayor would focus on the proposed changes to the tree, clearing & grading, and critical areas codes. 3. The next edition of the Woodway Whisper would be mailed before the end of January. 4. The Council would designate representatives to various regional organizations at the next meeting. 5. Staff sent a letter from Mayor Nichols, Woodway Ready! Chair Henry Veldman, and Police Chief Doug Hansen to residents in those Woodway Ready! areas that did not have any volunteers to act as area co-captain. To date, no one had responded. 6. Asked the Council to consider moving the regular bi-monthly Council meeting start time from 7 pm to 6 pm. 	
V - Town Administrator’s Report	<ol style="list-style-type: none"> 1. Updated the Council on the progress of the Town Hall repairs and painting. 2. Shared that staff would be meeting on Wednesday to further discuss the changes to the tree, clearing & grading, and critical areas codes, and would be meeting with staff and the resident proponents the following Monday. An open house was tentatively scheduled for the first meeting in February, with the code amendments likely on the agenda for action at the second meeting in February. 3. The City of Shoreline’s annexation bill was progressing well and might make it to a floor vote in both the House and Senate. 	

AGENDA ITEMS	COMMENTS & DISCUSSION	ACTION/ FOLLOW-UP
<p>VI - Confirmation of Planning Commission Appointments</p>	<p>Mayor Nichols shared that she contacted two Planning Commissioners whose terms were up at the end of 2019, Per Odegaard and John Zevenbergen. Both were interested in continuing, and the Mayor asked for confirmation of their reappointments.</p> <p><i>Councilmember Mitchell</i> moved to confirm the reappointment of Per Odegaard and John Zevenbergen to the Planning Commission for 4-year terms. <i>Councilmember Whitson</i> seconded the motion.</p> <p>Mayor Nichols proposed that John Brock be appointed to the Planning Commission to fill the position vacated by Andrew DeDonker’s election to the Council.</p> <p><i>Councilmember Bogen</i> moved to confirm the appointment of John Brock to the Planning Commission for the remainder of the term ending on December 31, 2021. <i>Councilmember Whitson</i> seconded the motion.</p>	<p>The motion passed 2-0-1 with Councilmember Bogen abstaining.</p> <p>The motion passed unanimously.</p>
<p>VII – Representative to Snohomish Health District</p>	<p>The Council discussed the position. No one present wished to participate as the Representative to Snohomish Health District.</p>	<p>Mayor Nichols instructed staff to contact the City of Lynnwood to notify them of the decision.</p>
<p>Audience Comments</p>	<p>None.</p>	

AGENDA ITEMS	COMMENTS & DISCUSSION	ACTION/ FOLLOW-UP
General Council Discussion - Choice of Subjects	<p>Councilmember Whitson asked if the Council would be scheduling a retreat.</p> <p>Councilmember Mitchell requested an excused absence for February 17.</p> <p>Mayor Nichols reminded the Council that the next regular meeting would be on a Tuesday due to the Martin Luther King Jr. holiday.</p> <p>Town Administrator Faison offered to invite the Planning Commission to the next meeting to discuss the changes to the tree, clearing & grading, and critical areas codes. The Council was in favor of inviting them.</p>	<p>Mayor Nichols suggested they discuss timing at the first meeting in February for a Council retreat.</p> <p>Staff will invite the Planning Commission to the January 21 meeting.</p>
Adjournment	<p><i>Councilmember Mitchell</i> moved to adjourn the meeting. <i>Councilmember Whitson</i> seconded the motion.</p>	<p>The motion passed unanimously. The meeting was adjourned at 8:29 p.m.</p>

Respectfully Submitted,

APPROVED BY THE TOWN COUNCIL

Heidi K. S. Napolitano, Clerk-Treasurer

Carla A. Nichols, Mayor


(These minutes accurately reflect what was said at the Council Meeting. Publication does not vouch for the veracity of these statements.)

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice: (425) 259-3144
e-mail: jegalt755@gmail.com

MEMORANDUM

To: ✓ Woodway Town Council
Woodway Planning Commission

CC: Mayor Carla A. Nichols
Eric Faison, Town Administrator

From: John E. Galt, Hearing Examiner 

Date: January 11, 2020

Subject: Annual Report for 2019

The Woodway Municipal Code provides for an annual report from the Hearing Examiner to the City Council and Planning Commission:

The examiner shall report in writing to and meet with the planning commission and town council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to town ordinances or other policies or procedures which would improve the performance of the examiner process. Such report shall include a summary of the examiner's decisions since the last report.

[WMC 2.56.130] This Report covers the case which I decided during 2019. (There were no reports for 2017 or 2018 as I heard no cases for the Town during those years.) The report is divided into two parts: Hearing Activity and Discussion of Issues. I am available to meet at a time of mutual convenience with Council and/or Planning Commission at your request.

Hearing Activity

I heard two cases in 2019, both appeals: An appeal of a Notice and Order; and an appeal of a Potentially Dangerous Dog Declaration.

Last year's cases are listed on the attached table.

Discussion of Issues

The cases heard last year raised no code issues.

Woodway Hearing Examiner Decisions: 2019

File #	Applicant	Project Name	Type	Acres	Lots	Decision	Decision Date	Recon.	Recon. Date
2018-01HE	Adrian_Laura Biesecker		NO Ap			Affirm	02/07/2019		
2019-000000606	Shane_Kelly Farrell	Harley	PDD Ap			Sustain	11/04/2019		

TOWN OF WOODWAY
REPRESENTATIVES TO REGIONAL ORGANIZATIONS

		2019			2020		
		Rep (1)	Rep (2)	Alternate Rep	Rep (1)	Rep (2)	Alternate Rep
Alliance for Housing Affordability	TBA (Quarterly)	Mitchell					
Mayor Pro Tem		Quinn					
Richmond Beach Community Association		Whitson					
Salmon Recovery Council	Every other month, 3rd Thursday	Bogen	Whitson				
Sno Co Department of Emergency Management	Quarterly	Whitson	Howard				
Snohomish County 911 Small City Caucus Rep.		Howard	Whitson				
Snohomish County Cities and Towns	Third Thursday of each month	Mitchell	Nichols	All Council Members			
Snohomish County Housing Affordability Task Force (HART)		Quinn	Bogen		None in 2020		
Snohomish County Policy Advisory Board		Mitchell					
Snohomish County Technical Advisory Committee		Quinn					
Snohomish County Tomorrow	Fourth Wednesday of each month	Mitchell	Quinn				
Snohomish Health District		City of Lynnwood Councilmember Shirley Sutton			City of Lynnwood Councilmember		
Solid Waste Advisory Committee	2nd Wednesday of each month	None					
South County Mayors		Nichols			Nichols		
State Audits of Town		Nichols	Quinn	Whitson			
Washington Cities Insurance Authority (WCIA)		Napolitano	Mitchell		Napolitano	Mitchell	

TOWN OF WOODWAY

RESOLUTION 2020-418

A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF WOODWAY DECLARING THE INTENT OF THE TOWN TO ADOPT LEGISLATION TO AUTHORIZE A SALES AND USE TAX FOR AFFORDABLE AND SUPPORTIVE HOUSING IN ACCORDANCE WITH SUBSTITUTE HOUSE BILL 1406 (CHAPTER 338, LAWS OF 2019), AND OTHER MATTERS RELATED THERETO.

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) (“SHB 1406”); and

WHEREAS, SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction, or rehabilitation of affordable housing or facilities providing supportive housing, and for the operations and maintenance costs of affordable or supportive housing; and

WHEREAS, the tax will be credited against state sales taxes collected within the Town and, therefore, will not result in higher sales and use taxes within the Town, and will represent an additional source of funding to address housing needs with Snohomish County; and

WHEREAS, the tax must be used to assist persons whose income is at or below sixty percent of the Town median income; and

WHEREAS, the Town Council desires to help the region improve access to affordable housing and has determined that imposing the sales and use tax to address this need will benefit its residents; and

WHEREAS, in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax; and

WHEREAS, this resolution constitutes the resolution of intent required by SHB 1406; and

WHEREAS, the Town Council now desires to declare its intent to impose a local sales and use tax as authorized by SHB 1406 as set forth herein.

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby resolve as follows:

Section 1. The Town Council declares its intent to adopt legislation to authorize the maximum capacity of the sales and use tax authorized by SHB 1406 within one year of the effective date of SHB 1406, or by July 28, 2020.

Section 2. All Town officials, their agents, and representatives are hereby authorized and directed to undertake all action necessary or desirable from time to time to carry out the terms of, and complete the actions contemplated by, this resolution. All acts taken pursuant to the authority of this resolution but prior to its effective date are hereby ratified.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED this 21st day of January 2020 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

Carla A. Nichols, Mayor

ATTEST:

Heidi K. S. Napolitano, Clerk-Treasurer

MEMORANDUM

TO: Town Council
FROM: Eric Faison, Town Administrator
SUBJECT: Affordable Housing Local Revenue Sharing
DATE: 1/21/2020
CC: Carla Nichols, Mayor

In the 2019 legislative session, the State approved SHB 1406 – a local revenue sharing program for local governments to address the issue of affordable housing. This local sales tax authority, which is a voluntary program, provides a sales and use tax credit against the state sales tax. Because it is a credit against the state sales tax, it does not increase the sales tax for the consumer.

If a jurisdiction participates in the program, the tax credit will remain in place for up to twenty years. The funding must be spent on projects that serve persons whose income is at or below sixty percent of the median income of the city imposing the tax. Eligible expenditures include:

1. Acquiring, rehabilitating, or constructing affordable housing;
2. Operations and maintenance of new affordable or supportive housing facilities; and,
3. Rental assistance.

The Municipal Research and Services Center (MRSC) has prepared an estimate of the amount of revenue that each jurisdiction would receive under the program. According to its estimates, Woodway would receive \$ 1,759 annually, or \$35,180 over twenty years.

Cities can issue bonds to finance the authorized projects. Participating cities also may enter into an interlocal agreement with other cities, counties and/or housing authorities to pool and allocate the tax revenues received under the program.

There are tight timelines that must be met to access this funding source. The first is the passage of a resolution of intent by **January 28, 2020**. The next step would be the passage of a tax ordinance, which must be adopted by **July 28, 2020**.

Attached you will find two items:

1. A bulletin from the Association of Washington Cities, which details the recent legislation;
2. A draft Resolution of Intent.



Implementing HB 1406

2020

Don't miss out on up to 20 years of shared revenue for affordable housing

In the 2019 legislative session, the state approved a local revenue sharing program for local governments by providing up to a 0.0146% local sales and use tax credited against the state sales tax for housing investments, available in increments of 0.0073%, depending on the imposition of other local taxes and whether your county also takes advantage. The tax credit is in place for up to 20 years and can be used for acquiring, rehabilitating, or constructing affordable housing; operations and maintenance of new affordable or supportive housing facilities; and, for smaller cities, rental assistance. The funding must be spent on projects that serve persons whose income is at or below sixty percent of the median income of the city imposing the tax. Cities can also issue bonds to finance the authorized projects.

This local sales tax authority is a credit against the state sales tax, so it does not increase the sales tax for the consumer. There are tight timelines that must be met to access this funding source – the first is January 28, 2020 to pass a resolution of intent. The tax ordinance must then be adopted by July 28, 2020 to qualify for a credit.

The following information is intended to assist your city in evaluating its options and timelines. It is not intended as legal advice. Check with your city's legal counsel and/or bond counsel for specific questions on project uses and deadlines for implementation.

Eligibility to receive shared revenues

- The state is splitting the shared resources between cities and counties. However, cities can receive both shares if they have

Deadlines to participate:

- Resolution to levy tax credit: July 28, 2019 – January 28, 2020
- Ordinance to levy the tax credit: By July 28, 2020
- Adopt "qualifying local tax" (optional): By July 31, 2020

adopted a "qualifying local tax" by July 31, 2020. Qualifying taxes are detailed below. Cities who are levying a "qualifying local tax" by July 28, 2019, the effective date of the new law, will receive both shares immediately once they impose the new sales tax credit.

- If a city does not implement a qualifying local tax by the deadline, they can still participate in the program if they meet the other deadlines but will be eligible for a lower credit rate.
- A city can adopt the sales tax credit before designating how the funds will be used once collected.

Qualifying local taxes

The following are considered "qualifying local taxes" and, if levied, give the city access to both shares of the tax credit (i.e. 0.0146% rate instead of the single share rate of 0.0073%):

- Affordable housing levy (property tax) under RCW 84.52.105
- Sales and use tax for housing and related services under RCW 82.14.530. The city must have adopted at least half of the authorized maximum rate of 0.001%.
- Sales tax for chemical dependency and mental health (optional .1 MIDD) under RCW 82.14.460
- Levy (property tax) authorized under RCW 84.55.050, if used solely for affordable housing

Think of the "qualifying local tax" as a multiplier or "doubler." It gives the city access to double the tax credit even when the county chooses to participate in the program.

Timing considerations

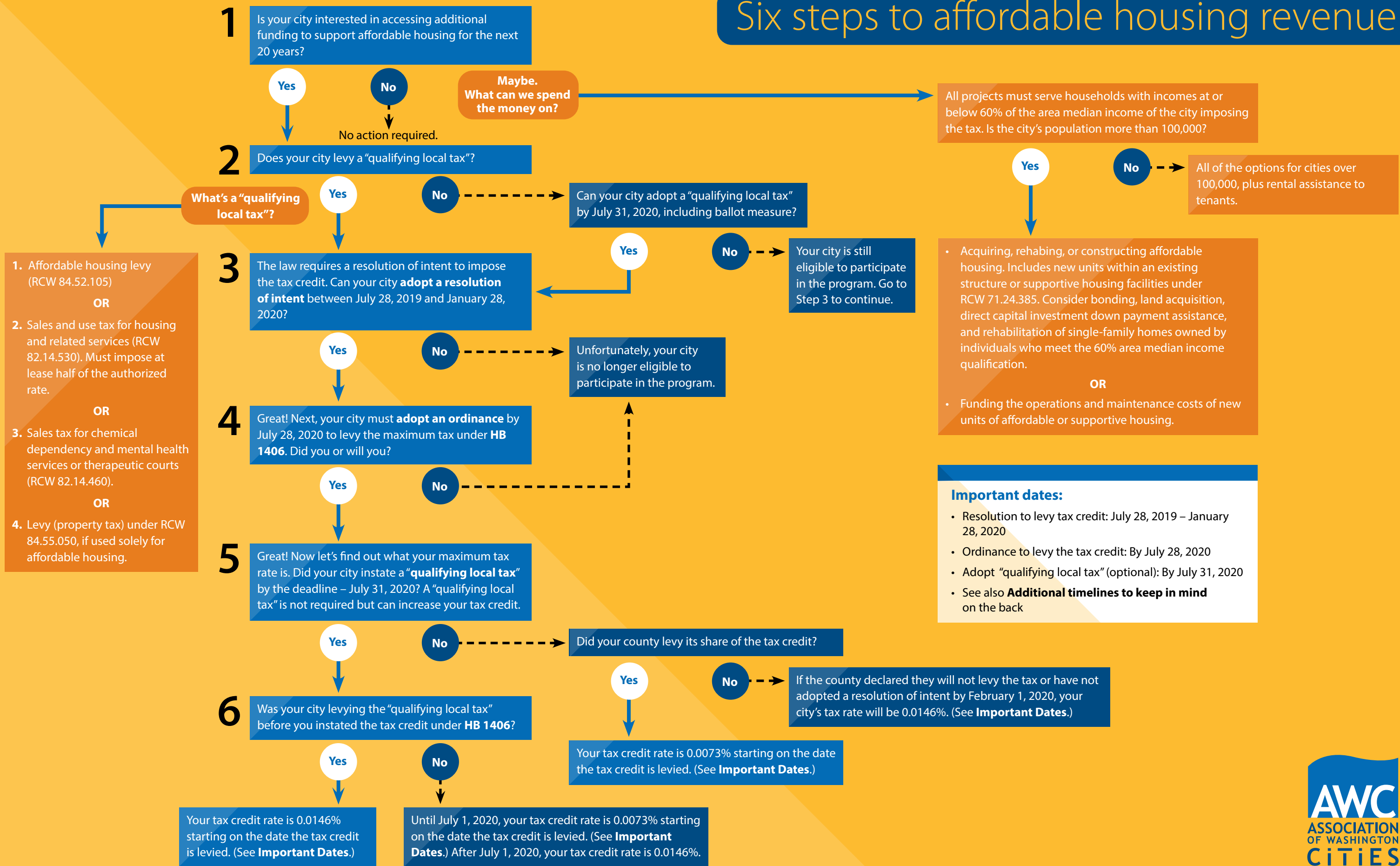
HB 1406 makes a distinction about whether a county or a city adopts the tax first. For cities, the amount you are eligible to receive will not change in either event. But for counties, if they adopt the tax before their cities, they will potentially be eligible to receive more revenue over the course of the twenty years of revenue sharing. Because of this, many cities are working with their counties to sequence their ordinances in order to maximize housing resources into the region.

Contact:

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Shannon McClelland
Legislative & Policy Analyst
shannonm@awcnet.org

Six steps to affordable housing revenue



Tax credit rate examples

Max tax credit rate under HB 1406	City with qualifying local tax	City without qualifying local tax	City doesn't levy a tax credit, county does participate	County doesn't participate, city participates but doesn't have a qualifying tax.*
City	0.0146%	0.0073%	0.0%	July 2020: 0.0%
County	0.0%	0.0073%	0.0146%	0.0%

*We believe that this was an error in bill drafting. Please let us know if you are in this situation. We can work to address it in future legislative sessions.

Eligible uses of the funds:

1. Projects must serve those at or below 60% of the area median income of the city imposing the tax.
2. Acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services. In addition to investing in traditional subsidized housing projects, this authority could potentially be used to provide for land acquisition, down payment assistance, and home repair so long as recipients meet the income guidelines.
3. Funding the operations and maintenance costs of new units of affordable or supportive housing.
4. For cities with a population at or under 100,000, the funds can also be used for rental assistance to tenants.

Additional timelines to keep in mind:

1. Department of Revenue (DOR) requires 30-days-notice of adoption of sales tax credits. The credit will then take effect on the first day of the month following the 30-day period.
2. If your city is adopting a "qualifying local tax", DOR requires 75-days-notice of adoption of sales tax increases. Local sales tax increases may only take effect on the first day of the first, second, or third quarter – not the fourth (April 1, July 1, or October 1).
3. If your city is adopting a "qualifying local tax" remember to factor in the ballot measure process into the timeline, as these must be approved by the voters.
4. If you are intending to bond the revenues for a project under this authority, check with your legal counsel and bond counsel about other deadlines that may apply to your city.

Frequently asked questions:

1. **This program sounds very familiar. Didn't a local option, affordable housing sales tax law pass a few years ago?** Yes, but the new law has important differences. The Legislature passed HB 2263 in 2015 that authorized cities and

towns to levy up to a 0.1% sales tax for affordable housing—but, importantly, only after voter approval. This sales tax levy is considered a "qualifying local tax" under HB 1406. Another important distinction is that the affordable housing sales tax from 2015 is an additional tax on the consumer, and not a credit on an existing state-imposed tax.

2. **Do we have to levy a "qualifying local tax" to participate?** No. Your city is still eligible to participate in the program, but your tax credit rate will depend on whether the county participates in the program. See *Tax credit rate examples* chart to the left.
3. **Do we only have access to the program if the county declines to participate?** No. A city can participate, and receive funds, even if the county participates. Unfortunately, if your city does not impose a "qualifying local tax" by the deadline and your county declines to participate, then you will not have access to funds after the first year, due to a drafting error in the bill. We don't anticipate this scenario to occur, but please let us know if you find yourself in that situation. We will work with the Legislature to address it if this proves problematic. In all cases you must meet the program deadlines to participate. See *Deadlines to participate*.
4. **Does it make a difference at all if our county participates?** Only if you have not adopted a "qualifying local tax." If you have adopted a "qualifying local tax" you can access the higher credit rate regardless of county participation. If you don't have a "qualifying local tax" then you can only access the higher rate if the county does not participate.
5. **How is "rental assistance" defined? Does that include rent vouchers?** The term "rental assistance" is not defined in the chapter 82.14 RCW; however, both federal and state housing programs use the term "rental assistance" to mean providing rent, security deposits, or utility payment assistance to tenants.
6. **Can we pool our revenue with another entity? Can we issue bonds or use the money to repay bonds?** Yes! Cities can enter into an interlocal agreement with other local governments or a public housing authority to pool tax receipts, pledge tax collections to bonds, allocating collected taxes to authorized affordable housing expenditures, or other agreements authorized under chapter 39.34 RCW. Cities may also use the tax credit revenue to issue or repay bonds in order to carry out the projects authorized under the new law.
7. **Is the amount of tax credit we receive limited only by the amount of sales tax collected per year?** No. The maximum amount will be based on state fiscal year 2019 sales.
8. **Does the tax credit program expire?** Yes, the tax expires 20 years after the date on which the tax is first levied.

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