



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, December 5, 2017

7:00 PM

Council Chambers

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION

- 2.A** [17-1234](#) Special Recognition - Hands on Children's Museum Update

3. PUBLIC COMMUNICATION

(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)

During this portion of the meeting, citizens may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.

Individual comments are limited to three (3) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.

COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)

4. CONSENT CALENDAR

(Items of a Routine Nature)

- 4.A** [17-1239](#) Approval of November 28, 2017 Study Session Meeting Minutes

Attachments: [Minutes](#)

- 4.B** [17-1240](#) Approval of November 28, 2017 City Council Meeting Minutes

Attachments: [Minutes](#)

- 4.C** [17-1233](#) Approval of Resolution Authorizing the City Manager to Execute a

Settlement Agreement in the lawsuit of City of Olympia v. Puget Sound Energy, Canray, LLC, and the Estate of Vernon L. Lindskog

Attachments: [Resolution Agreement](#)

4. SECOND READINGS (Ordinances) - None

4. FIRST READINGS (Ordinances) - None

5. PUBLIC HEARING - None

6. OTHER BUSINESS

- 6.A [17-1232](#) Approval of Ordinance Amending the Critical Areas Ordinance to add Habitat and Species Protections for Great Blue Heron

Attachments: [Ordinance Ordinance 7030](#)
[Ordinance 7090](#)
[ESA Tech Memo - Options](#)
[ESA Tech Memo - Recommendations](#)
[OPC Meeting Packets](#)
[OPC Recommendation Letter](#)
[OPC Meetings Minutes](#)

- 6.B [17-1218](#) Approval of an Ordinance Establishing a Downtown Urban Infill Area in Accordance with the Washington State Environmental Policy Act

Attachments: [Ordinance Downtown Strategy SEPA Memo](#)
[Land Use Review Process](#)
[Draft EDDS Traffic Impact Analysis](#)
[Planning Commission Public Comments](#)

7. CONTINUED PUBLIC COMMUNICATION

(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

8.B CITY MANAGER'S REPORT AND REFERRALS

9. ADJOURNMENT

The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.



City Council

Special Recognition - Hands on Children's Museum Update

Agenda Date: 12/5/2017
Agenda Item Number: 2.A
File Number: 17-1234

Type: recognition **Version:** 1 **Status:** Recognition

...Title

Special Recognition - Hands on Children's Museum Update

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Briefing only.

Staff Contact:

Jay Burney, Assistant City Manager, 360.753.8740

Presenter(s):

Patty Belmonte, Executive Director, Hands on Children's Museum

Background and Analysis:

Patty Belmonte, Executive Director of the Hands on Children's Museum will provide an update on the past year's activities and upcoming events, as well as tourism and program offerings.

Options:

Briefing only.

Financial Impact:

Briefing only.

Attachments:

None



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of November 28, 2017 Study Session Meeting Minutes

Agenda Date: 12/5/2017
Agenda Item Number: 4.A
File Number: 17-1239

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of November 28, 2017 Study Session Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, November 28, 2017

5:30 PM

Council Chambers

Study Session

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Julie Hankins and Councilmember Jeannine Roe

2. BUSINESS ITEM

2.A [17-1213](#) Discussion on 2018 Operating Budget and Capital Facilities Plan

City Manager Steve Hall noted the 2018 Budget is close to being balanced. He reviewed the budget items discussed at previous meetings.

Administrative Services Director Dean Walz noted there are additional revenues available for the General Fund Budget. He also shared expenses related to administrative changes.

Mr. Walz reviewed the recommendations made by the Finance Committee, several revised recommendations made by the City Manager and the approximate program costs for the Public Safety Levy.

Finance Committee Chair Jim Cooper shared comments from the Committee. He reviewed unfunded needs not included in the budget recommendations. He discussed several policy questions about the Clean Team/Ambassador Program.

Councilmember Bateman discussed her support of the Ambassador being brought into the City and for the need for the Program to be consistent, have continuity and succession planning.

Councilmember Roe noted she is eager to see the Ambassador program grow, but wants to be sure the downtown merchants, the Olympia Downtown Association (ODA), the Parking & Business Improvement Area Board and the Historical Society are on the same page. She is hopeful the program continues to include workforce training. Councilmember Roe noted she thinks the Welcome Center should be a separate discussion. She expressed support for the Ambassadors and Clean Team having a salary and benefits.

Mayor Selby expressed concern in bringing forward the recommendation regarding the Ambassador Program, noting the Request for Proposal (RFP) process has not been completed. She noted she cannot support the package as presented because of this. She also shared there is great value to the Welcome Center but it is currently poorly located.

Councilmember Gilman asked for clarification on the funding and RFP process of the Ambassador Program.

Community Planning and Development Director Keith Stahley reviewed the RFP process so far. The contract with the Capital Recovery Center will be on a month to month basis beginning January through the end of February to assist with the transition of the program.

Mayor Selby asked to see a big picture of what is being spent downtown and tie it to the downtown strategy. She noted she is disappointed the street trees continue to be pushed off the list of funded items.

Mayor Selby proposed a hybrid approach of having the Ambassadors managed through the City and the Welcome Center and Clean team be managed by the ODA.

Councilmember Cooper stated he had felt from the beginning the Ambassador program should have been a City program.

Mayor Pro Tem Jones requested the status of the major facilities repairs unfunded needs.

The study session was completed.

3. ADJOURNMENT

The meeting adjourned at 6:18 p.m.



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of November 28, 2017 City Council Meeting Minutes

Agenda Date: 12/5/2017
Agenda Item Number: 4.B
File Number: 17-1240

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of November 28, 2017 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, November 28, 2017

7:00 PM

Council Chambers

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Julie Hankins and Councilmember Jeannine Roe

1.A ANNOUNCEMENTS

Mayor Selby announced the City Council met earlier in a Study Session.

Acting Administrative Services Director Dean Walz swore in Councilmember Clark Gilman.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION (None)

3. PUBLIC COMMUNICATION

The following people spoke: Bev Bassett, Phyllis Boot, Jim Reeves, Noah Martin, Todd Cutts, Roberta Loeb, Todd Cutts, Earth Feather, EJ Zita and Sherri Goulet.

COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)

4. CONSENT CALENDAR

4.A [17-1222](#) Approval of November 22, 2017 City Council Meeting Minutes

The minutes were approved.

4.B [17-1208](#) Bills and Payroll Certification

Payroll check numbers 90643 through 90803 and Direct Deposit transmissions: Total: \$8,425,944.39; Claim check numbers 3692431 through 3694329: Total \$5,427,128.39

The decision was approved.

- 4.C** [17-1172](#) Approval of Resolution Appointing Pro and Con Committees For and Against Proposition 1, also known as the Olympia Home Fund Sales and Use Tax Measure

The resolution was approved.

- 4.D** [17-1212](#) Approval to Apply to the Washington Recreation and Conservation Office (RCO) for a Waiver of Retroactivity for Construction of the Woodruff Sprayground

The decision was approved.

4. SECOND READINGS (Ordinances)

- 4.E** [17-1189](#) Approval of an Ordinance Setting the 2018 Ad Valorem Tax

The ordinance was approved on second reading.

Approval of the Consent Agenda

Councilmember Hankins moved, seconded by Mayor Pro Tem Jones, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

4. FIRST READINGS (Ordinances) (None)

5. PUBLIC HEARING (None)

6. OTHER BUSINESS

- 6.A** [17-1211](#) Budget Balancing - 2018 Capital and Operating Budgets

Mr. Walz noted this is a time to discuss any changes to the draft 2018 Capital and Operating Budgets. He discussed the General Fund Revenues and Expenses, along with the Finance Committee Recommendations, City Manager Revised Recommendations and Public Safety Levy.

Mayor Selby discussed her concern regarding the Ambassador Program Request for Proposal (RFP) process.

Councilmember Cooper noted there is value in the Welcome Center but wants to ensure the right people come together in the right location.

Councilmember Cooper moved, seconded by Councilmember Bateman, to approve the budget balancing as presented by the staff and including the City

Manager’s recommended adjustments to be included in the final budget.

Aye: 6 - Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

Nay: 1 - Mayor Selby

Councilmember Bateman moved, seconded by Councilmember Cooper, to direct staff to bring forward a plan to establish the Clean Team and Ambassador Programs within the City by the end of the year for Council action.

Aye: 7 - Mayor Selby, Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

7. CONTINUED PUBLIC COMMUNICATION

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Councilmembers reported on meetings and events attended.

8.B CITY MANAGER'S REPORT AND REFERRALS

City Manager Steve Hall noted the annual Toy Run is occurring this weekend.

9. ADJOURNMENT

The meeting adjourned at 8:03 p.m.



City Council

Approval of Resolution Authorizing the City Manager to Execute a Settlement Agreement in the lawsuit of City of Olympia v. Puget Sound Energy, Canray, LLC, and the Estate of Vernon L. Lindskog

Agenda Date: 12/5/2017
Agenda Item Number: 4.C
File Number: 17-1233

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of Resolution Authorizing the City Manager to Execute a Settlement Agreement in the lawsuit of *City of Olympia v. Puget Sound Energy, Canray, LLC, and the Estate of Vernon L. Lindskog*

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the City Manager to execute a settlement agreement in the *City of Olympia v. Puget Sound Energy, Canray, LLC, and the Estate of Vernon L. Lindskog* lawsuit.

Report

Issue:

Whether to settle a lawsuit for compensation in the sum of \$1,700,000 in exchange for dismissal of all claims by and between the parties.

Staff Contact:

Darren Nienaber, Deputy City Attorney, 360.753.8338

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Between 2008 and 2014, the City conducted various remediation investigation and activities at its City Hall site, including removing and disposing of soil containing hazardous substances and conducting groundwater monitoring. The City also conducted sampling efforts in the vicinity of the property to help identify potential sources of those hazardous substances found on the future City Hall site.

In 2011, the City brought a legal action against Puget Sound Energy, Canray, LLC, Ronald Lindskog, and the Estate of Vernon L. Lindskog, seeking to recover costs incurred by the City for conducting a hazardous substances investigation and environmental remediation of its property currently occupied by the Olympia City Hall, as well as a declaratory judgment as to future remediation costs. The City asserts that the pollution came from 720 and 712 Legion Way SE and said property was owned by the defendants.

The City entered into settlement discussions in a formal mediation process and came to a tentative settlement agreement, subject to the ultimate approval of the Olympia City Council. The proposed settlement amount is \$1,700,000. In exchange, the City would waive further claims against the defendants for pollution from their Legion Way property to the Olympia City Hall site. The release does not affect the City's claims of pollution from the Legion Way site to other properties. Nor does the release affect claims of pollution to City Hall from sources outside of the 720 and 712 Legion Way site.

Neighborhood/Community Interests (if known):

N/A

Options:

1. Approve the resolution authorizing the City Manager to execute a Settlement Agreement in the above-referenced lawsuit in return for compensation to the City in the sum of \$1,700,000.
2. Continue with the lawsuit and assume the risks and uncertainty of the litigation, including escalating costs of prosecuting the City's claims.

Financial Impact:

The City will receive \$1,700,000 in payment of the City's claims.

Attachments:

Resolution

Settlement Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT IN THE
LAWSUIT OF CITY OF OLYMPIA vs. PUGET SOUND ENERGY, ET AL.**

WHEREAS, under Thurston County Superior Court Cause No. 11-2-02601-6, the City of Olympia brought a legal action against Puget Sound Energy, Canray, LLC, Ronald Lindskog, and the Estate of Vernon L. Lindskog, seeking to recover costs incurred by the City for conducting a hazardous substances investigation and environmental remediation of its property currently occupied by the Olympia City Hall, as well as a declaratory judgment as to future remediation costs; and

WHEREAS, Puget Sound Energy (PSE) has offered to settle the case with a payment of \$1,700,000 to the City of Olympia for its claims against PSE and other named defendants; and

WHEREAS, the parties wish to avoid the expense and uncertainty of litigation and to compromise and fully settle all claims asserted in the litigation;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the attached form of Settlement Agreement between the City of Olympia and Puget Sound Energy, Canray, LLC, Ronald Lindskog, and Joan F. Lindskog, as designated personal representative of the Estate of Vernon L. Lindskog, attached hereto as Exhibit A, and the terms and conditions contained therein (the "Settlement Agreement").
2. In exchange for monetary compensation and consideration in the sum of \$1,700,000 payable to the City of Olympia, the City Manager is authorized and directed to settle and execute on behalf of the City of Olympia all necessary documents in the above-referenced case, and to make any minor modifications as may be required and are consistent with the intent of the attached Settlement Agreement, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of December 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

DEPUTY CITY ATTORNEY

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between and among the following entities, which are defined in more detail in Section 1 below: The City of Olympia (“the City”), Puget Sound Energy (“PSE”), Canray, LLC (“Canray”), Ronald Linskog, and Joan F. Linskog, as designated personal representative of the estate of Vernon L. Linskog (“Joan Linskog”). All of the above are hereinafter collectively known as the “Parties.” All Parties other than the City are hereinafter collectively referred to as “Defendants.”

RECITALS

A. The City holds record title to an approximately 1.23-acre parcel of real property located in Olympia, Thurston County, Washington, and corresponding to present-day 601–609 4th Avenue East, with a legal description as set forth in Exhibit A (the “Property”). Exhibit B contains a figure depicting the Property. If there is a conflict between the legal description in Exhibit A and the figure in Exhibit B, the legal description in Exhibit A shall control.

B. From December 2007 to the present, the City has owned the Property. The Property is currently occupied by the Olympia City Hall.

C. Between 2008 and 2014, the City conducted various remediation activities at the Property, including removing and disposing of soil allegedly containing Hazardous Substances (as defined below) and conducting groundwater monitoring (collectively “Remediation Activities”). The City also conducted sampling efforts in the vicinity of the Property to help identify potential sources of those Hazardous Substances.

D. On or about December 7, 2011, the City filed a Complaint against Canray, Ronald Linskog, and Joan Linskog (collectively, “the Linskogs”) in Thurston County Superior Court, No. 11-2-02601-6. The City sought to recover costs incurred in connection with the investigation, identification, removal, and disposal of Hazardous Substances at the Property, under Washington’s Model Toxics Control Act (“MTCA”), as well as a declaratory judgment as to future costs. The City claimed that some of the Hazardous Substances detected at the Property originated from a manufactured gas plant (“MGP”) historically located at a parcel of land to the south of the Property, corresponding to present-day 712 Legion Way SE and 720 Legion Way SE, and with a legal description as set forth in Exhibit C (the “MGP Property”). The City asserted that the Linskogs are liable under MTCA because they owned the MGP Property at the time the City brought suit.

E. On or about March 6, 2012, the City filed an Amended Complaint, retaining its claims against the Linskogs and adding similar claims against PSE (“Amended Complaint”). The City asserted that PSE is liable under MTCA because it also owned the parcel of land on which the MGP was located and allegedly is a successor to the companies that operated the MGP.

F. Both PSE and the Linskogs answered the Amended Complaint and asserted counterclaims (collectively, “Counterclaims” and, together with the Amended Complaint, the “Litigation”) against the City for contribution under MTCA.

G. The City claims that it has incurred: (1) costs investigating the source, nature, and extent of Hazardous Substances at and near the Property; (2) costs for conducting Remediation Activities at the Property; and (3) legal fees.

H. The Parties wish to avoid the expense and uncertainty of litigation and desire to settle and compromise all the claims asserted in the Litigation. This Agreement memorializes the terms of the Parties' settlement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS:

1.1 The City. "The City" shall mean The City of Olympia, a Washington municipality, including, but not limited to, all of its past and present affiliates, predecessors, successors, assigns, departments, divisions, and employees.

1.2 PSE. "PSE" shall mean Puget Sound Energy, Inc., including, but not limited to, all past and present parents, subsidiaries, affiliates, predecessors, insurers, successors, and assigns.

1.3 The Linskogs. "The Linskogs" shall mean Ronald Linskog, Canray, LLC, and Joan F. Linskog, as designated personal representative of the Estate of Vernon L. Linskog, as well as each of their respective heirs, parents, subsidiaries, affiliates, predecessors, successors, cognates, owners, members, and assigns.

1.4 The Parties. "The Parties" shall mean The City, PSE, and the Linskogs.

1.5 The Property. The "Property" shall mean the approximately 1.23-acre parcel of real property located at present-day 601–609 4th Avenue East in Olympia, Washington, described above and having a legal description set forth in Exhibit A to this agreement. A figure showing the boundaries of the Property is attached to this Agreement as Exhibit B.

1.6 The MGP Property. The "MGP Property" shall mean the approximately 0.86-acre parcel of real property located at present-day 712 Legion Way SE and 720 Legion Way SE in Olympia, Washington, described above and with a legal description as set forth in Exhibit C.

1.7 Claim. "Claim" shall mean any and all past, present or future federal, state, or common law claims, suits, actions, causes of action, cross-claims, counterclaims, third-party actions, or demands, including but not limited to any of the foregoing that are pursued in a court of law or court of equity, in arbitration or mediation, or by demand letter. "Claim" includes but is not limited to investigation costs; cleanup costs; response, removal or remedial action costs; attorneys' fees; natural resource damage; common law torts; diminished property value; toxic torts; lost profits; loss of goodwill, business interruption, and any other economic loss or damage. The term "Claim" also includes, but is not limited to, those brought by any

governmental entity charged now or in the future with protection of human health or the environment or in any way having the authority to demand or require cleanup of the Property.

1.8 Hazardous Substance. “Hazardous Substance” shall mean those substances designated as hazardous under any federal, state, or local statute, regulation, judgment, or administrative or judicial order that relates to (i) pollution, protection or cleanup of the environment, (ii) a release or (iii) the use, treatment, storage, disposal, handling, manufacturing, transportation or shipment of Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended (“CERCLA”), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended (“RCRA”), the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., the Clean Air Act (“CAA”) 42 U.S.C. § 7401, and the Model Toxics Control Act, Chapter 70.1050 of the Revised Code of Washington.

1.9 Effective Date. With respect to the City’s claims against PSE, the “Effective Date” of this Agreement shall mean the date on which both the City and PSE have executed this Agreement. With respect to the City’s claims against the Lindskogs, the “Effective Date” of this Agreement shall mean the date on which the City and representatives of all of the Lindskogs all have executed this Agreement.

2. SETTLEMENT PAYMENT

Within thirty (30) days of the Effective Date of this Agreement with respect to the City’s claims against PSE, PSE shall pay the City \$1,700,000 to resolve its actual or alleged liability for any past, present, or future fees, costs, expenses, other expenditures, and damages, associated with: (1) investigating the source, nature, and extent of Hazardous Substances at and near the Property; and (2) costs for conducting Remediation Activities at the Property. Payment shall be made in the form of a check payable to the City of Olympia.

3. RELEASE

In consideration of the promises set forth in this Agreement and except as necessary to enforce the terms of this Agreement, the Parties and their successors and assigns agree to release with prejudice any and all Claims, whether past, present, or future, contingent or accrued, known or unknown, against each other related to or arising from the presence or alleged presence of Hazardous Substances located on, at, under, or emanating from the Property, including but not limited to those asserted in this Litigation. The Parties and their successors and assigns further agree that this release does not include any Claims based on the presence of Hazardous Substances on the Property that originated at a location or source other than, or that are unrelated to, the MGP or MGP Property and that were introduced into the environment after the Effective Date of this Agreement. This Agreement is not intended to provide and will not be construed to provide a release of any person or entity other than the Parties as those parties are defined in Section 1.1, 1.2 and 1.3. The releases contained herein shall not include a release or modification of that certain Settlement Agreement and amendments thereto entered into by the Lindskogs and PSE on November 15, 2013.

4. DEFENSE, HOLD HARMLESS, AND INDEMNITY

4.1 Indemnification. In consideration of the promises set forth in this Agreement, the City agrees to hold harmless, indemnify, and defend Defendants, with counsel acceptable to Defendants (consent not to be unreasonably withheld), against and from any Claims of any nature whatsoever, whether past, present, or future, known or unknown, that arise out of or in any way relate to Hazardous Substances at, on, under, or emanating from the Property, including, but not limited to, any subrogation claims by insurers of the City or claims by the Washington State Department of Ecology. The City is not obliged to hold harmless, indemnify, or defend Defendants with respect to claims based on the presence of Hazardous Substances on the Property that originated at a location or source other than, or that are unrelated to, the MGP or MGP Property and that were introduced into the environment after the Effective Date of this Agreement. The City's obligations under this Agreement, including in this Section 4, shall continue without modification, regardless whether the City sells or leases any portion of the Property.

4.2 Notice. Defendants, or any of them, shall be entitled to the defense, indemnification, or hold harmless provided in this Section, after receiving notice of a Claim for which they are entitled to be indemnified, upon providing prompt, reasonable written notice of the Claim. Notice shall be provided to the City as provided in Section 6.2 below.

5. DISMISSAL OF LAWSUIT

Upon payment of all amounts set forth in Section 2 above, the Parties shall file a stipulation of dismissal with prejudice (and without fees or costs to any Party) of all Claims, counterclaims, and/or cross-claims made or that could have been asserted in the Litigation related to or arising from Hazardous Substances located at, on, or under the Property.

6. MISCELLANEOUS:

6.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

6.2 Notices. Any notices required to be made under this Agreement shall be made in writing as set forth below and shall be deemed duly given: (a) upon hand delivery, (b) upon email transmission when the recipient confirms receipt of such transmission by return email, or (c) two (2) business days after being sent by registered mail. Any Party may alter or modify its notice address by delivery of written notice pursuant to the terms of this Agreement.

To the City:

City of Olympia
Attn: Steve Hall, City Manager
601 4th Ave E
Olympia, WA 98507
Phone: (360) 753-8447
Email: shall@ci.olympia.wa.us

Darren Nienaber
Deputy City Attorney
601 4th Ave E

Olympia, WA 98507
Phone: (360) 753-8044
Email: dnenabe@ci.olympia.wa.us

Stephen Tan
Cascadia Law Group
1201 Third Avenue, Suite 320
Seattle, WA 98101
Phone: (206) 292-2657
Email: stan@cascadialaw.com

To PSE:

Puget Sound Energy, Inc.
Attn: Steve Secrist, General Counsel
10885 NE 4th Street, PSE-12
Bellevue, WA 98004
Phone: (425) 462-3178
Email: steve.secris@pse.com

J. Christopher Baird
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Phone: (206) 359-8082
Email: jbaird@perkinscoie.com

To the Lindsogs:

Mark A. Peternell
Bean, Gentry, Wheeler & Peternell, PLLC
910 Lakeridge Way SW
Olympia, WA 98502
Phone: (360) 918-5213
Email: mpeternell@bgwp.net

6.3 Applicable Law. This Agreement shall be interpreted, and any dispute arising hereunder shall be resolved, in accordance with the substantive laws of the State of Washington, without reference to choice of law rules.

6.4 Integration. This Agreement represents the entire agreement among the Parties. The Parties acknowledge that this Agreement supersedes and replaces any and all prior agreements between the Parties regarding the subject matter herein. No modification of the terms hereof shall be effective unless in writing and duly executed by the authorized representatives of the respective Parties.

6.5 Jointly Drafted Agreement. This Agreement shall be construed without regard to the Party or Parties responsible for its preparation and shall be deemed to have been prepared jointly by the Parties hereto. The Parties agree that any rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting Party shall not be employed in the interpretation of this Agreement to favor one Party against another. The provisions of this

Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

6.6 No Admission of Liability. The Parties acknowledge and agree that neither this Agreement, the act of entering into it, or any act or omission pursuant hereto shall be construed as an admission of any nature. Moreover, this Agreement is without value as precedent and shall not be used in any proceeding or hearing to create, prove, or interpret the obligations under, or terms and conditions of, any other agreement or any insurance policy.

6.7 Prevailing Party. If any legal action or other proceeding is brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in that legal action or other proceeding.

6.8 Captions. The captions and headings used throughout this Agreement are for convenience or reference only, and the words contained therein shall in no way be held or deemed to define, limit describe, explain, modify, amplify or aid in the interpretation, consideration or meaning of any provisions or the scope or the intent of this Agreement.

6.9 Binding Effect. This Agreement is intended by the Parties for their sole and exclusive benefit and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, parent companies, subsidiaries, affiliates, predecessors, successors, and assigns. Successors and assigns shall include future owners of the Property and future owners of the MGP Property.

6.10 Warranty of Authorized Signatories. Each of the authorized signatories hereto warrants and represents that he or she is competent and is authorized to enter into this Agreement on behalf of the Party for which he or she purports to sign.

6.11 Good Faith. The Parties acknowledge that the settlement set forth in this Agreement is entered into in good faith, as a result of arms' length negotiations, and to resolve and compromise disputed Claims between them.

6.12 Third Party Beneficiaries. Provided that PSE has signed this Agreement, and until such time as all of the Lindskogs have signed the Agreement, all of the Lindskogs shall be third-party beneficiaries solely with respect to Sections 3, 4 and 5 of the Agreement.

[No further text; signature page follows]

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: Nov. 27, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: [Signature]
Name: Lorna Luchbe
Its: Assistant General Counsel

CANRAY LLC:

Dated: _____, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: _____
Name: _____
Its: _____

ESTATE OF VERNON L. LINDSKOG:

Dated: _____, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: _____
Name: _____
Its: _____

RONALD LINDSKOG:

Dated: _____, 2017

RONALD LINDSKOG,
a single man

By: _____
Name: _____
Its: _____

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: _____, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

CANRAY LLC:

Dated: 11/13, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: J. A. L.
Name: JACK A. LINDSKOG
Its: PRESIDENT

ESTATE OF VERNON L. LINDSKOG:

Dated: _____, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: _____
Name: _____
Its: _____

RONALD LINDSKOG:

Dated: _____, 2017

RONALD LINDSKOG,
a single man

By: _____
Name: _____
Its: _____

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: _____, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

CANRAY LLC:

Dated: _____, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: _____
Name: _____
Its: _____

ESTATE OF VERNON L. LINDSKOG:

Dated: 11-14-17, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: Joan F. Lindskog
Name: Joan F. Lindskog
Its: Executrix

RONALD LINDSKOG:

Dated: 11-14-, 2017

RONALD LINDSKOG,
a single man

By: [Signature]
Name: RONALD LINDSKOG
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

BLOCK 5 OF SWANS ADDITION, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, THURSTON COUNTY RECORDS, TOGETHER WITH THE VACATED ALLEY, CITY OF OLYMPIA ORDINANCE NO. 3200 AND NO. 6524.

IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

TAX PARCEL NOS. 78200500100, 78200500500, and 78200500700.

Page 1

RECORD OF SURVEY ~ BOUNDARY LINE ADJUSTMENT NO. 13-0040-01
OLYMPIA CITY HALL PROJECT NO. C109 BLOCK 5 SPANN'S ADDITION SITUATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 18 NORTH, RANGE 2 WEST, WILAMETTE MERIDIAN, THURSTON COUNTY, WASHINGTON 2013

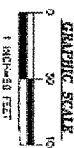
DECLARATION OF BOUNDARY LINE ADJUSTMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, the owner of the land herein referred to, and the claimants and occupants of the same, have agreed to the following adjustments and have caused the same to be recorded in the office of the Auditor of Public Lands, under the authority of the Act of Congress, approved March 3, 1853, entitled "An Act to provide for the settlement of claims and titles to the several parcels of land owned by the United States, and for other purposes."

1. The undersigned hereby certify that he has examined the original map and plat of the survey and the original field notes and has satisfied himself that the same are correct and conform to the provisions of the Act of Congress, approved March 3, 1853, and the amendments thereto, and he hereby declares that the boundary line shown on the said map and plat is the true and correct boundary line of the land herein referred to.

2. He, the undersigned, hereby certifies that the boundary line adjustment has been made with due care and a reasonable mind and has caused the same to be recorded in the office of the Auditor of Public Lands, under the authority of the Act of Congress, approved March 3, 1853, and the amendments thereto.

I, the undersigned, do hereby certify that the boundary line adjustment has been made with due care and a reasonable mind and has caused the same to be recorded in the office of the Auditor of Public Lands, under the authority of the Act of Congress, approved March 3, 1853, and the amendments thereto.



SURVEY EQUIPMENT

THEODOLITE
SINE BAR
STANDARD LEVEL
STANDARD ROD

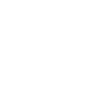
BASES OF BEARINGS

THE BEARINGS WERE OBTAINED BY DIRECT OBSERVATION OF THE SUN'S POSITION BY THE METHOD OF MEASURING THE SUN'S ALTITUDE AND AZIMUTH, AND THE BEARINGS WERE CORRECTED FOR REFRACTION AND PARALLAX.

SURVEY PROCEDURES

THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE ACT OF CONGRESS, APPROVED MARCH 3, 1853, AND THE AMENDMENTS THERETO.

VICINITY MAP



STATE OF WASHINGTON

COUNTY OF THURSTON

SURVEY

RECORDED IN THE OFFICE OF THE AUDITOR OF PUBLIC LANDS

BOOK 13, PAGE 40

DATE OF RECORD 10/28/13

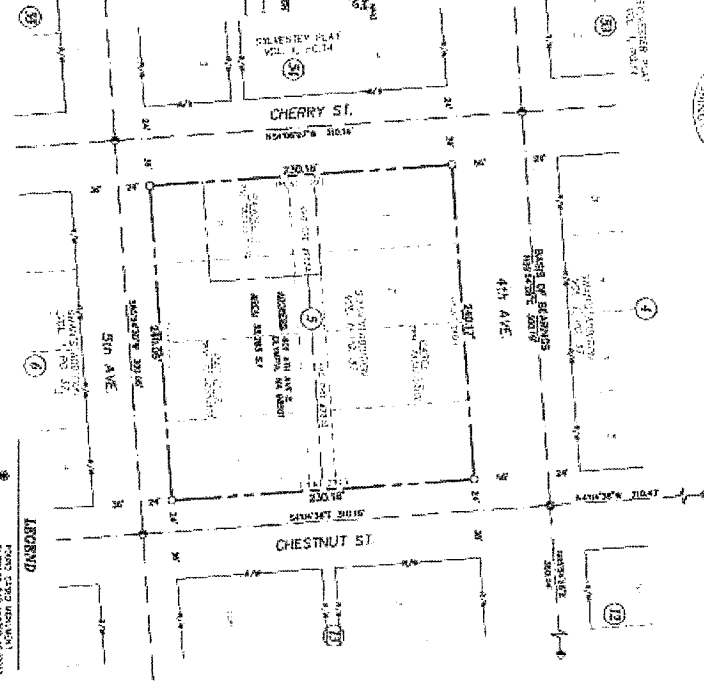
BY: *Chuck Spidle*

4-8-13



ORIGINAL LEGAL DESCRIPTION

SECTION 14, TOWNSHIP 18 NORTH, RANGE 2 WEST, WILAMETTE MERIDIAN, THURSTON COUNTY, WASHINGTON



LEGEND

- ① POINT TO BE MEASURED
- ② POINT TO BE PLACED
- ③ POINT TO BE REMOVED
- ④ POINT TO BE PLACED AND REMOVED
- ⑤ POINT TO BE PLACED AND REMOVED
- ⑥ POINT TO BE PLACED AND REMOVED
- ⑦ POINT TO BE PLACED AND REMOVED
- ⑧ POINT TO BE PLACED AND REMOVED
- ⑨ POINT TO BE PLACED AND REMOVED

RESULTING LOCAL DESCRIPTION OF PLA SUBJECT

TO THE CITY OF OLYMPIA, WASHINGTON
BY: *Chuck Spidle*

AUDITOR'S CERTIFICATE

THE ORIGINAL MAP AND PLAT OF THE SURVEY WAS EXAMINED AND FOUND TO BE CORRECT AND CONFORM TO THE PROVISIONS OF THE ACT OF CONGRESS, APPROVED MARCH 3, 1853, AND THE AMENDMENTS THERETO.

CITY OF OLYMPIA DEPARTMENT OF PUBLIC WORKS

AUDITOR'S RECEIVING DATA

NO. 1

BLAM 4328965

EXHIBIT C

LEGAL DESCRIPTION OF MGP PROPERTY

LOTS 6 TO 10 IN BLOCK 14 OF SWANS ADDITION, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, THURSTON COUNTY RECORDS, TOGETHER WITH THE VACATED SOUTHERLY 10 FEET OF ALLEY ADJOINING LOTS 6 AND 7 ON THE NORTH AND WITH THE SOUTH HALF OF THE ALLEY VACATED BY ORDINANCE NO. 138 RECORDED MARCH 29, 1890 UNDER FILE NO. 6373.

IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

TAX PARCEL NOS. 78201400600 AND 78201400800.

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between and among the following entities, which are defined in more detail in Section 1 below: The City of Olympia (“the City”), Puget Sound Energy (“PSE”), Canray, LLC (“Canray”), Ronald Linskog, and Joan F. Linskog, as designated personal representative of the estate of Vernon L. Linskog (“Joan Linskog”). All of the above are hereinafter collectively known as the “Parties.” All Parties other than the City are hereinafter collectively referred to as “Defendants.”

RECITALS

A. The City holds record title to an approximately 1.23-acre parcel of real property located in Olympia, Thurston County, Washington, and corresponding to present-day 601–609 4th Avenue East, with a legal description as set forth in Exhibit A (the “Property”). Exhibit B contains a figure depicting the Property. If there is a conflict between the legal description in Exhibit A and the figure in Exhibit B, the legal description in Exhibit A shall control.

B. From December 2007 to the present, the City has owned the Property. The Property is currently occupied by the Olympia City Hall.

C. Between 2008 and 2014, the City conducted various remediation activities at the Property, including removing and disposing of soil allegedly containing Hazardous Substances (as defined below) and conducting groundwater monitoring (collectively “Remediation Activities”). The City also conducted sampling efforts in the vicinity of the Property to help identify potential sources of those Hazardous Substances.

D. On or about December 7, 2011, the City filed a Complaint against Canray, Ronald Linskog, and Joan Linskog (collectively, “the Linskogs”) in Thurston County Superior Court, No. 11-2-02601-6. The City sought to recover costs incurred in connection with the investigation, identification, removal, and disposal of Hazardous Substances at the Property, under Washington’s Model Toxics Control Act (“MTCA”), as well as a declaratory judgment as to future costs. The City claimed that some of the Hazardous Substances detected at the Property originated from a manufactured gas plant (“MGP”) historically located at a parcel of land to the south of the Property, corresponding to present-day 712 Legion Way SE and 720 Legion Way SE, and with a legal description as set forth in Exhibit C (the “MGP Property”). The City asserted that the Linskogs are liable under MTCA because they owned the MGP Property at the time the City brought suit.

E. On or about March 6, 2012, the City filed an Amended Complaint, retaining its claims against the Linskogs and adding similar claims against PSE (“Amended Complaint”). The City asserted that PSE is liable under MTCA because it also owned the parcel of land on which the MGP was located and allegedly is a successor to the companies that operated the MGP.

F. Both PSE and the Linskogs answered the Amended Complaint and asserted counterclaims (collectively, “Counterclaims” and, together with the Amended Complaint, the “Litigation”) against the City for contribution under MTCA.

G. The City claims that it has incurred: (1) costs investigating the source, nature, and extent of Hazardous Substances at and near the Property; (2) costs for conducting Remediation Activities at the Property; and (3) legal fees.

H. The Parties wish to avoid the expense and uncertainty of litigation and desire to settle and compromise all the claims asserted in the Litigation. This Agreement memorializes the terms of the Parties' settlement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS:

1.1 The City. "The City" shall mean The City of Olympia, a Washington municipality, including, but not limited to, all of its past and present affiliates, predecessors, successors, assigns, departments, divisions, and employees.

1.2 PSE. "PSE" shall mean Puget Sound Energy, Inc., including, but not limited to, all past and present parents, subsidiaries, affiliates, predecessors, insurers, successors, and assigns.

1.3 The Linskogs. "The Linskogs" shall mean Ronald Linskog, Canray, LLC, and Joan F. Linskog, as designated personal representative of the Estate of Vernon L. Linskog, as well as each of their respective heirs, parents, subsidiaries, affiliates, predecessors, successors, cognates, owners, members, and assigns.

1.4 The Parties. "The Parties" shall mean The City, PSE, and the Linskogs.

1.5 The Property. The "Property" shall mean the approximately 1.23-acre parcel of real property located at present-day 601–609 4th Avenue East in Olympia, Washington, described above and having a legal description set forth in Exhibit A to this agreement. A figure showing the boundaries of the Property is attached to this Agreement as Exhibit B.

1.6 The MGP Property. The "MGP Property" shall mean the approximately 0.86-acre parcel of real property located at present-day 712 Legion Way SE and 720 Legion Way SE in Olympia, Washington, described above and with a legal description as set forth in Exhibit C.

1.7 Claim. "Claim" shall mean any and all past, present or future federal, state, or common law claims, suits, actions, causes of action, cross-claims, counterclaims, third-party actions, or demands, including but not limited to any of the foregoing that are pursued in a court of law or court of equity, in arbitration or mediation, or by demand letter. "Claim" includes but is not limited to investigation costs; cleanup costs; response, removal or remedial action costs; attorneys' fees; natural resource damage; common law torts; diminished property value; toxic torts; lost profits; loss of goodwill, business interruption, and any other economic loss or damage. The term "Claim" also includes, but is not limited to, those brought by any

governmental entity charged now or in the future with protection of human health or the environment or in any way having the authority to demand or require cleanup of the Property.

1.8 Hazardous Substance. “Hazardous Substance” shall mean those substances designated as hazardous under any federal, state, or local statute, regulation, judgment, or administrative or judicial order that relates to (i) pollution, protection or cleanup of the environment, (ii) a release or (iii) the use, treatment, storage, disposal, handling, manufacturing, transportation or shipment of Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended (“CERCLA”), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended (“RCRA”), the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., the Clean Air Act (“CAA”) 42 U.S.C. § 7401, and the Model Toxics Control Act, Chapter 70.1050 of the Revised Code of Washington.

1.9 Effective Date. With respect to the City’s claims against PSE, the “Effective Date” of this Agreement shall mean the date on which both the City and PSE have executed this Agreement. With respect to the City’s claims against the Linskogs, the “Effective Date” of this Agreement shall mean the date on which the City and representatives of all of the Linskogs all have executed this Agreement.

2. SETTLEMENT PAYMENT

Within thirty (30) days of the Effective Date of this Agreement with respect to the City’s claims against PSE, PSE shall pay the City \$1,700,000 to resolve its actual or alleged liability for any past, present, or future fees, costs, expenses, other expenditures, and damages, associated with: (1) investigating the source, nature, and extent of Hazardous Substances at and near the Property; and (2) costs for conducting Remediation Activities at the Property. Payment shall be made in the form of a check payable to the City of Olympia.

3. RELEASE

In consideration of the promises set forth in this Agreement and except as necessary to enforce the terms of this Agreement, the Parties and their successors and assigns agree to release with prejudice any and all Claims, whether past, present, or future, contingent or accrued, known or unknown, against each other related to or arising from the presence or alleged presence of Hazardous Substances located on, at, under, or emanating from the Property, including but not limited to those asserted in this Litigation. The Parties and their successors and assigns further agree that this release does not include any Claims based on the presence of Hazardous Substances on the Property that originated at a location or source other than, or that are unrelated to, the MGP or MGP Property and that were introduced into the environment after the Effective Date of this Agreement. This Agreement is not intended to provide and will not be construed to provide a release of any person or entity other than the Parties as those parties are defined in Section 1.1, 1.2 and 1.3. The releases contained herein shall not include a release or modification of that certain Settlement Agreement and amendments thereto entered into by the Linskogs and PSE on November 15, 2013.

4. DEFENSE, HOLD HARMLESS, AND INDEMNITY

4.1 Indemnification. In consideration of the promises set forth in this Agreement, the City agrees to hold harmless, indemnify, and defend Defendants, with counsel acceptable to Defendants (consent not to be unreasonably withheld), against and from any Claims of any nature whatsoever, whether past, present, or future, known or unknown, that arise out of or in any way relate to Hazardous Substances at, on, under, or emanating from the Property, including, but not limited to, any subrogation claims by insurers of the City or claims by the Washington State Department of Ecology. The City is not obliged to hold harmless, indemnify, or defend Defendants with respect to claims based on the presence of Hazardous Substances on the Property that originated at a location or source other than, or that are unrelated to, the MGP or MGP Property and that were introduced into the environment after the Effective Date of this Agreement. The City's obligations under this Agreement, including in this Section 4, shall continue without modification, regardless whether the City sells or leases any portion of the Property.

4.2 Notice. Defendants, or any of them, shall be entitled to the defense, indemnification, or hold harmless provided in this Section, after receiving notice of a Claim for which they are entitled to be indemnified, upon providing prompt, reasonable written notice of the Claim. Notice shall be provided to the City as provided in Section 6.2 below.

5. DISMISSAL OF LAWSUIT

Upon payment of all amounts set forth in Section 2 above, the Parties shall file a stipulation of dismissal with prejudice (and without fees or costs to any Party) of all Claims, counterclaims, and/or cross-claims made or that could have been asserted in the Litigation related to or arising from Hazardous Substances located at, on, or under the Property.

6. MISCELLANEOUS:

6.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

6.2 Notices. Any notices required to be made under this Agreement shall be made in writing as set forth below and shall be deemed duly given: (a) upon hand delivery, (b) upon email transmission when the recipient confirms receipt of such transmission by return email, or (c) two (2) business days after being sent by registered mail. Any Party may alter or modify its notice address by delivery of written notice pursuant to the terms of this Agreement.

To the City:

City of Olympia
Attn: Steve Hall, City Manager
601 4th Ave E
Olympia, WA 98507
Phone: (360) 753-8447
Email: shall@ci.olympia.wa.us

Darren Nienaber
Deputy City Attorney
601 4th Ave E

Olympia, WA 98507
Phone: (360) 753-8044
Email: dnenabe@ci.olympia.wa.us

Stephen Tan
Cascadia Law Group
1201 Third Avenue, Suite 320
Seattle, WA 98101
Phone: (206) 292-2657
Email: stan@cascadialaw.com

To PSE:

Puget Sound Energy, Inc.
Attn: Steve Secrist, General Counsel
10885 NE 4th Street, PSE-12
Bellevue, WA 98004
Phone: (425) 462-3178
Email: steve.secris@pse.com

J. Christopher Baird
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Phone: (206) 359-8082
Email: jbaird@perkinscoie.com

To the Lindskogs:

Mark A. Peternell
Bean, Gentry, Wheeler & Peternell, PLLC
910 Lakeridge Way SW
Olympia, WA 98502
Phone: (360) 918-5213
Email: mpeternell@bgwp.net

6.3 Applicable Law. This Agreement shall be interpreted, and any dispute arising hereunder shall be resolved, in accordance with the substantive laws of the State of Washington, without reference to choice of law rules.

6.4 Integration. This Agreement represents the entire agreement among the Parties. The Parties acknowledge that this Agreement supersedes and replaces any and all prior agreements between the Parties regarding the subject matter herein. No modification of the terms hereof shall be effective unless in writing and duly executed by the authorized representatives of the respective Parties.

6.5 Jointly Drafted Agreement. This Agreement shall be construed without regard to the Party or Parties responsible for its preparation and shall be deemed to have been prepared jointly by the Parties hereto. The Parties agree that any rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting Party shall not be employed in the interpretation of this Agreement to favor one Party against another. The provisions of this

Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

6.6 No Admission of Liability. The Parties acknowledge and agree that neither this Agreement, the act of entering into it, or any act or omission pursuant hereto shall be construed as an admission of any nature. Moreover, this Agreement is without value as precedent and shall not be used in any proceeding or hearing to create, prove, or interpret the obligations under, or terms and conditions of, any other agreement or any insurance policy.

6.7 Prevailing Party. If any legal action or other proceeding is brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in that legal action or other proceeding.

6.8 Captions. The captions and headings used throughout this Agreement are for convenience or reference only, and the words contained therein shall in no way be held or deemed to define, limit describe, explain, modify, amplify or aid in the interpretation, consideration or meaning of any provisions or the scope or the intent of this Agreement.

6.9 Binding Effect. This Agreement is intended by the Parties for their sole and exclusive benefit and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, parent companies, subsidiaries, affiliates, predecessors, successors, and assigns. Successors and assigns shall include future owners of the Property and future owners of the MGP Property.

6.10 Warranty of Authorized Signatories. Each of the authorized signatories hereto warrants and represents that he or she is competent and is authorized to enter into this Agreement on behalf of the Party for which he or she purports to sign.

6.11 Good Faith. The Parties acknowledge that the settlement set forth in this Agreement is entered into in good faith, as a result of arms' length negotiations, and to resolve and compromise disputed Claims between them.

6.12 Third Party Beneficiaries. Provided that PSE has signed this Agreement, and until such time as all of the Lindskogs have signed the Agreement, all of the Lindskogs shall be third-party beneficiaries solely with respect to Sections 3, 4 and 5 of the Agreement.

[No further text; signature page follows]

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: Nov. 27, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: [Signature]
Name: Lorna Luchbe
Its: Assistant General Counsel

CANRAY LLC:

Dated: _____, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: _____
Name: _____
Its: _____

ESTATE OF VERNON L. LINDSKOG:

Dated: _____, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: _____
Name: _____
Its: _____

RONALD LINDSKOG:

Dated: _____, 2017

RONALD LINDSKOG,
a single man

By: _____
Name: _____
Its: _____

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: _____, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

CANRAY LLC:

Dated: 11/13, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: J. A. L.
Name: JACK A. LINDSKOG
Its: PRESIDENT

ESTATE OF VERNON L. LINDSKOG:

Dated: _____, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: _____
Name: _____
Its: _____

RONALD LINDSKOG:

Dated: _____, 2017

RONALD LINDSKOG,
a single man

By: _____
Name: _____
Its: _____

CITY OF OLYMPIA:

Dated: _____, 2017

CITY OF OLYMPIA,
a Washington municipality

By: _____
Name: _____
Its: _____

PUGET SOUND ENERGY, INC.:

Dated: _____, 2017

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

CANRAY LLC:

Dated: _____, 2017

CANRAY LLC,
a Washington Limited Liability Company

By: _____
Name: _____
Its: _____

ESTATE OF VERNON L. LINDSKOG:

Dated: 11-14-17, 2017

ESTATE OF VERNON L. LINDSKOG, a
Washington estate

By: Joan F. Lindskog
Name: Joan F. Lindskog
Its: Executrix

RONALD LINDSKOG:

Dated: 11-14-, 2017

RONALD LINDSKOG,
a single man

By: [Signature]
Name: RONALD LINDSKOG
Its: _____

EXHIBIT A

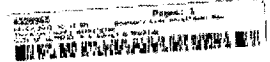
LEGAL DESCRIPTION OF THE PROPERTY

BLOCK 5 OF SWANS ADDITION, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, THURSTON COUNTY RECORDS, TOGETHER WITH THE VACATED ALLEY, CITY OF OLYMPIA ORDINANCE NO. 3200 AND NO. 6524.

IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

TAX PARCEL NOS. 78200500100, 78200500500, and 78200500700.

RECORD OF SURVEY~BOUNDARY LINE ADJUSTMENT NO. 13-0040-01
OLYMPIA CITY HALL PROJECT No. C109 BLOCK 5 SPANNS ADDITION SITUATED IN THE NORTHWEST QUARTER OF
THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 18 NORTH, RANGE 2 WEST, WILAMETTE MERIDIAN,
THURSTON COUNTY, WASHINGTON
2013



DECLARATION OF BOUNDARY LINE ADJUSTMENT

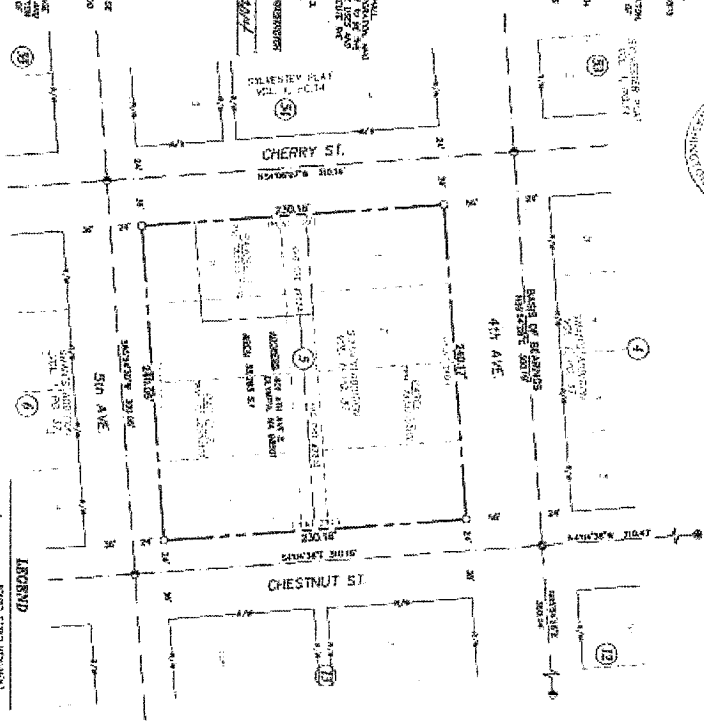
BEFORE ME, the undersigned authority, on this day personally appeared Chad R. Smith, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. My commission expires 12/31/2014.



ORIGINAL INSTRUMENT DESCRIPTION

RECORDED INSTRUMENT NO. 13-0040-01, BOUNDARY LINE ADJUSTMENT NO. 13-0040-01, CITY OF OLYMPIA, WASHINGTON, 2013. THIS INSTRUMENT WAS RECORDED IN THE PUBLIC RECORDS OF THURSTON COUNTY, WASHINGTON, ON 12/10/2013.

RESULTING LOCAL DESCRIPTION OF B.L.A. SUBJECT:
City of Olympia, Department of Public Works, 4th Avenue Addition, Northwest Quarter of Section 14, Township 18 North, Range 2 West, Willamette Meridian, Thurston County, Washington, 2013.



SURVEY EQUIPMENT

Surveyed with a Trimble SPP600 GNSS receiver, Leica TS16 total station, and Leica Disto D3 digital level.

BASES OF BEARINGS

Base bearings were obtained from the National Geodetic Survey (NGS) datum. All bearings are given in true bearings.

SURVEY PROCEDURES

The survey was conducted using a traverse method. All measurements were taken in a clockwise direction. The survey was closed by returning to the starting point.



SURVEYOR CERTIFICATE

I, Chad R. Smith, a duly licensed surveyor in the State of Washington, do hereby certify that I have personally supervised the execution of the above described survey and that the same has been correctly and truthfully reduced to writing in accordance with the laws of the State of Washington.

CITY OF OLYMPIA APPROVAL

City of Olympia, Department of Public Works, 4th Avenue Addition, Northwest Quarter of Section 14, Township 18 North, Range 2 West, Willamette Meridian, Thurston County, Washington, 2013.

AUDITOR'S CERTIFICATE

This is to certify that the above described survey has been correctly and truthfully reduced to writing in accordance with the laws of the State of Washington.

Table with 4 columns: NAME, ADDRESS, DISTRICT, DATE.

EXHIBIT C

LEGAL DESCRIPTION OF MGP PROPERTY

LOTS 6 TO 10 IN BLOCK 14 OF SWANS ADDITION, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, THURSTON COUNTY RECORDS, TOGETHER WITH THE VACATED SOUTHERLY 10 FEET OF ALLEY ADJOINING LOTS 6 AND 7 ON THE NORTH AND WITH THE SOUTH HALF OF THE ALLEY VACATED BY ORDINANCE NO. 138 RECORDED MARCH 29, 1890 UNDER FILE NO. 6373.

IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

TAX PARCEL NOS. 78201400600 AND 78201400800.



City Council

Approval of Ordinance Amending the Critical Areas Ordinance to add Habitat and Species Protections for Great Blue Heron

Agenda Date: 12/5/2017
Agenda Item Number: 6.A
File Number: 17-1232

Type: ordinance **Version:** 1 **Status:** Other Business

Title

Approval of Ordinance Amending the Critical Areas Ordinance to add Habitat and Species Protections for Great Blue Heron

Recommended Action

Committee Recommendation:

The Land Use and Environment Committee has received updates and provided direction during the process of developing this proposal.

At its October 2, 2017, meeting, the Olympia Planning Commission voted 4-2 to recommend approval of the attached ordinance.

City Manager Recommendation:

Move to approve the ordinance adding a new section of the Olympia Critical Areas Ordinance (OMC 18.32) to provide additional protections for Great Blue Heron rookeries on first reading and forward to second reading.

Report

Issue:

Whether to adopt the proposed amendments to the Critical Areas Ordinance, which include additional protections Great Blue Heron rookeries as locally important habitats.

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning and Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director, Community Planning and Development

Background and Analysis:

The Washington State Growth Management Act (GMA) required the City to update its Critical Areas Ordinance (CAO) in 2016 to ensure it was consistent with the Best Available Science (BAS) and to protect anadromous fish. In 2015, the Land Use and Environment Committee (LUEC) directed staff to

conduct an update of the City's CAO in two phases:

- Phase 1 - the state-mandated update to include BAS and protect anadromous fish. Phase 1 was completed by City Council adoption of Ordinance 7030 on August 16, 2016 (see Attachment 2).
- Phase 2 - review potential additional protections for locally important habitat and species, including Great Blue Heron.

State law requires that protection measures for critical areas that occur along shorelines must be included in the City's Shoreline Master Program (RCW 36.70A.480). So, to ensure the City's CAO provisions also apply in shoreline areas, the City's Shoreline Master Program (SMP) adopts the CAO by reference. Amendments to the CAO are then also required to be amended into the SMP and approved by the WA Department of Ecology. Therefore, Ordinance 7030 specified that the Phase 1 CAO amendments will be effective upon approval by the State Department of Ecology.

At its July 11, 2017, meeting, the City Council approved additional amendments to the CAO, as recommended by the Planning Commission, in Ordinance 7090 (See Attached). The City Council directed that Ordinance 7090 and Ordinance 7030 (Phase 1 CAO amendments) be sent to Ecology for review and approval as amendments to Olympia's SMP. The City Council also referred potential additional protections for Great Blue Heron rookeries back to the Planning Commission for a recommendation.

The Planning Commission deliberated further at its September 25 and October 2, 2017, meetings and recommends adoption of the attached ordinance (see Attachment 8). The primary difference between the recommended ordinance and the earlier version considered by the Planning Commission in January - April 2017 is that the length of time protections would apply to a heron rookery after its last known active nesting season is six years rather than 10 years.

If the City Council approves the ordinance, a draft resolution will be brought before the Council at its next regular meeting to direct staff to send the ordinance to Ecology for review and approval as an amendment to the City's Shoreline Master Program.

Background - Locally Important Habitat and Species

The City's consultant, ESA, presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017 (Attached). Staff hosted a public open house to discuss proposed amendments, including protections for Great Blue Herons, on January 18, 2017. Planning Commission held a public hearing on January 23, 2017, and deliberated further at its meetings on February 6 and 27, March 6 and 20, and April 3. (All meeting packets, minutes and public comments considered at those Planning Commission meetings are attached.)

On February 27, 2017, the Planning Commission completed its deliberations on part of the recommended changes and unanimously supported the proposed amendments to OMC 18.02, 18.32.500 and 18.20, and amendments to the Shoreline Master Program. These amendments were adopted by the City Council in Ordinance 7090.

However, the Planning Commission could not reach agreement on the proposed amendments to OMC 18.32.300-330. At its April 3, 2017, meeting they voted to send no recommendation to Council

on those sections. Instead, the Commissioners passed a motion to write a letter to City Council explaining their reasons (see attached Planning Commission letter). The City Council reviewed the letter and referred consideration of protections for Great Blue Heron rookeries back to the Planning Commission for a recommendation.

Great Blue Heron and Habitat

In general, staff proposed the following approaches to protect heron nesting colonies when development is proposed:

- Adopt fixed-width buffers around heron nesting colonies
- Require tree and vegetative screening
- Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
- Require mitigation sequencing where appropriate
- Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, staff proposed smaller buffers - a 200-foot year-round buffer and an additional 300-foot seasonal buffer for nesting colonies - than that recommended by WDFW for nests in rural and less developed areas. These buffer widths align more closely with those of two other cities that have adopted protections for Great Blue Heron rookeries - the Cities of Kenmore and Seattle.

Non-regulatory Approach in West Olympia

The most effective way to protect important habitat and species is to acquire and manage land that provides the necessary habitat for important species. Several properties containing and adjacent to a known Great Blue Heron rookery in West Olympia have been purchased by the Olympia Ecosystems Coalition for that purpose.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron. Comments considered by the Planning Commission are attached.

Options:

1. Approve the ordinance adding a new section of the Olympia critical areas ordinance (OMC 18.32) to provide additional protections for great blue heron rookeries.
2. Do not approve the ordinance.
3. Approve specific revisions to the ordinance and adopt as revised.
4. Refer the draft ordinance to Land Use and Environment Committee for further discussion.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's budget; however, additional habitat and species protections may require additional resources in the future.

Attachments:

Ordinance

Ordinance 7030

Ordinance 7090

ESA Technical Memo - Options

ESA Technical Memo - Recommendations

Planning Commission meeting packets and minutes Jan. - April 2017

Planning Commission Recommendation Letter

Planning Commission meeting minutes and public comments Sept. 25 & Oct. 2, 2017

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO CRITICAL AREAS AND ADDING A NEW SECTION IN CHAPTER 18.32 ESTABLISHING PERFORMANCE STANDARDS FOR GREAT BLUE HERON ROOKERIES AS LOCALLY IMPORTANT HABITATS

WHEREAS, OMC 18.32 contains the City's development regulations pertaining to the protection of critical areas located within the City; and

WHEREAS, the City contracted with a consultant who 1) performed research on the standards and requirements for regulating critical areas, including protection of locally important habitat and species, 2) considered guidance available from state agencies including the Departments of Ecology and Fish and Wildlife, and 3) consulted with experts in the disciplines covered by these regulations; and

WHEREAS, the environmental impacts of the amendments to the critical areas regulations resulted in the issuance of a Determination of Non-Significance (DNS) on January 10, 2017; and

WHEREAS, the City of Olympia Planning Commission (the Planning Commission) considered the proposed Critical Areas Regulations amendments at a properly noticed public hearing on January 23, 2017, so as to receive public testimony; and

WHEREAS, at its October 2, 2017, meeting, the Planning Commission voted to recommend approval of the amendments to the critical areas regulations; and

WHEREAS, on December 5, 2017, the City Council discussed the proposed Critical Areas and Shoreline Master Program Regulations amendments at a properly noticed open public meeting; and

WHEREAS, pursuant to RCW 36.70A.370, the City used the process established by the Washington State Attorney General to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on January 11, 2017, the City provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code; and

WHEREAS, the City Council considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, including documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, the City Council determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens and property owners of the City; and

WHEREAS, the City Council determined that the proposed amendments are consistent with the goals and requirements of the Growth Management Act; and

WHEREAS, it is the Council expectation that this Ordinance will not be published as required by law until it is approved by the Washington State Department of Ecology; and

WHEREAS, once the Department of Ecology approves the Ordinance, then it may be published as required by law; and

WHEREAS, this Ordinance meets the goals and requirements of the Growth Management Act; and

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 18.32.000. Olympia Municipal Code 18.32.000 is hereby amended to read as follows:

18.32.000 Chapter Contents

Sections:

- 18.32.100 General Provisions - Purpose and Intent.
- 18.32.105 General Provisions - Critical Area Development Regulations.
- 18.32.110 General Provisions - Application of Critical Area Regulations.
- 18.32.115 General Provisions - Applicant Requirements.
- 18.32.120 General Provisions - Application Form for Critical Areas Review.
- 18.32.125 General Provisions - Department Requirements.
- 18.32.130 General Provisions - Hearing Examiner Role.
- 18.32.135 General Provisions - Mitigation Priorities.
- 18.32.140 General Provisions - Critical Area Tracts.
- 18.32.145 General Provisions - Signs and Fencing.
- 18.32.150 General Provisions - Notice on Title.
- 18.32.155 General Provisions - Authorized Activity Time Period.
- 18.32.160 General Provisions - Application of Multiple Development Regulations.
- 18.32.165 General Provisions - Emergency Actions.
- 18.32.170 General Provisions - Critical Area Maps.
- 18.32.200 Drinking Water (Wellhead) Protection Areas - Purpose and Intent.
- 18.32.205 Drinking Water (Wellhead) Protection Areas - Applicability and Designation.
- 18.32.210 Drinking Water (Wellhead) Protection Areas - Exempt Uses and Activities.
- 18.32.215 Drinking Water (Wellhead) Protection Areas - Prohibited Uses.
- 18.32.220 Drinking Water (Wellhead) Protection Areas - Administratively Authorized Uses and Activities.
- 18.32.225 Drinking Water (Wellhead) Protection Areas - Minimum Mitigation Standards.
- 18.32.230 Drinking Water (Wellhead) Protection Areas - Hydrogeological Report.

- 18.32.235 Drinking Water (Wellhead) Protection Areas - Existing Uses.
- 18.32.240 Drinking Water (Wellhead) Protection Areas - Farm Conservation Plan.
- 18.32.300 Important Habitats and Species - Purpose and Intent.
- 18.32.305 Important Habitats and Species - Applicability and Definition.
- 18.32.310 Important Habitats and Species - Exempt, Prohibited, Administratively Authorized Uses, and Hearing Examiner Authorized Uses and Activities.
- 18.32.315 Important Habitats and Species - Authority.
- 18.32.320 Important Habitats and Species - Buffers.
- 18.32.325 Important Habitats and Species - Special Reports.
- 18.32.327 Process to Identify Additional Locally Important Habitat and Species.
- 18.32.328 Locally Important Habitat and Species – Definitions and Performance Standards
- 18.32.330 Important Habitats and Species - Management Plan.
- 18.32.400 Streams and Important Riparian Areas - Purpose and Intent.
- 18.32.405 Streams and Important Riparian Areas - Applicability and Definition.
- 18.32.410 Streams and Important Riparian Areas - Typing System.
- 18.32.415 Streams and Important Riparian Areas - Prohibited Alterations.
- 18.32.420 Streams and Important Riparian Areas - Exempt Uses and Activities.
- 18.32.425 Streams and Important Riparian Areas - Administratively Authorized Uses and Activities.
- 18.32.430 Streams and Important Riparian Areas - Hearing Examiner Authorized Uses and Activities.
- 18.32.435 Streams and Important Riparian Areas - Buffers.
- 18.32.440 Streams and Important Riparian Areas - Special Reports.
- 18.32.445 Streams and Important Riparian Areas - Biological Assessment.
- 18.32.500 Wetlands and Small Lakes - Purpose and Intent.
- 18.32.505 Wetlands and Small Lakes - Definition.
- 18.32.510 Wetlands and Small Lakes - Rating System.
- 18.32.515 Wetlands - Small Wetlands.
- 18.32.518 Wetlands and Small Lakes - Prohibited Alterations.
- 18.32.520 Wetlands and Small Lakes - Exempt Uses and Activities.
- 18.32.525 Wetlands and Small Lakes - Administratively Authorized Uses and Activities.
- 18.32.530 Wetlands and Small Lakes - Hearing Examiner Authorized Uses and Activities.
- 18.32.535 Wetlands and Small Lakes - Wetland Buffers.
- 18.32.540 Wetlands and Small Lakes - Compensating for Loss or Affected Functions.
- 18.32.545 Wetlands and Small Lakes - Compensation Projects.
- 18.32.550 Wetlands and Small Lakes - Replacement Ratios.
- 18.32.555 Wetlands and Small Lakes - Increase and Reduction to Replacement Ratios
- 18.32.560 Wetlands and Small Lakes - Type and Location of Compensation Mitigation.
- 18.32.565 Wetlands and Small Lakes - Mitigation Timing.
- 18.32.570 Wetlands and Small Lakes - Wetland Mitigation Banks.

- 18.32.575 Wetlands and Small Lakes - Special Reports.
- 18.32.580 Wetlands and Small Lakes - Wetland Boundary Delineation.
- 18.32.585 Wetlands and Small Lakes - Wetland Rating Report.
- 18.32.587 Wetlands and Ponds - Wetland Rating Report.
- 18.32.590 Wetlands and Small Lakes - Wetland Mitigation Report.
- 18.32.595 Wetlands and Small Lakes - Wetland Compensation Mitigation Report.
- 18.32.600 Landslide Hazard Areas - Purpose and Intent.
- 18.32.605 Landslide Hazard Areas - Applicability and Definition.
- 18.32.610 Landslide Hazard Areas - Prohibited Alterations.
- 18.32.615 Landslide Hazard Areas - Exempt Uses and Activities.
- 18.32.620 Landslide Hazard Areas - Administratively Authorized Uses and Activities.
- 18.32.625 Landslide Hazard Areas - Hearing Examiner Authorized Uses and Activities.
- 18.32.630 Landslide Hazard Areas - Buffers.
- 18.32.635 Landslide Hazard Areas - Special Reports.
- 18.32.640 Landslide Hazard Areas - Geotechnical Report.
- 18.32.645 Landslide Hazard Areas - Covenant.

Section 2. Amendment of OMC 18.32. A new Section 18.32.328 is hereby added to the Olympia Municipal Code to read as follows.

18.32.328 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary, subject to the reasonable use exception provisions of OMC 18.66.040.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

1. No development shall occur in the great blue heron nesting colony.
2. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:
 - a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, the City may allow development within the year-round buffer April 16 through January 31, subject to the provisions of OMC 18.32.328(C)(2).
4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron core zone for this colony shall be protected under the provisions of this subsection C for a period of six years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

1. Development may occur at any time in the seasonal buffer, subject to the following: When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels at the site shall not be performed during the great blue heron nesting season. The nesting season is February 15 through August 31, unless a different nesting season for that year is certified by a written report from a qualified professional.
2. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger outside of developed areas shall be retained. Any required new or

replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

Section 3. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

ORDINANCE NO. 7030

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON RELATING TO CRITICAL AREAS AND AMENDING CHAPTER 18.32, AND SECTIONS 18.02.180 AND 18.37.070 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, the City of Olympia is required to plan under RCW 36.70A.040; and

WHEREAS, the Growth Management Act mandates that the City adopt development regulations to protect the functions and values of five (5) types of critical areas: wetlands, critical aquifer recharge areas, fish and wildlife habitat areas, frequently flooded areas, and geologically hazardous areas; and

WHEREAS, OMC 18.32 contains the City's development regulations pertaining to the protection of critical areas located within the City; and

WHEREAS, OMC 18.02.180 contains definitions pertaining, in part, to critical areas; and

WHEREAS, OMC 18.37.070 pertains to nonconforming structures and uses within critical areas; and

WHEREAS, pursuant to RCW 36.70A.130, the City is required to periodically review and, if needed, revise its development regulations, including its critical areas regulations, to ensure its regulations comply with the goals and requirements of the Growth Management Act; and

WHEREAS, RCW 36.70A.172 requires that when reviewing its Critical Areas Regulations the City must include Best Available Science in developing the regulations to protect the functions and values of critical areas and to give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, in performing this periodic review, the City hired a consultant who did extensive research on the standards and requirements for regulating critical areas, considered guidance available from state agencies including the Departments of Commerce and Ecology, consulted with experts in the disciplines covered by these regulations, and considered various sources of Best Available Science in developing its Critical Areas Regulations, giving special consideration to anadromous fisheries; and

WHEREAS, mines and volcanic hazards have not been included in this critical areas update as the City is not subject to these geological hazards; and

WHEREAS, the environmental impacts of the amendments to the Critical Areas Regulations resulted in the issuance of a Determination of Non-Significance (DNS) on May 26, 2016, with no appeals filed; and

WHEREAS, in developing these Critical Areas Regulations, the City provided for early and continuous public participation through a variety of means as demonstrated by the public record; and

WHEREAS, the City of Olympia Planning Commission considered the proposed Critical Areas Regulations amendments at a properly noticed public hearing on June 6, 2016, so as to receive public testimony; and

WHEREAS, at its June 20, 2016, meeting, the Planning Commission voted unanimously to recommend approval of the proposed amendment; and

WHEREAS, on July 19, 2016, the City Council discussed the proposed Critical Areas Regulations amendments at the properly noticed open public meeting; and

WHEREAS, pursuant to RCW 36.70A.370, the City utilized the process established by the Washington State Attorney General to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on May 17, 2016, the City provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code; and

WHEREAS, the City Council considered the entire public record, public comments, written and oral, the Best Available Science, and the Planning Commission's recommendation; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, including documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance;

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, the City Council determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens and property owners of the City; and

WHEREAS, the City Council determined that the proposed amendments are necessary to ensure compliance with the goals and requirements of the Growth Management Act;

WHEREAS, it is the Council expectation that this Ordinance will not be published as required by law until it is approved by the Washington State Department of Ecology; and

WHEREAS, once the Department of Ecology approves the Ordinance, then it may be published as required by law; and

THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. OMC 18.32 Critical Areas is amended as set forth in Exhibit A to this Ordinance; OMC.18.02.180 Definitions is amended as set forth in Exhibit B to this Ordinance; and OMC 18.37.070 Nonconforming Structures and Uses Within Critical Area Buffers is amended as set forth in Exhibit C to this Ordinance.

Section 2. Severability. If any portion of OMC 18.32, OMC 18.02.180, or OMC 18.37.070 is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other chapter or any other section of OMC 18.32, OMC 18.02, or 18.37.070.

Section 3. Codification of Amendments. The City Council authorizes the City Clerk to correct any non-substantive errors in Exhibit A, codify the amendments to OMC 18.32, 18.02.180, and 18.37.070 and publish the amended code.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Publication and Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR



ATTEST:

CITY CLERK



APPROVED AS TO FORM:

CITY ATTORNEY



PASSED: 8/16/2016

APPROVED: 8/16/2016

PUBLISHED:

Ordinance No. 7090

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO
CRITICAL AREAS AND AMENDING SECTION 18.02.180 AND CHAPTER 18.20
AND 18.32 OF THE OLYMPIA MUNICIPAL CODE**

WHEREAS, Olympia Municipal Code (OMC) Chapter 18.32 contains the City's development regulations pertaining to the protection of critical areas located within the City of Olympia; and

WHEREAS, OMC Section 18.02.180 contains definitions pertaining, in part, to critical areas; and

WHEREAS, OMC Chapter 18.20 contains the City's Shoreline Master Program Regulations; and

WHEREAS, the City contracted with a consultant who 1) performed research on the standards and requirements for regulating critical areas, including protection of locally important habitat and species, 2) considered guidance available from state agencies including the Department of Ecology and the Department of Fish and Wildlife, and 3) consulted with experts in the disciplines covered by these regulations; and

WHEREAS, the environmental impacts of the amendments to the Critical Areas Regulations resulted in the issuance of a Determination of Non-Significance (DNS) on January 10, 2017, with no appeals filed; and

WHEREAS, the City of Olympia Planning Commission (the Planning Commission) considered the proposed Critical Areas and Shoreline Master Program Regulations amendments at a properly noticed public hearing on January 23, 2017, so as to receive public testimony; and

WHEREAS, at its February 27, 2017 meeting, the Planning Commission voted unanimously to recommend approval of the proposed amendment; and

WHEREAS, on July 11, 2017, the City Council discussed the proposed Critical Areas and Shoreline Master Program Regulations amendments at a properly noticed open public meeting; and

WHEREAS, pursuant to RCW 36.70A.370, the City used the process established by the Washington State Attorney General to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on January 11, 2017, the City provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code, OMC Title 18; and

WHEREAS, the City Council considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, including documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, the City Council determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens and property owners of the City; and

WHEREAS, the City Council determined that the proposed amendments are consistent with the goals and requirements of the Growth Management Act; and

WHEREAS, it is the Council's expectation that this Ordinance will not be published as required by law until it is approved by the Washington State Department of Ecology (DOE); and

WHEREAS, once DOE approves the Ordinance, then it may be published as required by law;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 18.02.180. Olympia Municipal Code Subsection 18.02.180.L is hereby amended to read as follows:

18.02.180 Definitions

L. DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 18.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving authority.

Landscape Structure. A fence, wall, trellis, statue or other landscape and ornamental object.

Landscaping. An area devoted to or developed and maintained predominantly with native or non-native plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

Landslide. Episodic down-slope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, earthflows and snow avalanches.

Large Lot Subdivision. The division of land into lots or tracts, each of which is 1/128 of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land.

Laundry and Laundry Pick-up Agency. An enterprise where articles of clothing, linen, etc. are washed, including self-service laundries as well as those where customers drop off articles to be laundered either on or off the premises, or dry-cleaned off the premises only. This includes diaper services, but not the following, which are classified as Light Industrial uses: dry-cleaning plants, linen supply services, carpet and upholstery cleaning plants, and industrial launderers.

Legal Lot of Record. A lot of a subdivision plat or binding site plan or a parcel of land described in a deed either of which is officially recorded to create a separate unit of property, provided that such plat, site plan, or deed shall accord with applicable local, state or federal law on the date created. Separate descriptions of adjoining parcels within a single deed shall not necessarily constitute separate legal lots of record.

Local Improvement. A public improvement for the benefit of property owners provided to a specific area that benefits that area and that is usually paid for, at least in part, by a special assessment.

Lodging House. See Dwelling, Transient.

Lot. Lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall also include tracts and parcels. Lot classifications are as follows:

- a. Lot, Corner. A lot that abuts two (2) or more intersecting streets.
- b. Lot, Flag or Panhandle. A lot with less than thirty (30) feet of street frontage which is typically connected to a public or private street by a narrow driveway. A lot where access is only provided by a private easement is not a flag lot.
- c. Lot, Interior. A lot that has frontage on one public or private street only, or is provided access by a private easement.
- d. Lot, Through. A lot that fronts on two (2) parallel or nearly parallel streets that do not intersect at the boundaries of the lot.
- e. Lot, Wedge-shaped. A lot with a street frontage which is no more than half as wide as the lot's width at the rear property line, as depicted in Figure 2-5b.

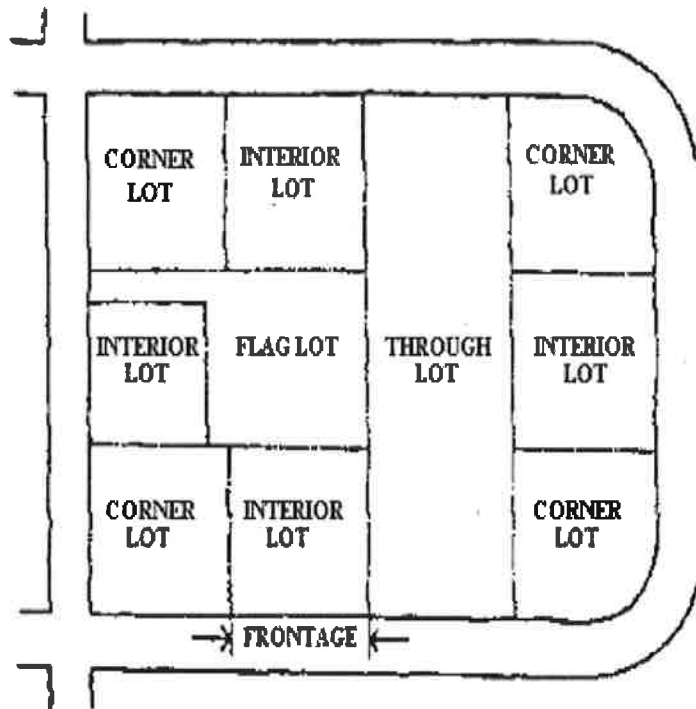
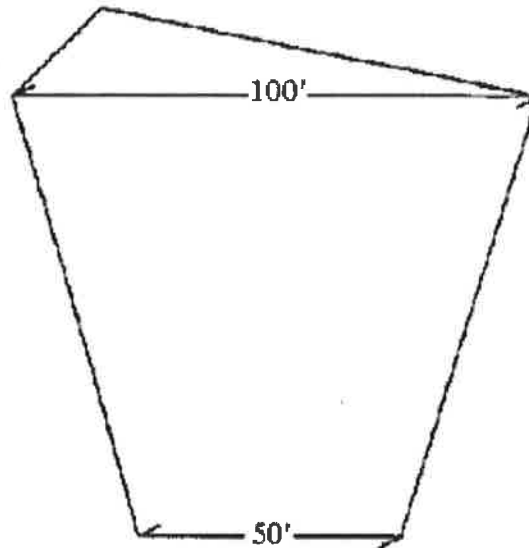


FIGURE 2-5



Example of a Wedge-Shaped Lot

FIGURE 2-5b

Lot Frontage. See Frontage.

Lot Line. A line dividing one lot from another lot or from a street rights-of-way or alley. (See also Property Line.)

Lot of Record. A lot, the plat, or deed to which is officially recorded as a unit of property and is described by metes and bounds.

Lot, Substandard. A parcel of land that is less than the minimum area or minimum dimensions required in the zone in which the lot is located. (See also Minimum Lot Size, Undersized Lots in development standards.)

Lot Width. The straight line distance measured between side lot lines parallel to the front setback line. (See also Section 18.04.080(G)(1) and Table 4.04.)

Low Income Housing. See Affordable Housing.

Section 2. Amendment of OMC 18.02.180. Olympia Municipal Code Subsection 18.02.180.O is hereby amended to read as follows:

18.02.180 Definitions

O. DEFINITIONS - SPECIFIC.

Object. A thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Off-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes or special incinerator ash generated on properties other than the property on which the off-site facility is located. (See also current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.)

Office. A building or portion thereof which is primarily used to transact the administrative or professional activities of a business. Such uses include, but are not limited to: medical (excluding veterinary), dental, chiropractic, optometric, legal, banking, insurance, real estate, security brokers, administrative, public, contractors, consultants, corporate, or manufacturers' offices. (See also Home Occupation.)

Office, Bank. Banks, savings and loans, credit unions, and other depository institutions.

Office, Business. The offices of real estate agencies, mortgage brokers, advertising agencies, credit agencies, mailing services and postal substations, employment agencies, insurance agencies, membership organizations except fraternal organizations, accountants, attorneys, security brokers, financial advisors, architects, engineers, surveyors, tax preparation services, computer software development, and other similar business services. This may also include the administrative offices for businesses whose primary activity may be construction, manufacturing, utility services, or some other non-office use conducted elsewhere.

Office, Government. The legislative, administrative, service delivery, or judicial offices of local, state, or federal agencies. It also includes federal post offices where mail processing takes place for local delivery. It does not include government land uses such as maintenance facilities for government-owned trucks, busses, or heavy equipment which are a Light Industrial use.

Office, Medical. This includes the offices of doctors, dentists, chiropractors, optometrists, and other health practitioners providing outpatient care. It also includes medical and dental laboratories, blood banks, and the like.

Office Supplies and Equipment Stores. Stores selling office products such as stationery, legal forms, writing implements, typewriters, computers, copiers, office furniture, and the like.

Office Uses, General. A room or group of rooms used for conducting the affairs of a business and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020 (3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020 (3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020 (3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per WAC ~~22-110-020~~220-660-030, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OHWM~~OHWM is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

Section 3. Amendment of OMC 18.20.420. Olympia Municipal Code Section 18.20.420 is hereby amended to read as follows:

18.20.420 Critical Areas

A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.

B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.

C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:

1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.

2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) (~~OMC 18.32.435(H)~~) within shoreline jurisdiction shall require a shoreline variance.

~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

~~43.~~ Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(KI)) and only when no other location is feasible.

~~54.~~ Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

~~65.~~ Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

~~86. Wetland buffer reductions beyond twenty-five percent (25%) (OMC 18.32.535(H)) within shoreline jurisdiction shall require a shoreline variance.~~

~~97. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).~~

~~108. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.~~

~~119. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.~~

~~1210. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).~~

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

Section 4. Amendment of OMC 18.20.810. Olympia Municipal Code Section 18.20.810 is hereby amended to read as follows:

18.20.810 Permitted Shoreline Modifications

Shoreline modifications may be allowed by shoreline environment designation as listed in Table 7.1. Aquatic environment provisions are based on the adjacent environment designation, including permitted with a Shoreline Substantial Development Permit or exemption (P), Shoreline Conditional Use permit (C), or prohibited outright (X). This table shall be used in conjunction with the written provisions for each use. Column notes provide additional clarification and identify other applicable City regulations.

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and	X	X/C See OMC	←	See OMC 18.20.872 through

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Weirs		18.20.874		18.20.874
Stair Towers	X	X	←	Prohibited

Section 5. Amendment of OMC 18.32.300. Olympia Municipal Code Section 18.32.300 is hereby amended to read as follows:

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, Chapter 18.20 OMC.

Section 6. Amendment of OMC 18.32.305. Olympia Municipal Code Section 18.32.305 is hereby amended to read as follows:

18.32.305 Important Habitats and Species - Applicability and Definition

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or
- C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.325; or
- ED. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems,

communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

Section 7. Amendment of OMC 18.32.315. Olympia Municipal Code Section 18.32.315 is hereby amended to read as follows:

18.32.315 Important Habitats and Species - Authority

A. ~~No development shall be allowed in an important habitat and species area where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305 without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.~~

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

Section 8. NEW SECTION 18.32.325. A NEW SECTION 18.32.325 is hereby added to Chapter 18.32 of the Olympia Municipal Code to read as follows:

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to Chapter 18.58 OMC, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and
5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

Section 9. Amendment of OMC 18.32.500. Olympia Municipal Code Section 18.32.500 is hereby amended to read as follows:

18.32.500 Wetlands and Small Lakes - Purpose and Intent

In order to protect the natural function of wetlands and "small lakes" for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands and "small lakes" or which lie within three hundred (300) feet of wetlands and "small lakes" shall be subject to the standards in OMC 18.32.505 through OMC 18.32.595.

(Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 (twenty) acres in size, and streams can be found in Chapter 18.20 OMC, Shoreline Master Program.)

Section 10. Amendment of OMC 18.32.515. Olympia Municipal Code Section 18.32.5015 is hereby amended to read as follows:

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

1. Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; and
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; and
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420.C.3.

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland;

2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic;
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014);
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; and
6. A wetland mitigation report is provided as required by OMC 18.32.590;
7. No part of the wetland is within shorelines of the State of Washington.

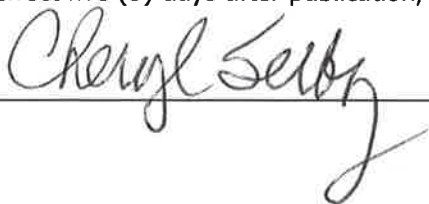
Section 11. Official Shoreline Map. The current official Shoreline Map of the City of Olympia as referenced in OMC 18.20.310, Figure 4.1, is hereby replaced by the City of Olympia Shoreline Map attached hereto as Exhibit A.

Section 12. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary, non-substantive corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 13. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.


Section 14. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 15. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.



 MAYOR

ATTEST:



 CITY CLERK

APPROVED AS TO FORM:



 CITY ATTORNEY

PASSED: 7/18/2017

APPROVED: 7/18/2017

PUBLISHED: 7/20/2017



FIGURE 4.1 OLYMPIA SHORELINE MASTER PROGRAM

Shoreline Environment
Designations 10/8/2015

- AQUATIC
- MARINE RECREATION
- NATURAL
- PORT MARINE INDUSTRIAL
- SHORELINE RESIDENTIAL
- URBAN CONSERVANCY
- URBAN INTENSITY
- WATERFRONT RECREATION
- Roads
- Urban Growth Area
- Olympia City Limits
- Tumwater/Lacey City Limits



DISCLAIMER: This map was created for internal City use only. The parcels, right-of-ways, utilities and structures depicted on this map are based on information taken from historical records and aerial photos. The information has not been independently verified as complete or accurate. Access to such information is provided to the public as a matter of public record for general information only. The completeness and accuracy of this information should not be relied upon. Users are advised to independently verify all information through a private licensed professional. The City of Olympia and its personnel expressly disclaim any liability arising from commercial or private use of this map or the information or absence of information contained herein.



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memorandum

date August 5, 2016

to Linda Bentley, City of Olympia
Leonard Bauer, City of Olympia

from Ilon Logan and Christina Hersum, ESA

subject Critical Areas Ordinance Update Phase II: Locally Important Species and Associated Habitats Overview and Options Memo

The City of Olympia (City) is concluding its Critical Areas Ordinance (CAO) update process in accordance with the requirements of the Growth Management Act (GMA) (RCW 36.70A). The City has performed a review of current best available science (BAS) for informing policies and regulations that protect and manage activities in and near critical areas and applied special considerations to salmonids. The *Best Available Science* memo (ESA, 2016) incorporates the findings of previous review efforts conducted by the City and assesses the existing regulations for consistency with current BAS.

For Phase II of the CAO update process, the City has elected to research, evaluate, and engage community members and elected officials in identifying potential protections for locally important species and associated habitats. The City is interested in multiple wildlife species, but in particular, great blue heron. ESA has prepared this memo to incorporate findings from the BAS science review with information from the City regarding valued wildlife species and/or habitats in the City and describe the following:

- Current federal, state, and local regulatory protections for wildlife species and their habitats;
- Legal basis for protecting species and habitats of local value or importance;
- Current approaches in cities with comparable characteristics to Olympia; and
- Options for increasing protections the identified species and/or habitats.

The intent of this memo is to provide a basis for discussion between stakeholders and the City about wildlife and wildlife habitats in Olympia.

Mapped Priority Species and Habitats and Prairie Soils in Olympia

ESA performed a limited evaluation of existing GIS information of species and habitats in the City and its UGA. The major source of information is the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) database (WDFW, 2016). The PHS database is continuously updated by WDFW, but does not include all known occurrences of priority species and habitats due to limited agency resources. Figure 1 shows the location of current and historic wildlife occurrences and concentrations as mapped by WDFW and Table 1 provides a summary of PHS records. The PHS database includes both individual species and species group records for Olympia including documentation of wood duck breeding areas, mink occurrences (both from the early 1990s), great blue heron rookeries, bald eagle and peregrine falcon breeding sites, and bat communal roosts. There are mapped concentrations of shorebirds and waterfowl in Budd Inlet and Capitol Lake, respectively. Capitol Lake and the Percival Creek riparian corridor is mapped as a Biodiversity Area and Corridor.

Table 1. Mapped WDFW Priority Habitats and Species

Habitat or Species	PHS Category	Location
Habitats		
Biodiversity Area & Corridor	Priority Habitat	Capitol Lake
Shorebird Concentration Area	Regular Concentration	Budd Inlet
Waterfowl Concentration Area	Regular Concentration	Capitol Lake
Birds		
Wood duck	Breeding Area	West Olympia
Great blue heron	Breeding Area	West Bay
Bald eagle	Breeding Area/Nest Site	Deschutes River, Capitol Lake (nest)
Peregrine falcon	Breeding Area/Nest Site	Port of Olympia
Purple martin	Breeding Area/Site	East Bay Marina, West Bay Marina, Percival Landing, Fiddlehead Marina
Vaux's swift	Communal Roost	Deschutes River, SE of Capitol Lake
Mammals and Amphibians		
Mink	Occurrence	Black Lake Ditch corridor
Mazama pocket gopher	Occurrence	One individual near Yelm Highway/Blvd Road
Oregon spotted frog	Occurrence	Two egg mass in Fish Pond Creek
Bats		
Yuma myotis	Communal Roost	Woodard Creek, Deschutes River, near Hazard Lake
California myotis	Communal Roost	Deschutes River
Big brown bat	Communal Roost	Capitol Lake
Little brown bat	Communal Roost	Woodard Creek
Townsend's Big-eared bat	Occurrence	Deschutes River
Fish		
Olympic mudminnow	Occurrence	Ditch at Kaiser Road, Green Cove (headwaters, drainage, Creek), Cooper Pt Road, Louise Lake, Woodard Creek

Coho	Occurrence/Migration	Indian Creek, Moxlie Creek, Deschutes River, Schneider Creek, Percival Creek, Ellis Creek, Black Lake Drainage Ditch
Fall Chinook	Occurrence/Migration	Indian Creek, Moxlie Creek, Deschutes River, Percival Creek
Fall Chum	Occurrence/Migration	Indian Creek, Moxlie Creek, Deschutes River, Percival Creek
Residential Coastal Cutthroat	Occurrence/Migration	Woodard Creek, Indian Creek, Deschutes River, Percival Creek
Winter Steelhead	Occurrence	Deschutes River, Woodard Creek
Surf smelt	Breeding Area	Budd Inlet

Prairie-dependent plant and wildlife species are of concern in Thurston County. As described in detail later in this memo, the County has designated prairies as locally important habitats and employs Natural Resources Conservation Service (NRCS) soil mapping to preliminarily identify locations that may support dry or wet prairie habitats. The County provides a list of soils known to be associated with prairies in its CAO (Table 24.25-6 in Thurston County Code Title 24). Figure 2 shows the location of these soil types in the City of Olympia and its UGA.

The Washington Department of Natural Resources (WDNR) maintains a database of rare plant species and ecosystems of special concern through its Natural Heritage Program (NHP). Native prairies and oak woodlands are considered high-quality terrestrial ecosystems and their occurrence is mapped by the NHP. Based on a review of the NHP database, there are no known locations of these habitats in the City of Olympia and its UGA.

Additional Information on Wildlife in the City

WDFW records for great blue heron in the City note active breeding (confirmed by WDFW biologists) in 2008, 2009, 2010, 2012, 2013, and 2014 (WDFW, 2015). Information provided by citizens note breeding in 2015 and 2016 (Einstein, 2016). Approximately 30 individuals comprise the heron population, which has alternated rookery locations on forested slopes of both the West Bay and East Bay of Budd Inlet (Einstein, 2016). The West Bay rookery location is shown on Figure 1.

The Black Hills Audubon Society conducts surveys of bird species in Olympia during the annual Christmas Bird Count. The data has been compiled by citizen volunteers and provides a basis of overall patterns in bird abundance over time when appropriately interpreted. Abundance patterns for great blue heron, purple martin, osprey, Western grebe, and Vaux’s swift are available (Black Hills Audubon, 2016).

Federal and State Regulatory Protections

Fish and wildlife species and their habitats are protected under multiple federal, state, and local government policies, regulations, and laws. At the federal level, the major environmental law protecting wildlife is the Endangered Species Act. Species listed under the Act are a limited number of fishes, mammals, and birds that are designated as “endangered,” “threatened,” and “candidate” species.

In Olympia, listed species that are mapped by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) include salmonids such as Chinook and steelhead, pocket gopher, marbled murrelet, streaked horned lark, and yellow-billed cuckoo and one plant species (golden paintbrush) (USFWS, 2016; NMFS, 2016). However, suitable habitat for the pocket gopher, the three bird species, and golden paintbrush is not present within the City limits or the urban growth area (UGA) and these species are unlikely to occur.

The Migratory Bird Treaty Act (MBTA) protects native bird species from harm (specifically illegal is to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter the parts, nests, or eggs). The list of birds protected under the MBTA is periodically updated with the most recent update occurring in 2013, which designated 1,026 bird species. According to USFWS (2016), the migratory bird species that occur in Olympia include numerous waterfowl, raptor, and songbird species.

The MBTA protects the individual bird, its nest, and its eggs, but it does not protect the bird’s habitat. Thus, removing a tree with an active nest would be considered unlawful under the MBTA, but removing the same tree outside of the nesting season would not. The MBTA is administered by USFWS who also authorizes WDFW for state and local projects. Enforcement of the MBTA is common for federally-funded projects, but less so for state and local projects due to limited WDFW resources.

Similar to the MBTA, the Bald and Golden Eagle Protection Act protects the “taking” of eagles, including their parts, nests, or eggs. Bald eagles regularly occur in the City and nest along the shoreline of Budd Inlet and other waterbodies such as the Deschutes River.

Table 2 summarizes all of the applicable federal and state laws as well as programs for wildlife and their habitats. Two state laws, the GMA and the Shoreline Management Act (SMA), provide the legal basis for protecting wildlife species and habitats in Washington. Both acts are implemented at the local level (as described in the following section).

Table 2. Federal and State Regulations and Programs Protecting Wildlife

Statute	Lead Agency	Regulated Activities / Program
Federal		
Endangered Species Act (50 CFR Part 17)	NMFS and USFWS	Protects species identified as endangered or threatened along with designated critical habitat required for the conservation of those species. NMFS has authority over most anadromous fishes, marine mammals, marine reptiles, and other marine fish species, while the USFWS has authority over terrestrial wildlife and resident fish species that inhabit inland waters.
Magnuson-Stevens Fishery Conservation Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267)	NMFS	Requires federal agencies to consult with NMFS on federal actions that may adversely affect designated Essential Fish Habitat for federally managed fish species.

Marine Mammal Protection Act	NMFS and USFWS	Protects all marine mammals from take in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products. NMFS is charged with protecting whales, dolphins, porpoises, seals, and sea lions. Walrus, manatees, otters, and polar bears are protected by the USFWS.
Bald and Golden Eagle Protection Act (50 CFR Part 22)	USFWS	Protects bald and golden eagles and makes it unlawful to take, import, export, sell, purchase, or barter any bald or golden eagles, their parts, products, nests, or eggs. The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."
Migratory Bird Treaty Act (50 CFR Part 21)	USFWS	Protects many common native birds as well as birds that are listed as threatened or endangered. USFWS regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds.
State		
Growth Management Act (Chapter 36.70A RCW)	Department of Commerce	Requires county and local municipalities to manage Washington's growth through the identification and protection of critical areas and natural resource lands; the designation of <i>urban growth areas</i> ; and the preparation and implementation of comprehensive plans.
Shoreline Management Act (Chapter 90.58 RCW)	Department of Ecology (Ecology)	Regulates water bodies above a threshold size as well as lands within 200 feet of the ordinary high water mark of those water bodies. Includes policies and regulations to protect shoreline habitat, preserve public access, and allow for water-dependent uses.
State Wildlife Permanent Regulations (Chapter 232-12 WAC)	WDFW	Protects and regulates the hunting of wildlife including game species, listed species, etc.
Priority Habitats and Species Program	WDFW	Non-regulatory program that provides information on documented locations of fish and aquatic resources, terrestrial plants and animals, and habitats listed or defined as priority. Priority species include state endangered, threatened, sensitive, or candidate species; animal aggregations considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable. Priority habitats are habitat types or elements of habitat with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species, a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs).
Natural Heritage Program	WDNR	Non-regulatory program that provides information for listed plant species or those defined as rare. Also maintains information on rare ecological communities and priority species.

City of Olympia Regulatory Protections and Gaps

The local regulatory programs and policies associated with wildlife species and habitat currently implemented by the City include the CAO, Shoreline Master Program (SMP), and Comprehensive Plan. The City's CAO protects and regulates activities on or adjacent to designated critical areas with the goal of minimizing potential impacts to fish, wildlife, and plant species and habitats. It helps to establish allowed uses, buffers, setback requirements, and mitigation requirements for regulated critical areas. City administration of the CAO and SMP regulations must also be balanced with private property uses and rights under state law. Per the state's constitution and state law (RCW 36.70A .370), land use regulations that affect the use of private property must be administered in a manner that does not constitute a taking of private property or violate the principles of substantive due process (State of Washington, 2015).

Among the critical areas identified for protection under the GMA are fish and wildlife habitat conservation areas (FWHCAs). FWHCAs are defined as (WAC 365-190-130):

- a) Areas where endangered, threatened, and sensitive species have a primary association;
- b) Habitats and species of local importance, as determined locally;
- c) Commercial and recreational shellfish areas;
- d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;
- e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
- f) Waters of the state;
- g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
and
- h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

The current CAO provides standards for protection of FWHCAs in two sections of OMC 18.32: Important Habitats and Species (18.32.300-330) and Streams and Important Riparian Areas (18.32.400-445). Important habitats and species are defined in OMC 18.32.305 as "*habitats or species known to occur within Thurston County and which may be found within the City of Olympia...*" and include ESA-listed species, as well as state-listed species. The code does not provide a list of habitats or species and does not reference the lists available in the Thurston County CAO (discussed in detail below).

The SMP establishes allowed uses, buffers, setback requirements, and mitigation requirements for shorelines of regulated waterways (e.g. streams, wetlands) in OMC 14.08. It identifies specific shoreline areas for protection that provide important wildlife habitat, including: Port Lagoon, Priest Point Park, Ellis Cove, Grass Lake, Chambers Lake, and Percival Canyon. The SMP generally identifies wildlife species for habitat protection as "locally important plant, fish and wildlife species..." but does not identify particular species.

Lastly, the Olympia Comprehensive Plan contains policies that include: protection of ecological processes and functions of wildlife habitat (e.g. wetlands, streams), restoration of natural features, and tree retention. Similar to the CAO and SMP, no specific wildlife habitats or species are identified for protection or restoration.

In summary, Olympia’s CAO addresses species that are already listed under federal and state regulations (e.g., salmonids, marine mammals, bald eagle), several specific habitat types (e.g., eelgrass beds, surf smelt breeding areas), and habitats that occur in specific locations (e.g., Important Riparian Areas and those identified in the City’s SMP). Conversely, wildlife species that are not listed and/or that do not have a primary association with the habitats defined as FWHCAs or those specifically identified in the CAO and SMP, are not protected. In the case of great blue herons, if the heron rookery were located in one of the areas specifically protected or within a standard buffer of a wetland or stream, then critical areas protections would apply. If it were located outside of these areas, only the removal of an active nest would be considered unlawful under the MBTA and state law (WAC 232-12-011), and removal of nest trees outside of the nesting season would not.

Legislation for Protecting Local Habitats and Species

Primary legislation for protecting local habitats and species is provided by the GMA. As previously mentioned, the GMA designates FWHCAs for protection as a critical area and provides a definition for FWHCAs that includes habitats and species of local importance, as determined locally (WAC 365-190-030(19)):

“Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities;

“Species of local importance” as those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

The GMA does not provide additional specificity about designating habitat or species of local importance beyond the above definitions. To assist local jurisdictions, the Department of Commerce (formerly CTED) provides one method of designating habitats and species through a set of example code provisions (CTED, 2007). The example provisions are as follows:

- a. **Designation Process.** The [city/county] shall accept and consider nominations for habitat areas and species to be designated as locally important on an annual basis.
 - i. Habitats and species to be designated shall exhibit the following characteristics:
 - (a) Local populations of native species are in danger of extirpation based on existing trends:
 1. Local populations of native species that are likely to become endangered; or
 2. Local populations of native species that are vulnerable or declining (see WAC 232-12-297);
 - (b) The species or habitat has recreation, commercial, game, tribal, or other special value;
 - (c) Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;

- (d) Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in [city/county]; and
 - (e) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.
- ii. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.
 - iii. Habitats and species may be nominated for designation by any person.
 - iv. The nomination should indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety.
 - v. The nomination may include management strategies for the species or habitats. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination.
 - vi. The [director] shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection (i) and make a recommendation to the [planning commission] based on those findings.
 - vii. The [planning commission] shall hold a public hearing for proposals found to be complete in accordance with [locally adopted hearing procedures] and make a recommendation to the [city council or county commissioners] based on the characteristics enumerated in subsection (i).
 - viii. Following the recommendation of the [planning commission], the [city council or county commissioners] shall designate a Habitat or Species of Local Importance.
 - ix. Approved nominations will be subject to the provisions of this Title.

Current Approaches in Other Jurisdictions

Some local governments identify and protect specific habitats and species of local importance through their CAO with the goal of protecting the species before they end up on a state or federal threatened or endangered species list. The following paragraphs discuss the current protections for habitats and species of local importance in neighboring jurisdictions, including Thurston County and the cities of Kenmore, Redmond, Bellevue, and Tacoma.

Thurston County

The Thurston County CAO (Thurston County Code [TCC] Title 24) designates habitats and species of local importance as a FWHCA. The County follows a process similar to the example code provisions from Commerce as listed in the previous section. Thurston County has codified these specific

submission requirements for adding or removing habitats or species of local importance in their CAO ([TCC 24.25.065\(C\)](#)). Habitats of local importance are defined in TCC 24.03 as habitats that:

“... may include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.”

The County has designated five habitats of local importance. Table 3 lists the habitats as well as a justification for the habitat listing.

Table 3. TCC Table 24.25-4 Habitats of Local Importance.

Habitat	Purpose of Habitat/Basis for Listing	Related Species
Cottonwood floodplains	Current floodplain regulations do not protect this habitat from being cleared for converting to agricultural uses. This is a habitat found only along the Nisqually River in Thurston County. Cottonwoods are a keystone species in many riparian zones (Johnson et al 2001).	Red-eyed vireo
Balds (dry plant communities, grasslands)	Globally unique and rare plant community. Primarily located in SE corner of Thurston County, vicinity of Bald Hills. Similar to prairies, but smaller and shallower soils (associated with bedrock outcrops).	
Prairie or Westside Prairie	Important prairie or westside prairie habitat means herbaceous, non-forested (forested means greater than or equal to sixty percent forest canopy cover) plant communities that can either take the form of a dry prairie where soils are well-drained or a wet prairie. Priority dry prairie areas have a minimum size of one acre. In addition, some areas dominated by Scot's (Scotch) Broom (non-native shrub) or other invasive species to prairies shall be considered prairie if the area is restorable and when there are native prairie species in the understory below the shrubs. Such marginal and restorable areas can be less valuable, but may have significant value if they are large in area, or in a landscape that connects two or more prairies. Small areas less than one acre with characteristics meeting the definition of prairie habitat which are functionally connected to another larger prairie habitat within approximately one half mile are also important prairie habitat areas. Mima mounds shall be preserved to the greatest practicable extent as determined by the review authority. See the definitions for prairie habitat, dry prairie, and wet prairie.	Mazama pocket gopher, Taylor's checkerspot butterfly, Mardon skipper, streaked horned lark
Oregon White Oak Habitat	Important Oak Habitat means stands of Oregon white oak (<i>Quercus garryana</i>) or oak/conifer associations where canopy coverage of the oak component of the stand is twenty-five	Western gray squirrel

Habitat	Purpose of Habitat/Basis for Listing	Related Species
	percent or more; or where total canopy coverage of the stand is less than twenty-five percent, but oak accounts for at least fifty percent of the canopy coverage. The latter is often referred to as oak savanna. Important oak habitat consists of stands greater than or equal to one acre (0.4 hectares) in size. Single oaks or stands less than one acre (0.4 hectares) shall also be considered an important habitat when found to be particularly valuable to fish and wildlife (i.e. they contain many cavities, have a large diameter at breast height, are used by priority species, or have a large canopy), or are located in degraded habitat areas. Individual oak trees and stands of pure oak or oak conifer associations less than one acre in size that are located in close proximity to an oak habitat larger than one acre may also be considered an important habitat.	
Springs and seeps (includes mineral springs)	Forested springs/seeps are protected in the Forests and Fish Report to protect stream associated amphibians (SAA), protect water quality, etc. fifty-foot no cut buffer required. Mineral springs are important to Band-tailed pigeons, especially during breeding season.	Band Tailed Pigeon

Species of local importance in Thurston County are defined in TCC 24.03 as:

“... those species that may not be endangered or threatened from a statewide perspective, but are of local concern due to their population status or their sensitivity to habitat manipulation and have been designated as such.”

The County has designated eight bird species and four amphibian and reptiles species of local importance. Table 4 lists the species as well as a justification for listing.

Table 4. TCC Table 24.25-5 Wildlife Species of Local Importance

Common Name	Scientific Name	Basis for Listing as Locally Important
<i>Birds:</i>		The following bird species depend on prairie habitat and are declining in population due to loss of habitat. They serve as indicator species for relatively large and/or healthy prairie and may assist in protection of prairie habitat.
Western Meadowlark	<i>Sturnella neglecta</i>	Prairie species. Needs large open areas. Found on Joint Base Lewis McChord (JBLM), Mima Mounds, and Olympia Airport year round.
Lazuli Bunting	<i>Passerina amoena</i>	Prairie species. Declining populations. Found near Scatter Creek and Joint Base Lewis McChord (JBLM).

Common Name	Scientific Name	Basis for Listing as Locally Important
Common nighthawk	<i>Chordeiles minor</i>	Prairie species. Population declining significantly.
American Kestrel	<i>Falco sparverius</i>	Prairie species. Population is declining. Nests in cavities. Can use nest boxes.
Northern Harrier	<i>Circus cyaneus</i>	Prairie and herbaceous wetlands. Ground nester. Uncommon breeding in Washington.
American Bittern	<i>Botaurus lentiginosus</i>	State of Washington Birds classifies A. Bittern as a Species of Immediate Concern for wetlands.
Olive-sided Flycatcher	<i>Contopus cooperi</i>	State of Washington Birds classifies Olive-sided Flycatcher as a Species of Immediate Concern for forests.
Short-eared owl	<i>Asio flammeus</i>	State of Wa Birds classifies Short-eared owl as a Species of High Concern for grasslands.
<i>Amphibians and Reptiles:</i>		The following amphibian species ranges have been significantly reduced due to habitat alteration and development. Sensitive to site and landscape alterations, specifically that limit breeding and foraging site connectivity, and dispersal/seasonal corridors.
Olympic Torrent Salamander	<i>Rhyacotriton olympicus</i>	Three of the four species of Rhyacotritoninae occur in Thurston County - Olympic Torrent, Columbia Torrent, and Cascade Torrent. Cascade and Columbia Torrent salamanders are both listed as State Candidate Species by WDFW. Erik Neatherlin of WDFW and Bill Leonard, Biologist with WDOT, both recommend listing the Olympic Torrent Salamander as a Locally Important Species due to their association with old-growth forests and sensitivity to increased temperatures and sedimentation in streams and headwaters.
Tailed Frog	<i>Ascaphus trui</i>	Sensitive to timber harvest. Survival may depend on protection of cool flowing streams required for breeding and larval development. Likely to be affected by increased water temperatures occurring after timber harvest. Headwater stream protection through buffers is important mitigation measure.
Cope's Giant Salamander	<i>Dicamptodon copei</i>	Cope's giant salamander (<i>Dicamptodon copei</i>) are sensitive to habitat change and fragmentation from development. Both species would be expected to occur in the extreme SE portion of the county, similar to the two PHS species, Cascades torrent salamander and Van Dyke's salamander. The SE portion of the county in the headwaters of the Deschutes systems and the Nisqually system in the vicinity of Alder lake should be considered a "hot" region for all four (2 PHS, 2 local species mentioned) as this area is the only place they are likely to occur in the county. (Source: E. Neatherlin, WDFW)
Pacific Giant Salamander	<i>Dicamptodon tenebrosus</i>	May be associated with old-growth forests. Found in moist coniferous forests. During breeding season found in or near streams. Closely associated with high gradient streams with coarse substrate.

City of Kenmore

The City of Kenmore CAO (Kenmore Municipal Code [KMC] 18.55) designates habitats of local importance through the following criteria (KMC 18.55.500):

1. Documented presence of species listed by the federal government or the State of Washington as endangered or threatened; or
2. Heron rookeries or active nesting trees; or
3. Class 1 wetlands as defined in KMC 18.55; or
4. Type 1 streams as defined in KMC 18.55; or
5. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC [232-12-292](#)).

According to the code, all areas meeting one or more of these criteria within the City of Kenmore, regardless of formal identification, are designated as critical areas and are subject to the provisions of the CAO (KMC 18.55). The code includes specific performance standards for these species including the following provisions for great blue heron rookeries (KMC 18.55.530(B)):

- 1. A buffer equal to the distance of a 900-foot radius measured from the outermost nest tree in the rookery will be established around an active rookery. This area will be maintained in native vegetation. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the buffer excludes the area south of the north edge of the State Route 522 right-of-way and west of the east edge of the 73rd Avenue NE right-of-way.*
- 2. Between January 1st and July 31st, no clearing, grading or land disturbing activity shall be allowed within 900 feet of the rookery unless approved by the City and Washington State Department of Fish and Wildlife. For the Kenmore heron rookery located adjacent to the Kenmore park-and-ride lot, the area south of the north edge of the State Route 522 right-of-way and west of the east edge of 73rd Avenue NE right-of-way is excluded.*
- 3. Approval of permits for activities within the heron rookery buffer shall not occur prior to the approval of a habitat management plan by the City and the Washington State Department of Fish and Wildlife.*

Note that the performance standards have been written to apply to great blue heron rookeries in general as well as a specific existing rookery.

Cities of Bellevue, Tacoma, and Redmond

The City of Bellevue CAO (Bellevue Land Use Code [LUC] 20.25H) provides a list of 23 species as the definition for ‘species of local importance’ and designation as a critical area (LUC 20.25H.150). Any habitat associated with listed species of local importance is also designated as a critical area (LUC 20.25H.150). Like Thurston County, the City includes a process for identifying additional species. <http://www.codepublishing.com/WA/Bellevue/LUC/BellevueLUC2025H.html>. The City of Bellevue also developed and adopted an Urban Wildlife Habitat Functional Assessment Model (Watershed Company, 2009a and 2009b), which allows users to rate habitat on a property based on its potential to support species of local importance and other wildlife. The City requires habitat assessment for proposals that are in and adjacent to important habitat areas.

While the City of Tacoma CAO does not specifically designate ‘locally important’ species or habitats, it does provide a list of WDFW priority habitat and species known to be located within the City limits that are designated for protection as FWHCAs (Tacoma Municipal Code [TMC] 13.11.520).

The City of Redmond designates great blue heron as its only species of local importance (Redmond Municipal Code [RMC] 21.64.020(A)(2)). For habitats, the City has two distinctive designations: Core Preservation and Quality Habitat Areas. Core preservation areas are “*areas that protect habitat and that are preserved through any of the regulatory mechanisms provided in [the] Zoning Code, including Native Growth Protection Areas, Class I streams and their buffers, Class II through IV streams, and other areas similarly protected. Core Preservation Areas may also include lands where development rights have been sold and some lands with recorded open space easements, depending on the purpose of the easement. These areas include wetlands and streams and their associated buffers as they become identified at a site-specific level.*” Quality habitats areas are “*areas that provide significant wildlife value by virtue of their characteristics. These characteristics include several parameters indicative of quality habitat, including size, community diversity, interspersion (spatial patterns), continuity, forest vegetation layers, forest age, and lack of invasive plants.*” Proposals located in either of these areas are reviewed under special criteria with the intent of protecting and preserving habitat.

Options for Protecting Local Habitats and Species

Programmatic

A programmatic approach to identifying and protecting locally important habitats and species entails the designation of land for specific purposes such as open space, native growth protection areas, or habitat preservation areas. Native growth protection areas are probably the most commonly used and are typically defined as areas “where native vegetation is preserved for the purpose of preventing harm to property and the environment, including but not limited to providing open space, maintaining wildlife corridors, maintaining slope stability, controlling runoff and erosion, and/or any other designated purpose.” Other programs include Conservation Futures, a state tax levy program that allows counties to preserve land of public interest for future generations. The Thurston County Conservation Futures Program “protects, preserves, maintains, improves, restores, and limits the future use of threatened areas of open space, timberlands, wetlands, habitat areas, culturally significant sites, and agricultural farmlands.” Similarly, Open Space Tax Programs help maintain, preserve, and conserve adequate open space lands for the production of food, fiber, and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty. These programs provide reduced property tax rates for property owners who voluntarily commit a portion of land to open space.

The City of Redmond uses a programmatic approach to wildlife habitats by designating Core Preservation Areas (defined previously). These areas are mapped by the City and consist of habitats that are already protected. Existing native growth protection easements, categorized streams and Class I stream buffers, properties that have transferred development rights, and preserved parkland are all examples of core preservation areas. The map is available at:

<https://www.redmond.gov/cms/one.aspx?portalId=169&pageId=7398>

With support from its Comprehensive Plan, the City of Olympia could consider designating specific publicly-owned lands for wildlife habitat. Enforcing the protection of these lands would need to be done through regulations, but a City-wide approach to wildlife habitat would establish a basis for protection.

Regulatory

As described previously, some cities and counties protect locally important species and habitats through specific regulations that limit the type, location, and timing of development adjacent to known species locations or habitats. This is the most common approach because it can be tailored to specific species or habitats of interest (in the jurisdiction) and then applied to site-specific proposals as needed. The regulatory approach also relies on state guidance (for designating habitats and species).

To add protections for the great blue heron, the City of Olympia could consider an approach similar to Kenmore, which requires a 900-foot buffer around heron rookeries, timing restrictions on construction, and consultation with the City and WDFW. More broadly, the City could consider adopting the Thurston County lists of habitats as a conservative approach to protecting multiple habitats. However, based on available mapping of prairie soils, known prairie habitats, and oak woodlands, adding protections for these habitats similar to the Thurston County may not be warranted due to the lack of their occurrence of the City and its UGA. Another approach is to focus on landscaping regulations that can ensure preservation of special natural areas and significant trees that are typically used by heron or other locally important wildlife species.

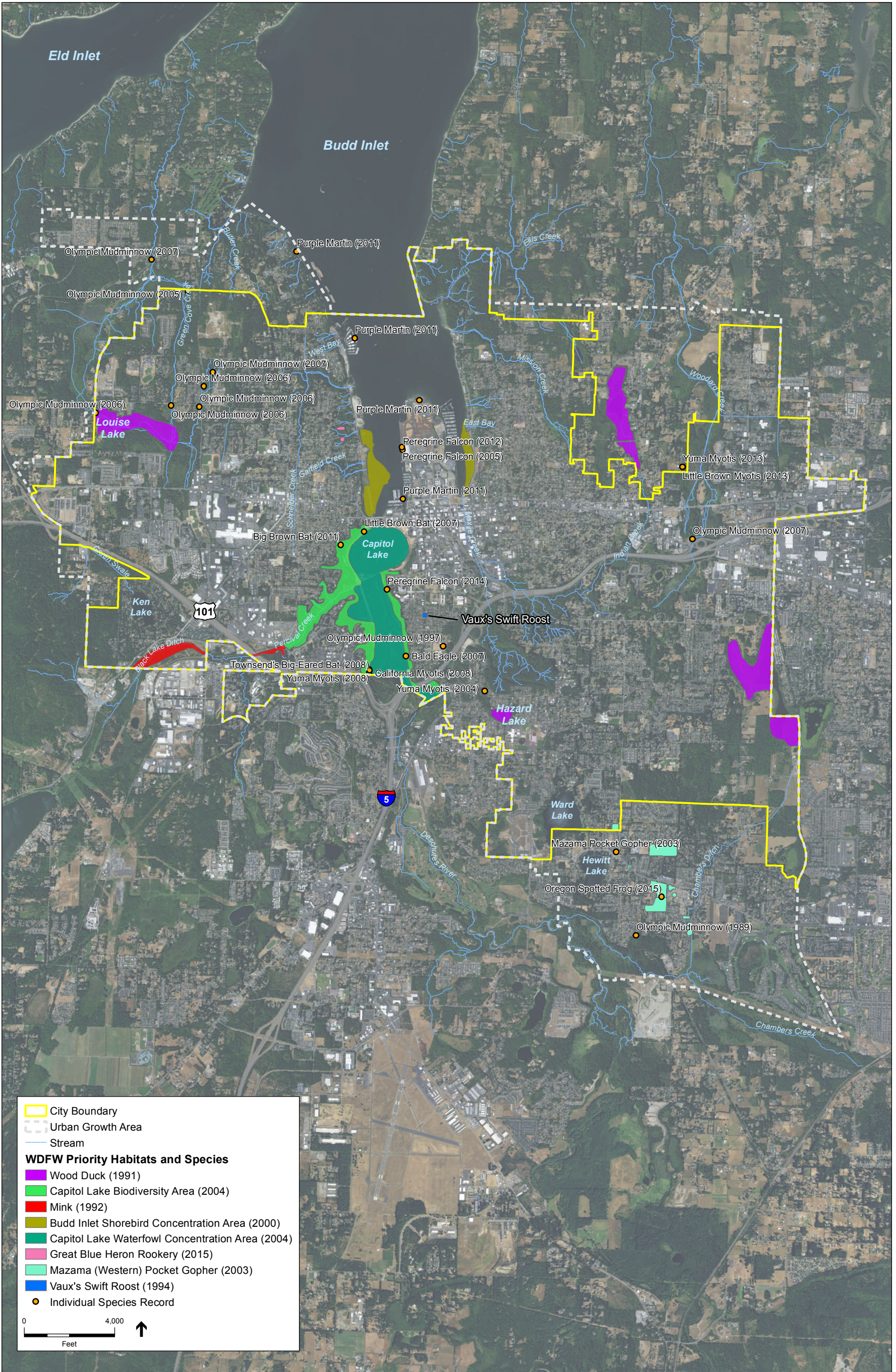
Incentive-based

Incentive-based approaches to wildlife habitat protection include both acquisition and easements on property that support locally important wildlife and their habitats. The City could consider innovative ways of acquiring property for open space such as transfer of development rights and development incentives for set asides. Where appropriate, the City could encourage private donations of land or conservation easements for locally important wildlife and habitats.

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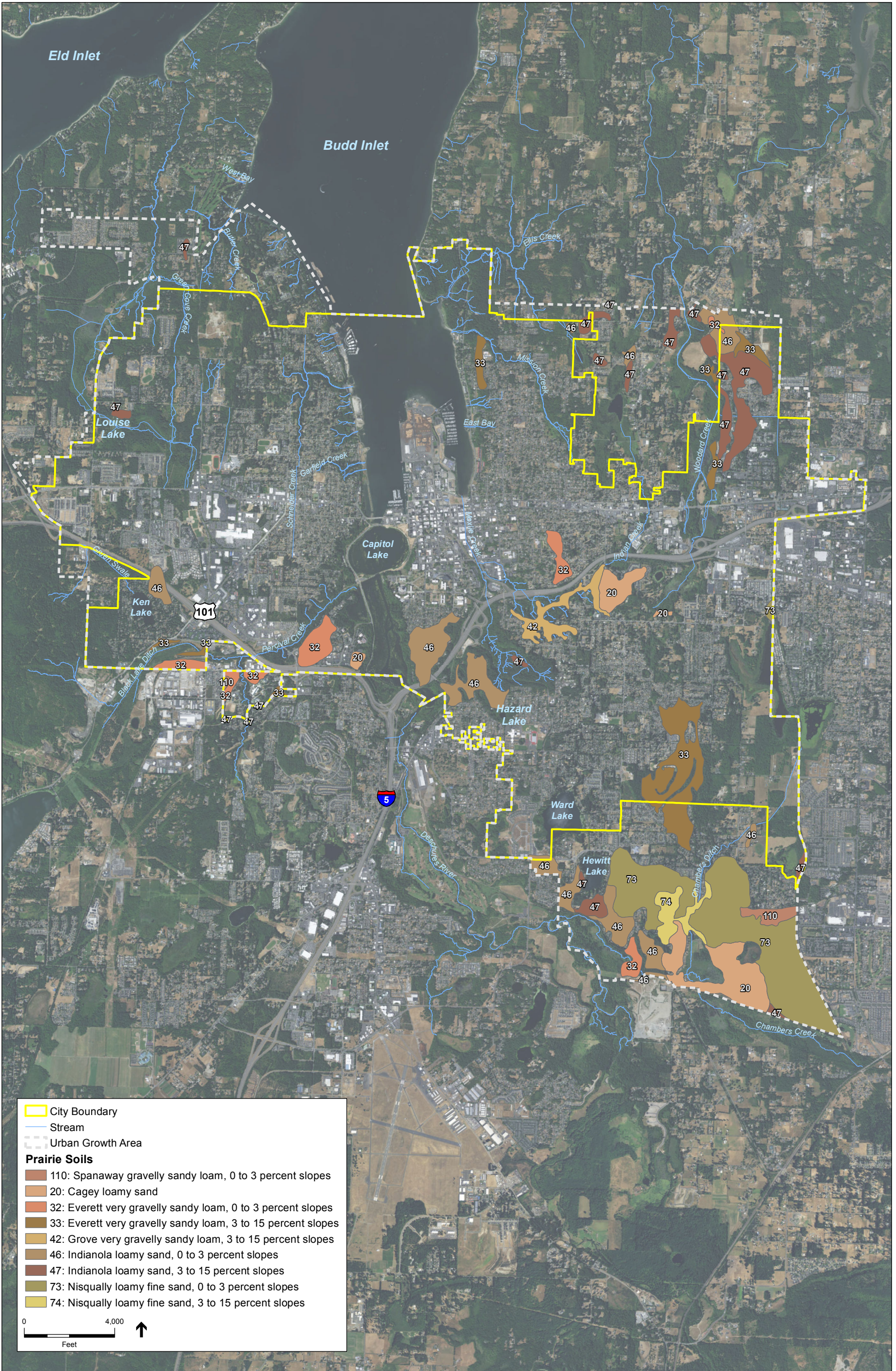


SOURCE: NAIP 2013, City of Olympia 2016, WDFW 2016

Olympia CAO Update - Phase II . 150635

Figure 1
 Mapped WDFW Priority Habitats and Species

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SOURCE: NAIP 2013, City of Olympia 2016, NRCS 2003

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Figure 2
 Mapped Prairie Soils



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memorandum

date October 31, 2016

to Linda Bentley, City of Olympia

from Ilon Logan

subject Critical Areas Ordinance Update Phase II: **Locally Important Species and Associated Habitats Recommendations**

This memo is a follow-on to our previous memo *Locally Important Species and Associated Habitats Recommendations Overview and Options* (dated August 5, 2016) and includes high-level recommendations for implementing some of the previously discussed options. The intent is to provide a basis for discussion and decision-making by the City regarding protections for wildlife and wildlife habitats in Olympia.

Based on the review of existing information, published literature, and input from the CAO working group, we suggest the City consider a combination of regulatory and non-regulatory methods to expand and/or increase protections for wildlife and wildlife habitat. Our recommendations fall into two categories: 1) general protections for priority species and habitats, and 2) protections specific to great blue heron.

General Protections

As reported in our previous memo, the City of Olympia contains a low number of sensitive and/or rare habitats and species as documented by the Washington Department of Fish and Wildlife (WDFW) in the Priority Habitats and Species (PHS) database (WDFW, 2016). This is due to the developed-nature of lands within the City and urban growth area boundaries, the limited extent of stream corridors and wetland areas, and the lack of native prairie or oak woodland habitats. The PHS database does include records for wood duck breeding areas and mink occurrences (both from the early 1990s), great blue heron rookeries, bald eagle and peregrine falcon breeding sites, and bat communal roosts. Additionally, several of the species identified by the CAO working group as important and/or potentially declining (see July 26, 2016 meeting notes), including western grebe, purple martin, osprey, Vaux's swift, several bat species, and Olympic mudminnow, are on the PHS list.

To provide regulatory protections for individual wildlife species, we have the following high-level recommendations for the City:

- Rely on the current regulations for important habitats and species (OMC 18.32.305B) for peregrine falcon and bald eagle. Both are state sensitive species (<http://wdfw.wa.gov/conservation/endangered/status/SS/>) and federal species of concern, which puts them within the City's current definition of important habitats and species. In addition, these two bird species were not a major concern by the CAO working group as neither are currently experiencing population declines.
- Rely on the current regulations for streams (OMC 18.32.405A), wetlands (OMC 18.32.505), and small lakes (OMC 18.32.305D) for habitat protection of wood duck breeding areas, western grebe, and Olympic mudminnow.
- Rely on the current regulations for streams (OMC 18.32.405A) and important riparian areas (OMC 18.32.405B) for habitat protection of bat communal roosts (including Yuma myotis, California myotis, big brown bat, little brown bat, and Townsend's big-eared bat).

In terms of a nomination process for adding new locally important species and habitats, the City should have a nomination and designation process in place. The Department of Commerce (formerly CTED) has developed an example step-wise process (see our previous memo) that can be used as a guide. We note that some counties and cities (e.g., Thurston County and City of Bellevue) have codified their version of the process in the CAO regulations. Based on our experience, this approach is not necessary as the nomination and designation process is rarely used and is an optional requirement of the GMA. We recommend that the City prepare its guidelines and have them available upon request from the City manager or other representative.

Lastly, to increase protection of general wildlife habitats in the City, we recommend the City continue to work with the Olympia Coalition for Ecosystems Preservation and pursue opportunities to purchase properties near known rookery locations as they did in 2016 when 2.5 acres of the West Bay Woods were acquired (The Olympian, August 16, 2016). In addition to outright purchase, the City could consider innovative ways of acquiring property for open space such as Transfer of Development Rights (TDR) and development incentives for set asides. These programs provide reduced property tax rates for property owners who voluntarily commit a portion of land to open space or avoiding activities harmful to specific species or habitat.

Great Blue Heron Protections

To protect the population of great blue heron and their breeding habitat, we suggest the City follow an approach similar to the City of Kenmore, which includes:

- Adoption of a fixed-width buffer around mapped heron rookeries
- Timing restrictions on some types of activities (e.g., clearing, grading)
- Consultation with the City and WDFW during project planning

For specifics, we recommend the City follow WDFW's guidelines for identifying, mapping, and managing heron habitats as detailed in *Management Recommendations for Washington's Priority*

Species: Great Blue Heron (Azerrad, 2012). An abbreviated set of guidelines is provided with this memo.

Following the WDFW guidelines would address and document the known rookery locations in both the West Bay woods and East Bay forested ravine and establish those areas as Heron Management Areas (HMAs). The WDFW-recommended buffers for nesting colonies in urban areas include a year-round buffer of 60 meters (197 feet) and an additional seasonal buffer of 200 meters (656 feet) for unusually loud activities during breeding season (i.e., February-September). Buffer protections are based on the premise that adequate buffers result in greater longevity and colony productivity because they are a physical and visual barrier to potentially intrusive activities, can protect nest trees from being blown down, and provide habitat for birds when they move from one nest tree to another. The City should require a site-specific habitat management plan to be developed whenever a land use proposal is submitted in or near the HMA.

As an alternative to the WDFW-recommended buffer widths, we recommend the City consider the City of Seattle's protections for great blue heron drafted in 2016, but not yet adopted (City of Seattle, 2016). The proposed regulations establish a year-round buffer of 197 feet and seasonal buffers that are less than the WDFW-recommended width. The proposed seasonal buffers include a 500-foot buffer applied to the colonies in the Kiwanis and North Beach Ravines and a 300-foot buffer applied to all other nesting colonies. The City maintains that heron colonies within the City of Seattle are in part habituated to urban conditions and notes that WDFW did not establish smaller seasonal buffers for urban areas.

To address the sometimes transitory nature of nesting colonies, we recommend the City stipulate the period in which a HMA remains in effect from the last known active nesting season. As referenced in the WDFW recommendations, the Migratory Bird Treaty Act (MBTA) states that protections applying to an active colony should remain in effect for 10 years after the last recorded nesting season. The City of Seattle draft protection adopt this time period as well.

We suggest that City project planners actively consult the WDFW guidelines for carrying out the heron recommendations. During project review, a habitat management plan should be developed whenever a land use proposal is submitted in or near the HMA. Consultation with WDFW about known heron activity and breeding confirmation should also occur.

Lastly, the WDFW guidelines also recommend non-regulatory incentive programs for protecting great blue herons, such as those described previously. While many local governments protect the nesting colony through regulatory measures, habitats that indirectly benefit a colony sometimes go unprotected. WDFW suggests local governments offer incentives to landowners who want to permanently protect any type of breeding season habitat. Specifically, proposals near breeding season habitat deserve high priority when choosing between candidates for new Conservation Futures sites. Furthermore, land trusts should also consider these areas when developing their conservation portfolios.

References

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<http://wdfw.wa.gov/publications/01371/>

City of Olympia. 2016. Locally Important Species and Habitats Working Group Meeting notes. July 26, 2016. Olympia City Hall. Olympia, Washington.

City of Seattle. 2016. Director's Rule X-2016: Great Blue Heron Management Plan. Draft. Available at:
http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/p2345109.pdf

The Olympian. Olympia will buy 2.75 acres to protect great blue heron habitat. Published August 16, 2016. <http://www.theolympian.com/news/local/article96109887.html>

Washington State Department of Fish and Wildlife (WDFW). 2008. Priority Habitat and Species List. Updated April 2014. Olympia, Washington. <http://wdfw.wa.gov/conservation/phs/list/>



Planning Commission

Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species Briefing

Agenda Date: 1/9/2017
Agenda Item Number: 6.A
File Number: 17-0006

Type: information Version: 1 Status: In Committee

Title

Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species Briefing

Recommended Action

Information only. No action requested.

Report

Issue:

Whether to receive the information and update on Phase 2 of the CAO, Locally Important Habitat and Species.

Staff Contact:

Linda Bentley, Senior Planner, Community Planning and Development, 360.570.3746

Presenter(s):

Linda Bentley, Senior Planner, Community Planning and Development

Background and Analysis:

Under the Washington State Growth Management Act (GMA), the City is required to update the Critical Areas Ordinance (CAO) periodically as part of the City's Comprehensive Plan update. The required update included a mandate that the City's critical areas sections in the development code must be reviewed to ensure consistency with current best available science (BAS).

In addition to the required update, the Land Use and Environment Committee directed staff to include a review of potential additional protections for locally important habitat and species. To ensure staff could complete the state-required BAS updates by the deadline and to allow more time for an in-depth look at the locally important habitat species issue, we divided the tasks into Phase 1 (BAS) and Phase 2 (habitat and species).

Finally, when the City amends its CAO, it must also amend its Shoreline Master Program (SMP) to adopt the new CAO by reference.

Phase 1 of the CAO was approved by City Council on July 19, 2016. The tentative future timeline for Phase 2 follows:

Jan 9, 2017 Planning Commission Briefing
Jan 18, 2017 Public Open House
Feb-Mar 2017 Planning Commission Public Hearing (Including SMP amendment)
Mar-Apr 2017 City Council Ordinance adoption (Including SMP Ordinance to adopt amended CAO)

After hearing concerns and getting suggestions from a technical working group, staff and consultant Environmental Science Associates (ESA) did additional research and consulted with other jurisdictions regarding their experiences with protecting locally important species. For example, we were interested in other cities' experiences with inviting the public to nominate additional locally important species. Bellevue, Redmond and Kenmore have such a process but, according to their staff, no nominations have been received and they may be considering abandoning that portion of their programs. We are, however, suggesting a process by which additional locally important species and/or habitat could be nominated in Olympia (see attached proposed new OMC 18.32.325).

As suggested in ESA's October 31 memo (attached), we propose relying on our existing CAO and Shoreline Master Program (SMP) regulations to protect most species, with the exception of great blue heron and their breeding habitat.

Great Blue Heron and Habitat

In general, we are proposing the following approaches to protect heron rookeries:

- Adopting a fixed-width buffer around mapped heron rookeries
- Restricting the timing on some types of activities (e.g., clearing, grading)
- Requiring consultation with the City and the Washington Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Our goal is to find the best balance between protecting species and respecting private property rights. After reviewing similar protections for heron rookeries in Seattle and Kenmore, we are proposing a smaller seasonal buffer than that recommended in WDFW's published management recommendations for nests in rural and less developed areas. As indicated on the attached draft maps, we suggest a 200 foot year-round buffer and an additional 300 foot seasonal buffer for both the East Bay and West Bay rookeries. We also recommend regulatory language that outlines requirements for development near the rookeries (see proposed new OMC 18.32.327). We've developed two draft handouts - Great Blue Heron Management Guidelines and Great Blue Heron Development Conditions - which further explain the regulations.

Non-regulatory Protections

The best way to protect important habitat and species is to acquire the land that provides the necessary habitat for important species. Therefore, we recommend the following:

- The City should continue to work with non-profit groups such as the Olympia Coalition for Ecosystems Preservation to pursue opportunities to purchase properties that support or are near known rookeries.
- Property under consideration by Parks Department for acquisition for passive type parks

should consider the quality and extent of habitat value in its decision-making.

The City could also research and/or develop incentives for landowners who want to permanently protect any type of breeding season habitat and assist existing non-profit groups in developing an ongoing program of citizen science to assist in monitoring the status of locally important habitat and species.

Shoreline Master Program Amendments

The amendment to Olympia's SMP, which adopts the amended CAO by reference, ensures consistency with the CAO adopted July 19, 2016, and corrects errors, is attached. Minor changes to OMC 18.02.180 Definitions and OMC 18.32.500 and 515 are required to bring the CAO into consistency with the SMP and are also attached.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to this Phase 2 may require additional resources.

Attachments:

Proposed OMC 18.32 amendments
Rookeries maps
Great Blue Heron Management Guidelines
Great Blue Heron Development Conditions
ESA memo
Miscellaneous Title 18 OMC amendments
Shoreline Master Program amendments

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OMC Chapter 18.32 as approved by City Council Aug 16, 2016, with proposed new language shown in track changes.

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 1 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

1. No development shall occur in the great blue heron nesting colony.
2. Any development within the year-round buffer shall use mitigation sequencing as provided in OMC 18.32.135 to:
 - a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall

- c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
- 3. If the parcel where the development will occur abuts a parcel containing a great blue heron nesting colony, there shall be a minimum 30 foot building setback from the property line(s) closest to the nesting colony. The setback shall be vegetated using native trees and shrubs that screen activities on the parcel from the nesting colony.
- 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- 1. Any clearing, grading, outside construction or other activity that causes loud noise above ambient noise levels shall be done from September 1 through January 31, outside of the nesting season. Ambient noise is specific to the location of the nesting colony site and can include noises such as sirens and leaf blowers. Noise that is not considered ambient noise includes but is not limited to outdoor construction and the use of dump trucks, front end loaders, pile drivers and blasting equipment.
- 2. All 6 inch diameter breast height (dbh) or larger trees shall be retained if the removal of those trees decreases the effectiveness of the trees' screening of new and existing development from the colony and if replacing the removed trees with other trees does not screen the nesting colony to the same extent as the existing trees.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.

B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.

C. Contain, but not be limited to:

1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;
 - f. The extent and location of the important species habitat;
 - g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

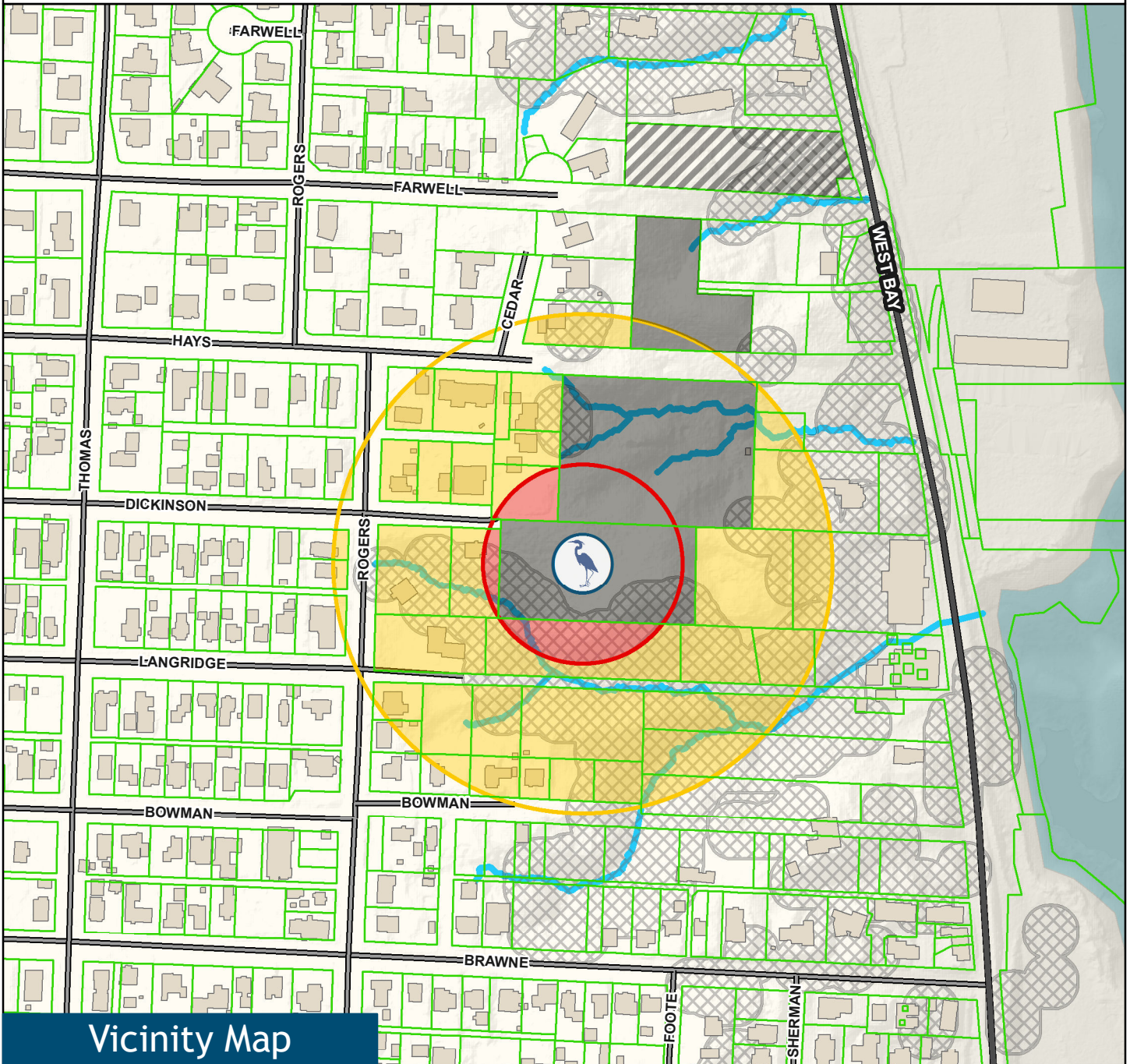
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ATTACHMENT 1

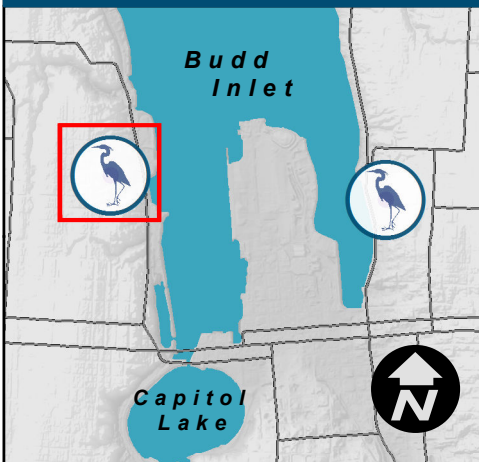


Community Planning and Development

Westside Heron Rookery



Vicinity Map



Heron Rookeries



200' Annual Buffer



Additional 300' Seasonal Buffer



City Parcels



Under Option by City



Government or NGO Owned



Steep Slopes



Existing Buildings

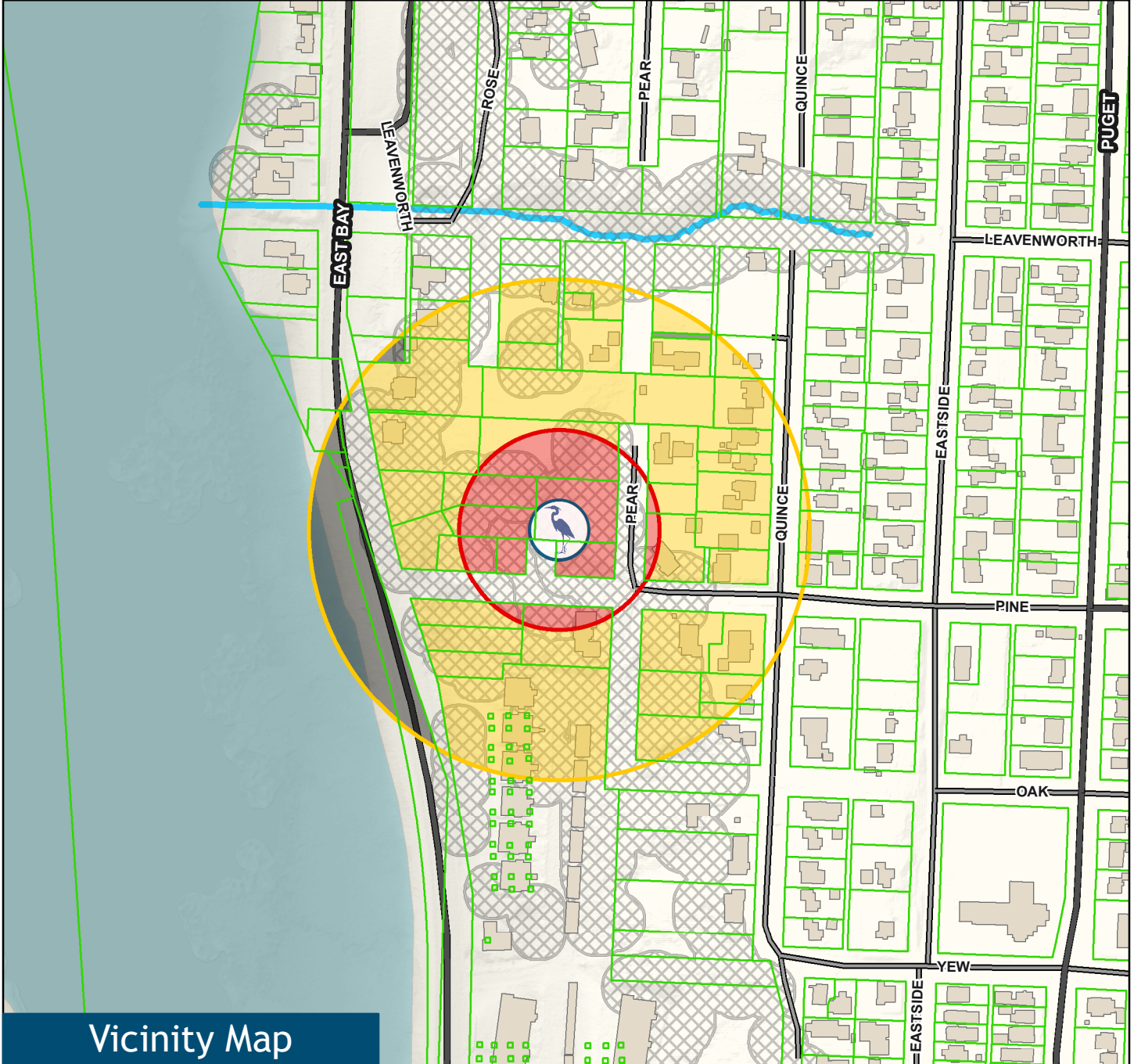
1 inch = 300 feet
 0 0.03 0.06 Miles

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

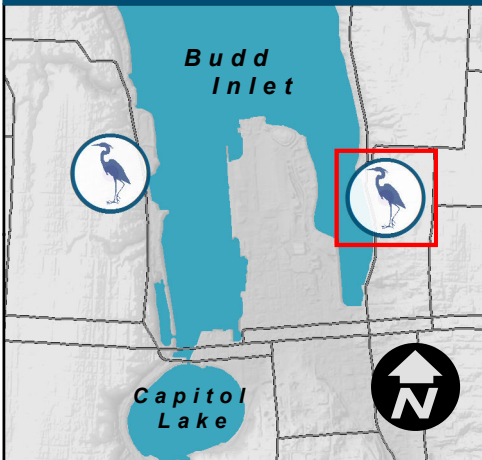


Community Planning and Development

Eastside Heron Rookery



Vicinity Map



Heron Rookeries



200' Annual Buffer



Additional 300' Seasonal Buffer



City Parcels



Government or
NGO Owned

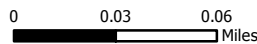


Steep Slopes



Existing Buildings

1 inch = 300 feet



The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

GREAT BLUE HERON MANAGEMENT GUIDELINES

Background & Purpose:

Great blue herons can be vulnerable because of their tendency to aggregate during the breeding season. They are colonial breeders that nest in a variety of deciduous and evergreen tree species. Nests are usually constructed in the tallest trees available, presumably to reduce the risk of predation by mammals. The availability of suitable great blue heron breeding habitat is declining as human population increases. Great blue heron nesting colonies are listed as a Washington State Department of Fish and Wildlife (WDFW) Priority Species.

Statewide Recommendations

Statewide, WDFW recommends a permanent, year-round buffer of 60 meters (197 feet) from the perimeter of the great blue heron nesting colony for urban areas as defined by WDFW. Additional management recommendations include a seasonal buffer of 200 meters (656 feet) for loud noises and 400 meters (1,320 feet) for extremely loud noises such as blasting. The seasonal buffers are measured from the outside edge of the year-round buffer. These management recommendations can be found in the 2012 Washington's Priority Species, Great Blue Heron, prepared by WDFW. This can be viewed by going to <http://wdfw.wa.gov/publications/01371/> or by contacting WDFW.

Local Recommendations

The WDFW recommends that local land use planning should, when possible, protect existing great blue heron colonies using colony site-specific management plans that consider the colony size, location, relative isolation and the degree of habituation to human disturbance. Typically in Olympia it is difficult to restrict development within larger buffer areas due to existing development and buildable lots in close proximity to colonies. Therefore, and because heron colonies within the City of Olympia are in part habituated to urban conditions and WDFW did not establish smaller seasonal buffers for urban areas, the City has established a 200 foot year-round buffer and an additional 300 foot seasonal buffer for great blue heron nesting colonies in both the West Bay and East Bay areas. Development conditions for proposed development within or near a Great Blue Heron Management Area are contained in OMC 18.32.327.

Definitions

Great Blue Heron Nesting Season means February 1 through August 31

Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.

Great Blue Heron Core Zone means the area consisting of a great blue heron nesting colony and its 200 foot year-round buffer.

Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the 200 foot year-round buffer, and the 300 foot seasonal buffer.

Screening Tree means a tree that is within the direct line of sight between the structure(s) or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from the structure(s) or development during any part of the year, and within the great blue heron management area.

Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

Measurements

Year-round buffer: The 200 foot year-round buffer is measured from the nesting colony boundary.

Seasonal buffer: The additional 300 foot seasonal buffer is measured from the great blue heron core zone.

GREAT BLUE HERON DEVELOPMENT CONDITIONS:**Within the Great Blue Heron Management Area:**

- Any clearing, grading, outside construction or other activity that causes loud noise above ambient noise levels shall be done from September 1 through January 31, outside of the nesting season. Ambient noise is specific to the location of the nesting colony site and can include noises such as sirens and leaf blowers. Noise that is not considered ambient noise includes but is not limited to outdoor construction and the use of dump trucks, front end loaders, pile drivers and blasting equipment.
- All 6 inch diameter breast height (dbh) or larger trees shall be retained if the removal of those trees decreases the effectiveness of the trees' screening of new and existing development from the colony and if replacing the removed trees with other trees does not screen the nesting colony to the same extent as the existing trees.

Within the Great Blue Heron Core Zone:

- No development shall occur in the great blue heron nesting colony.
- Any development within the year-round buffer shall use mitigation sequencing as set out in OMC 18.32.135 to:
- maintain baseline development conditions and ambient noise levels;
 - maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - Include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
- If a nesting colony has been abandoned by a great blue heron colony, the great blue heron core zone for this colony shall be protected for a period of 10 years from the last known active nesting season.
- If the parcel where the development will occur abuts a parcel containing a great blue heron nesting colony, there shall be a minimum 30 foot building setback from the property line(s) closest to the nesting colony. The setback shall be vegetated using native vegetation that screens activities on the parcel from the nesting colony.

If the standard conditions set forth above in the Conditions section are acceptable, please sign below and this will serve as your Great Blue Heron Management Plan. Activities will be periodically monitored and failure to comply with the Plan constitutes a violation as set forth in OMC 18.32.175.

I have read and understand the above conditions placed on parcel

_____ located at

Signature _____ Date _____

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ATTACHMENT 4



5309 Shilshole Avenue NW
Suite 200
Seattle, WA 98107
206.789.9658 phone
206.789.9684 fax

memorandum

date October 31, 2016

to Linda Bentley, City of Olympia

from Ilon Logan

subject Critical Areas Ordinance Update Phase II: **Locally Important Species and Associated Habitats Recommendations**

This memo is a follow-on to our previous memo *Locally Important Species and Associated Habitats Recommendations Overview and Options* (dated August 5, 2016) and includes high-level recommendations for implementing some of the previously discussed options. The intent is to provide a basis for discussion and decision-making by the City regarding protections for wildlife and wildlife habitats in Olympia.

Based on the review of existing information, published literature, and input from the CAO working group, we suggest the City consider a combination of regulatory and non-regulatory methods to expand and/or increase protections for wildlife and wildlife habitat. Our recommendations fall into two categories: 1) general protections for priority species and habitats, and 2) protections specific to great blue heron.

General Protections

As reported in our previous memo, the City of Olympia contains a low number of sensitive and/or rare habitats and species as documented by the Washington Department of Fish and Wildlife (WDFW) in the Priority Habitats and Species (PHS) database (WDFW, 2016). This is due to the developed-nature of lands within the City and urban growth area boundaries, the limited extent of stream corridors and wetland areas, and the lack of native prairie or oak woodland habitats. The PHS database does include records for wood duck breeding areas and mink occurrences (both from the early 1990s), great blue heron rookeries, bald eagle and peregrine falcon breeding sites, and bat communal roosts. Additionally, several of the species identified by the CAO working group as important and/or potentially declining (see July 26, 2016 meeting notes), including western grebe, purple martin, osprey, Vaux's swift, several bat species, and Olympic mudminnow, are on the PHS list.

To provide regulatory protections for individual wildlife species, we have the following high-level recommendations for the City:

- Rely on the current regulations for important habitats and species (OMC 18.32.305B) for peregrine falcon and bald eagle. Both are state sensitive species (<http://wdfw.wa.gov/conservation/endangered/status/SS/>) and federal species of concern, which puts them within the City's current definition of important habitats and species. In addition, these two bird species were not a major concern by the CAO working group as neither are currently experiencing population declines.
- Rely on the current regulations for streams (OMC 18.32.405A), wetlands (OMC 18.32.505), and small lakes (OMC 18.32.305D) for habitat protection of wood duck breeding areas, western grebe, and Olympic mudminnow.
- Rely on the current regulations for streams (OMC 18.32.405A) and important riparian areas (OMC 18.32.405B) for habitat protection of bat communal roosts (including Yuma myotis, California myotis, big brown bat, little brown bat, and Townsend's big-eared bat).

In terms of a nomination process for adding new locally important species and habitats, the City should have a nomination and designation process in place. The Department of Commerce (formerly CTED) has developed an example step-wise process (see our previous memo) that can be used as a guide. We note that some counties and cities (e.g., Thurston County and City of Bellevue) have codified their version of the process in the CAO regulations. Based on our experience, this approach is not necessary as the nomination and designation process is rarely used and is an optional requirement of the GMA. We recommend that the City prepare its guidelines and have them available upon request from the City manager or other representative.

Lastly, to increase protection of general wildlife habitats in the City, we recommend the City continue to work with the Olympia Coalition for Ecosystems Preservation and pursue opportunities to purchase properties near known rookery locations as they did in 2016 when 2.5 acres of the West Bay Woods were acquired (The Olympian, August 16, 2016). In addition to outright purchase, the City could consider innovative ways of acquiring property for open space such as Transfer of Development Rights (TDR) and development incentives for set asides. These programs provide reduced property tax rates for property owners who voluntarily commit a portion of land to open space or avoiding activities harmful to specific species or habitat.

Great Blue Heron Protections

To protect the population of great blue heron and their breeding habitat, we suggest the City follow an approach similar to the City of Kenmore, which includes:

- Adoption of a fixed-width buffer around mapped heron rookeries
- Timing restrictions on some types of activities (e.g., clearing, grading)
- Consultation with the City and WDFW during project planning

For specifics, we recommend the City follow WDFW's guidelines for identifying, mapping, and managing heron habitats as detailed in *Management Recommendations for Washington's Priority*

Species: Great Blue Heron (Azerrad, 2012). An abbreviated set of guidelines is provided with this memo.

Following the WDFW guidelines would address and document the known rookery locations in both the West Bay woods and East Bay forested ravine and establish those areas as Heron Management Areas (HMAs). The WDFW-recommended buffers for nesting colonies in urban areas include a year-round buffer of 60 meters (197 feet) and an additional seasonal buffer of 200 meters (656 feet) for unusually loud activities during breeding season (i.e., February-September). Buffer protections are based on the premise that adequate buffers result in greater longevity and colony productivity because they are a physical and visual barrier to potentially intrusive activities, can protect nest trees from being blown down, and provide habitat for birds when they move from one nest tree to another. The City should require a site-specific habitat management plan to be developed whenever a land use proposal is submitted in or near the HMA.

As an alternative to the WDFW-recommended buffer widths, we recommend the City consider the City of Seattle's protections for great blue heron drafted in 2016, but not yet adopted (City of Seattle, 2016). The proposed regulations establish a year-round buffer of 197 feet and seasonal buffers that are less than the WDFW-recommended width. The proposed seasonal buffers include a 500-foot buffer applied to the colonies in the Kiwanis and North Beach Ravines and a 300-foot buffer applied to all other nesting colonies. The City maintains that heron colonies within the City of Seattle are in part habituated to urban conditions and notes that WDFW did not establish smaller seasonal buffers for urban areas.

To address the sometimes transitory nature of nesting colonies, we recommend the City stipulate the period in which a HMA remains in effect from the last known active nesting season. As referenced in the WDFW recommendations, the Migratory Bird Treaty Act (MBTA) states that protections applying to an active colony should remain in effect for 10 years after the last recorded nesting season. The City of Seattle draft protection adopt this time period as well.

We suggest that City project planners actively consult the WDFW guidelines for carrying out the heron recommendations. During project review, a habitat management plan should be developed whenever a land use proposal is submitted in or near the HMA. Consultation with WDFW about known heron activity and breeding confirmation should also occur.

Lastly, the WDFW guidelines also recommend non-regulatory incentive programs for protecting great blue herons, such as those described previously. While many local governments protect the nesting colony through regulatory measures, habitats that indirectly benefit a colony sometimes go unprotected. WDFW suggests local governments offer incentives to landowners who want to permanently protect any type of breeding season habitat. Specifically, proposals near breeding season habitat deserve high priority when choosing between candidates for new Conservation Futures sites. Furthermore, land trusts should also consider these areas when developing their conservation portfolios.

References

- Azerrad, J. M. 2012. Management recommendations for Washington's priority species: Great Blue Heron. Washington Department of Fish and Wildlife, Olympia, Washington. <http://wdfw.wa.gov/publications/01371/>
- City of Olympia. 2016. Locally Important Species and Habitats Working Group Meeting notes. July 26, 2016. Olympia City Hall. Olympia, Washington.
- City of Seattle. 2016. Director's Rule X-2016: Great Blue Heron Management Plan. Draft. Available at: http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/p2345109.pdf
- The Olympian. Olympia will buy 2.75 acres to protect great blue heron habitat. Published August 16, 2016. <http://www.theolympian.com/news/local/article96109887.html>
- Washington State Department of Fish and Wildlife (WDFW). 2008. Priority Habitat and Species List. Updated April 2014. Olympia, Washington. <http://wdfw.wa.gov/conservation/phs/list/>

1.6 Regulations Adopted by Reference

The Critical Areas regulations in ~~effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 3. ~~In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
 4. ~~3.~~ Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(~~K~~)) and only when no other location is feasible.
 5. ~~4.~~ Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

~~6.5.~~ Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

~~8.6.~~ Wetland buffer reductions beyond twenty-five percent (25%) (~~OMC 18.32.535(H)~~) within shoreline jurisdiction shall require a shoreline variance.

~~9.7.~~ Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

~~10.8.~~ Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

~~11.9.~~ New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

~~12.10.~~ Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

3.58 18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/	P	←	See OMC 18.20.820

	Enhancement Projects)			
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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ATTACHMENT 6

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving authority.

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife~~;~~ ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590~~;~~ ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, January 9, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Vice Chair Auderer called the meeting to order at 6:32 p.m.

1.A ROLL CALL

Commissioner Richmond arrived after roll call was taken.

Present: 7 - Vice Chair Mike Auderer, Commissioner Travis Burns, Commissioner Paula Ehlers, Commissioner Darrell Hoppe, Commissioner Negheen Kamkar, Commissioner Carole Richmond and Commissioner Missy Watts

Excused: 1 - Chair Brian Mark

OTHERS PRESENT

Community Planning and Development:
Director Keith Stahley
Deputy Director Leonard Bauer
Senior Planner Joyce Phillips
Senior Planner Linda Bentley
Office Specialist/Minute Recorder Stacey Rodell

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0007](#) Approval of the November 21, 2016 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT

The following members of the public spoke:

George Kurzman spoke in favor of changing the current code that prevents a property owner from renting out an accessory dwelling unit (ADU) that has been built on the owner's property when the property owner does not live on site.

Judy Bardin stated she would like to see someone from an environmental group included on the 'missing middle' work group. She presented a list of environmental groups in Olympia that she would like to see invited to join the work group. Ms. Bardin made reference to the "Tool Box" which is a document listing potential tools to implement Olympia Downtown Strategy (DTS). She feels Item 22 (Reduced building/planning/impact SDC fees) will impact needed City services such as compliance enforcement. Reducing impact fees for some projects will only shift the cost to other developers or the public resulting in a possible general fund reduction. Item 22 also mentions a reduction in stormwater fees; she feels this will impact the efforts towards preparing for sea level rise. She feels it is not logical to reduce fees for projects that may be most impacted by sea level rise. She spoke about Item 24 (SEPA) and how the environmental impact statement (EIS) for the Comprehensive Plan covered a broad range of topics but a site specific SEPA review may include additional information. She is in favor of Item 27 (Brownfields Area-Wide or Property-Specific Grants/Loans).

Chris van Daalen spoke in favor of the exploration of the 'missing middle' housing. He spoke about Vancouver's use of laneway housing.

Kirsten Evenson spoke in favor of tiny homes and urged the City to make changes to the code to allow these types of affordable housing.

Joseph Becker, ecological builder in Olympia, has built a number of tiny homes. He has been actively encouraging the development of ADU's with the City for about ten years. He spoke about Santa Cruz, CA and its successful ADU program. He is in favor of condominium ownership being applied to ADU's. He also spoke in favor of detached accessory structure (DAS) zoning. A DAS is a detached bedroom and shared main house.

Bob Jacobs spoke in favor of ADU's but cautions the belief of having these types units will make housing more affordable. He has concerns the economic development in the region will only create more unaffordable housing due to population growth.

5. STAFF ANNOUNCEMENTS

Ms. Phillips announced the following:

- Positions for City Advisory Boards are still open, including for the Planning Commission. The deadline to apply is January 31, 2017.
- A reminder the Commission will be reviewing and considering the Downtown Strategy recommendations soon. There is a lot of background information on the City's website to review. It is intended the final report will be sent to the Commission in mid-January. The briefing will be on February 6, 2017 with the public hearing tentatively scheduled for February 27, 2017.
- At the next meeting the Commission will begin developing the Planning Commission work plan for April 1, 2017 - March 31, 2018. The starting point is the remaining items on the current work plan that are not complete and the

2017 CPD Work Program.

- The Comprehensive Plan chapter “teach back” summaries from Commissioners to the rest of the Commission will begin at the next meeting. Commissioner Richmond will be giving a recap of the Capital Facilities Plan (CFP). On February 27, 2017, Chair Mark is scheduled to cover Community Values and Vision. Vice Chair Auderer and Commissioner Burns will be summarizing the Economy chapter. Commissioner Kamkar will be summarizing either the Transportation or Public Participation & Partners chapter.
- Some of the projects currently under review are Harrison Mixed Used, Washington Realtors, Colonial Estates, Briggs North Multifamily, Briggs Town Center Multifamily and Washington State Employee Credit Union (WSECU).

6. BUSINESS ITEMS

6.A [17-0006](#) Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species Briefing

Ms. Bentley reported on the Critical Areas Ordinance (CAO) Phase 2 - locally important habitat and species via a PowerPoint presentation. Under the Washington State Growth Management Act (GMA), the City is required to update the Critical Areas Ordinance (CAO) periodically as part of the City’s Comprehensive Plan update. The required update included a mandate that the City’s critical areas sections in the development code must be reviewed to ensure consistency with current best available science (BAS).

Phase 1 (BAS updates) - adopted by City Council at 2nd reading on August 16, 2016.

Phase 2

- Option to protect locally important species and habitats
- Shoreline Master Plan (SMP) amendment (concurrent with Phase 2 adoption)

Protection Options for locally important species and habitats

- Regulatory
 - Amend development code to include specific species/habitat
 - Requirements triggered by a specific proposal
 - Many species/habitats already protected by City CAO and SMP and by State Department of Fish and Wildlife Priority Habitat and Species list
 - Great Blue Heron habitat protection
 - Annual and additional seasonal buffers around known habitat
 - Provide and/or replace vegetative screening
 - Restrict timing on certain activities
 - Restrict development within a nesting colony
 - Nomination of additional locally important species/habitats
- Incentive-based
 - Land acquisition and/or conservation easements
 - Private donations

- Programmatic
 - Designate as open space, native growth protection, habitat preserve
 - Parks, Arts & Recreation - Land Acquisition West Bay Woods - Trails, Open Space, Habitat Protection
 - Public Works, Water Resources - Storm and Surface Water Plan - Aquatic Habitat - e.g., Low Impact Development regulations (in conjunction with Community Planning and Development)

Development considerations

- No development in the nesting colony
- Activities causing loud noises above the ambient level restricted in the breeding season - February 1-August 31
- All screening trees must be retained or replaced
- Development within the annual buffer must follow mitigation sequencing
- Development on parcels abutting nesting colony requires a minimum 30' building setback from the property lines closest to the colony
- If nesting colony abandoned, area should be protected for 10 years from last known active nesting season

Phase 2 Timeline

- Public Open House - January 18, 2017
- Planning Commission Public Hearing - January 23, 2017 (Including SMP Amendment)
- City Council Adoption - March-April 2017
- Department of Ecology Approval - Summer 2017

The information was received.

6.B [17-0029](#) Briefing on Housing Tool Box and Downtown Strategy Work Implementation Plan

Mr. Stahley reported on the housing toolbox and Downtown Strategy work implementation plan via a PowerPoint presentation. He reviewed the "housing trilemma" - cities face tradeoffs in terms of housing affordability, job availability and quality of life. The slide compared the 100 largest metropolitan statistical areas (MSA) in the country. He also reviewed the following:

- New Downtown housing units from 2014-2016
- Proposed Downtown housing units from 2017-2019
- Housing toolbox highlights
- City owned property
- Downtown Strategy implementation plan highlights

The report was received.

6.C [17-0024](#) 'Missing Middle' Infill Housing Analysis - Public Involvement Plan

Mr. Bauer reported on the 'Missing Middle' Infill Housing Analysis and the public involvement plan via a PowerPoint presentation. The term 'Missing Middle' refers to a range of multi-unit housing types that are compatible in scale with single-family homes. In other words, they provide 'middle' density housing. There have been

relatively few of these types of housing constructed in Olympia (and nation-wide) over the past 40 years - thus, they are referred to as 'missing'. Some examples of housing types this project will particularly focus on include tiny houses, modular units, cottage homes, townhouses, small multifamily apartments, and accessory dwelling units. To implement Comprehensive Plan goals and policies regarding providing a variety of housing types, the Missing Middle Infill Housing Analysis will review existing city regulations - such as zoning, permit fees, development standards, utility connection charges, etc. - for potentially disproportionate effects on the ability to provide for a variety of housing types in the City's residentially zoned areas. A work group will be formed to provide in-depth discussion and feedback throughout the project. The work group is currently proposed to include two Planning Commission members and one Utility Advisory Commission member. Mr. Bauer asked if any of the Commissioners would be interested in serving on this work group. Commissioner Ehlers and Commissioner Richmond indicated they would like to serve on this work group. Remaining work group members will represent a broad range of perspectives on infill housing design, financing, construction, neighborhood compatibility, and affordable housing.

The information was received.

7. REPORTS - None

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 8:41 p.m.

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Planning Commission

Public Hearing, Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species

Agenda Date: 1/23/2017
Agenda Item Number: 6.A
File Number: 17-0054

Type: public hearing **Version:** 2 **Status:** In Committee

Title

Public Hearing, Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species

Recommended Action

Conduct a public hearing on the Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species

Report

Issue:

Whether to conduct a public hearing on the Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species.

Staff Contact:

Linda Bentley, Senior Planner, Community Planning and Development, 360.570.3746

Presenter(s):

Linda Bentley, Senior Planner, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. A public open house to discuss the proposed amendments was held January 18, 2017. A report of the open house will be available at the Planning Commission's January 23 meeting.

A SEPA Determination of Non-Significance (DNS) for the recommended changes was issued January 10, 2017. The 60-day notice of intent to adopt, as required by state statute, was sent to the Department of Commerce on January 11, 2017.

Proposed Protections

As suggested in ESA's October 31 memo (attached), staff and consultant believe that the city's existing CAO and SMP regulations will adequately protect most species and habitat but, based on community interest and Council direction, we are proposing new and amended regulations to give added protection to the great blue heron and its habitat.

Staff is also proposing a process by which additional locally important species and/or habitat could be nominated in the future as conditions change (proposed new OMC 18.32.325).

Great Blue Heron and Habitat

In general, we are proposing the following approaches to protect heron rookeries:

- Adopt a fixed-width buffer around mapped heron rookeries
- Require tree and vegetative screening
- Restrict the timing on some types of activities (e.g., clearing, grading)
- Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

Our goal is to find the best balance between protecting species and respecting private property rights. WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, staff is proposing a smaller seasonal buffer than that recommended in WDFW's management recommendations for nests in rural and less developed areas. As indicated on the attached draft maps, we are proposing a 200 foot year-round buffer and an additional 300 foot seasonal buffer for both the East Bay and West Bay rookeries. We also recommend regulatory language that outlines requirements for development near the rookeries (see proposed new OMC 18.32.327). We've developed two draft handouts - Great Blue Heron Management Guidelines and Great Blue Heron Development Conditions - which further explain the regulations.

Non-regulatory Protections

The best way to protect important habitat and species is to acquire the land that provides the necessary habitat for important species. Therefore, we recommend the following:

- The City should continue to work with non-profit groups such as the Olympia Coalition for Ecosystems Preservation to pursue opportunities to purchase properties that support or are near known rookeries or other sensitive habitat.
- The City Parks Department should include as a consideration the quality and extent of habitat value when deliberating acquisition of land for passive-type parks.

The City could also research and develop incentives for landowners who want to permanently protect any type of breeding season habitat and assist existing non-profit groups to develop an ongoing citizen-science training program to assist in monitoring the status of locally important habitat and species.

Shoreline Master Program (SMP) Amendments

When the City amends its CAO, it must also amend its SMP to adopt the new CAO by reference. The Washington State Department of Ecology must approve the amendments to the SMP before they can become effective.

The attached amendment to Olympia's SMP adopts the amended CAO by reference, ensures consistency with the CAO adopted July 19, 2016, and corrects errors. Minor changes to OMC 18.02.180 Definitions and OMC 18.32.500 and 515 are required to bring the CAO into consistency with the SMP and are also attached.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC Chapter 18, adoption of amendments to the SMP and approval of the non-regulatory suggestions, **as recommended by staff.**
2. Recommend to City Council adoption of amendments to OMC Chapter 18, adoption of amendments to the SMP and approval of the non-regulatory suggestions, **with modifications.**
3. Request staff to furnish further clarification or revisions.
4. Recommend denial of all proposed amendments and/or non-regulatory suggestions.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species protection may require additional resources in the future.

Attachments:

Proposed OMC 18.32 amendments
Miscellaneous Title 18 OMC amendments
Shoreline Master Program amendments
ESA memo
Rookeries maps
Great Blue Heron Management Guidelines
Great Blue Heron Development Conditions

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OMC Chapter 18.32 as approved by City Council Aug 16, 2016, with proposed new language shown in track changes.

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 1 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

1. No development shall occur in the great blue heron nesting colony.
2. Any development within the year-round buffer shall use mitigation sequencing as provided in OMC 18.32.135 to:
 - a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall

- c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
- 3. If the parcel where the development will occur abuts a parcel containing a great blue heron nesting colony, there shall be a minimum 30 foot building setback from the property line(s) closest to the nesting colony. The setback shall be vegetated using native trees and shrubs that screen activities on the parcel from the nesting colony.
- 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- 1. Any clearing, grading, outside construction or other activity that causes loud noise above ambient noise levels shall be done from September 1 through January 31, outside of the nesting season. Ambient noise is specific to the location of the nesting colony site and can include noises such as sirens and leaf blowers. Noise that is not considered ambient noise includes but is not limited to outdoor construction and the use of dump trucks, front end loaders, pile drivers and blasting equipment.
- 2. All 6 inch diameter breast height (dbh) or larger trees shall be retained if the removal of those trees decreases the effectiveness of the trees' screening of new and existing development from the colony and if replacing the removed trees with other trees does not screen the nesting colony to the same extent as the existing trees.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.

B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.

C. Contain, but not be limited to:

1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;
 - f. The extent and location of the important species habitat;
 - g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

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ATTACHMENT 1

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving authority.

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife~~;~~ ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590~~;~~ ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.310 – Official Shoreline Map

The Shoreline Map (Figure 4.1) is hereby amended to correct a map error in Budd Inlet, Reach BUDD-3B to show the intent, which is to include the now unused railway berm shown on previous maps but erroneously deleted in the latest SMP update. The Boundary Descriptions in Appendix B are correct.

3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 3. ~~In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

~~4.3.~~ Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.

~~5.4.~~ Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

~~6.5.~~ Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7.~~ In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.

~~8.6.~~ Wetland buffer reductions beyond twenty-five percent (25%) (OMC 18.32.535(H)) within shoreline jurisdiction shall require a shoreline variance.

~~9.7.~~ Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

~~10.8.~~ Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

~~11.9.~~ New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

~~12.10.~~ Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13.~~ In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.

3.58 18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use	Natural	All other Shoreline Environments	Aquatic (Same as adjacent	Notes & Applicable Regulations
---	---------	--	---------------------------------	--------------------------------------

X – Prohibited X/C – Allowed by conditional use only in specific cases.			shoreline environment designation)	
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20.842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

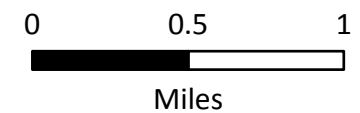
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ATTACHMENT 3

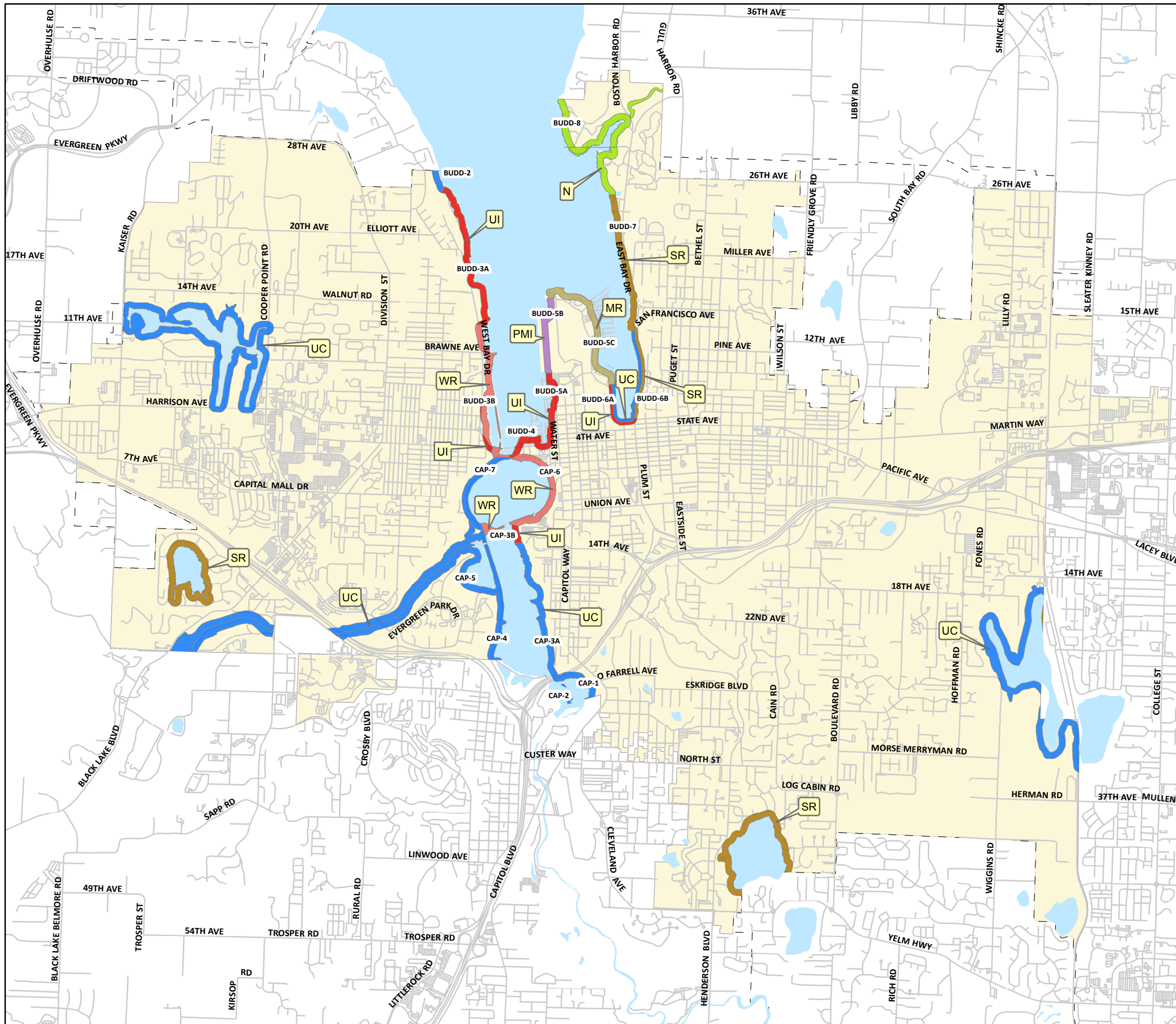
FIGURE 4.1 OLYMPIA SHORELINE MASTER PROGRAM

Shoreline Environment
Designations 10/8/2015

-  AQUATIC
-  MARINE RECREATION
-  NATURAL
-  PORT MARINE INDUSTRIAL
-  SHORELINE RESIDENTIAL
-  URBAN CONSERVANCY
-  URBAN INTENSITY
-  WATERFRONT RECREATION
-  Roads
-  Urban Growth Area
-  Olympia City Limits
-  Tumwater/Lacey City Limits



DISCLAIMER: This map was created for internal City use only. The parcels, right-of-ways, utilities and structures depicted on this map are based on information taken from historical records and aerial photos. The information has not been independently verified as complete or accurate. Access to such information is provided to the public as a matter of public record, for general information only. The completeness and accuracy of this information should not be relied upon. Users are advised to field-verify all information through a private, licensed professional. The City of Olympia and its personnel expressly disclaim any liability arising from commercial or private use of this map or the information, or absence of information, contained herein.



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memorandum

date October 31, 2016

to Linda Bentley, City of Olympia

from Ilon Logan

subject Critical Areas Ordinance Update Phase II: **Locally Important Species and Associated Habitats Recommendations**

This memo is a follow-on to our previous memo *Locally Important Species and Associated Habitats Recommendations Overview and Options* (dated August 5, 2016) and includes high-level recommendations for implementing some of the previously discussed options. The intent is to provide a basis for discussion and decision-making by the City regarding protections for wildlife and wildlife habitats in Olympia.

Based on the review of existing information, published literature, and input from the CAO working group, we suggest the City consider a combination of regulatory and non-regulatory methods to expand and/or increase protections for wildlife and wildlife habitat. Our recommendations fall into two categories: 1) general protections for priority species and habitats, and 2) protections specific to great blue heron.

General Protections

As reported in our previous memo, the City of Olympia contains a low number of sensitive and/or rare habitats and species as documented by the Washington Department of Fish and Wildlife (WDFW) in the Priority Habitats and Species (PHS) database (WDFW, 2016). This is due to the developed-nature of lands within the City and urban growth area boundaries, the limited extent of stream corridors and wetland areas, and the lack of native prairie or oak woodland habitats. The PHS database does include records for wood duck breeding areas and mink occurrences (both from the early 1990s), great blue heron rookeries, bald eagle and peregrine falcon breeding sites, and bat communal roosts. Additional, several of the species identified by the CAO working group as important and/or potentially declining (see July 26, 2016 meeting notes), including western grebe, purple martin, osprey, Vaux's swift, several bat species, and Olympic mudminnow, are on the PHS list.

To provide regulatory protections for individual wildlife species, we have the following high-level recommendations for the City:

- Rely on the current regulations for important habitats and species (OMC 18.32.305B) for peregrine falcon and bald eagle. Both are state sensitive species (<http://wdfw.wa.gov/conservation/endangered/status/SS/>) and federal species of concern, which puts them within the City's current definition of important habitats and species. In addition, these two bird species were not a major concern by the CAO working group as neither are currently experiencing population declines.
- Rely on the current regulations for streams (OMC 18.32.405A), wetlands (OMC 18.32.505), and small lakes (OMC 18.32.305D) for habitat protection of wood duck breeding areas, western grebe, and Olympic mudminnow.
- Rely on the current regulations for streams (OMC 18.32.405A) and important riparian areas (OMC 18.32.405B) for habitat protection of bat communal roosts (including Yuma myotis, California myotis, big brown bat, little brown bat, and Townsend's big-eared bat).

In terms of a nomination process for adding new locally important species and habitats, the City should have a nomination and designation process in place. The Department of Commerce (formerly CTED) has developed an example step-wise process (see our previous memo) that can be used as a guide. We note that some counties and cities (e.g., Thurston County and City of Bellevue) have codified their version of the process in the CAO regulations. Based on our experience, this approach is not necessary as the nomination and designation process is rarely used and is an optional requirement of the GMA. We recommend that the City prepare its guidelines and have them available upon request from the City manager or other representative.

Lastly, to increase protection of general wildlife habitats in the City, we recommend the City continue to work with the Olympia Coalition for Ecosystems Preservation and pursue opportunities to purchase properties near known rookery locations as they did in 2016 when 2.5 acres of the West Bay Woods were acquired (The Olympian, August 16, 2016). In addition to outright purchase, the City could consider innovative ways of acquiring property for open space such as Transfer of Development Rights (TDR) and development incentives for set asides. These programs provide reduced property tax rates for property owners who voluntarily commit a portion of land to open space or avoiding activities harmful to specific species or habitat.

Great Blue Heron Protections

To protect the population of great blue heron and their breeding habitat, we suggest the City follow an approach similar to the City of Kenmore, which includes:

- Adoption of a fixed-width buffer around mapped heron rookeries
- Timing restrictions on some types of activities (e.g., clearing, grading)
- Consultation with the City and WDFW during project planning

For specifics, we recommend the City follow WDFW's guidelines for identifying, mapping, and managing heron habitats as detailed in *Management Recommendations for Washington's Priority*

Species: Great Blue Heron (Azerrad, 2012). An abbreviated set of guidelines is provided with this memo.

Following the WDFW guidelines would address and document the known rookery locations in both the West Bay woods and East Bay forested ravine and establish those areas as Heron Management Areas (HMAs). The WDFW-recommended buffers for nesting colonies in urban areas include a year-round buffer of 60 meters (197 feet) and an additional seasonal buffer of 200 meters (656 feet) for unusually loud activities during breeding season (i.e., February-September). Buffer protections are based on the premise that adequate buffers result in greater longevity and colony productivity because they are a physical and visual barrier to potentially intrusive activities, can protect nest trees from being blown down, and provide habitat for birds when they move from one nest tree to another. The City should require a site-specific habitat management plan to be developed whenever a land use proposal is submitted in or near the HMA.

As an alternative to the WDFW-recommended buffer widths, we recommend the City consider the City of Seattle's protections for great blue heron drafted in 2016, but not yet adopted (City of Seattle, 2016). The proposed regulations establish a year-round buffer of 197 feet and seasonal buffers that are less than the WDFW-recommended width. The proposed seasonal buffers include a 500-foot buffer applied to the colonies in the Kiwanis and North Beach Ravines and a 300-foot buffer applied to all other nesting colonies. The City maintains that heron colonies within the City of Seattle are in part habituated to urban conditions and notes that WDFW did not establish smaller seasonal buffers for urban areas.

To address the sometimes transitory nature of nesting colonies, we recommend the City stipulate the period in which a HMA remains in effect from the last known active nesting season. As referenced in the WDFW recommendations, the Migratory Bird Treaty Act (MBTA) states that protections applying to an active colony should remain in effect for 10 years after the last recorded nesting season. The City of Seattle draft protection adopt this time period as well.

We suggest that City project planners actively consult the WDFW guidelines for carrying out the heron recommendations. During project review, a habitat management plan should be developed whenever a land use proposal is submitted in or near the HMA. Consultation with WDFW about known heron activity and breeding confirmation should also occur.

Lastly, the WDFW guidelines also recommend non-regulatory incentive programs for protecting great blue herons, such as those described previously. While many local governments protect the nesting colony through regulatory measures, habitats that indirectly benefit a colony sometimes go unprotected. WDFW suggests local governments offer incentives to landowners who want to permanently protect any type of breeding season habitat. Specifically, proposals near breeding season habitat deserve high priority when choosing between candidates for new Conservation Futures sites. Furthermore, land trusts should also consider these areas when developing their conservation portfolios.

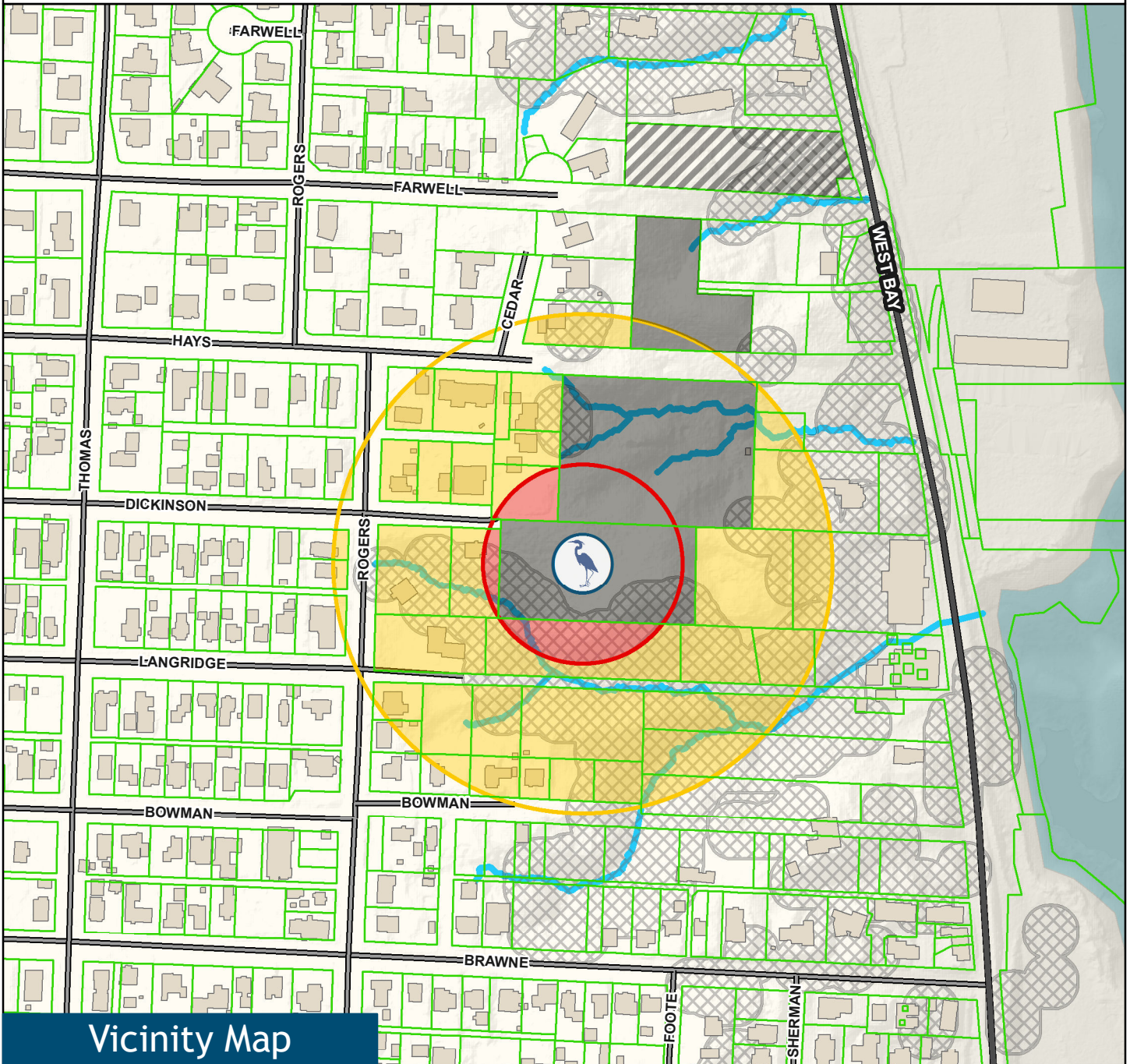
References

- Azerrad, J. M. 2012. Management recommendations for Washington's priority species: Great Blue Heron. Washington Department of Fish and Wildlife, Olympia, Washington. <http://wdfw.wa.gov/publications/01371/>
- City of Olympia. 2016. Locally Important Species and Habitats Working Group Meeting notes. July 26, 2016. Olympia City Hall. Olympia, Washington.
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- Washington State Department of Fish and Wildlife (WDFW). 2008. Priority Habitat and Species List. Updated April 2014. Olympia, Washington. <http://wdfw.wa.gov/conservation/phs/list/>

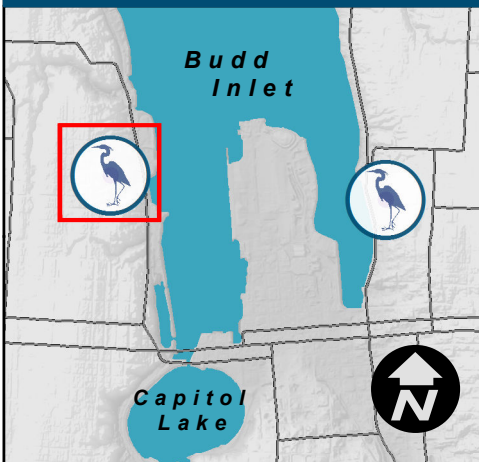


Community Planning and Development

Westside Heron Rookery



Vicinity Map



Heron Rookeries



200' Annual Buffer



Additional 300' Seasonal Buffer



City Parcels



Under Option by City



Government or
NGO Owned



Steep Slopes



Existing Buildings

1 inch = 300 feet
0 0.03 0.06 Miles

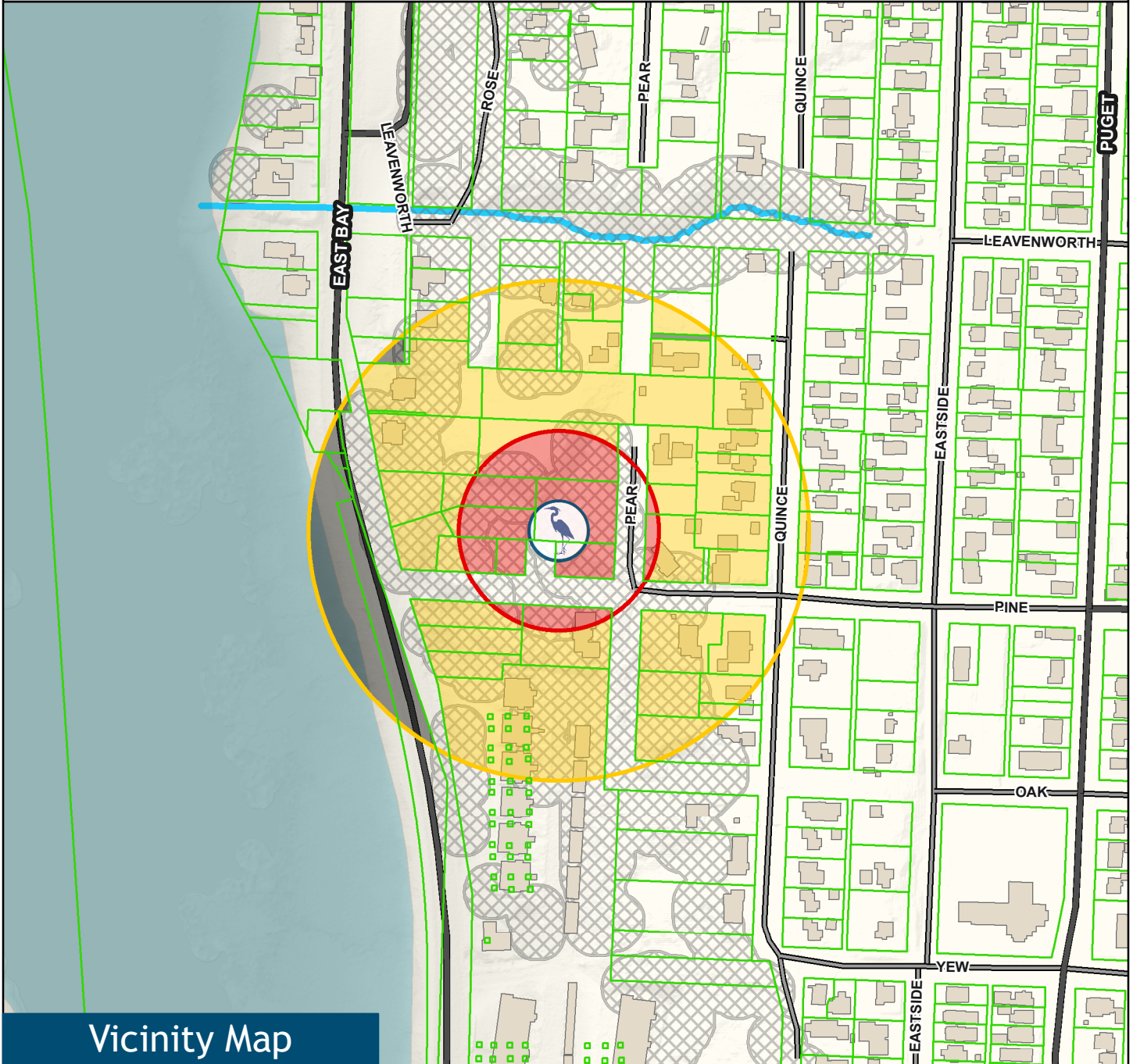


The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

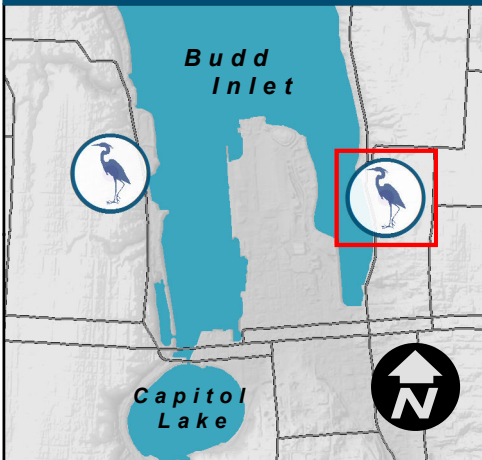


Community Planning and Development

Eastside Heron Rookery



Vicinity Map



Heron Rookeries



200' Annual Buffer



Additional 300' Seasonal Buffer



City Parcels



Government or
NGO Owned

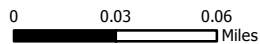


Steep Slopes



Existing Buildings

1 inch = 300 feet



The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

GREAT BLUE HERON DEVELOPMENT CONDITIONS:**Within the Great Blue Heron Management Area:**

- Any clearing, grading, outside construction or other activity that causes loud noise above ambient noise levels shall be done from September 1 through January 31, outside of the nesting season. Ambient noise is specific to the location of the nesting colony site and can include noises such as sirens and leaf blowers. Noise that is not considered ambient noise includes but is not limited to outdoor construction and the use of dump trucks, front end loaders, pile drivers and blasting equipment.
- All 6 inch diameter breast height (dbh) or larger trees shall be retained if the removal of those trees decreases the effectiveness of the trees' screening of new and existing development from the colony and if replacing the removed trees with other trees does not screen the nesting colony to the same extent as the existing trees.

Within the Great Blue Heron Core Zone:

- No development shall occur in the great blue heron nesting colony.
- Any development within the year-round buffer shall use mitigation sequencing as set out in OMC 18.32.135 to:
 - maintain baseline development conditions and ambient noise levels;
 - maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - Include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
- If a nesting colony has been abandoned by a great blue heron colony, the great blue heron core zone for this colony shall be protected for a period of 10 years from the last known active nesting season.
- If the parcel where the development will occur abuts a parcel containing a great blue heron nesting colony, there shall be a minimum 30 foot building setback from the property line(s) closest to the nesting colony. The setback shall be vegetated using native vegetation that screens activities on the parcel from the nesting colony.

If the standard conditions set forth above in the Conditions section are acceptable, please sign below and this will serve as your Great Blue Heron Management Plan. Activities will be periodically monitored and failure to comply with the Plan constitutes a violation as set forth in OMC 18.32.175.

I have read and understand the above conditions placed on parcel

_____ located at

Signature _____ Date _____

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ATTACHMENT 7

GREAT BLUE HERON MANAGEMENT GUIDELINES

Background & Purpose:

Great blue herons can be vulnerable because of their tendency to aggregate during the breeding season. They are colonial breeders that nest in a variety of deciduous and evergreen tree species. Nests are usually constructed in the tallest trees available, presumably to reduce the risk of predation by mammals. The availability of suitable great blue heron breeding habitat is declining as human population increases. Great blue heron nesting colonies are listed as a Washington State Department of Fish and Wildlife (WDFW) Priority Species.

Statewide Recommendations

Statewide, WDFW recommends a permanent, year-round buffer of 60 meters (197 feet) from the perimeter of the great blue heron nesting colony for urban areas as defined by WDFW. Additional management recommendations include a seasonal buffer of 200 meters (656 feet) for loud noises and 400 meters (1,320 feet) for extremely loud noises such as blasting. The seasonal buffers are measured from the outside edge of the year-round buffer. These management recommendations can be found in the 2012 Washington's Priority Species, Great Blue Heron, prepared by WDFW. This can be viewed by going to <http://wdfw.wa.gov/publications/01371/> or by contacting WDFW.

Local Recommendations

The WDFW recommends that local land use planning should, when possible, protect existing great blue heron colonies using colony site-specific management plans that consider the colony size, location, relative isolation and the degree of habituation to human disturbance. Typically in Olympia it is difficult to restrict development within larger buffer areas due to existing development and buildable lots in close proximity to colonies. Therefore, and because heron colonies within the City of Olympia are in part habituated to urban conditions and WDFW did not establish smaller seasonal buffers for urban areas, the City has established a 200 foot year-round buffer and an additional 300 foot seasonal buffer for great blue heron nesting colonies in both the West Bay and East Bay areas. Development conditions for proposed development within or near a Great Blue Heron Management Area are contained in OMC 18.32.327.

Definitions

Great Blue Heron Nesting Season means February 1 through August 31

Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.

Great Blue Heron Core Zone means the area consisting of a great blue heron nesting colony and its 200 foot year-round buffer.

Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the 200 foot year-round buffer, and the 300 foot seasonal buffer.

Screening Tree means a tree that is within the direct line of sight between the structure(s) or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from the structure(s) or development during any part of the year, and within the great blue heron management area.

Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

Measurements

Year-round buffer: The 200 foot year-round buffer is measured from the nesting colony boundary.

Seasonal buffer: The additional 300 foot seasonal buffer is measured from the great blue heron core zone.



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501

Contact: Joyce Phillips
360.570.3722

Monday, January 23, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Present: 7 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Paula Ehlers, Commissioner Darrell Hoppe, Commissioner Negheen Kamkar, Commissioner Carole Richmond and Commissioner Missy Watts

Excused: 1 - Commissioner Travis Burns

OTHERS PRESENT

Community Planning and Development:
Deputy Director Leonard Bauer
Senior Planner Joyce Phillips
Senior Planner Linda Bentley
Office Specialist/Minutes Recorder Stacey Rodell

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0062](#) Approval of the January 9, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips made the following announcements:

- Positions for City advisory boards are still open, including for the Planning Commission. The deadline to apply is January 31, 2017.
- The next Planning Commission meeting is on February 6, 2017. It will be held in the Council Chambers as Room 207 will be closed for the installation of new

A/V equipment. The meeting will primarily be dedicated to the Downtown Strategy (DTS) briefing. A DTS open house will occur from 5:00 - 6:30 pm. Planning Commission is invited and encouraged to attend.

- Staff is working hard to get the DTS graphic report summary formatted by Thursday - February 2, 2017. The approximately 40-page summary will be sent to the Commission and posted to the web. Copies for Commissioners and the public will be available at the February 6, 2017 meeting.
- As the more detailed background chapters are completed, they will be posted to the web and a link sent to the Commission. The hope is to have these all complete and posted by February 13, 2017; however if they are not completed by that date, the public hearing date (currently planned for February 27, 2017) may be held at a later date.
- The Comprehensive Plan chapter “teach back” summaries from Commission members to the rest of the Commission begin tonight with Commissioner Richmond giving a recap of the Capital Facilities Plan chapter. On February 27, 2017, Chair Mark is scheduled to cover Community Values and Vision.
- Public comment for written comments will remain open until noon on January 27, 2017 for the Critical Areas Ordinance. The Commission’s deliberations will begin on February 6, 2017.

6. BUSINESS ITEMS

6.A [17-0054](#) Public Hearing, Critical Areas Ordinance (CAO), Phase 2, Locally Important Habitat and Species

Ms. Bentley presented a briefing regarding the Critical Areas Ordinance (CAO) via a PowerPoint presentation.

Discussion:

- Commissioner Richmond asked how developable the land is at the west side habitat. Ms. Bentley explained it is sloped, there are some streams and there is some developable land. Most of the property is owned by a non-profit organization that does not plan to develop the land. Determination of whether or not the land is developable would be considered on a case to case basis.
- Vice Chair Auderer asked if there has been a revenue impact study done on either of the areas. Ms. Bentley indicated there hasn’t been a study done to the best of her knowledge. Chair Auderer indicated he would like staff to inquire further regarding this impact. Ms. Bentley indicated she will look into this further.
- Commissioner Hoppe inquired why development would be restricted during the non-occupied habitat season. Ms. Bentley indicated if the habitat is not occupied then the development activity time period will be extended to April 1st instead of September 1st. Commissioner Hoppe asked how the herons will be tracked in the future. Ms. Bentley stated what would trigger such a determination of if there are herons on a parcel would be when a property owner submits an application for development.

- Commissioner Watts asked for clarification on the decibel noise levels. Ms. Bentley provided some clarification.
- Vice Chair Auderer said he would like to see the decibel level portion of the ordinance be more clearly defined.
- Mr. Bauer provided some clarification that noise level impacts would be measured at the boundary of the nesting colony.

Chair Mark opened the public hearing.

The following members of the public spoke:

Andrea Buser, Daniel Einstein, Martin McCallum, Jennifer Schafer, Katherine Himes, Noah Jensen, Harry Branch and Bob Jacobs all spoke in support of the ordinance.

Tom Schrader spoke in support of protecting the herons but questioned the City's process of developing the CAO. He was not in support of the ordinance as it is written.

Joel Baxter, a representative for Olympia Master Builders, stated he believes the five month development period is too short to finish a development project. He feels the ten year restriction could create a burden on land owners and there should be additional scientific study done regarding the CAO and the protection of the herons.

Chair Mark stated the public hearing would remain open for any additional written comments to be submitted to the City by noon on Friday, January 27, 2017.

The verbal portion of the public hearing was held and closed.

6.B [17-0053](#) Preliminary Planning Commission Work Plan for April 1, 2017 through March 31, 2018

Ms. Phillips reviewed the 2017 draft work plan. The Commission discussed the draft work plan.

The discussion was completed.

7. REPORTS

Chair Mark presented a report on the recent Arts Commission meeting he attended. They have completed the request for proposals process and have selected a consultant for the Gateways project. They also reviewed their 2017 draft work plan as well as the municipal art plan. The Poet Laureate has started with the City. Chair Mark will be meeting with the Coalition of Neighborhood Associations regarding a pilot garden project in the public right-of-ways in neighborhoods.

8. OTHER TOPICS

Commissioner Richmond gave a PowerPoint presentation that included an overview of the Capital Facilities Plan (CFP), the goals and policies of the Capital Facilities Element, and how they relate to the City's comprehensive plan and capital budget.

She reviewed the requirements of Capital Facilities Elements as outlined in the Growth Management Act (RCW 36.70A) and discussed the Commission's role in the review of the annual CFP.

Vice Chair Auderer inquired as to what event started the Critical Areas Ordinance (CAO). Ms. Phillips and the Commission briefly discussed the origin of the CAO.

9. ADJOURNMENT

The meeting adjourned at 9:04 p.m.



Planning Commission

Deliberations, Amendments to Critical Areas Ordinance (CAO), Locally Important Habitat and Species, and Shoreline Master Program

Agenda Date: 2/6/2017
Agenda Item Number: 6.B
File Number: 17-0109

Type: recommendation **Version:** 1 **Status:** In Committee

Title

Deliberations, Amendments to Critical Areas Ordinance (CAO), Locally Important Habitat and Species, and Shoreline Master Program

Recommended Action

Recommend to City Council adoption of proposed amendments to the Critical Areas Ordinance (CAO) and related code sections and to the Shoreline Master Program.

Report

Issue:

Whether to recommend to City Council adoption of proposed amendments to the Critical Areas Ordinance (CAO) and related code sections and to the Shoreline Master Program.

Staff Contact:

Linda Bentley, Senior Planner, Community Planning and Development, 360.570.3746

Presenter(s):

Linda Bentley, Senior Planner, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. Staff hosted a public open house to discuss the proposed amendments on January 18, 2017 and the Planning Commission held a public hearing on January 23, 2017. Any written comments received by noon, January 27, 2017, and the additional information requested of staff will be presented before or at the meeting for consideration as part of the Commission's deliberations.

The City issued a SEPA Determination of Non-Significance (DNS) for the recommended changes on January 10, 2017, and sent the 60-day notice of intent to adopt, as required by state statute, to the Department of Commerce on January 11, 2017.

Proposed Protections

Staff and consultant believe that the city's existing CAO and SMP regulations will adequately protect most species and habitat but, based on community interest and Council direction, we are proposing new and amended regulations to give added protection to the great blue heron and its habitat (attached).

Staff is also proposing a process by which additional locally important species and/or habitat could be nominated in the future as conditions change (proposed new OMC 18.32.325).

Great Blue Heron and Habitat

In general, we are proposing the following approaches to protect heron nesting colonies when development is proposed:

- Adopt fixed-width buffers around heron nesting colonies
- Require tree and vegetative screening
- Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
- Require mitigation sequencing where appropriate
- Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

Our goal is to find the best balance between protecting species and respecting private property rights. WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, staff is proposing a smaller seasonal buffer than that recommended in WDFW's management recommendations for nests in rural and less developed areas: a 200 foot year-round buffer and an additional 300 foot seasonal buffer for nesting colonies.

Non-regulatory Protections

The best way to protect important habitat and species is to acquire the land that provides the necessary habitat for important species. Therefore, we recommend the following:

- The City should continue to work with non-profit groups such as the Olympia Coalition for Ecosystems Preservation to pursue opportunities to purchase properties that support or are near known rookeries or other sensitive habitat.
- The City Parks Department should include as a consideration the quality and extent of habitat value when deliberating acquisition of land for passive-type parks.

The City could also 1) research and develop incentives for landowners who want to permanently protect any type of breeding season habitat; and 2) help non-profit groups to develop an ongoing citizen-science training program to assist in monitoring the status of locally important habitat and species.

Shoreline Master Program (SMP) Amendments

When the City amends its CAO, it must also amend its SMP to adopt the new CAO by reference. The Washington State Department of Ecology must approve the amendments to the SMP before they can become effective.

The attached amendment to Olympia's SMP adopts the amended CAO by reference, ensures consistency with the CAO adopted July 19, 2016, and corrects errors. Minor changes to OMC 18.02.180 Definitions, OMC 18.32.500 and 515, and OMC 18.20 are required to bring the CAO into consistency with the SMP and are also attached.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC Chapters 18.32, 18.02 and 18.20; adoption of amendments to the SMP; and approval of the non-regulatory suggestions, **as recommended by staff.**
2. Recommend to City Council adoption of amendments to OMC Chapters 18.32, 18.02 and 18.20; adoption of amendments to the SMP; and approval of the non-regulatory suggestions, **with modifications.**
3. Request staff to furnish further clarification or revisions.
4. Recommend denial of all proposed amendments and/or non-regulatory suggestions.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species protection may require additional resources in the future.

Attachments:

Proposed OMC 18.32.300 amendments
Proposed OMC 18.02 and 18.32.500 amendments
Proposed OMC 18.20 amendments
Proposed Shoreline Master Program amendments
Written public comments

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OMC Chapter 18.32 as approved by City Council Aug 16, 2016, with proposed new language shown in track changes. PROPOSED CHANGES FROM PC 1/9/17
VERSION HIGHLIGHTED YELLOW IN 18.32.327

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

A. Are designated as endangered or threatened species identified under the Endangered Species Act; or

B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The

Department may restrict the uses and activities of a development proposal, such as construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:
 - a. Local populations of native species that are likely to become endangered; or
 - b. Local populations of native species that are vulnerable or declining;
2. The species or habitat has recreation, commercial, game, tribal, or other special value;
3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;
4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and
5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 1 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

1. No development shall occur in the great blue heron nesting colony, except under OMC 18.66.040 Reasonable Use Exception.
2. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:
 - a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. ~~If the parcel where the development will occur abuts a parcel containing a great blue heron nesting colony, there shall be a minimum 30 foot building setback from the property line(s) closest to the nesting colony. The setback shall be vegetated using native trees and shrubs that screen activities on the parcel from the nesting colony.~~
3. If no herons have congregated or nested by March 31, as certified by a report submitted by the developer from a qualified professional, as defined in OMC 18.02.180, the City may allow development April 1 through December 31 for that year, subject to the provisions of OMC 18.32.330 and mitigation sequencing in OMC 18.32.327(C)(2).
4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

Comment [LB1]: Included code reference to make the reasonable use doctrine explicit

Comment [LB2]: Clarification that a habitat management plan (HMP) may be required.

Comment [LB3]: Not clear and redundant with 18.32.327(C)(2)

Comment [LB4]: To allow a longer development time period.

Comment [LB5]: Clarification that a habitat management plan (HMP) may be required.

D. Development Conditions Within the Great Blue Heron Management Area

4. When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels specific to the site shall be done outside of the nesting season, generally September 1 through January 31, unless a different nesting season for that year is certified by a report from a qualified professional. Ambient noise is specific to the location of the nesting colony site and can include noises such as sirens and leaf blowers. Noise that is not considered ambient noise includes but is not limited to outdoor construction and the use of dump trucks, front end loaders, pile drivers and

Comment [LB6]: Clarification of "loud noise" definition from WDFD management recommendations.

~~blasting equipment.~~

~~2. Development may occur at any time in the seasonal buffer in a year where it appears no herons have congregated or nested, subject to the applicant submitting a report from a qualified professional so stating.~~

~~3. All 6 inch diameter breast height (dbh) or larger trees shall be retained if the removal of those trees decreases the effectiveness of the trees' screening of new and existing development from the colony and if replacing the removed trees with other trees does not screen the nesting colony to the same extent as the existing trees.~~

~~3. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger shall be retained. Any required new or replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.~~

Comment [LB7]: Revised for clarity. See new language below.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.
- B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.
- C. Contain, but not be limited to:
 1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
 2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;

3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:

- a. Establishment of buffer zones;
- b. Preservation of important plants and trees;
- c. Limitation of access;
- d. Seasonal restriction of construction and other activities; and
- e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:

- a. The location of the proposed development site, to include a boundary survey;
- b. The relationship of the site to surrounding topographic features;
- c. The nature and density of the proposed development or land use change;
- d. Proposed building locations and arrangements;
- e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;
- f. The extent and location of the important species habitat;
- g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving authority.

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife~~;~~ ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590~~;~~ ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

The following amendments are to bring OMC 18.20 into consistency with the City's Shoreline Master Program:

3.17 18.20.310 – Official Shoreline Map

The Shoreline Map (Figure 4.1) is hereby amended to correct a map error in Budd Inlet, Reach BUDD-3B to show the intent, which is to include the now unused railway berm shown on previous maps but erroneously deleted in the latest SMP update. The Boundary Descriptions in Appendix B are correct.

18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - ~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
 - 4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.
 - 5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).
 - 6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).
 - ~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

~~8.6.~~ Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.

~~9.7.~~ Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

~~10.8.~~ Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

~~11.9.~~ New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

~~12.10.~~ Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement	P	←	See OMC 18.20.830 through 837

	Projects)			
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20.842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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ATTACHMENT 3

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.310 – Official Shoreline Map

The Shoreline Map (Figure 4.1) is hereby amended to correct a map error in Budd Inlet, Reach BUDD-3B to show the intent, which is to include the now unused railway berm shown on previous maps but erroneously deleted in the latest SMP update. The Boundary Descriptions in Appendix B are correct.

3.22 18.20.420 - Critical Areas

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 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
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~~7.~~ In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.

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~~10.8.~~ Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

~~11.9.~~ New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

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3.58 18.20.810 – Permitted Shoreline Modifications

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Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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ATTACHMENT 4

Public comments received
January 23-January 27, 2017,
on proposed amendments to the City's CAO
and SMP

Olympia Community Planning and Development Department
601 4th Ave E
PO Box 1967
Olympia WA, 98507-1967

Re: Comments to Public Hearing #1038 - Changes to Critical Areas Ordinance - January 23, 2017

I am opposed to the proposed changes regarding heron habitat quiet period.

As a land owner within the proposed seasonal boundaries, I see the new regulations as overly oppressive. Currently, because of steep slopes critical areas, the building period for my property is limited to the 'dry season' (May 1st to September 30th). If the new regulations, limiting activity above ambient noise, go into effect and restricts building from February 1st to August 1st, my effective building period will be limited to one month a year. Not a viable situation.

I'm am willing to perform excessively noisy operations – like blasting and pile driving during the 'non-nesting-season'. But standard building operations such as pouring footers, framing, roofing, paving will need to take place during the dry season to build a house within standard permitting timeframe.

Restrictions on activities should not exists during the spring and summer if the herons are not nesting that year.

I am opposed to the proposed changes regarding screen trees.

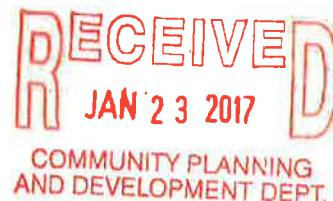
Currently, I have a large tree on my property that needs to come down before building - as there exists a large heart rot in the trunk. Under the new ordinance, such safety measures would not be allowed. This doesn't seem right.

I plan to respect a setback of 30 feet on the rookery side of my property, but it will take decades to grow vegetation that effectively screens the rookery.

In summary, I see the proposed protection plan of the East and West bay rookeries as an overreaction. Herons are urban birds and can coexist with our modern world. There is no science that says otherwise – or even that herons are bothered by human noise. Herons are threatened by animals that eat their young, not by those that admire them from afar.

Thank you,

Doug Keck
dbKeck@yahoo.com
303 NW Kenyon #4B
Olympia, WA 98502



Linda Bentley

From: Tom Schrader <schraderfour@gmail.com>
Sent: Monday, January 23, 2017 9:25 PM
To: Linda Bentley; Brian Mark; Carole Richmond; Darrell Hoppe; Mike Auderer; Missy Watts; Negheen Kamkar; Paula Ehlers
Cc: glenn wells; Tim Smith
Subject: > CITY OF OLY - CAO (Blue Herons) 2017

Dear Planning Commissioners,

We just finished tonight's meeting regarding the City of Olympia's CAO/Blue Heron issue, Phase II.

If we all are really serious about preserving the wonderful blue herons we currently have, we would begin to set policy which actually saves these birds. Since the great blue heron is a transitory species, and doesn't the area for a warmer climate, etc... the birds have to be somewhere right now. Right now-- before this years' breeding season begins.

Since the West Bay site has been decimated for years... the only "known nesting site" most likely is the East Bay site,... or is it? Tonight, we were told that site wasn't even known for sure as a nesting location.

If this is the case, why isn't it a nesting site now??? For if the herons can't/won't nest in the West Bay site, shouldn't we be doing everything we can to get ready for them at East Bay NOW before the breeding/nesting season?

Or wherever they will nest this year?!?

Where is today's science--- here in our South Sound, on where they are now, and where they nested last year, and future REAL SCIENCE (not neighbors, or emotional well intentioned eco-groups, etc...)???

- 1) GET A REAL PLAN, FORMULATED BY REAL ANIMAL BIOLOGISTS ON HOW TO PROTECT THE HERON'S NESTS --- EVERY YEAR.**
- 2) ONCE A NESTING SITE HAS BEEN DETERMINED (by the biologist...), ENFORCE ALL THE CAO ORDINANCE'S WE HAVE IN FRONT OF US TODAY.**
- 3) HAVE BUILDERS/ HOMEOWNERS WHO WANT TO BUILD/ETC... HIRE A BIOLOGIST FOR EVERY SUSPECTED HABITAT (much like mazama gopher soils...), AND PROVE THERE AREN'T HERONS THERE.**

NOW we can get on to your CAO guidelines you have brought to Phase II, because we know where the birds are, where they are nesting and how we protect their habitat next year, and then next for decades to come!

Let's get to work and do this--- for all of us, our children's children!

Thank you for your time and service to our beautiful community!

Tom Schrader
 (360) 480-9387



OlyEcosystems

Olympia Coalition for Ecosystems Preservation

January 26, 2017

Members of the Olympia Planning Commission,

The purpose of this letter is to enhance and amend oral comments given in support of the proposed Phase II of the Critical Areas Ordinance (CAO) update. However, we believe that it is necessary to correct statements made by opponents of the proposed CAO during the January 23, 2017 public hearing regarding the activities of the Olympia Coalition for Ecosystem Preservation (OCEP) at the West Olympia Heronry. We believe this is necessary, because it provides proper context for how and whether the community should strive to protect the Pacific Great Blue Heron in Olympia, and provides background for critical next steps, such as the adoption of Phase II of the CAO update. We believe the City of Olympia can and should preserve the interface of our urban and natural environment.

Part I - Corrections

- 1) It was vocally and somewhat aggressively stated that by removing invasive English Ivy from the trees and ground at the Westside Heronry, OCEP volunteers had driven away the resident heron colony by altering the heron's preferred habitat. Moreover, it was stated that the actions of OCEP were well-meaning but naïve, and that they certainly were not science-based. Nothing could be farther from the truth.

First, we ask you to consider the fact that English Ivy is invasive and has only been present in the Olympia area for approximately 50 years, whereas the Pacific Great Blue Heron have inhabited our shores since the receding of the glaciers, approximately 12,000 years ago. The fact that English ivy is a recent introduction contradicts the assertion that it is necessary or even desirable for the survival of the herons.

Secondly, of the three OCEP Board Members with Ph.D.'s, one has a Ph.D. in restoration ecology and actively teaches the subject for the Master of Environmental Studies graduate program at The Evergreen State College. As a practitioner, she has many years of experience in the field. Collectively, as scientists, we appreciate the need for research and due diligence.

Thus, before beginning restoration, we consulted with heron conservation groups throughout the Puget Sound region; additionally, we consulted with the Washington State Department of Fish and Wildlife. Moreover, our restoration activities directly follow the

stewardship directives prepared for this site by the City of Olympia's Public Works Environmental Services Habitat Stewardship Program. That document is attached to this letter. Finally, our restoration activities have been guided by a Conservation Strategy memorandum for the West Bay Woods compiled by the regional land trust Forterra.

In short, the assertion of unintended harm by restoration activities carried out by OCEP confuses correlation with causation. In fact, while the herons did not breed at the Westside Heronry in the 2016 season, they did breed at the site in the 2015 season, which is documented and in the April 23, 2015 article in *The Olympian*, available here: <http://www.theolympian.com/news/local/article26125213.html>. In contrast, the predominant reason the herons did not breed in 2016 at the Westside Heronry was eagle predation, which drove the herons to the East Bay site. Heron movement underscores the inadequacy of preserving a circumscribed set of trees at a single location. Nature is dynamic, and animals adapt to survive. For Olympia's herons, this demonstrates the importance of providing an alternate breeding site, and not destroying their habitat should they not be present in one rookery for one or two breeding seasons.

Barring habitat destruction at the East Bay site, eagle predation is likely to drive Olympia's herons back to the West Bay site. Heron movement between breeding sites is a pattern; it is not arbitrary, nor are the locations arbitrary. It requires much less energy to inhabit an old breeding site than to find and create new site. In nature, energy conservation equates with survival. It is estimated that 40% of colony abandonment in the Puget Sound region is due to eagle predation. The remaining 60% is due to habitat destruction. There are many variables at play in wildlife biology. Humans control one variable: habitat destruction.

Finally, let us point out that OCEP and its activities enjoy substantial public support in Olympia. In addition, the City of Olympia has repeatedly and tangibly supported conservation at the Westside Heronry through technical and other in-kind support, such as applying Parks funds to purchase threatened areas in the West Bay Woods, and writing letters of support for OCEP grant applications. To date, we have received approximately \$200k in foundation and agency support, including most recently \$150k for the purchase of a 1-acre parcel from the Thurston County Conservation Futures Program. A proposal to conserve an additional 3 acres in the West Bay Woods was ranked competitively by the State of Washington's Recreation and Conservation Office this year and likely will be funded. Clearly, OCEP's activities have earned the respect they merit. The next step is to protect this progress with fair and effective regulation.

It was also asserted that by removing English Ivy from the forest floor, restoration left the ground denuded of plants. This is also false. The flat plateau where the herons nest are located was a holly plantation as late as the early 1950's. The combination of holly (also an invasive species) and dense English Ivy on the forest floor made it impossible for

understory forest plants to establish growth in the intervening years. Nearly every plant on the forest floor under the heron nests was planted in the last two years. In fact, OCEP, with foundation support, has installed nearly 5000 native plants in the area. It is true that not all plants survive. The summer drought of 2015 was particularly brutal. With the area occupied by herons, there was no way to water the young plants without disturbing the colony. Nevertheless, we estimate that approximately 75% of installed plants did survive, a percentage that is well within the norm for a typical year and frankly exceptional for a drought year. Accounts of plant death due to the drought are widespread, affecting many mature trees throughout the region.

- 2) It was stated that accounts of the herons' presence at the West Olympia Heronry was merely anecdotal. Again, this statement is provably false. The Washington Department of Fish and Wildlife has monitored this site on and off since at least 2005. The City of Olympia is in possession of these documents; they are also readily available to the public.

Part II - Recommendations

As stated orally during the January 23, 2017 public hearing, we do not think that the proposed ordinance is perfect. We would prefer stronger protections in each of the buffer zones. We do, however, find the bulk of the ordinance to be a common-sense compromise; one that is not an excessive imposition on property owners, while clearly underscoring the need for additional conservation. We point out that the ordinance is universally supported by West Olympia Heronry neighbors, who have made their homes in the vicinity of the heronry. Many of these neighbors provided oral testimony during the January 23, 2017 hearing.

Regulation exists to uphold the values and interests of the many, over the narrow interests of the few. Beyond the East and West side neighborhoods, habitat and species conservation is the first or second priority of a statistically significant pool of citizens in multiple surveys conducted by the City of Olympia. This ordinance update enjoys widespread community support.

However, the real measure of regulation is whether it will work, and whether it can work. The goal of this CAO update is to protect and preserve Olympia's sole Pacific Great Blue Heron colony. As such, protection and preservation must be its first yardstick of success.

Recently, an amendment to permit development on off-season years during the heron breeding season in the 'heron colony' was introduced. This amendment was presented publically for the first time at the January 23, 2017 public hearing. The working group established to help craft this proposed update to the CAO was not consulted on this amendment, and, we believe, would not support this change. Permitting development within the heron colony during a ten-year window should herons not be present by April 1 will not protect and preserve Olympia's sole Great Blue Heron colony.

First, the 10-year window is not arbitrary; rather, it aligns with federal and state recommendations for Great Blue Heron protection and preservation. As stated previously, a small number of alternate breeding sites are critical for heron survival. Allowing development within the colony during the breeding season would completely remove the possibility for the herons to escape eagle predation at their secondary breeding site. Olympia's herons were on the West Side as late as April 23, 2015; about a month later they abandoned that site due to eagle predation. At this time, the entire colony moved to the East Side to an historic breeding site. There they successfully fledged a small number of chicks late in the season. Had development been allowed at the Eastside location – where after all no herons were present the year before – the herons would have been left with no alternate breeding site, and Olympia's heron population would have crashed.

There are approximately 9000 breeding individuals of the Pacific Great Blue Heron left in the world. We believe that our city must protect and preserve breeding sites for these animals. Thus, we cannot support the amendment. Should it remain, then we will withdraw our support for the entire ordinance. With the amendment, the ordinance is not workable and has a high probability of failure.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Einstein', written in a cursive style.

Daniel R. Einstein, Ph.D.
Chairman, Olympia Coalition for Ecosystems Preservation

City of Olympia Public Works, Environmental services

Habitat Stewardship Program



Habitat Assessment for West Bay Heronry

May 2015

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1.0 Introduction

In 2012, the City of Olympia Utility Advisory Committee directed the Stormwater Planning & Implementation (now Environmental Services) section of Water Resources at Public Works to explore opportunities for strategic land stewardship by protecting and improving aquatic, riparian, and associated habitat within Olympia and its urban growth boundary. Following a detailed city-wide analysis, a Preliminary Habitat & Stewardship Strategy (City of Olympia 2014) was developed, which led to the creation of the Environmental Services (ES) Habitat Program in 2014. The program's mission is to "Partner with the community to protect, steward, and restore aquatic, riparian, and associated terrestrial habitats within Olympia's watersheds".

In late 2014, ES staff collaborated with landowner Alicia Elliott and the Olympia Coalition for Ecosystems Preservation (OlyEcosystems) in wildlife habitat enhancement activities on a 4.5 acre site, found near the intersection of Rogers St. NW and Dickinson Ave. NW. This site is of particular value as wildlife habitat because it is some of the last breeding and nesting habitat for the Pacific great blue heron (*Ardea herodias fannini*) found within Olympia city limits. This document presents the findings of Olympia ES staff regarding current habitat conditions and concludes with general maintenance and restoration recommendations. It is the goal of ES staff to form productive partnerships with like-minded community members and organizations, such as Alicia and OlyEcosystems, for the improvement of habitat and ecological function throughout the City of Olympia and Urban Growth Area.

1.1 Description of Project Site

The site is located on two properties, both purchased for habitat conservation by Alicia Elliott, with the support of OlyEcosystems, in 2014. The southernmost of the parcels contains the heron colony proper (county parcel # 09030002001; 1.87 acres); the northern parcel (#67400003600; 2.73 acres), has value for other wildlife, as a buffer for the breeding colony, and as a portion of the West Bay Woods wildlife habitat corridor envisioned by OlyEcosystems. Map 1 shows the parcels purchased for conservation, hereafter referred to as the West Bay Heronry. The habitat corridor would connect the West Bay Heronry with wooded properties to the north, as well as the Schneider Creek stream basin.

1.2 Site History

West Olympia's agricultural and residential development dates to the mid-1800s; the first wooden bridge between the west side and downtown was constructed in 1869. A more reliable concrete bridge was installed in 1919, allowing increased residential, agricultural, and industrial development. The heronry parcel was used as a holly (*Ilex aquifolium*) plantation as recently as the mid-1900s. Map 2 depicts a historic aerial photo of the site from 1947. The photo was georeferenced to show land use as of 1947 at the site and cross-referenced with the current Thurston County parcel layer. In this photo, a plantation of English holly is clearly visible. Since that time, the site has grown into a deciduous plant community and is currently heavily impacted by invasive vegetation. Further detail into the ecology of the site is provided below.

1.3 Ecological Background

Thurston County lies on a glacial plain, carved by the advance and retreat of the Vashon Glacier ~10 - 20,000 years ago. It is bordered by low-lying mountain chains to the south, west, and east, and by the Puget Sound to the north. The West Bay Heronry site is located on the west side of Budd Inlet, within the Olympia city limits. The area is geologically and topographically similar to the coastal regions and islands of the south Puget Sound. The parent material is typically Vashon-age glacial till. Historically, late successional forests in the area likely consisted of Douglas-fir (*Pseudotsuga menziesii*), western redcedar (*Thuja plicata*), western hemlock (*Tsuga heterophylla*), bigleaf maple (*Acer macrophyllum*), and grand fir (*Abies grandis*), with salal (*Gaultheria shallon*), Oregon grape (*Mahonia nervosa*), huckleberry (*Vaccinium* spp.) sword fern (*Polystichum munitrum*), and trailing blackberry (*Rubus ursinus*) in the understory. In wetter or more disturbed areas, one might find red alder (*Alnus rubra*), black cottonwood (*Populus trichocarpa*), Oregon ash (*Fraxinus latifolia*), willow (*Salix* spp.), and other faster growing deciduous tree species. The West Bay Heronry, at one time, probably held a late-seral, temperate forest plant community such as the one described above. This is evident by the redcedar found occupying a prominent space in the canopy of the north parcel, as well as the Douglas-fir located in the draw to the south, which is steeper and less likely to experience human disturbance. Some time after the land ceased to be managed as a holly farm, red alder likely seeded in naturally, along with a variety of invasive vegetation, leading to the site's current condition.

1.4 Basin Information

The West Bay Heronry lies within the watershed of Budd Inlet, with the basin flowing directly into West Bay. Map 3 shows the complete West Bay basin, from Cooper Point to Capitol Lake. A small intermittent stream flows along the southern edge of the heronry parcel, fed by runoff from the northwest Rogers Street and the neighborhood. An intermittent stream may flow through the north parcel; although no standing or flowing water was present at time of survey.

1.5 Goals & Objectives

The formation of OlyEcosystems was and land purchase for conservation, was in part, a response to the threat development on adjacent properties, including an access/road easement on the parcel currently owned by Alicia Elliott which would have cut directly through the heron colony. Now that the property has been acquired by Alicia for habitat conservation, ES staff are collaborating with her and OlyEcosystems to restore and improve habitat conditions on site, for the heron in particular, and also for other wildlife species that use the area. The fact that great blue heron are aquatic-dependent species, the relative rarity locally and sensitivity of their breeding colonies to disturbance, and desire to support community conservations efforts merit the Habitat Program's involvement.

2.0 Current Site Conditions

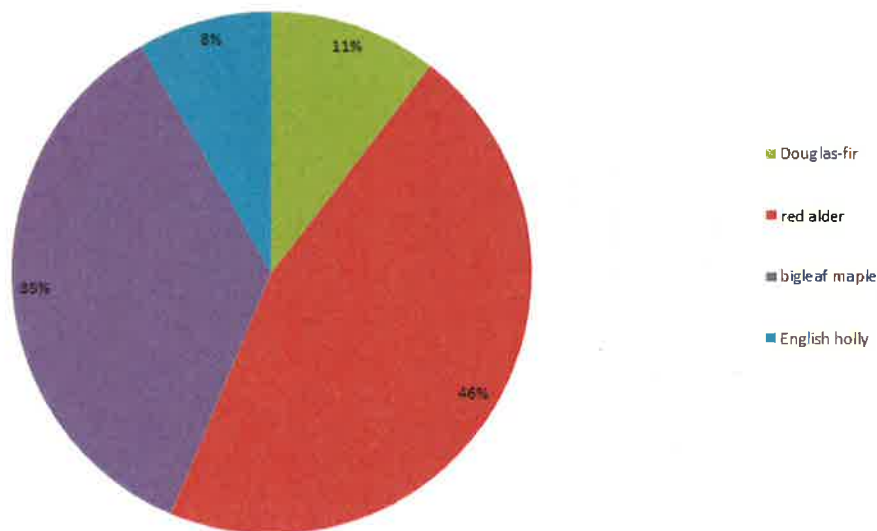
Current conditions and habitat elements of the forest were assessed using a five-part sampling methodology, which examined forest overstory, regeneration, plant community/ invasive plant coverage, snags, and downed wood on the forest floor. Data collected during the overstory survey allows the calculation of metrics such as basal area per acre, number of trees per acre, tree species distribution, and relative stand density; a measure long used by foresters to determine optimal stocking levels in a working forest (Reineke 1933; Curtis 1981). Relative stand density is also useful for determining stocking levels in forests managed as wildlife habitat (Bottorff et al. 2003). Tree seedling and sapling regeneration data allows the analysis of the future seral stages of the forest. Vegetation community analysis identifies native plant communities onsite, facilitating native species selection for replanting and restoration efforts. Approximate distribution and coverage of invasive vegetation was also determined during the vegetation survey, iden-

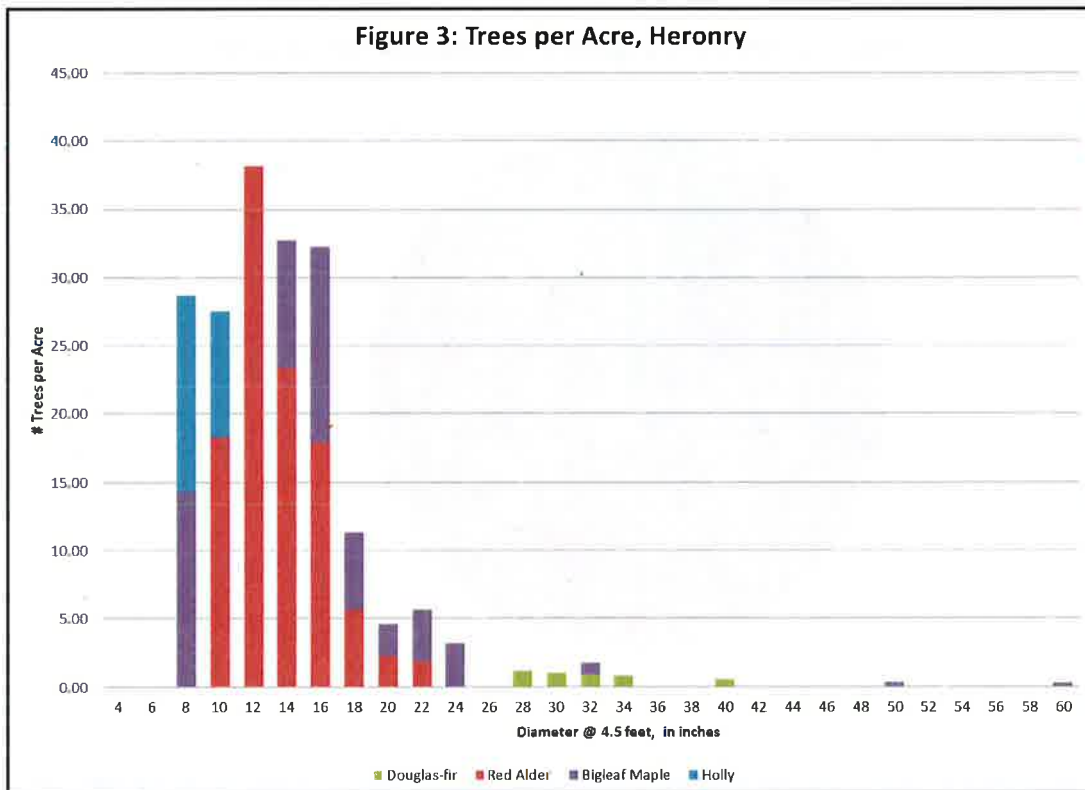
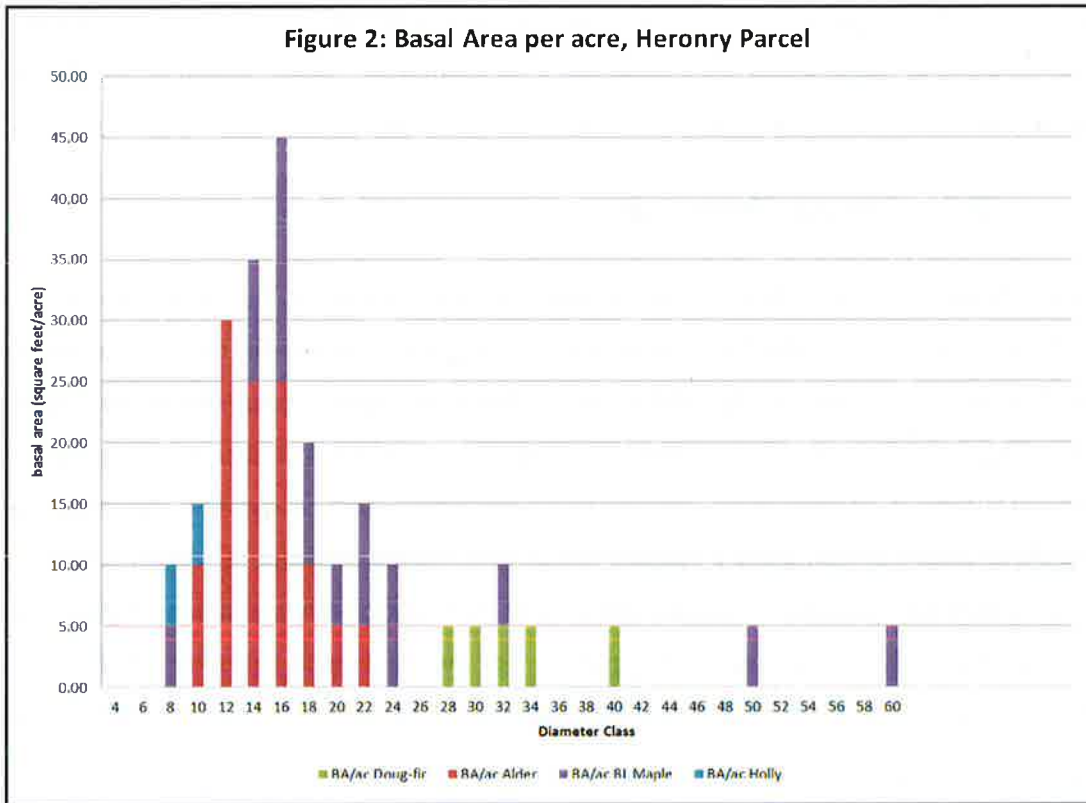
tifying future invasive plant removal efforts and allowing monitoring of vegetation community restoration success. Snag and downed wood surveys identify the current amount of dead wood within the forest, and can be used to predict future needs of these habitat elements.

2.1 Forest Overstory

Heronry Parcel: The overstory is primarily comprised of red alder, with a secondary component of bigleaf maple. The third most common tree species is Douglas-fir, found primarily within the draw along the southern edge of the parcel. The fourth species noted during the tree survey was English holly, normally considered a shrub species, which would be noted during the vegetation survey. However, the specimens found on site are large enough that they were tallied during the overstory survey using a variable-radius plot method of sampling (Avery and Burkhart 1983), possibly due to a legacy effect from the historic holly plantation. Figure 1 illustrates tree species diversity on the heronry parcel. The quadratic mean diameter (QMD, the diameter of a tree with average basal area for the site) for the heronry parcel is 14.9 inches. Basal

Figure 1: Overstory Species Diversity, Heronry Parcel

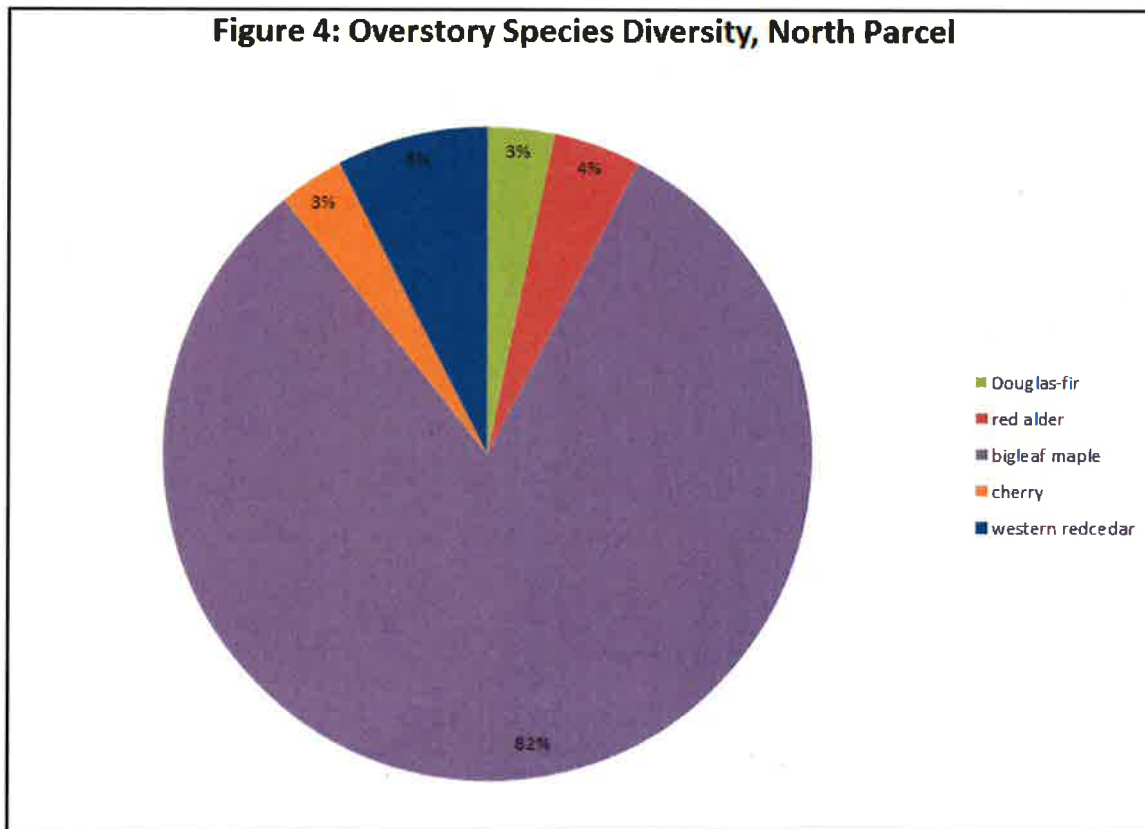


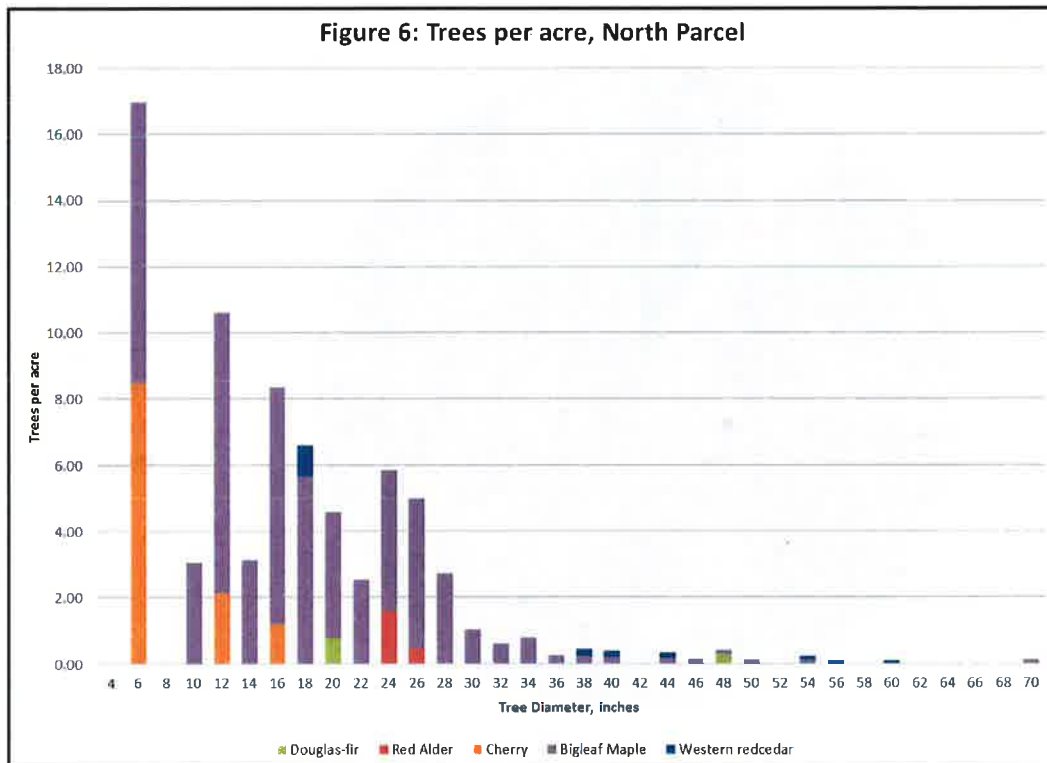
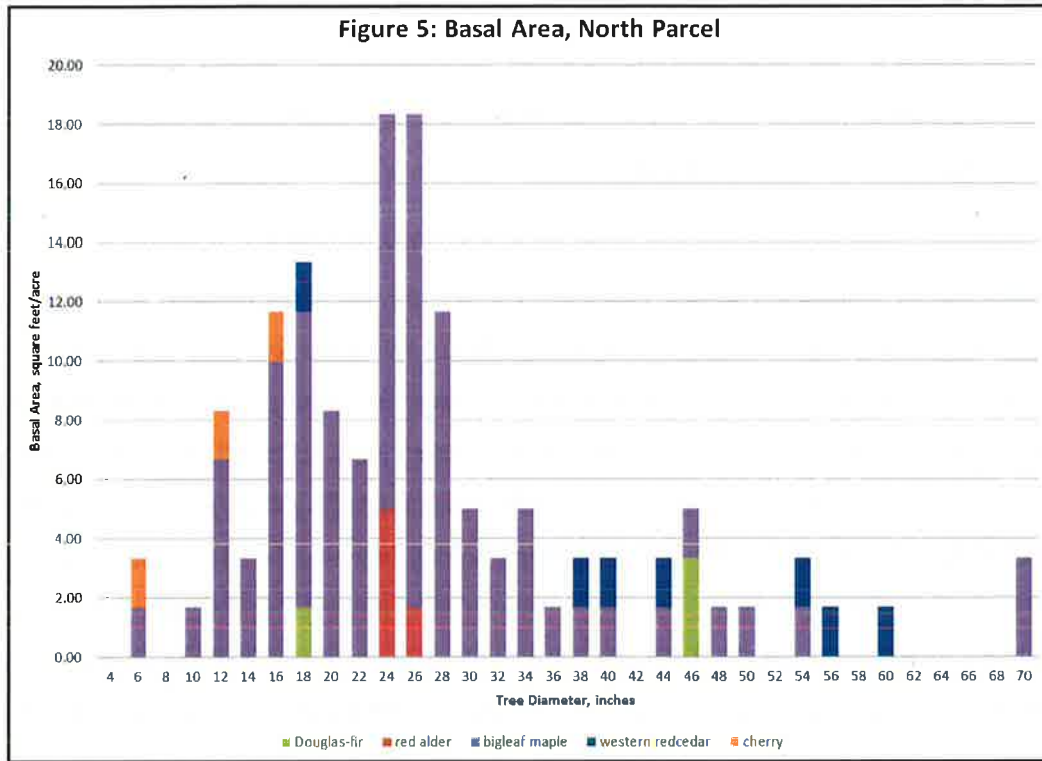


area is about 230 square feet per acre (Figure 2), and average number of trees per acre is 190 (Figure 3). Using a theoretical maximum stand density for red alder of 595, relative density for the heronry parcel is around 61%. What these numbers mean, and how they can be used for wildlife habitat management, is discussed below.

North Parcel: Trees on the north parcel are primarily made up of big-leaf maple, with a small amount of western redcedar, red alder, cherry [*Prunus* spp.], and Douglas-fir (Figure 4). QMD for the north parcel is 19.13 inches. Basal area is about 148 square feet per acre (Figure 5), and the north parcel has an average of 74 trees per acre (Figure 6). Again, using a maximum stand density of 595, relative density for the north parcel is about 35%. Bottorff et al. (2003) recommend a relative density within the range of 25-45% when managing even-aged Douglas-fir as wildlife habitat; the reason for this is that a lower stocking level would allow understory shrubs, as well as new seedlings, to thrive, creating more structural and species diversity within the forest. While Douglas-fir is not the dominant overstory species on this site, there are clear relationships between red alder canopy cover and understory growth (Grotta and Zobrist 2009). Puett-

Figure 4: Overstory Species Diversity, North Parcel





man et al. (1993) have created a density management guide for red alder forests, and while their guidelines optimize wood production, their techniques and the relationships between trees per acre and average diameter can be used for wildlife habitat management as well. Figure 7 is a diagram showing recommended “management zones” for red alder forests; according to this diagram, the heronry parcel is above recommended stocking levels for timber management, which are typically higher than stocking recommendations for wildlife.

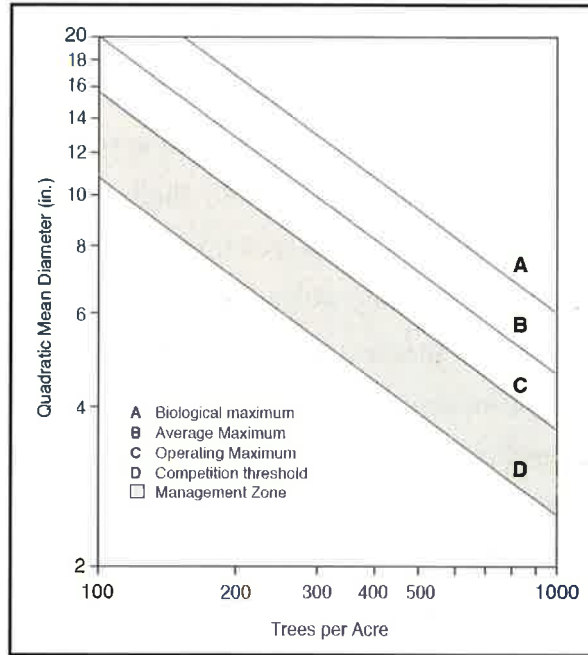


Figure 7: Red Alder (*Alnus rubra*) density management diagram (from Puettman et al. 1993)

2.2 Regeneration

Heronry Parcel: No tree regeneration was discovered on this site; the only woody species found growing in the understory were Indian plum (*Oemleria cerasiformis*) and invasive English holly, along with small amounts of beaked hazelnut (*Corylus cornuta*), as well as some salmonberry (*Rubus spectabilis*) in the southern drainage.

North Parcel: Again, very little tree regeneration was noted during the survey; no trees of seedling or sapling size (< 4 inches diameter @ 4.5 feet) were found on any sample plot. However,

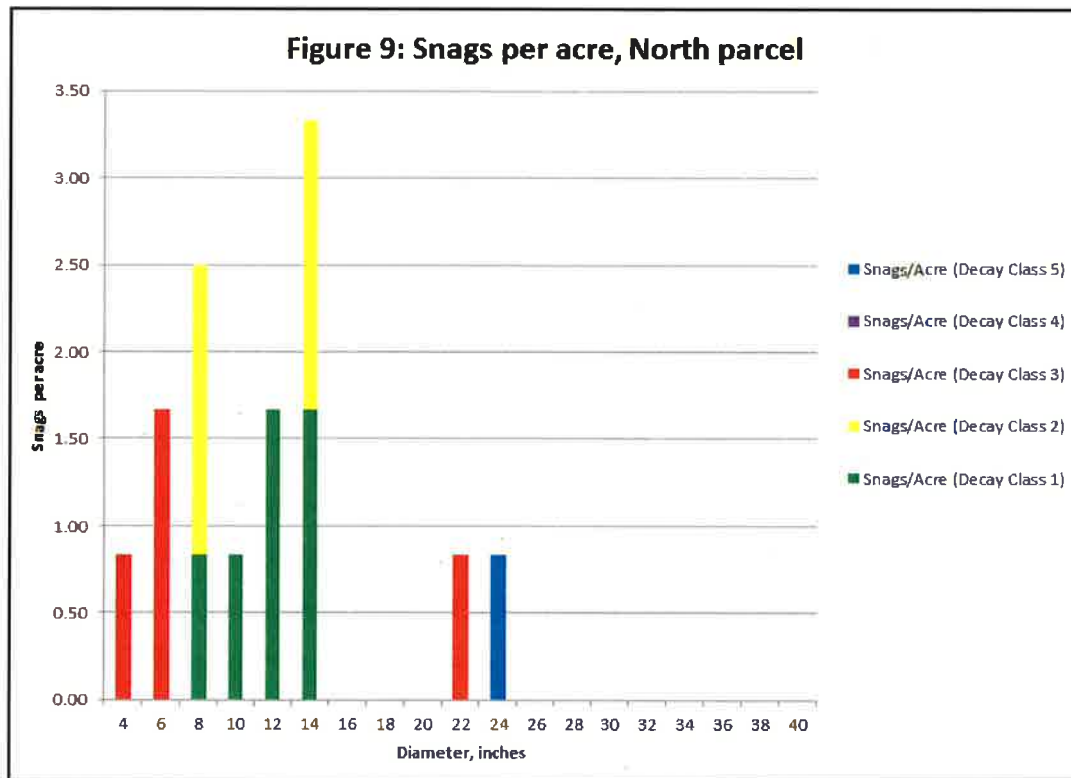
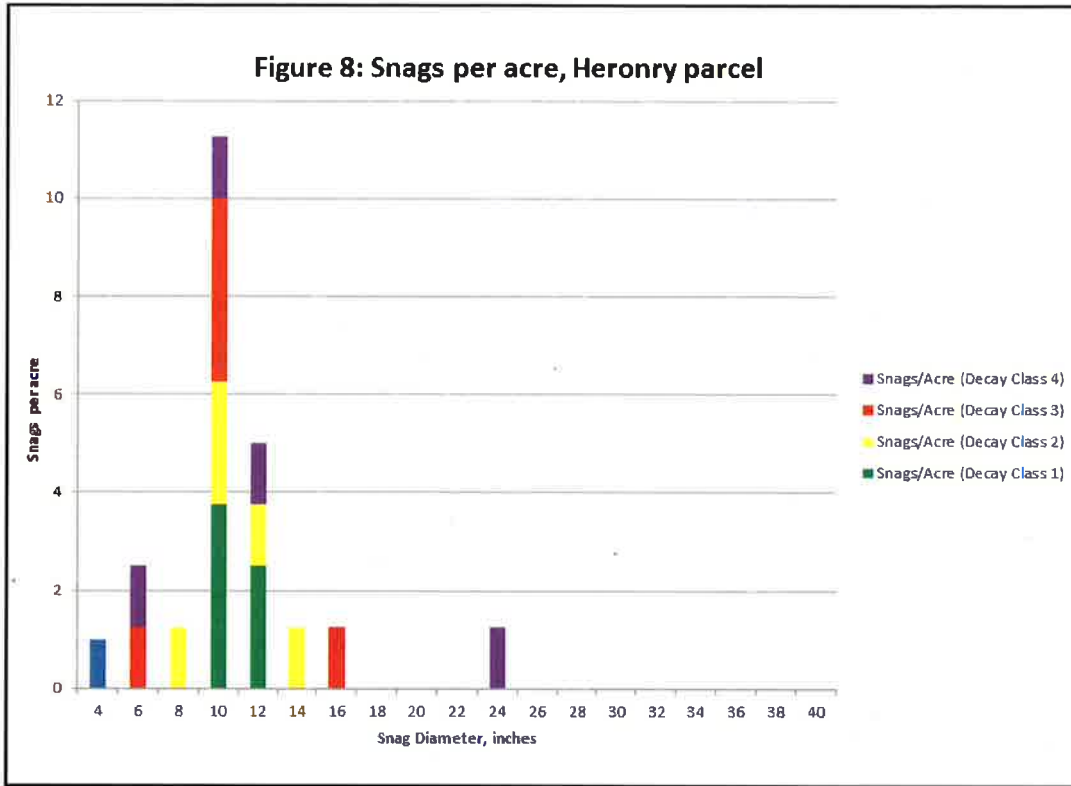
some small cherry, redcedar, and bigleaf maple were noted on the unit which did not make it into the sample.

2.3 Plant Communities

The majority of habitat on both parcels of the West Bay heronry appears to be part of a red alder/sword fern (*A. rubra/Polystichum munitum*) plant community (Chappell 2006). As mentioned in section 2.1, forest canopy is dominated by red alder, with a large component of bigleaf maple. Some Douglas-fir can be found on the southern and eastern borders of the heronry parcel, while the north parcel is home to a number of western redcedar, as well as small amounts of cherry. The heronry parcel also holds a number of large English holly shrubs and trees, likely left over from when the site was used as a holly plantation and seed from those mature plants. The shrub component of both parcels is dominated by holly, with more holly found on the southern parcel. The second-most common shrub on both sites was Indian plum, with small amounts of non-native one-seed hawthorn (*Crataegus monogyna*), beaked hazelnut (*Corylus cornuta*), and salmon-berry (*Rubus spectabilis*). Ground cover on both parcels was dominated by English ivy (*Hedera helix*), with the vine climbing into the canopy on many of the trees found on both sites. Map 4 illustrates density and distribution of *H. helix* on the two parcels. Restoration projects in late 2014/early 2015 have drastically reduced the amount of ivy on the heronry parcel, as well as installed a number of native forest plants. The newly-installed plantings had not been installed prior to the vegetation survey.

2.4 Snags

West Bay Heronry: Nineteen snags were found on eight 1/10th acre plots; this equates to an average of 23.75 snags per acre. Decay class was measured on a scale of 1-5, (1 would be a freshly dead snag and 5 showing advanced stages of decay). Bunnell et al. (2002) suggest one large (> 12-inch diameter) snag, and 4-8 smaller snags per acre, as a target for acceptable snag habitat in Pacific Northwest forests. The West Bay heronry contains an average of 20 smaller snags and 3.75 larger snags per acre, well over the suggested target range (Figure 8).



North parcel: The north parcel held a smaller number of snags per acre, at 12.5. Of these, 7.5 snags were 12 inches or less, while 5 per acre were in the larger diameter range. While this is substantially less than the heronry parcel, it is still within the target range (Figure 9).

2.5 Coarse Woody debris

West Bay Heronry: While the value of coarse woody debris (CWD) on the ground as a habitat element has been known for years (Thomas 1979), ideal amounts and spatial distribution of downed wood can be difficult to determine. Bunnell et al. (2002) found that volumes of 1400-2800 cubic feet per acre, with a variety of log sizes, should sustain most users of downed wood. During the CWD survey, an average of 1793.25 cubic feet of downed wood per acre was found on the heronry site, within the recommended target range mentioned above.

North parcel: The north parcel had a much higher volume of CWD per acre than the heronry site, with 2724.04 cubic feet of CWD per acre. This may be due to trees being prematurely taken down by English ivy climbing into the canopy adding weight and surface area for wind exposure.

2.6 Great Blue Heron Breeding, Nesting, & Foraging Habitat

The colony found on site appeared to contain 12-15 nests at the time of the survey (non-nesting season) and occupied approximately 20,000 square feet (about one half acre). Nests are large (3 ft. + in diameter), and found in the upper portions of the 70-80 foot red alder. A likely reason for the existence of the heron colony at this location is the proximity to foraging areas; Map 6 shows the intertidal estuarine habitat, as identified by Washington Department of Fish & Wildlife (WDFW), found within 3 km of the West Bay Heronry. Key foraging grounds for this colony are likely located in shallows and mudflats along the shoreline of Budd Inlet in close proximity to the colony within 3 km of the rookery (Azerrad 2012). Though invasive plants, such as English ivy and holly will eventually lead to a net loss in habitat diversity for the site, and may even prevent new trees from establishing, the horizontal and vertical visual screening of the nests which these plants provide may have been another factor in the heron choosing this site for a nesting colony.

2.7 Fish, Riparian, & Wetland Habitat

No areas on either the heronry parcel or the north parcel have been identified as containing riparian, wetland, or stream habitat. The herons nesting at the site are wetland and estuary dependent species. This association along with the relative scarcity of local nesting populations supports the involvement of the Habitat Program in site stewardship and technical assistance.

A ravine along the south edge of the heronry parcel contains an intermittent stream fed by storm-water runoff originating off of Rogers St. NW and the surrounding neighborhood and likely some groundwater inputs. This small channel contains some wetland-associated plants, such as skunk cabbage (*Lysichiton americanum*) and salmonberry, though the majority of these types of plants were located further down the ravine, and not on the West Bay Heronry parcel. On the north parcel, some small hillside seeps and other hydrologic activity resulted in small microsites with wetland characteristics; as none of these microsites are greater than 1000 square feet, part of a wetland mosaic, or considered as critical habitat to a WDFW listed or priority species, these micro-wetlands are likely not subject to critical areas protection.

2.8 Other Wildlife Use

A variety of other wildlife species have been identified using the site, including black-tailed deer (*Odocoileus hemionus columbianus*), raccoon (*Procyon lotor*), eastern grey squirrel (*Sciurus carolinensis*), Virginia opossum (*Didelphis virginiana*), Steller's jay (*Cyanocitta stelleri*), American robin (*Turdus migratorius*), and American crow (*Corvus brachyrhynchos*). Similar species of wildlife can be found on the north parcel, and in the more open areas, extensive evidence of mountain beaver (*Aplodontia rufa*) activity was found.

3.0 Recommendations

Collected data was used to develop recommendations to optimize the habitat value of the West Bay Heronry parcels and protect nesting herons from disturbance. Why great blue heron have chosen this site for nesting is unknown, but key issues have been identified which may threaten the health of the forest on the site. This may eventually force the colony to migrate to property that is not protected for conservation. This is also a natural response as landscape conditions

change over time in both natural and urban environments with various forest and vegetation communities developing and changing in response to disturbance and forest succession. This dynamic speaks to the need to conserve appropriate forested parcels within a reasonable proximity to key foraging ground capable of supporting a breeding colony (alternative nesting sites) in addition to protecting the current colony location from disturbance. WDFW's guidance on heron management describes stand traits and proximity to consider (Azerrad 2012).

Other general recommendations aim to improve the habitat for all wildlife users, increasing diversity of the on-site forest, understory, and planting screening vegetation from the surrounding residences, neighborhood, community residents and their pets. Perhaps the most pressing long term issue with forest health at the West Bay Heronry is the age and decadence of the overstory canopy, and little to no seedling regeneration occurring underneath. The forest is comprised of a deciduous closed canopy of trees approaching the end of their life. If no new seedlings exist to replace the dying canopy, then the site will degenerate into a brush patch filled with noxious and invasive vegetation, such as English ivy and Himalayan blackberry. The infestation of English ivy on the ground across much of both parcels may be preventing seedlings from establishing.

The site should be protected from disturbance from the early nesting season in February through the month of August; a split-rail fence, installed by OlyEcosystems with help from volunteers, is an effective way to limit traffic on the retired road bed which cuts through the colony. It is recommended that trees and shrubs be planted along the perimeter of the West Bay Heronry site, to further screen the colony from disturbance. WDFW has published recommendations for management of great blue heron habitat (Azerrad 2012); these guidelines should be used to protect and minimize disturbance at the colony site. As per WDFW guidelines, ES recommends more accurate identification of nesting and overlapping trees, to obtain a more accurate boundary for the nesting colony. Buffer sizes and locations are displayed on Map 7; buffer distances are based on the density of development within $\frac{1}{4}$ mile of the nest colony. In urban areas, a year-round buffer of 197 feet is recommended; for suburban or rural areas, the buffer is increased to 656 feet ($\sim\frac{1}{8}$ mile). From February to September; it is recommended that unusually loud activities (> 92 decibels) be prohibited from occurring within the $\frac{1}{8}$ mile seasonal buffer. Extremely loud activities (an example would be rock blasting) should be prevented from occurring during the nesting season within $\frac{1}{4}$ mile of the colony location.

3.1 Invasive Management

Currently, Olympia has not developed a city-wide Integrated Pest Management (IPM). The Parks, Arts, and Recreation Department has their own policy that applies to property under their management. Until a policy addressing our City's needs and standards is developed, pest and vegetation management recommendations for the City will be based on the Thurston County IPM policy (Thurston County 2013). Through several meetings between OlyEcosystems and ES staff, it was determined that the best control strategies for the two parcels are mechanical removal, including hand-pulling of ivy and English laurel, as well as the girdling or cutting of English holly on site. While the holly may resprout from the base below the point of girdle or stump, this treatment should slow the spread of seed from the mature holly trees, and the standing dead stems continue to provide habitat as cover and as snags. Suckers sprouting from the base of the holly will need to be cut annually (or more frequently) for a number of years to exhaust the root reserves.

3.2 Restoration Planting

It is recommended that any area in which invasive vegetation is removed be promptly replanted with native vegetation, to reduce erosion and prevent invasive plants from reestablishing in the site. Due to the lack of regenerating seedlings within the forest, it is recommended that shade-tolerant tree species be used to underplant the alder/maple overstory. A mix of conifers is recommended, such as western redcedar and Sitka spruce (*Picea sitchensis*) in the wetter areas, and western hemlock (*Thuja heterophylla*) or grand fir (*Abies grandis*), in dryer, shaded sites. A mixture of native understory shrubs including low Oregon grape (*Mahonia nervosa*), Indian plum, salmonberry, oceanspray, and vine maple would be appropriate. This will help recreate the natural plant succession on a site in absence of invasive vegetation. In areas of disturbed ground after removal of dense ivy woody mulch, straw, and/or native seeds should be spread to prevent erosion.

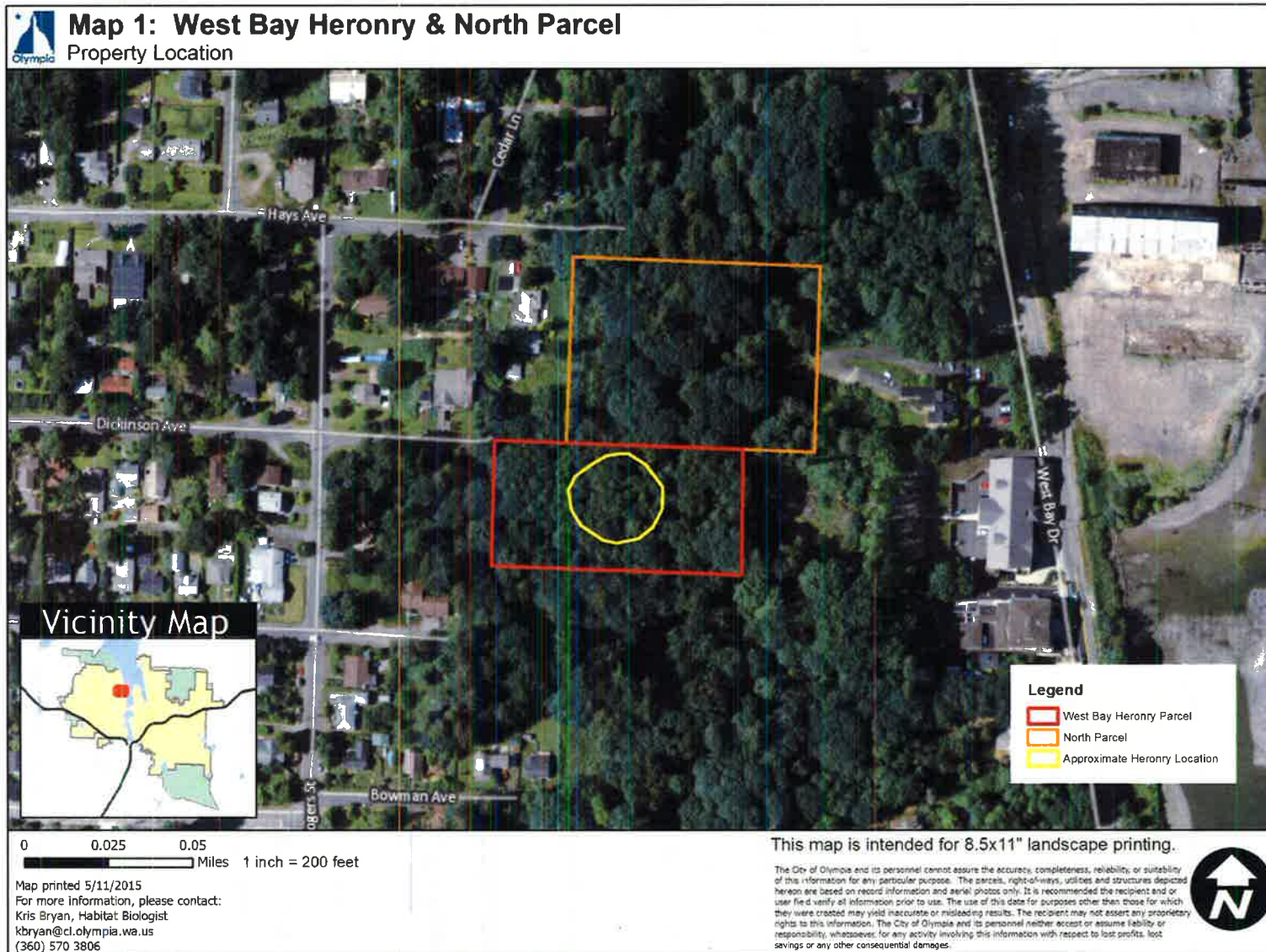
In January of 2015 800 native plants were planted on the heronry parcel where ivy had been removed by a contract crew hired by Alicia and OlyEcosystems over approximately 0.5 acre. The bulk of this area was also mulched during the January 21st event and the next weekend. See Table 1 on the following page for a plant list.

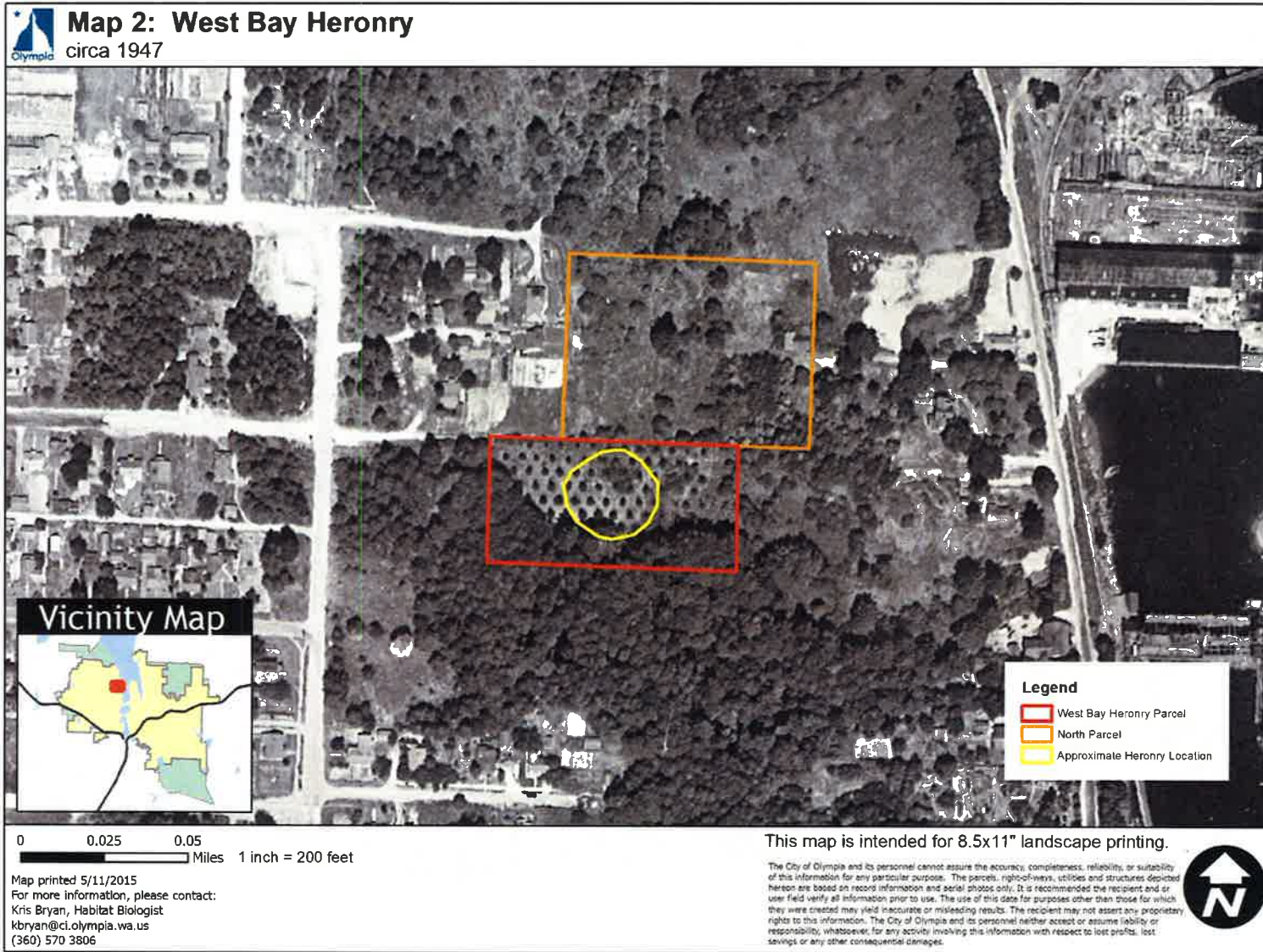
Species	Quantity	Stock Type
cascara	20	#2
Douglas fir	20	#5
hazelnut	14	#1
Indian plum	150	#1 and BR
low Oregon grape	66	#1
Nootka rose	25	#3
oceanspray	15	#1
western red cedar	25	#1
salmonberry	100	BR
sword fern	350	#1 and BR
vine maple	112	#1 and BR
Total	897	

Table 1: Plant List from Martin Luther King Jr. Day event, 2015

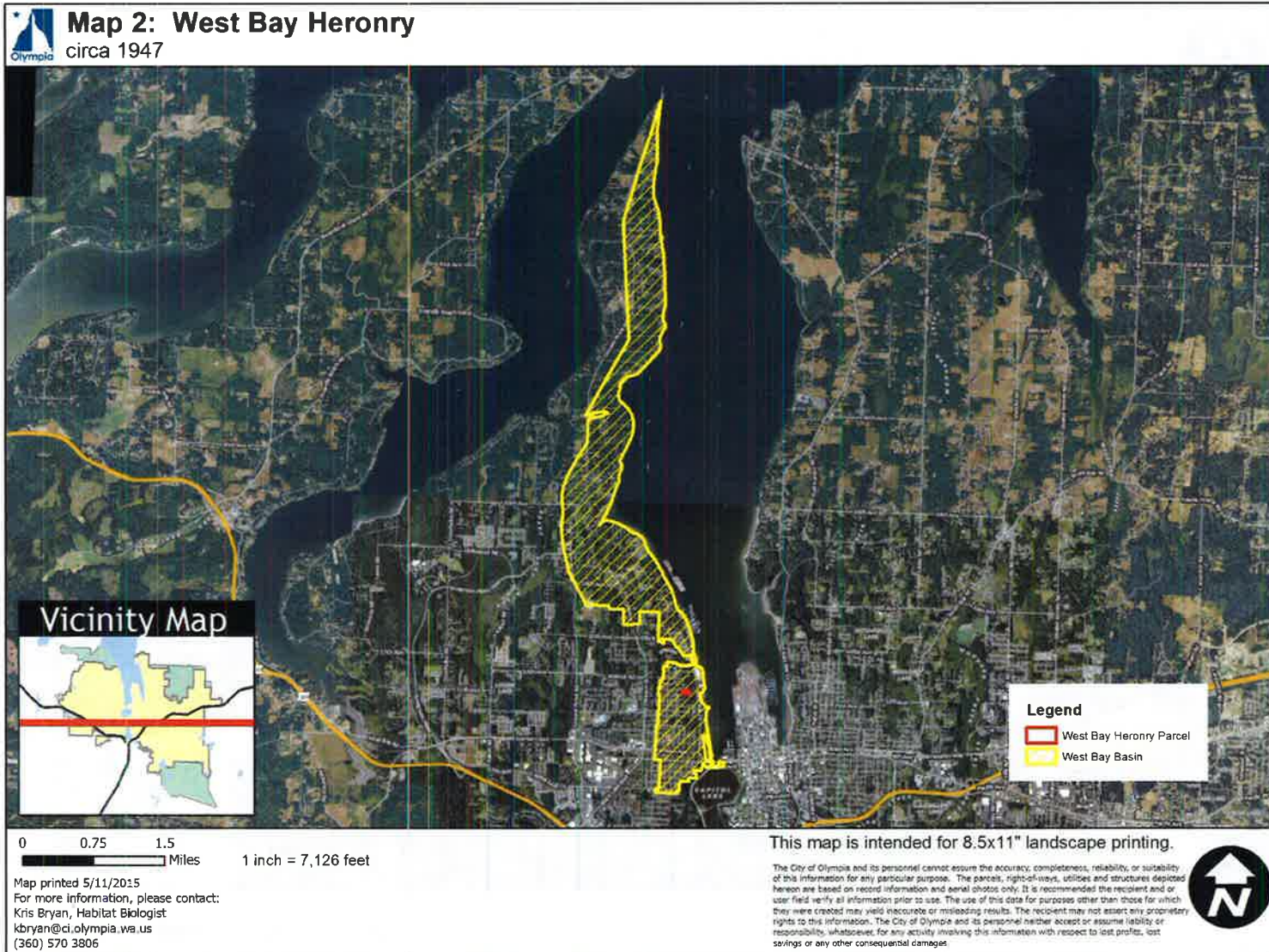
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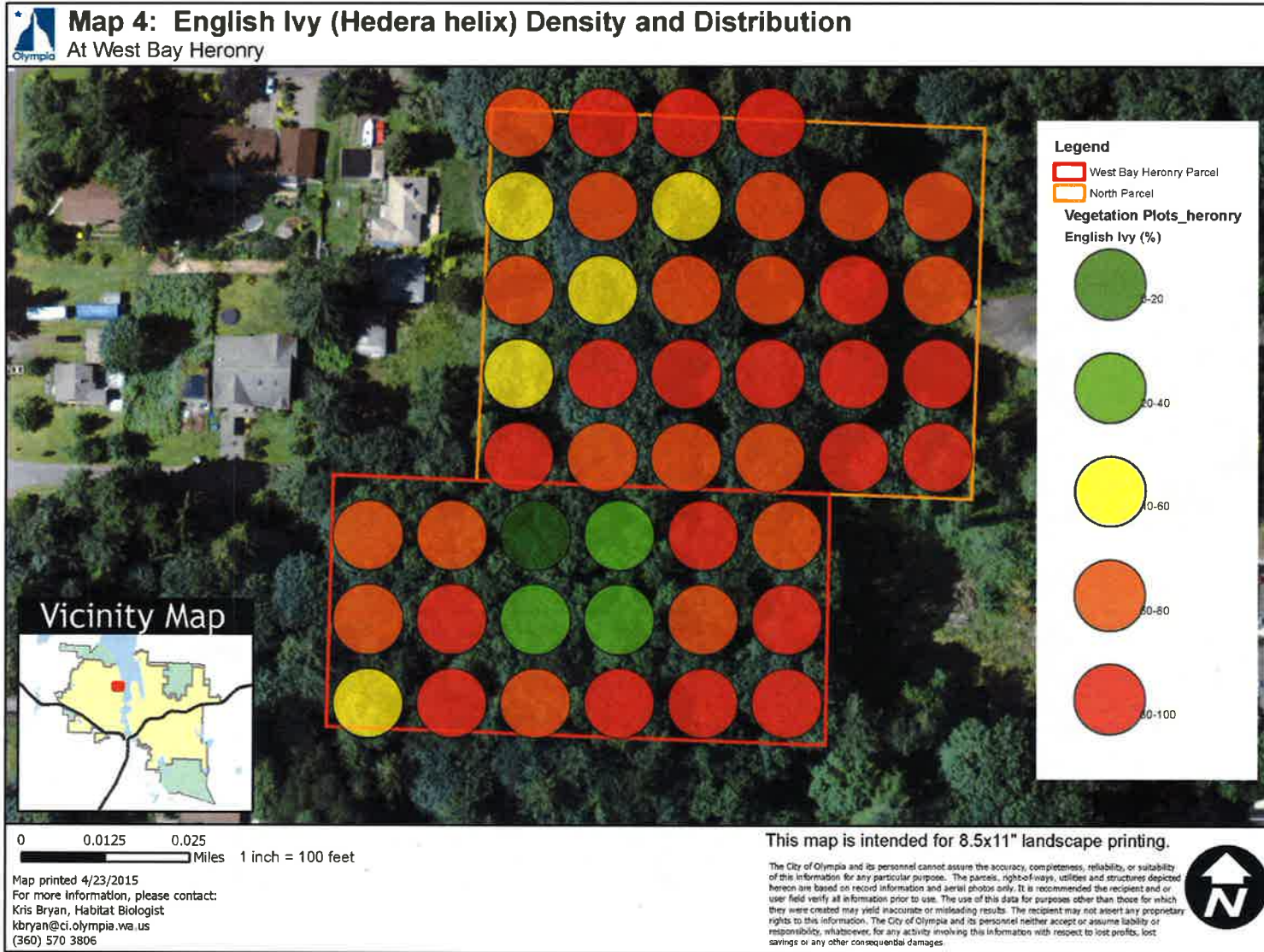




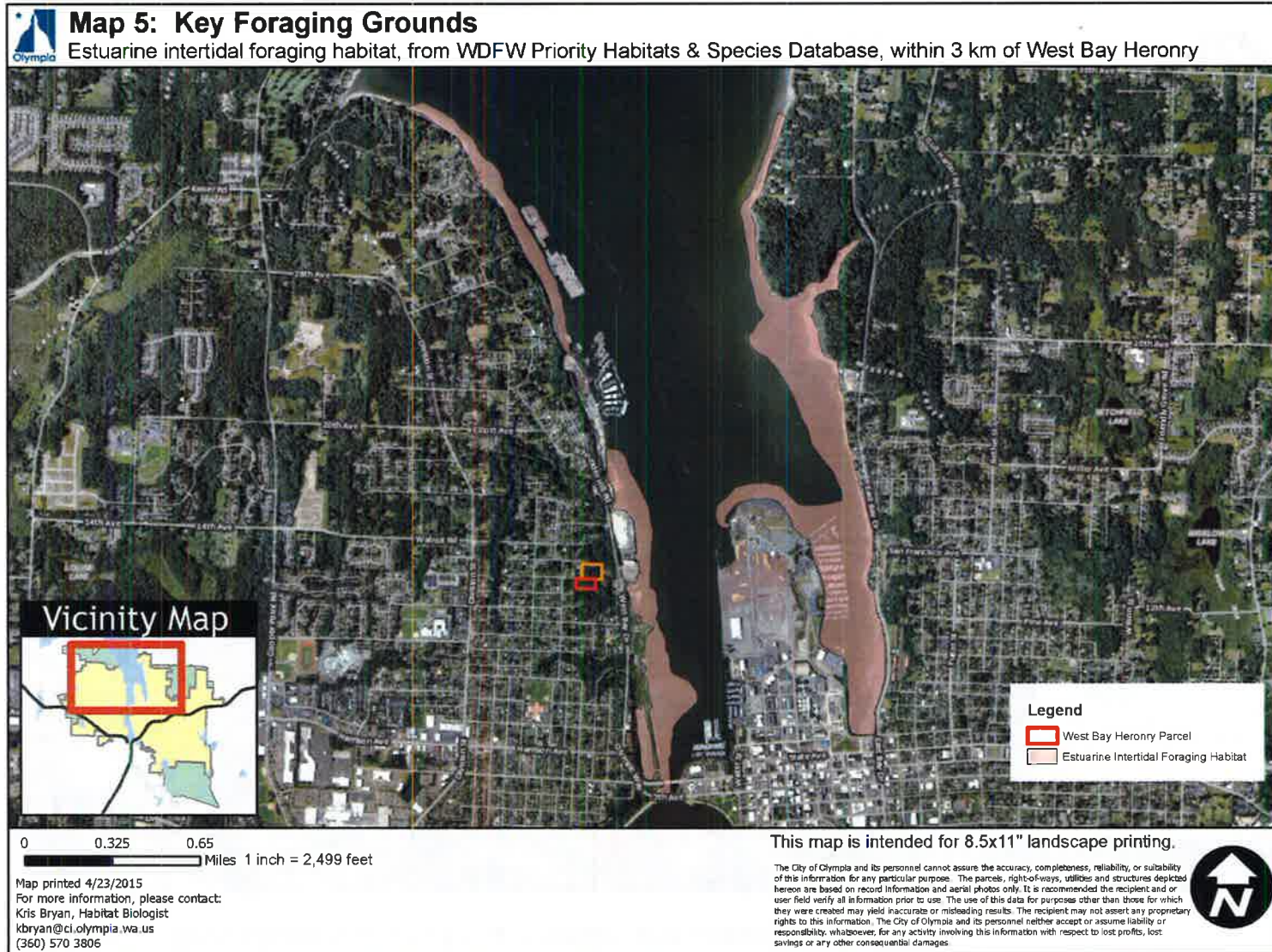
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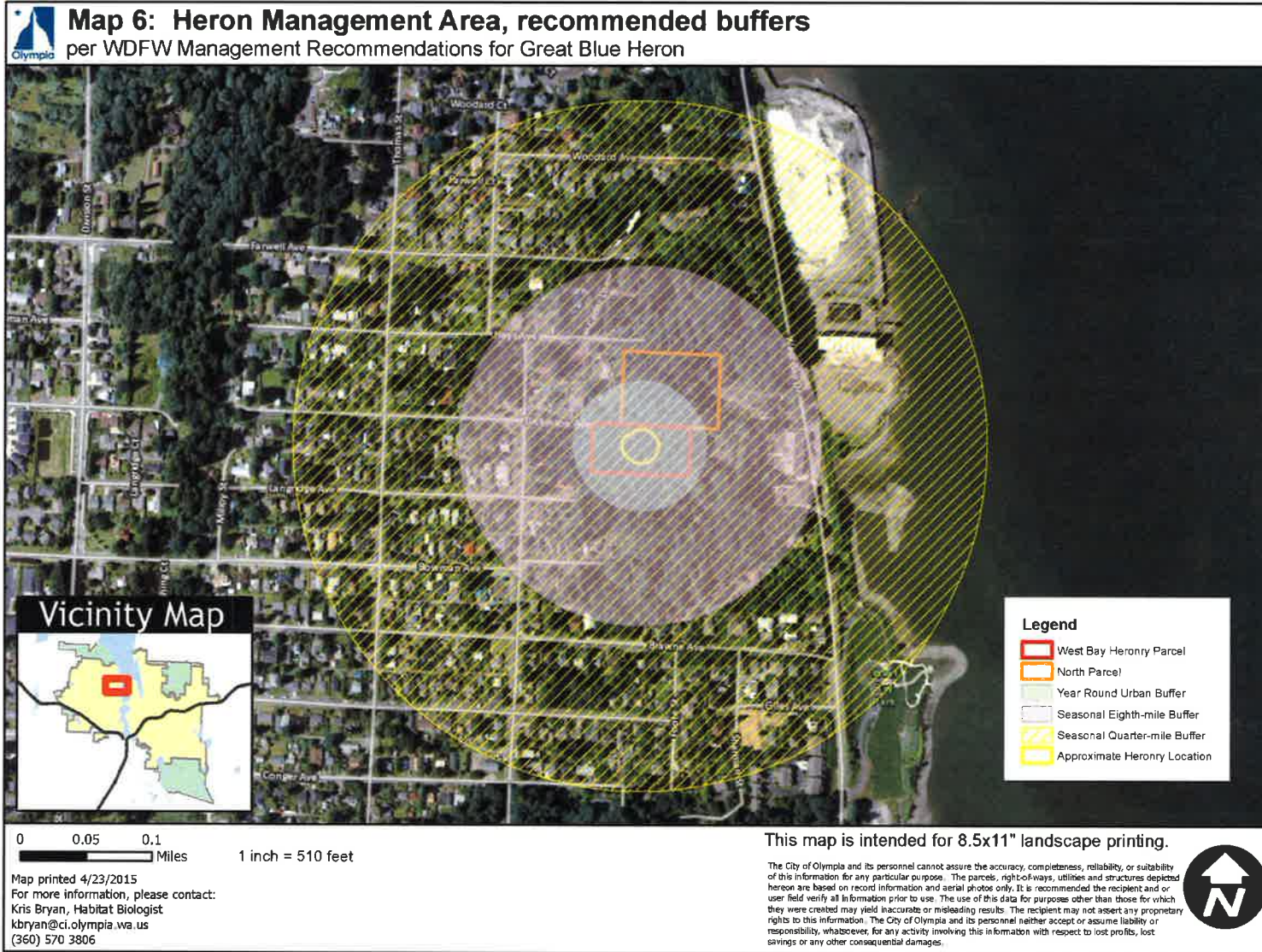
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Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, February 6, 2017

6:30 PM

Council Chambers

1. CALL TO ORDER

Vice Chair Auderer called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Present: 6 - Vice Chair Mike Auderer, Commissioner Travis Burns, Commissioner Paula Ehlers, Commissioner Darrell Hoppe, Commissioner Carole Richmond and Commissioner Missy Watts

Excused: 2 - Chair Brian Mark and Commissioner Negheen Kamkar

OTHERS PRESENT

Community Planning and Development:
Director Keith Stahley
Deputy Director Leonard Bauer
Economic Development Director Renee Sunde
Senior Planner Joyce Phillips
Senior Planner Amy Buckler
Housing Program Manager Anna Schlecht
Senior Planner Linda Bentley
Office Specialist/Minutes Recorder Stacey Rodell
MAKERS John Owen

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0108](#) Approval of the January 23, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips announced the following:

- There will not be a Comprehensive Plan chapter “teach back” summary at this meeting. Chair Mark is scheduled to cover Community Values and Vision on February 27, 2017. Vice Chair Auderer and Commissioner Burns will be discussing the Economy chapter, and Commissioner Kamkar reviewing either the Transportation or Public Participation & Partners chapter at a future meeting.
- There are no scheduled proposals for the Site Plan Review Committee this week or next. However, our current planning staff has been quite busy with projects over the last several weeks, including a pre-submission conference for medical offices and senior living apartment residential units on a 19 acre parcel in the Kaiser Harrison Opportunity Area.
- The City has received 9 applications for the three Planning Commission seats.
- The Planning Commission will not meet again until February 27, 2017, due to the President’s Day holiday.

6. BUSINESS ITEMS

6.A [17-0110](#) Presentation of the Downtown Strategy Draft

Ms. Buckler and Mr. Owen presented the Downtown Strategy (DTS) draft. They reviewed the following:

- Process
- Concept - character areas
- Elements and Actions
 - Land use
 - Transportation
 - Design
 - Housing
 - Homelessness and street dependency
 - Toolbox of development incentives
 - Retail Business, Community and Economic Development
- City Council direction for Olympia Planning Commission (OPC)
 - Hold a public hearing on the draft Downtown Strategy so that the public has an opportunity to comment on the final draft report
 - Summarize public’s main comments and OPC recommendation in a letter to Council
 - Respond to the following:
 - Is the DTS consistent with the Comprehensive Plan?
 - Was any new information provided that causes OPC to make a different recommendation or that should be included in the report
 - Include any memos from advisory boards
- Next steps
 - February 15, 2017 background chapters to be posted online
 - February 27, 2017 Public Hearing before the Planning
 - March - Planning Commission deliberation
 - March - Briefings on design guideline, zoning and SEPA updates

- Spring - Planning Commission/Council study session and Council adoption
- Implementation

The report was received.

- 6.B** [17-0109](#) Deliberations, Amendments to Critical Areas Ordinance (CAO), Locally Important Habitat and Species, and Shoreline Master Program

Ms. Bentley presented a brief update on amendments that occurred since the public hearing on January 23, 2017 in response to comments raised at the public hearing. She also provided clarifying information requested by the Commission.

The Commission deliberated.

Commissioner Burns moved, seconded by Commissioner Richmond, to take no action during this meeting and continue deliberation at the next Planning Commission meeting. The motion carried by the following vote:

- Aye:** 4 - Vice Chair Auderer, Commissioner Burns, Commissioner Richmond and Commissioner Watts
- Nay:** 1 - Commissioner Hoppe
- Excused:** 2 - Chair Mark and Commissioner Kamkar
- Recused:** 1 - Commissioner Ehlers

- 6.C** [17-0107](#) Approval of the draft Planning Commission Work Plan

Commissioner Burns moved, seconded by Commissioner Richmond, to approve the 2017 draft work plan as proposed. The motion was unanimously approved.

7. REPORTS

Commissioner Burns commented on the recent resolution that passed for Olympia becoming a Sanctuary City and he encouraged everyone to be aware of the future of this topic given recent events at the federal level.

Commissioner Watts commented about environmental protections becoming in jeopardy on a federal level and how it is now more important than ever these issues be addressed locally. She cautioned care needs to be taken when handling these issues.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 9:03 p.m.



Planning Commission

Deliberations, Amendments to Critical Areas Ordinance (CAO) and Shoreline Master Program

Agenda Date: 2/27/2017
Agenda Item Number: 6.B
File Number: 17-0188

Type: decision **Version:** 1 **Status:** In Committee

Title

Deliberations, Amendments to Critical Areas Ordinance (CAO) and Shoreline Master Program

Recommended Action

Recommend to City Council adoption of proposed amendments to the Critical Areas Ordinance (CAO) and related code sections and to the Shoreline Master Program.

Report

Issue:

Whether to recommend to City Council adoption of proposed amendments to the Critical Areas Ordinance (CAO) and related code sections and to the Shoreline Master Program.

Staff Contact:

Linda Bentley, Senior Planner, Community Planning and Development, 360.570.3746

Presenter(s):

Linda Bentley, Senior Planner, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. Staff hosted a public open house to discuss the proposed amendments on January 18, 2017 and the Planning Commission held a public hearing on January 23, 2017. All written comments received by noon, January 27, 2017, and the additional information requested of staff were presented to the Planning Commission at its February 6, 2017, meeting.

The City issued a SEPA Determination of Non-Significance (DNS) for the recommended changes on January 10, 2017, and sent the 60-day notice of intent to adopt, as required by state statute, to the Department of Commerce on January 11, 2017.

Proposed Protections

Staff and consultant believe that the city's existing CAO and SMP regulations will adequately protect most species and habitat but, based on community interest and Council direction, we are proposing new and amended regulations (attached) to give added protection to the great blue heron and its habitat, while continuing to respect private property rights.

Staff is also proposing a process by which additional locally important species and/or habitat could be nominated in the future as conditions change (proposed new OMC 18.32.325).

Great Blue Heron and Habitat

In general, we are proposing the following approaches to protect heron nesting colonies when development is proposed:

- Adopt fixed-width buffers around heron nesting colonies
- Require tree and vegetative screening
- Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
- Require mitigation sequencing where appropriate
- Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, staff is proposing a smaller seasonal buffer than that recommended by WDFW for nests in rural and less developed areas: a 200 foot year-round buffer and an additional 300 foot seasonal buffer for nesting colonies.

Non-regulatory Protections

The best way to protect important habitat and species is to acquire the land that provides the necessary habitat for important species. Therefore, we recommend the following:

- The City should continue to work with non-profit groups such as the Olympia Coalition for Ecosystems Preservation to pursue opportunities to purchase properties that support or are near known rookeries or other sensitive habitat.
- The City Parks Department should include as a consideration the quality and extent of habitat value when deliberating acquisition of land for passive-type parks.

The City could also:

- research and develop incentives for landowners who want to permanently protect any type of breeding season habitat; and
- help non-profit groups to develop an ongoing citizen-science training program to assist in monitoring the status of locally important habitat and species.

Shoreline Master Program (SMP) Amendments

When the City amends its CAO, it must also amend its SMP to adopt the new CAO by reference. The Washington State Department of Ecology must approve the amendments to the SMP before they can become effective.

The attached amendment to Olympia's SMP adopts the amended CAO by reference, ensures consistency with the CAO adopted July 19, 2016, and corrects errors. Minor changes to OMC 18.02.180 Definitions, OMC 18.32.500 and 515, and OMC 18.20 are required to bring Title 18 OMC into consistency with the SMP and are also attached.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC 18.32.300-330, 18.32.500, 18.32.515, 18.02 and 18.20; adoption of amendments to the SMP; and approval of the non-regulatory suggestions, **as recommended by staff.**
2. Recommend to City Council adoption of amendments to OMC 18.32.300-330, 18.32.500, 18.32.515, 18.02 and 18.20; adoption of amendments to the SMP; and approval of the non-regulatory suggestions, **with modifications.**
3. Recommend to City Council adoption of amendments to OMC 18.32.500, 18.32.515, 18.02 and 18.20; adoption of amendments to the SMP; and approval of the non-regulatory suggestions
4. Recommend denial of all proposed amendments and/or non-regulatory suggestions.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species protection may require additional resources in the future.

Attachments:

Proposed OMC 18.32.300 amendments
Proposed OMC 18.02 and 18.32.500 amendments
Proposed OMC 18.20 amendments
Proposed Shoreline Master Program amendments

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OMC 18.32.300-330 AS APPROVED BY CITY COUNCIL AUGUST 16, 2016, WITH PROPOSED NEW LANGUAGE SHOWN IN TRACK CHANGES

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.325 and 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

No development shall occur in the great blue heron nesting colony.

1. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:

- a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, as defined in OMC 18.02.180, the City may allow development April 16 through January 31, subject to the provisions of OMC 18.32.330 and mitigation sequencing in OMC 18.32.327(C)(2).
 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- a. 1. When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels specific to the site shall be performed outside of the nesting season. The nesting season is generally February 15 through August 31, unless a different nesting season for that year is certified by a report from a qualified professional.
2. Development may occur at any time in the seasonal buffer in a year where it appears no herons have congregated or nested, subject to the applicant submitting a report from a qualified professional so stating. Development may occur at any time in the seasonal buffer, subject to the applicant submitting a report from a qualified professional documenting that no herons congregated or nested from February 1 through April 15 of a specific year. [Wording amended for clarity upon advice from Legal.]
- 3. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger shall be retained. Any required new or replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the

Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.
- B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.
- C. Contain, but not be limited to:
 1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
 2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
 3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;

- f. The extent and location of the important species habitat;
- g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

DRAFT

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.02.180, 18.32.500 AND 18.32.515 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features;

grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving

authority.

Landscape Structure. A fence, wall, trellis, statue or other landscape and ornamental object.

Landscaping. An area devoted to or developed and maintained predominantly with native or non-native plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

Landslide. Episodic down-slope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, earthflows and snow avalanches.

Large Lot Subdivision. The division of land into lots or tracts, each of which is 1/128 of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land.

Laundry and Laundry Pick-up Agency. An enterprise where articles of clothing, linen, etc. are washed, including self-service laundries as well as those where customers drop off articles to be laundered either on or off the premises, or dry-cleaned off the premises only. This includes diaper services, but not the following, which are classified as Light Industrial uses: dry-cleaning plants, linen supply services, carpet and upholstery cleaning plants, and industrial launderers.

Legal Lot of Record. A lot of a subdivision plat or binding site plan or a parcel of land described in a deed either of which is officially recorded to create a separate unit of property, provided that such plat, site plan, or deed shall accord with applicable local, state or federal law on the date created. Separate descriptions of adjoining parcels within a single deed shall not necessarily constitute separate legal lots of record.

Local Improvement. A public improvement for the benefit of property owners provided to a specific area that benefits that area and that is usually paid for, at least in part, by a special assessment.

Lodging House. See Dwelling, Transient.

Lot. Lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall also include tracts and parcels. Lot classifications are as follows:

- a. Lot, Corner. A lot that abuts two (2) or more intersecting streets.
- b. Lot, Flag or Panhandle. A lot with less than thirty (30) feet of street frontage which is typically connected to a public or private street by a narrow driveway. A lot where access is only provided by a private easement is not a flag lot.
- c. Lot, Interior. A lot that has frontage on one public or private street only, or is provided access by a private easement.
- d. Lot, Through. A lot that fronts on two (2) parallel or nearly parallel streets that do not intersect at the boundaries of the lot.
- e. Lot, Wedge-shaped. A lot with a street frontage which is no more than half as wide as the lot's width at the rear property line, as depicted in Figure 2-5b.

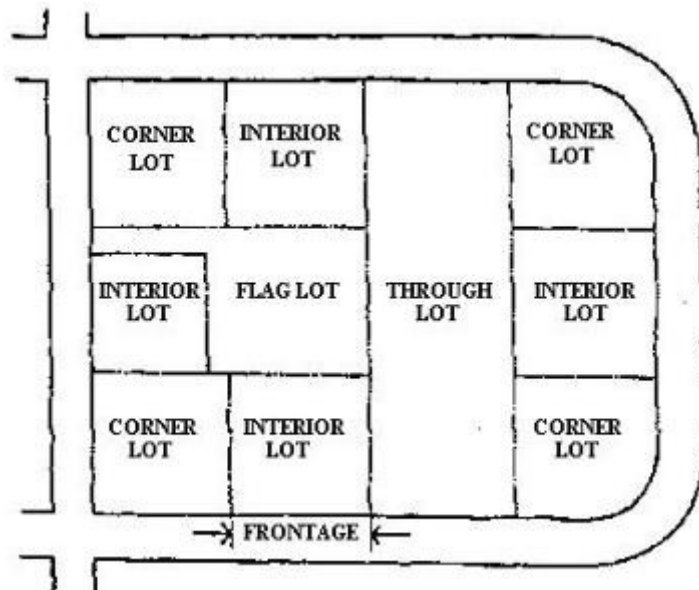
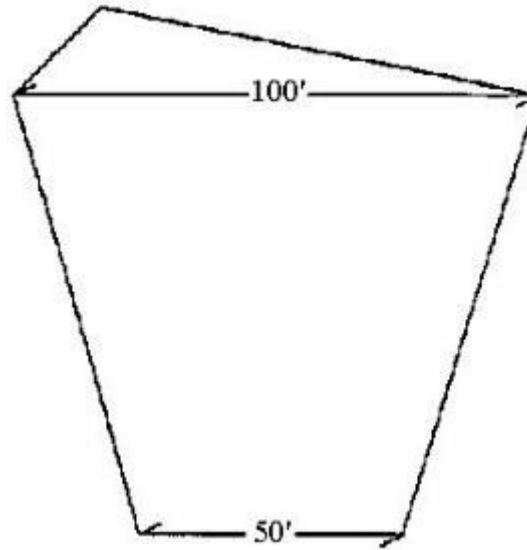


FIGURE 2-5



Example of a Wedge-Shaped Lot

FIGURE 2-5b

Lot Frontage. See Frontage.

Lot Line. A line dividing one lot from another lot or from a street rights-of-way or alley. (See also Property Line.)

Lot of Record. A lot, the plat, or deed to which is officially recorded as a unit of property and is described by metes and bounds.

Lot, Substandard. A parcel of land that is less than the minimum area or minimum dimensions required in the zone in which the lot is located. (See also Minimum Lot Size, Undersized Lots in development standards.)

Lot Width. The straight line distance measured between side lot lines parallel to the front setback line. (See also Section 18.04.080(G)(1) and Table 4.04.)

Low Income Housing. See Affordable Housing.

18.02.180 DEFINITIONS - SPECIFIC.

Object. A thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Off-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes or special incinerator ash generated on properties other than the property on which the off-site facility is located. (See also current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.)

Office. A building or portion thereof which is primarily used to transact the administrative or professional activities of a business. Such uses include, but are not limited to: medical (excluding veterinary), dental, chiropractic, optometric, legal, banking, insurance, real estate, security brokers, administrative, public, contractors, consultants, corporate, or manufacturers' offices. (See also Home Occupation.)

Office, Bank. Banks, savings and loans, credit unions, and other depository institutions.

Office, Business. The offices of real estate agencies, mortgage brokers, advertising agencies, credit agencies, mailing services and postal substations, employment agencies, insurance agencies, membership organizations except fraternal organizations, accountants, attorneys, security brokers, financial advisors, architects, engineers, surveyors, tax preparation services, computer software development, and other similar business services. This may also include the administrative offices for businesses whose primary activity may be construction, manufacturing, utility services, or some other non-office use conducted elsewhere.

Office, Government. The legislative, administrative, service delivery, or judicial offices of local, state, or federal agencies. It also includes federal post offices where mail processing takes place for local delivery. It does not include government land uses such as maintenance facilities for government-owned trucks, busses, or heavy equipment which are a Light Industrial use.

Office, Medical. This includes the offices of doctors, dentists, chiropractors, optometrists, and other health practitioners providing outpatient care. It also includes medical and dental laboratories, blood banks, and the like.

Office Supplies and Equipment Stores. Stores selling office products such as stationery, legal forms, writing implements, typewriters, computers, copiers, office furniture, and the like.

Office Uses, General. A room or group of rooms used for conducting the affairs of a business

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

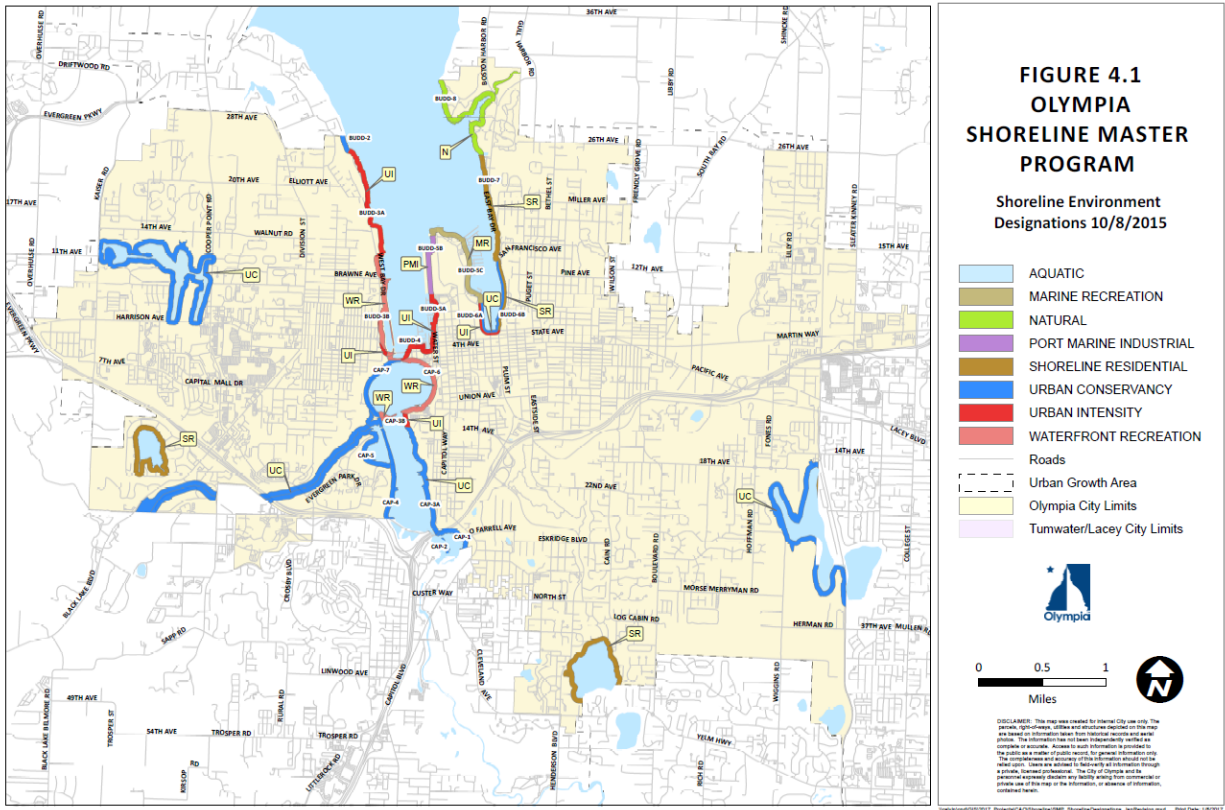
1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590; ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.20 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM:

18.20.320 – Official Shoreline Map



18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 - 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 - 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~from~~ **18.32.435(H))** within shoreline jurisdiction shall require a shoreline variance.

~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.

5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.

9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

12.10. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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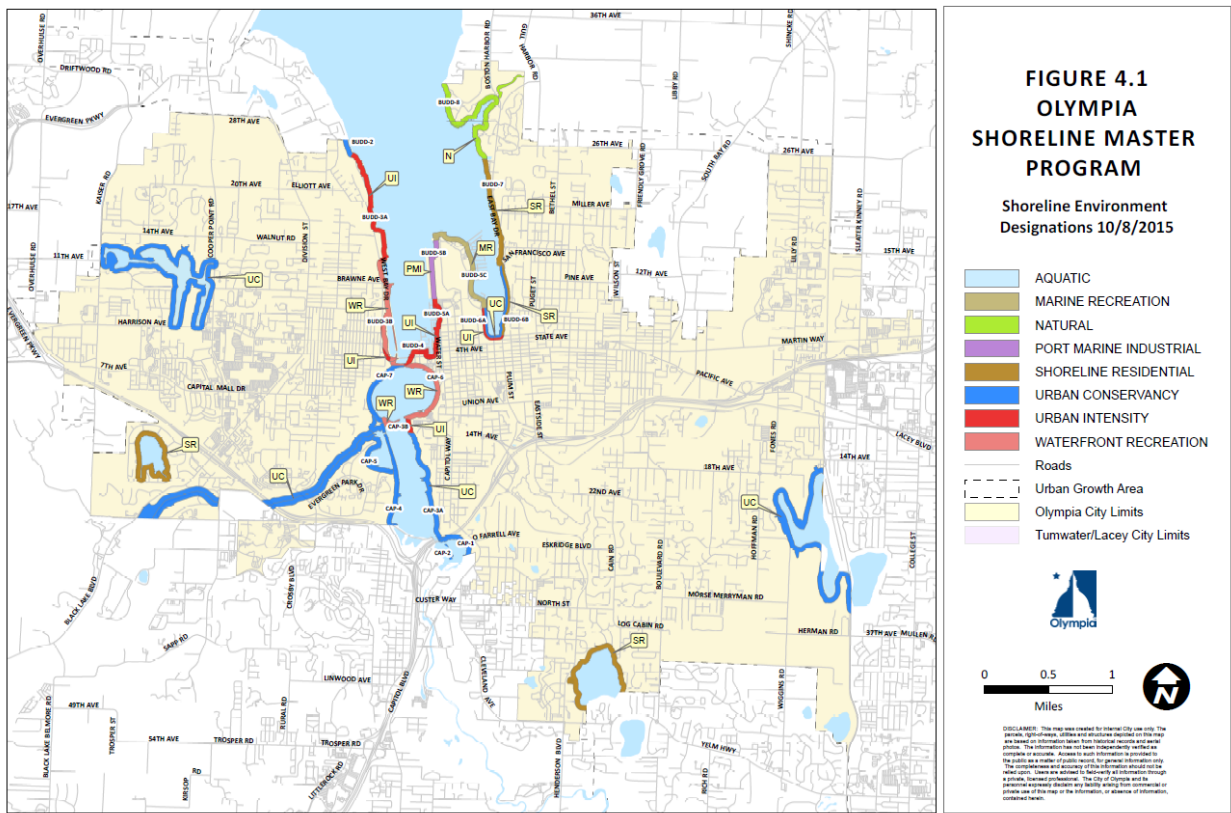
ATTACHMENT 3

SHORELINE MASTER PROGRAM AMENDMENTS

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.320 – Official Shoreline Map



3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.

- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
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 - ~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
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 - ~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~
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 - 9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).
 - 10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.
 - 11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

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Stair Towers	X	X	←	Prohibited



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, February 27, 2017

6:30 PM

Council Chamber

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:31 p.m.

1.A ROLL CALL

Commissioner Watts arrived after the roll call was taken.

Present: 7 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Travis Burns, Commissioner Paula Ehlers, Commissioner Darrell Hoppe, Commissioner Carole Richmond and Commissioner Missy Watts

Excused: 1 - Commissioner Negheen Kamkar

OTHERS PRESENT

Community Planning and Development:
Director Keith Stahley
Deputy Director Leonard Bauer
Senior Planner Joyce Phillips
Senior Planner Amy Buckler
Office Specialist/Minutes Recorder Stacey Rodell
MAKERS: John Owen

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0165](#) Approval of the February 6, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips announced the following:

- The next Planning Commission meeting will be on March 6, 2017. There will

be a Downtown Strategy - Design Guidelines and Views Briefing and Downtown Strategy deliberations will begin.

- A written summary of the sign code update has been provided to the Commission and a detailed briefing will be conducted in April.
- This week the Site Plan Review Committee (SPRC) will consider the Pizza Parlor project proposed on Harrison Avenue near the Bark and Garden Center.
- Next week SPRC will consider four items - 2 for recommendations to the director and 2 as presubmission conferences to provide information to the applicants:
 - Capital High School Track & Field Renovation (recommendation)
 - Martin Way Residential (recommendation)
 - East Bay Flats and Townhomes (presubmission)
 - Capitol Plaza Building Improvements (presubmission)
- There will be a neighborhood meeting on Wednesday - March 1, 2017 at 5:30 p.m. in City Hall regarding the Olympia Community Care Center.

6. BUSINESS ITEMS

6.A [17-0197](#) Public Hearing on the Downtown Strategy Draft

Ms. Buckler presented a short briefing and noted written public comment will be accepted until Friday, March 3, 2017 at 5:00 p.m.

Chair Mark opened the public hearing.

Public testimony was received from:

Stewart Drebeck, a local developer, stated he felt the document was a good one which can help to create the vision, and he commended staff for their work during this process. His concerns were:

- Housing Chapter Page 1, second sentence - *The City's Comprehensive Plan includes a target of directing ¼ of the city's forecasted population growth into downtown. This translates into about 5,000 new downtown residents living in approximately 2,500 to 3,500 new residences over the next 20 years.* Concerned about the word "directing" and feels it should not become a mandate by the City. He feels the expectation of building 150 housing units per year over the next 20 years is overly optimistic and the market will not bear it. Multifamily is a cyclical industry that overbuilds then stops because the banks won't lend. There is too much available land elsewhere that is far less expensive than Downtown.
- Housing Chapter Page 3 - *Avoid displacement of lower income groups from the downtown.* Concerned about the City mandating owners of existing lower income rentals from remodeling these units and raising the rent.
- Housing Chapter Page 4 - He feels the example of a potential quarter block development is unrealistic as it is too big for anyone to take on.
- Housing Chapter Page 11 - Concerned the costs associated with rehabilitation or demolition of existing buildings make this an unrealistic option.

- Concerned about how Olympia might implement its goal of maintaining affordable units. He does not want to see the City implement rent control. That would be bad for the community and bad for people who own real estate.

Bonnie Jacobs, a long-time Olympia resident, referenced written testimony from the Friends of the Waterfront (FOW) organization. She praised the Planning Commission for their service, and stressed the importance of the waterfront as a treasured community asset. Their concerns are:

- View protection from the waterfront. When planning for more visitors and for 5,000 more residents, think about views and setback from the waterfront.
- The Shoreline Master Program minimum 30-foot setback is insufficient for a pathway and the setback distance should be increased.

Aaron Sauerhoff, a student at Evergreen State College, thanked everyone who put the thoughtful and thorough plan together. He is concerned about collaboration with experts who have the most current data regarding sea level rise and urged the importance of not missing any available data when implementing the Downtown Strategy.

Joel Baxter, a representative from the Olympia Master Builders (OMB), feels the plan is mostly easy to read and understand and will be a good tool for citizen involvement. While OMB members do not often build in downtown, they wanted to weigh in on the Downtown Strategy because they care about the vitality of downtown and believe it is important to the region. His concerns are:

- The plan's priority of walkability and the desire to add 5,000 residents to Downtown. He feels the current restrictions on building height may create a challenge of obtaining the goal of increasing housing units. OMB does not want to eliminate views, but housing goals as well as walkability can only be supported by increasing density.
- When considering affordable housing incentives an actual affordable housing dollar amount needs to be established in order to determine if a developer can meet this goal of supplying affordable units.

Bob Jacobs, a long time Olympia resident, referenced written testimony from the FOW organization. Two themes he sees are holistic and long-term. Different interests have to be balanced in order to have a healthy community, and we need to prepare for growth, for example by setting aside park land and putting view protections in place. He reiterated the following concerns of FOW:

- The Shoreline Master Program minimum 30-foot setback is insufficient for a pathway and the setback distance should be increased. Only 20 feet of that is flat land. Fifty-five feet would be better for trail users and private businesses (e.g. for outdoor seating).
- Appreciate the recommendations to get people to the waterfront but need to think about the experience people have when they get there.
- View protection - the draft recommends the Capitol Dome view be defined as only the Capitol Dome, not including the Drum. FOW thinks both the Dome

and the Drum are important to the view. (The draft also includes a typo that states the recommended view is the Capitol “Drum” - intended to be Capitol “Dome”)

- Isthmus - urges that the Downtown Strategy should include a recommendation to remove the Capitol Center Building from the isthmus and replace it with a grand public open space.

Chair Mark closed the public hearing.

The public hearing was held and closed.

6.B [17-0188](#) Deliberations, Amendments to Critical Areas Ordinance (CAO) and Shoreline Master Program

Chair Mark opened the deliberation of the Critical Areas Ordinance (CAO) amendments.

Commissioner Richmond made a motion to accept amendments as proposed by staff at the public hearing on January 23, 2017, using the language that was originally proposed, rather than the amended language considered at the meeting on February 6, 2017. There not being a second, this motion did not move to a vote.

Commissioner Hoppe stated he is uncomfortable accepting the amendments to OMC 18.32.300-330 as written. He believes there is insufficient science to move forward with the proposed language to protect the Heron. He is in favor of revisiting these amendments upon the next CAO review.

Commissioner Richmond indicated there was a report provided with a letter from OlyEcosystems. The report is from the Habitat Stewardship Program, Environmental Services section of the Public Works Department. This is the best available science to support the amendment of OMC 18.32.300-330.

Vice Chair Auderer asked Commissioner Richmond about her opinion on the “regulatory taking” of the property in these rookeries. Commissioner Richmond said she had thought the legal department would have provided clarification by this meeting but they have not provided this information yet. Due to her research on property law she feels these regulations do not fall under the “regulatory taking” criteria, as development is allowed to occur with these amendments.

Mr. Bauer indicated legal staff replied prior to this meeting. He summarized the legal staff’s response, indicating the proposed language, given the reasonable use and other code provisions that would remain in effect, would not result in a regulatory takings.

Commissioner Watts indicated the amendments to OMC 18.32.300-330 are too prescriptive for property owners and she doesn’t have enough information to make a recommendation on these amendments at this time.

Commissioner Hoppe moved, seconded by Commissioner Watts, to recommend to City Council adoption of amendments to the Critical Areas Ordinance (CAO) and related codes in OMC 18.02.180, 18.32.500, 18.32.515, 18.20.320, 18.20.420, 18.20.810 and to the Shoreline Master Program 1.6, 3.17, 3.22, 3.58, and to support the non-regulatory measures to protect the heron. The remainder of the proposed amendments OMC 18.32.300-330 will be deliberated upon at a future meeting of the Planning Commission. The motion carried by the following vote:

Aye: 6 - Chair Mark, Vice Chair Auderer, Commissioner Burns, Commissioner Hoppe, Commissioner Richmond and Commissioner Watts

Excused: 1 - Commissioner Kamkar

Recused: 1 - Commissioner Ehlers

7. REPORTS

Commissioner Richmond attended the February 14, 2017 City Council meeting and reported about the briefing on affordable housing and homelessness. There was a discussion about a proposal to raise property taxes to fund a partnership with Lacey and Tumwater to build 500 affordable housing units.

Vice Chair Auderer reported on a recent meeting he attended for the Olympia Downtown Association (ODA) regarding economic development.

Chair Mark indicated the community kickoff meeting for the Gateways project will at the Olympia Center in room 101 & 102 on March 30, 2017 from 7:00 p.m. to 9:00 p.m. Community members can meet with staff and the consultants working on the gateways master plan.

Chair Mark reported on a recent Land Use and Environment Committee meeting he attended. He presented the proposed 2017 Planning Commission work plan to the Committee. They approved of the plan and were in favor of a joint meeting with the Planning Commission.

8. OTHER TOPICS

The Commissioners asked for some clarification regarding the Downtown Strategy plan. Mr. Owen and Ms. Buckler provided clarification.

9. ADJOURNMENT

The meeting adjourned at 7:58 p.m.

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Planning Commission

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Agenda Date: 3/6/2017
Agenda Item Number: 6.C
File Number: 17-0226

Type: recommendation **Version:** 1 **Status:** In Committee

Title

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Recommended Action

Recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Report

Issue:

Whether to recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning and Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. Staff hosted a public open house to discuss the proposed amendments on January 18, 2017 and the Planning Commission held a public hearing on January 23, 2017. All written comments received by noon, January 27, 2017, and the additional information requested of staff were presented to the Planning Commission at its February 6 and 27, 2017, meetings.

The City issued a SEPA Determination of Non-Significance (DNS) for the recommended changes on January 10, 2017, and sent the 60-day notice of intent to adopt, as required by state statute, to the

Department of Commerce on January 11, 2017.

At its February 27, 2017 meeting, the Planning Commission voted to recommend approval of the amendments to the Olympia Municipal Code and Shoreline Master Program in Attachments 2-4. The Commission continued deliberation of the amendments in Attachment 1.

The draft amendments in Attachment 1 include the following:

- a process by which additional locally important species and/or habitat could be nominated in the future as conditions change
- designation of the great blue heron as a locally important species, with the following approaches to protect heron nesting colonies when development is proposed:
 - Adopt fixed-width buffers around heron nesting colonies
 - Require tree and vegetative screening
 - Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
 - Require mitigation sequencing where appropriate
 - Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, this draft includes a smaller seasonal buffer than that recommended by WDFW for nests in rural and less developed areas: a 200 foot year-round buffer and an additional 300 foot seasonal buffer for nesting colonies.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **as recommended by staff.**
2. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **with modifications.**
3. Recommend City Council **not adopt** locally important species regulations at this time.
4. Forward the draft amendments to OMC 18.32.300-.330 to City Council with **no recommendation.**

Under any of these options, the Planning Commission may direct staff to present the recommendation to the City Council, designate one or more Commissioners to present the recommendation to City Council along with staff, or create a written letter to describe the recommendation to be forwarded to City Council.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species

protection may require additional resources in the future.

Attachments:

Proposed OMC 18.32.300 - .330 amendments

Proposed OMC 18.02 and 18.32.500 amendments

Proposed OMC 18.20 amendments

Proposed Shoreline Master Program amendments

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OMC 18.32.300-330 AS APPROVED BY CITY COUNCIL AUGUST 16, 2016, WITH PROPOSED NEW LANGUAGE SHOWN IN TRACK CHANGES

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.325 and 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

No development shall occur in the great blue heron nesting colony.

1. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:

- a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, as defined in OMC 18.02.180, the City may allow development April 16 through January 31, subject to the provisions of OMC 18.32.330 and mitigation sequencing in OMC 18.32.327(C)(2).
 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- a. 1. When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels specific to the site shall be performed outside of the nesting season. The nesting season is generally February 15 through August 31, unless a different nesting season for that year is certified by a report from a qualified professional.
2. Development may occur at any time in the seasonal buffer in a year where it appears no herons have congregated or nested, subject to the applicant submitting a report from a qualified professional so stating. Development may occur at any time in the seasonal buffer, subject to the applicant submitting a report from a qualified professional documenting that no herons congregated or nested from February 1 through April 15 of a specific year. [Wording amended for clarity upon advice from Legal.]
- 3. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger shall be retained. Any required new or replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the

Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.
- B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.
- C. Contain, but not be limited to:
 1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
 2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
 3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;

- f. The extent and location of the important species habitat;
- g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

DRAFT

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.02.180, 18.32.500 AND 18.32.515 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features;

grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving

authority.

Landscape Structure. A fence, wall, trellis, statue or other landscape and ornamental object.

Landscaping. An area devoted to or developed and maintained predominantly with native or non-native plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

Landslide. Episodic down-slope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, earthflows and snow avalanches.

Large Lot Subdivision. The division of land into lots or tracts, each of which is 1/128 of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land.

Laundry and Laundry Pick-up Agency. An enterprise where articles of clothing, linen, etc. are washed, including self-service laundries as well as those where customers drop off articles to be laundered either on or off the premises, or dry-cleaned off the premises only. This includes diaper services, but not the following, which are classified as Light Industrial uses: dry-cleaning plants, linen supply services, carpet and upholstery cleaning plants, and industrial launderers.

Legal Lot of Record. A lot of a subdivision plat or binding site plan or a parcel of land described in a deed either of which is officially recorded to create a separate unit of property, provided that such plat, site plan, or deed shall accord with applicable local, state or federal law on the date created. Separate descriptions of adjoining parcels within a single deed shall not necessarily constitute separate legal lots of record.

Local Improvement. A public improvement for the benefit of property owners provided to a specific area that benefits that area and that is usually paid for, at least in part, by a special assessment.

Lodging House. See Dwelling, Transient.

Lot. Lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall also include tracts and parcels. Lot classifications are as follows:

- a. Lot, Corner. A lot that abuts two (2) or more intersecting streets.
- b. Lot, Flag or Panhandle. A lot with less than thirty (30) feet of street frontage which is typically connected to a public or private street by a narrow driveway. A lot where access is only provided by a private easement is not a flag lot.
- c. Lot, Interior. A lot that has frontage on one public or private street only, or is provided access by a private easement.
- d. Lot, Through. A lot that fronts on two (2) parallel or nearly parallel streets that do not intersect at the boundaries of the lot.
- e. Lot, Wedge-shaped. A lot with a street frontage which is no more than half as wide as the lot's width at the rear property line, as depicted in Figure 2-5b.

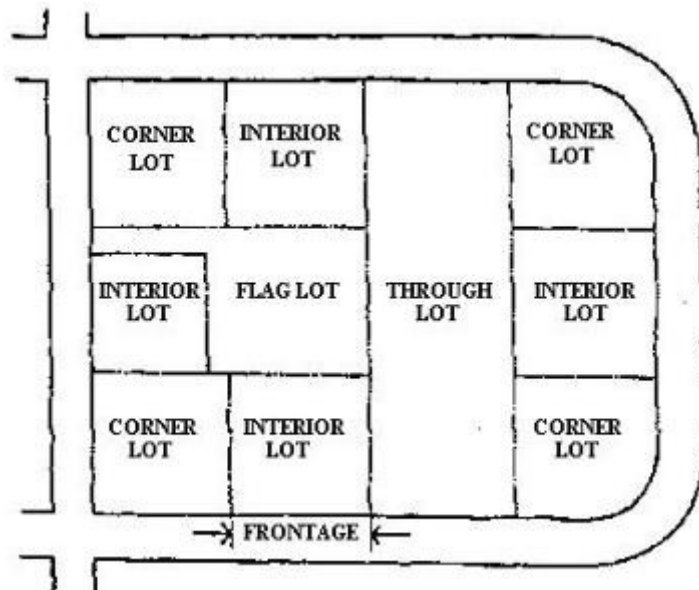
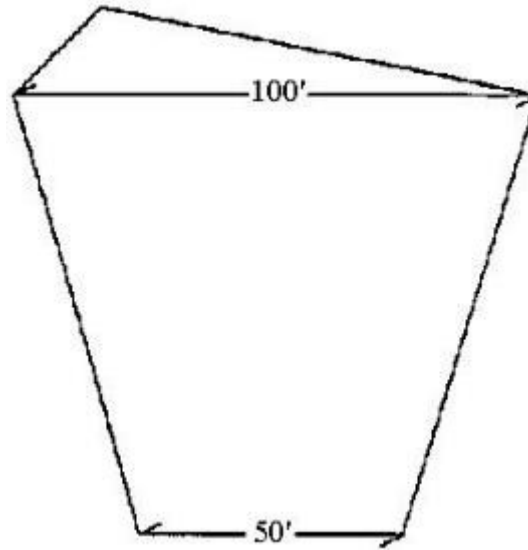


FIGURE 2-5



Example of a Wedge-Shaped Lot

FIGURE 2-5b

Lot Frontage. See Frontage.

Lot Line. A line dividing one lot from another lot or from a street rights-of-way or alley. (See also Property Line.)

Lot of Record. A lot, the plat, or deed to which is officially recorded as a unit of property and is described by metes and bounds.

Lot, Substandard. A parcel of land that is less than the minimum area or minimum dimensions required in the zone in which the lot is located. (See also Minimum Lot Size, Undersized Lots in development standards.)

Lot Width. The straight line distance measured between side lot lines parallel to the front setback line. (See also Section 18.04.080(G)(1) and Table 4.04.)

Low Income Housing. See Affordable Housing.

18.02.180 DEFINITIONS - SPECIFIC.

Object. A thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Off-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes or special incinerator ash generated on properties other than the property on which the off-site facility is located. (See also current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.)

Office. A building or portion thereof which is primarily used to transact the administrative or professional activities of a business. Such uses include, but are not limited to: medical (excluding veterinary), dental, chiropractic, optometric, legal, banking, insurance, real estate, security brokers, administrative, public, contractors, consultants, corporate, or manufacturers' offices. (See also Home Occupation.)

Office, Bank. Banks, savings and loans, credit unions, and other depository institutions.

Office, Business. The offices of real estate agencies, mortgage brokers, advertising agencies, credit agencies, mailing services and postal substations, employment agencies, insurance agencies, membership organizations except fraternal organizations, accountants, attorneys, security brokers, financial advisors, architects, engineers, surveyors, tax preparation services, computer software development, and other similar business services. This may also include the administrative offices for businesses whose primary activity may be construction, manufacturing, utility services, or some other non-office use conducted elsewhere.

Office, Government. The legislative, administrative, service delivery, or judicial offices of local, state, or federal agencies. It also includes federal post offices where mail processing takes place for local delivery. It does not include government land uses such as maintenance facilities for government-owned trucks, busses, or heavy equipment which are a Light Industrial use.

Office, Medical. This includes the offices of doctors, dentists, chiropractors, optometrists, and other health practitioners providing outpatient care. It also includes medical and dental laboratories, blood banks, and the like.

Office Supplies and Equipment Stores. Stores selling office products such as stationery, legal forms, writing implements, typewriters, computers, copiers, office furniture, and the like.

Office Uses, General. A room or group of rooms used for conducting the affairs of a business

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

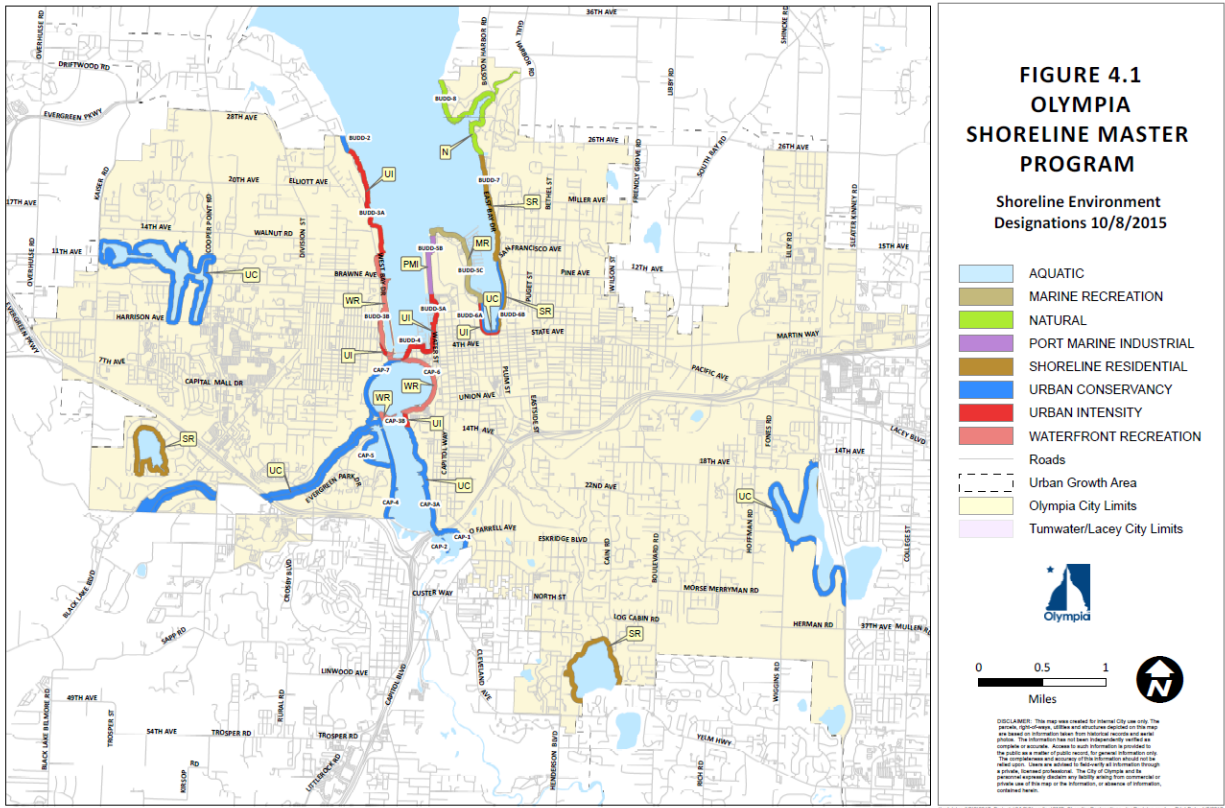
1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590; ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.20 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM:

18.20.320 – Official Shoreline Map



18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~from~~ **18.32.435(H))** within shoreline jurisdiction shall require a shoreline variance.

~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.

5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.

9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

12.10. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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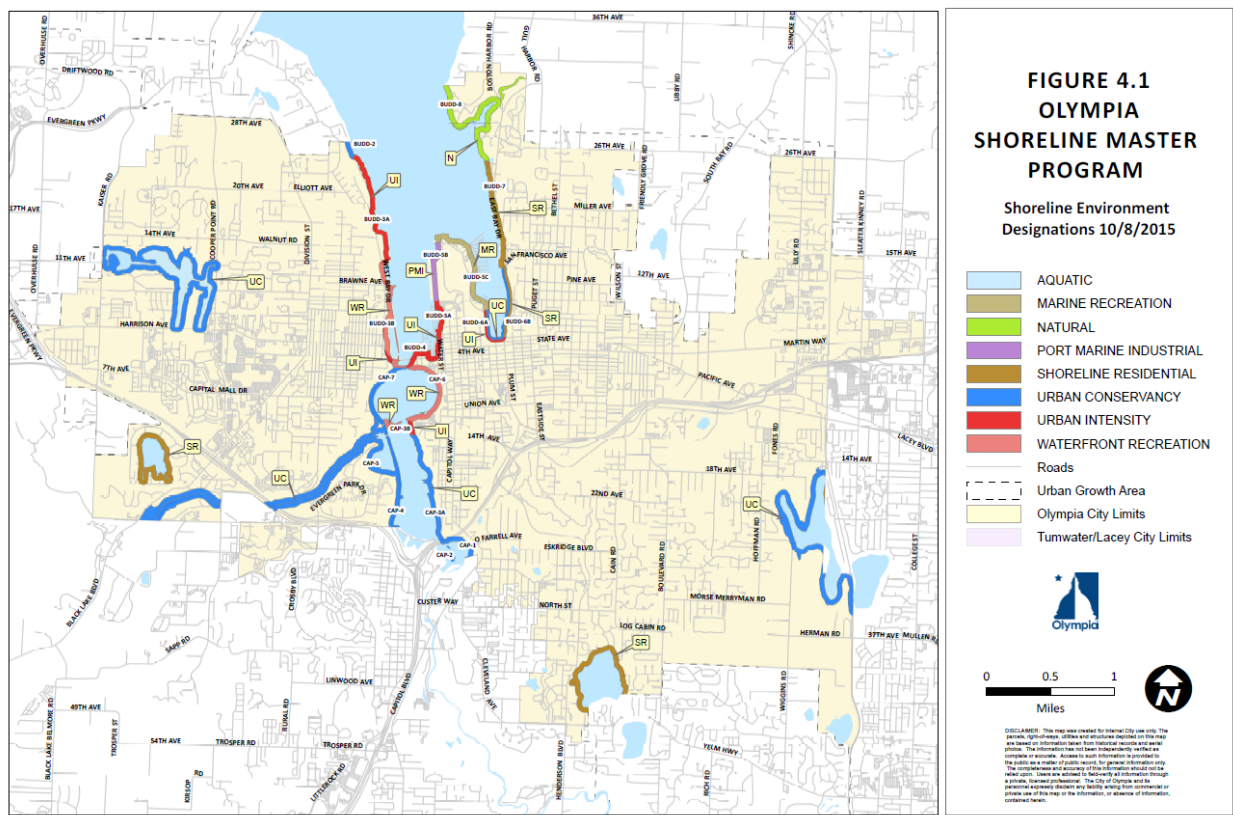
ATTACHMENT 3

SHORELINE MASTER PROGRAM AMENDMENTS

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.320 – Official Shoreline Map



3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.

- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - ~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
 - 4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.
 - 5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).
 - 6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).
 - ~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~
 - 8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - 9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).
 - 10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.
 - 11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

~~12.10.~~ Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

3.58 18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through

				18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, March 6, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:35 p.m.

1.A ROLL CALL

There was not a quorum present.

Present: 4 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Darrell Hoppe and Commissioner Carole Richmond

Excused: 3 - Commissioner Travis Burns, Commissioner Paula Ehlers and Commissioner Missy Watts

Absent: 1 - Commissioner Negheen Kamkar

OTHERS PRESENT

Community Planning and Development:
Deputy Director Leonard Bauer
Senior Planner Joyce Phillips
Senior Planner Amy Buckler
Office Specialist/Minutes Recorder Stacey Rodell
MAKERS: John Owen

2. APPROVAL OF AGENDA

There was not a quorum present, therefore this item could not be voted upon.

3. APPROVAL OF MINUTES

3.A [17-0227](#) Approval of the February 27, 2017 Olympia Planning Commission Meeting Minutes

Due to a lack of a quorum, approval of the minutes was postponed to the March 20 Planning Commission meeting under File 17-0278.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips announced the following:

- The Parking Strategy survey is open through the end of the day - March 6, 2017. As of noon - March 6, 2017, over 2,600 participants have taken the survey.
- At its March 7, 2017 meeting the Council will consider a charter for an Ad Hoc Committee on Housing Affordability. The Committee will have its first meeting on March 10, 2017 at 3:15 p.m. in Council Chambers at City Hall. The Ad Hoc Committee on Housing Affordability will consist of Chairs of the three standing City Council Committees (Councilmember Roe, Councilmember Hankins and Councilmember Cooper). Community Planning and Development Director Keith Stahley will be the primary staff liaison to the Committee.
- The *Plans in Progress* page on the City's website has recently been updated. It now includes links to webpages on the Missing Middle housing project and Sea Level Rise planning. She provided a copy of the recently updated Major Planning Projects timeline.
- The Missing Middle housing work group will have its first meeting on March 14, 2017 from 4:30 p.m. to 6:00 p.m. at City Hall, Council Chambers. The work group will be chaired by Planning Commissioner Richmond.

6. BUSINESS ITEMS

6.A [17-0220](#) Briefing on Downtown Design Guidelines Update

Mr. Owen presented a briefing on Downtown Design Guidelines update via a PowerPoint presentation. He reviewed the following:

Basic Objectives:

- Simplify
- Avoid vague language
- Update illustrations
- Address character areas
- Integrate with other code provisions
- Re-examine "pedestrian oriented streets"
- Address Historic District review
- Incorporate Crime Prevention Through Environmental Design (CPTED) principles
- Update mixed-use standards
- Add private open space requirements
- Incorporate view protection regulations

Guideline Topics:

- Site planning
- Site design
- Building design

Next steps/schedule 2017 including the potential April 12, 2017 Open House.

Commission Discussion:

- Vice Chair Auderer stated he would like to see the City's building official be involved early in the process to ensure design guidelines are financially realistic.
- Commissioner Richmond would like to see harmony when addressing the many different styles of Downtown buildings.
- Commissioner Hoppe stated:
 - He would like to see the festival street going from Sylvester Park to 4th Avenue.
 - He feels the view observation points should encompass a larger area than what was analyzed.
 - He has concerns about the design guidelines for the Backflow Prevention Assembly (BPA) locations. Mr. Bauer indicated it is being reviewed.

The report was received.

6.B [17-0224](#) Recommendation on the Downtown Strategy Draft

Ms. Buckler indicated the goal was to have the Commission's recommendation letter completed by the March 20, 2017 Planning Commission meeting. Ms. Buckler and Mr. Owen addressed public comments that were made at the public hearing on February 27, 2017. She handed out copies of written comments received during the public comment period as well as a matrix summarizing all public comments received (both verbal and written) and provided clarification on the comments.

Commission recommendations and discussion:

- Enhancements to crosswalks needed
- Streetlight type should reflect the character areas
- Building scale/height and providing interest with design
- A data pictorial explanation of the Downtown Strategy process similar to the one being done for the Action Plan
- Add language to the Retail Chapter to emphasize the importance of the Downtown Ambassador program and the Welcome Center
- Emphasis on emergency management - could add in language referencing the emergency response plan to the DTS
- Department of Commerce and the Department of Ecology referenced as partners in the *Sea Level Rise* chapter under the partners section
- Reference the Critical Areas Ordinance (CAO) in the Sea Level Rise chapter in regards to Best Available Science (BAS) around frequently flooded areas
- Incorporate a cost analysis for potential flood damage to existing buildings
- Citizen work group to inform the community about the Sea Level Response plan and it should remain an on-going group
- Revision to a sentence in the *Homelessness* chapter: - "Convene a broad range of community stakeholders, including social service providers, business owners, housed and homeless Downtown residents, Downtown business patrons, agency/ City/County representatives, and other relevant sub-groups, to develop an action plan leading to a more coordinated response to

homelessness and street dependency and the impacts to Downtown". Chair Mark stated in his experience with the homeless, it will be difficult for the City to "convene" the homeless to a meeting. He would like to see the language rewritten to read "Actively engage the homeless Downtown residents to gather feedback" and not require them to come to a meeting.

- Incorporate the body of work being done by Aaron Rodriguez in response to homelessness
- Incorporate intention of future plans by cross referencing other City plans (e.g. Parks Plan, Shoreline Master Plan, Emergency Management Plan etc.)
- Website suggestion of moving Ms. Buckler's contact information to the top of the website and also add in a "how we got here" section
- Flood proofing - 16 feet may be insufficient
- *Homelessness* Chapter - add an emergency relocation plan in response to development causing displacement. Connect with the homeless proactively before development occurs and direct them to services.
- Make sure to emphasize the 5 year implementation cycle

Ms. Buckler referenced the public comments matrix and asked the Commission to address the areas where staff is seeking direction.

Parklets were briefly discussed and will be addressed further during the design guidelines update.

Chair Mark will compose a draft a letter of recommendation for the Downtown Strategy to City Council and it will be reviewed at the next Planning Commission meeting.

The recommendation was discussed and continued to the March 20 Planning Commission meeting under File 17-0274.

- 6.C [17-0226](#) Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

There was a consensus to table this business item until the March 20 Planning Commission meeting.

7. REPORTS

Commissioner Richmond attended the Artesian Commons Leadership Committee meeting March 2, 2017.

Chair Mark discussed the upcoming Arts Commission meeting he is planning on attending.

Vice Chair Auderer attended the Olympia Community Care Center neighborhood meeting March 1, 2017.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 9:20 p.m.

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Planning Commission

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Agenda Date: 3/20/2017
Agenda Item Number: 6.B
File Number: 17-0226

Type: recommendation **Version:** 1 **Status:** In Committee

Title

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Recommended Action

Recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Report

Issue:

Whether to recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning and Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. Staff hosted a public open house to discuss the proposed amendments on January 18, 2017 and the Planning Commission held a public hearing on January 23, 2017. All written comments received by noon, January 27, 2017, and the additional information requested of staff were presented to the Planning Commission at its February 6 and 27, 2017, meetings.

The City issued a SEPA Determination of Non-Significance (DNS) for the recommended changes on January 10, 2017, and sent the 60-day notice of intent to adopt, as required by state statute, to the

Department of Commerce on January 11, 2017.

At its February 27, 2017 meeting, the Planning Commission voted to recommend approval of the amendments to the Olympia Municipal Code and Shoreline Master Program in Attachments 2-4. The Commission continued deliberation of the amendments in Attachment 1.

The draft amendments in Attachment 1 include the following:

- a process by which additional locally important species and/or habitat could be nominated in the future as conditions change
- designation of the great blue heron as a locally important species, with the following approaches to protect heron nesting colonies when development is proposed:
 - Adopt fixed-width buffers around heron nesting colonies
 - Require tree and vegetative screening
 - Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
 - Require mitigation sequencing where appropriate
 - Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, this draft includes a smaller seasonal buffer than that recommended by WDFW for nests in rural and less developed areas: a 200 foot year-round buffer and an additional 300 foot seasonal buffer for nesting colonies.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **as recommended by staff**.
2. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **with modifications**.
3. Recommend City Council **not adopt** locally important species regulations at this time.
4. Forward the draft amendments to OMC 18.32.300-.330 to City Council with **no recommendation**.

Under any of these options, the Planning Commission may direct staff to present the recommendation to the City Council, designate one or more Commissioners to present the recommendation to City Council along with staff, or create a written letter to describe the recommendation to be forwarded to City Council.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species

protection may require additional resources in the future.

Attachments:

- Proposed OMC 18.32.300 - .330 amendments
- Proposed OMC 18.02 and 18.32.500 amendments
- Proposed OMC 18.20 amendments
- Proposed Shoreline Master Program amendments

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OMC 18.32.300-330 AS APPROVED BY CITY COUNCIL AUGUST 16, 2016, WITH PROPOSED NEW LANGUAGE SHOWN IN TRACK CHANGES

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.325 and 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

No development shall occur in the great blue heron nesting colony.

1. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:

- a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, as defined in OMC 18.02.180, the City may allow development April 16 through January 31, subject to the provisions of OMC 18.32.330 and mitigation sequencing in OMC 18.32.327(C)(2).
 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- a. 1. When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels specific to the site shall be performed outside of the nesting season. The nesting season is generally February 15 through August 31, unless a different nesting season for that year is certified by a report from a qualified professional.
2. Development may occur at any time in the seasonal buffer in a year where it appears no herons have congregated or nested, subject to the applicant submitting a report from a qualified professional so stating. Development may occur at any time in the seasonal buffer, subject to the applicant submitting a report from a qualified professional documenting that no herons congregated or nested from February 1 through April 15 of a specific year. [Wording amended for clarity upon advice from Legal.]
- 3. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger shall be retained. Any required new or replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the

Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.
- B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.
- C. Contain, but not be limited to:
 1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
 2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
 3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;

- f. The extent and location of the important species habitat;
- g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

DRAFT

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.02.180, 18.32.500 AND 18.32.515 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features;

grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving

authority.

Landscape Structure. A fence, wall, trellis, statue or other landscape and ornamental object.

Landscaping. An area devoted to or developed and maintained predominantly with native or non-native plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

Landslide. Episodic down-slope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, earthflows and snow avalanches.

Large Lot Subdivision. The division of land into lots or tracts, each of which is 1/128 of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land.

Laundry and Laundry Pick-up Agency. An enterprise where articles of clothing, linen, etc. are washed, including self-service laundries as well as those where customers drop off articles to be laundered either on or off the premises, or dry-cleaned off the premises only. This includes diaper services, but not the following, which are classified as Light Industrial uses: dry-cleaning plants, linen supply services, carpet and upholstery cleaning plants, and industrial launderers.

Legal Lot of Record. A lot of a subdivision plat or binding site plan or a parcel of land described in a deed either of which is officially recorded to create a separate unit of property, provided that such plat, site plan, or deed shall accord with applicable local, state or federal law on the date created. Separate descriptions of adjoining parcels within a single deed shall not necessarily constitute separate legal lots of record.

Local Improvement. A public improvement for the benefit of property owners provided to a specific area that benefits that area and that is usually paid for, at least in part, by a special assessment.

Lodging House. See Dwelling, Transient.

Lot. Lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall also include tracts and parcels. Lot classifications are as follows:

- a. Lot, Corner. A lot that abuts two (2) or more intersecting streets.
- b. Lot, Flag or Panhandle. A lot with less than thirty (30) feet of street frontage which is typically connected to a public or private street by a narrow driveway. A lot where access is only provided by a private easement is not a flag lot.
- c. Lot, Interior. A lot that has frontage on one public or private street only, or is provided access by a private easement.
- d. Lot, Through. A lot that fronts on two (2) parallel or nearly parallel streets that do not intersect at the boundaries of the lot.
- e. Lot, Wedge-shaped. A lot with a street frontage which is no more than half as wide as the lot's width at the rear property line, as depicted in Figure 2-5b.

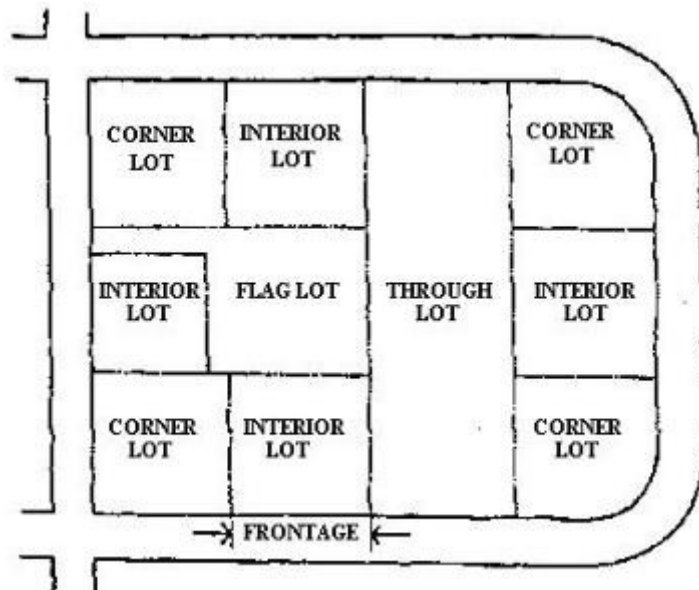
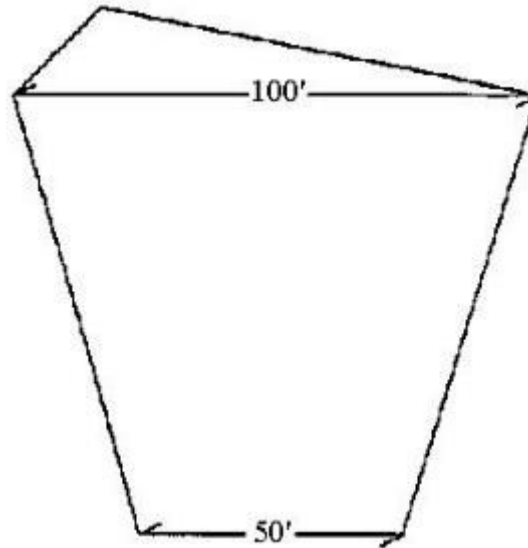


FIGURE 2-5



Example of a Wedge-Shaped Lot

FIGURE 2-5b

Lot Frontage. See Frontage.

Lot Line. A line dividing one lot from another lot or from a street rights-of-way or alley. (See also Property Line.)

Lot of Record. A lot, the plat, or deed to which is officially recorded as a unit of property and is described by metes and bounds.

Lot, Substandard. A parcel of land that is less than the minimum area or minimum dimensions required in the zone in which the lot is located. (See also Minimum Lot Size, Undersized Lots in development standards.)

Lot Width. The straight line distance measured between side lot lines parallel to the front setback line. (See also Section 18.04.080(G)(1) and Table 4.04.)

Low Income Housing. See Affordable Housing.

18.02.180 DEFINITIONS - SPECIFIC.

Object. A thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Off-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes or special incinerator ash generated on properties other than the property on which the off-site facility is located. (See also current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.)

Office. A building or portion thereof which is primarily used to transact the administrative or professional activities of a business. Such uses include, but are not limited to: medical (excluding veterinary), dental, chiropractic, optometric, legal, banking, insurance, real estate, security brokers, administrative, public, contractors, consultants, corporate, or manufacturers' offices. (See also Home Occupation.)

Office, Bank. Banks, savings and loans, credit unions, and other depository institutions.

Office, Business. The offices of real estate agencies, mortgage brokers, advertising agencies, credit agencies, mailing services and postal substations, employment agencies, insurance agencies, membership organizations except fraternal organizations, accountants, attorneys, security brokers, financial advisors, architects, engineers, surveyors, tax preparation services, computer software development, and other similar business services. This may also include the administrative offices for businesses whose primary activity may be construction, manufacturing, utility services, or some other non-office use conducted elsewhere.

Office, Government. The legislative, administrative, service delivery, or judicial offices of local, state, or federal agencies. It also includes federal post offices where mail processing takes place for local delivery. It does not include government land uses such as maintenance facilities for government-owned trucks, busses, or heavy equipment which are a Light Industrial use.

Office, Medical. This includes the offices of doctors, dentists, chiropractors, optometrists, and other health practitioners providing outpatient care. It also includes medical and dental laboratories, blood banks, and the like.

Office Supplies and Equipment Stores. Stores selling office products such as stationery, legal forms, writing implements, typewriters, computers, copiers, office furniture, and the like.

Office Uses, General. A room or group of rooms used for conducting the affairs of a business

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

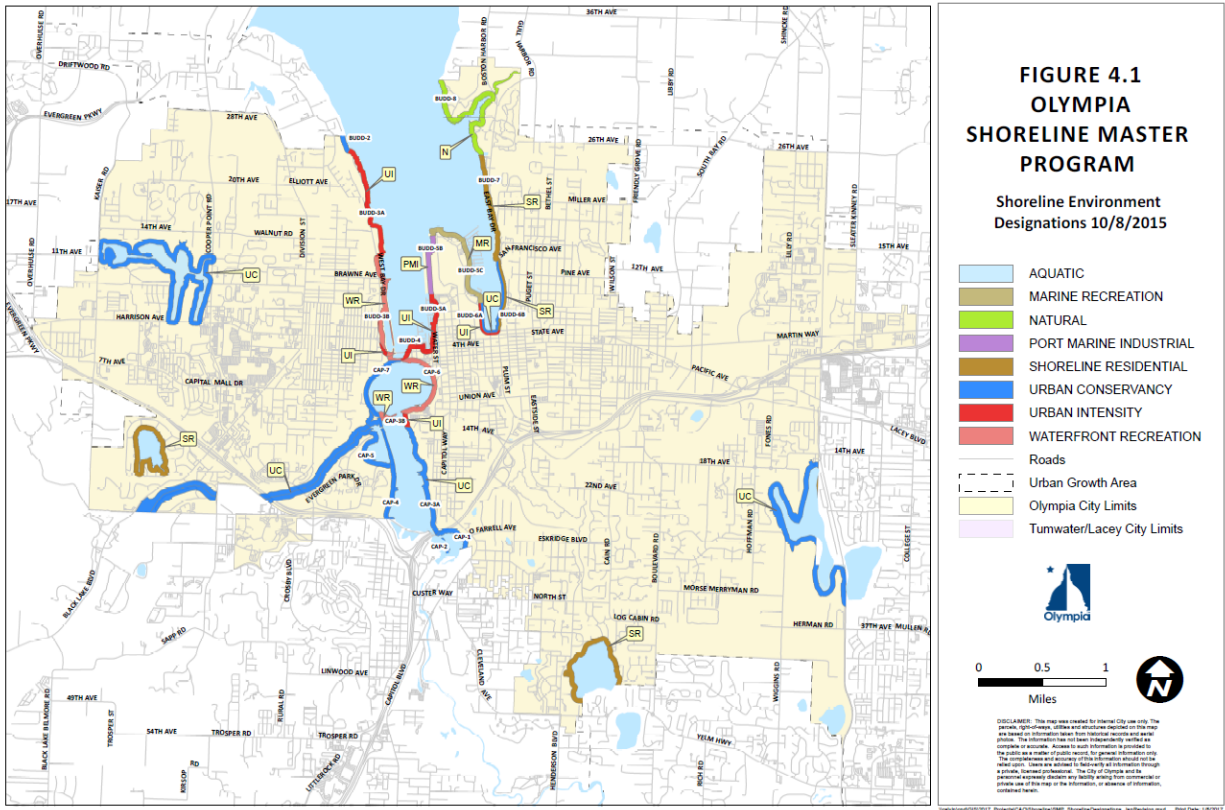
1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590; ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.20 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM:

18.20.320 – Official Shoreline Map



18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 - 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 - 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~from~~ **18.32.435(H))** within shoreline jurisdiction shall require a shoreline variance.

~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.

5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.

9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

12.10. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20.842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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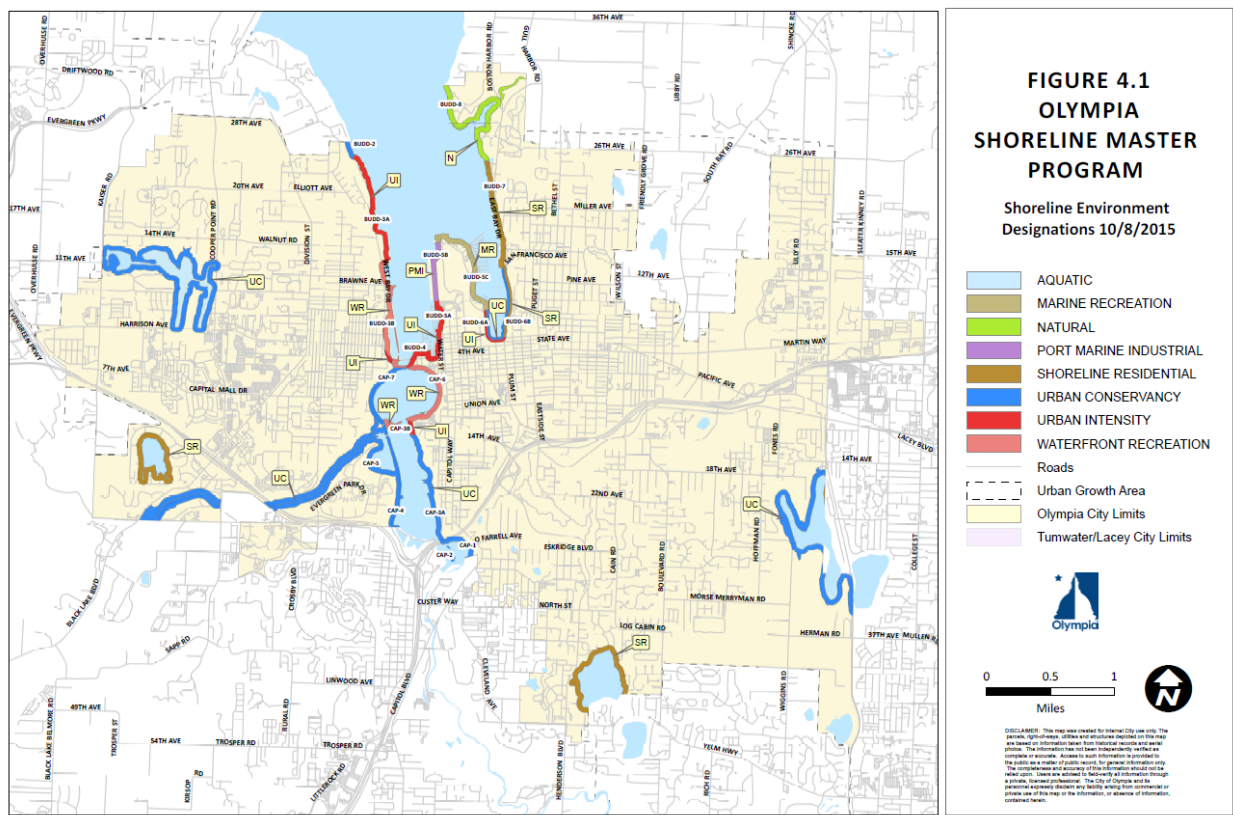
ATTACHMENT 3

SHORELINE MASTER PROGRAM AMENDMENTS

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.320 – Official Shoreline Map



3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.

- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
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 - ~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
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 - 6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).
 - ~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~
 - 8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - 9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).
 - 10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.
 - 11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

~~12-10.~~ Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

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Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
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Stair Towers	X	X	←	Prohibited



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, March 20, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Present: 5 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Travis Burns, Commissioner Paula Ehlers and Commissioner Carole Richmond

Excused: 2 - Commissioner Negheen Kamkar and Commissioner Missy Watts

Absent: 1 - Commissioner Darrell Hoppe

OTHERS PRESENT

Community Planning and Development:
Deputy Director Leonard Bauer
Senior Planner Amy Buckler
Senior Planner Joyce Phillips
Office Specialist/Minutes Recorder Stacey Rodell
MAKERS: John Owen

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0278](#) Approval of the February 27, 2017 Olympia Planning Commission Meeting Minutes

Commissioner Richmond had one revision to the minutes. Page 4 - Item 6. B - 5th paragraph, change sentence from *Due to her experience in property law...to Due to her research on property law...*

The minutes were approved as amended.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips announced the following:

- Planning Association of Washington is offering its Boot Camp on March 24, 2017 at the Lacey Community Center. The City of Olympia has a group membership and we can send up to three Commissioners for the member rate. You could then share the information you learned with the rest of the Commission. Agenda items include Vested Rights; Vested Rights for Stormwater Regulations; Water Rights; Regulation of Homelessness; Sign Codes; and Land Use Case Law.
- At the March 21, 2017 City Council Study Session, there will be a discussion regarding planning for the Isthmus, including options for long-term planning, continued blight removal, and proposed interim improvements on the Isthmus.
- The Site Plan Review Committee has three presubmission conferences scheduled this week:
 - Columbarium Project, Lutheran Church of the Good Shepherd - a new structure of 63 niches.
 - Chamber Lake Townhomes Addition, 1718-1730 Elizabeth St. SE. The proposal is to add 3 new buildings to parcel, which currently has two buildings on it.
 - Cooper's Knoll Preliminary Plat, 2400 Kaiser Rd. NW - Subdivide an existing parcel into 20 residential lots.

6. BUSINESS ITEMS

6.A [17-0274](#) Recommendation on the Downtown Strategy Draft

The Commission completed its deliberation. There were several amendments to the recommendation letter.

Vice Chair Auderer moved, seconded by Commissioner Burns, to approve the recommendation letter as amended and forward to City Council for consideration at the April 25, 2017 Council meeting under File 17-0422.

6.B [17-0226](#) Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Commissioner Ehlers recused herself from this business item; therefore, there was not a quorum to make a decision tonight.

The recommendation was postponed until the April 3, 2017 Planning Commission meeting.

7. REPORTS

Commissioners Ehlers and Richmond reported on the Missing Middle Work Group meeting they attended on March 14, 2017 at City Hall.

Chair Mark announced the Gateways Community kick-off meeting will be on Thursday, March 30, 2017 from 7:00 p.m. to 9:00 p.m. at the Olympia Center.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 7:55 p.m.

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Planning Commission

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Agenda Date: 4/3/2017
Agenda Item Number: 6.A
File Number: 17-0226

Type: recommendation **Version:** 1 **Status:** In Committee

Title

Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Recommended Action

Recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Report

Issue:

Whether to recommend to City Council adoption of draft amendments to the Critical Areas Ordinance (CAO)

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning and Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director, Community Planning and Development

Background and Analysis:

In 2015, the Land Use and Environment Committee (LUEC) directed staff to review potential additional protections for locally important habitat and species after the Washington State Growth Management Act (GMA) mandated update to the Critical Areas Ordinance (CAO) was completed, which occurred in August 2016.

After working with consultant ESA, staff presented information on protections for locally important habitat and species to LUEC on September 15 and November 17, 2016 and to Planning Commission on August 8, 2016, and January 9, 2017. Staff hosted a public open house to discuss the proposed amendments on January 18, 2017 and the Planning Commission held a public hearing on January 23, 2017. All written comments received by noon, January 27, 2017, and the additional information requested of staff were presented to the Planning Commission at its February 6 and 27, 2017, meetings.

The City issued a SEPA Determination of Non-Significance (DNS) for the recommended changes on January 10, 2017, and sent the 60-day notice of intent to adopt, as required by state statute, to the

Department of Commerce on January 11, 2017.

At its February 27, 2017 meeting, the Planning Commission voted to recommend approval of the amendments to the Olympia Municipal Code and Shoreline Master Program in Attachments 2-4. The Commission continued deliberation of the amendments in Attachment 1.

The draft amendments in Attachment 1 include the following:

- a process by which additional locally important species and/or habitat could be nominated in the future as conditions change
- designation of the great blue heron as a locally important species, with the following approaches to protect heron nesting colonies when development is proposed:
 - Adopt fixed-width buffers around heron nesting colonies
 - Require tree and vegetative screening
 - Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
 - Require mitigation sequencing where appropriate
 - Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

WDFW recognizes that protections for heron rookeries have a different set of considerations in urban areas than in less developed areas. Consequently, this draft includes a smaller seasonal buffer than that recommended by WDFW for nests in rural and less developed areas: a 200 foot year-round buffer and an additional 300 foot seasonal buffer for nesting colonies.

Neighborhood/Community Interests (if known):

Many groups and individuals in the community are interested in protection of the Great Blue Heron.

Options:

1. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **as recommended by staff**.
2. Recommend to City Council adoption of amendments to OMC 18.32.300-330, and approval of the non-regulatory suggestions, **with modifications**.
3. Recommend City Council **not adopt** locally important species regulations at this time.
4. Forward the draft amendments to OMC 18.32.300-.330 to City Council with **no recommendation**.

Under any of these options, the Planning Commission may direct staff to present the recommendation to the City Council, designate one or more Commissioners to present the recommendation to City Council along with staff, or create a written letter to describe the recommendation to be forwarded to City Council.

Financial Impact:

Initial review of locally important habitat and species was included in Community Planning and Development Department's 2016 budget; however, some approaches to habitat and species

protection may require additional resources in the future.

Attachments:

Proposed OMC 18.32.300 - .330 amendments

Proposed OMC 18.02 and 18.32.500 amendments

Proposed OMC 18.20 amendments

Proposed Shoreline Master Program amendments

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OMC 18.32.300-330 AS APPROVED BY CITY COUNCIL AUGUST 16, 2016, WITH PROPOSED NEW LANGUAGE SHOWN IN TRACK CHANGES

18.32.300 Important Habitats and Species - Purpose and Intent

In order to preserve and protect important habitats and species which are known to occur in Thurston County and which may be found within the City of Olympia, and which are not already protected by another critical area category, appropriate protection of an important habitat or species location shall be subject to the standards in OMC 18.32.305 through OMC 18.32.330. Protection in lake and marine shorelines is regulated under the City of Olympia Shoreline Master Program, OMC ~~14.08~~18.20.

18.32.305 Important Habitats and Species - Applicability and Definition

"Important habitats and species" are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g. Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and:

- A. Are designated as endangered or threatened species identified under the Endangered Species Act; or
- B. Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the state WDFW for the current PHS list); or

C. Are designated as "locally important habitat or species" pursuant to OMC 18.32.325 and 18.32.327; or

CD. Are areas in Olympia that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

DE. Small lakes, defined as naturally existing bodies of standing water less than twenty acres in size that exist on a year-round basis in a depression of land or expanded part of a stream and not defined as "Shorelines of the State" by RCW 90.58 (Shoreline Management Act), are considered an "important habitat." This term does not apply to constructed ponds.

18.32.315 Important Habitats and Species - Authority

- A. No development shall be allowed in an important habitat and species area ~~where local, state or federally endangered, threatened or sensitive species have a primary association as defined in OMC 18.32.305~~ without approval from the Department. The Department may restrict the uses and activities of a development proposal, such as

construction restrictions during breeding season, which lie when the proposal is located within one thousand (1,000) feet of an important habitat or species location.

B. The minimum performance standards that apply to a development proposal shall be those provided by the Washington Department of Fish & Wildlife's Management Recommendations for Washington's Priority Habitat and Species (1991), as amended, and the requirements in OMC 18.32.115, except as modified on the basis of an Important Habitat and Species Management Plan described in OMC 18.32.330.

18.32.320 Important Habitats and Species - Buffers

The Department shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise if needed, based on the critical area report outlined in OMC 18.32.115 and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.

18.32.325 Process to Identify Additional Locally Important Habitat and Species.

A. Additional species of local importance may be designated pursuant to OMC 18.58, zoning text amendment.

B. In addition to the decision criteria of OMC 18.59.050, a species may be designated locally important only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends and best available science:

a. Local populations of native species that are likely to become endangered; or

b. Local populations of native species that are vulnerable or declining;

2. The species or habitat has recreation, commercial, game, tribal, or other special value;

3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;

4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and

5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Effect of Designation. Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

18.32.327 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

No development shall occur in the great blue heron nesting colony.

1. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:

- a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and shall
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, as defined in OMC 18.02.180, the City may allow development April 16 through January 31, subject to the provisions of OMC 18.32.330 and mitigation sequencing in OMC 18.32.327(C)(2).
 4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron management core zone for this colony shall be protected for a period of ten years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

- a. 1. When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels specific to the site shall be performed outside of the nesting season. The nesting season is generally February 15 through August 31, unless a different nesting season for that year is certified by a report from a qualified professional.
2. Development may occur at any time in the seasonal buffer in a year where it appears no herons have congregated or nested, subject to the applicant submitting a report from a qualified professional so stating. Development may occur at any time in the seasonal buffer, subject to the applicant submitting a report from a qualified professional documenting that no herons congregated or nested from February 1 through April 15 of a specific year. [Wording amended for clarity upon advice from Legal.]
- 3. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger shall be retained. Any required new or replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

18.32.330 Important Habitats and Species - Management Plan

When a development proposal lies within an important habitats and/or species location, an Important Habitats and Species Management Plan shall be submitted by the applicant. The Department may waive the submittal when consultation with the

Washington Department of Fish and Wildlife staff indicates that such a plan is not needed.

An Important Habitats and Species Management Plan shall:

- A. Identify how the development impacts from the proposed project will be mitigated. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991), as amended, shall be the basis for this plan.
- B. Be prepared by a person who demonstrates sufficient experience and education as a wildlife biologist, habitat management consultant or botanist.
- C. Contain, but not be limited to:
 1. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the important species and its habitat;
 2. An analysis of the effect of the proposed development, activity or land use change upon the important species and its habitat, based upon Washington Department of Fish and Wildlife management guidelines;
 3. A mitigation plan by the applicant which shall explain how any adverse impacts to the important species or its habitat created by the development will be minimized or avoided, such as:
 - a. Establishment of buffer zones;
 - b. Preservation of important plants and trees;
 - c. Limitation of access;
 - d. Seasonal restriction of construction and other activities; and
 - e. Provisions for periodic review of the plan.

and

4. A map(s) to-scale, showing:
 - a. The location of the proposed development site, to include a boundary survey;
 - b. The relationship of the site to surrounding topographic features;
 - c. The nature and density of the proposed development or land use change;
 - d. Proposed building locations and arrangements;
 - e. Existing structures and landscape features including the name and location of all streams, ponds and other bodies of water;

- f. The extent and location of the important species habitat;
- g. A legend with: Title, scale and north arrows, and date, including revision dates if applicable.

DRAFT

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.02.180, 18.32.500 AND 18.32.515 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM

18.02.180 DEFINITIONS – SPECIFIC.

Lake. A naturally existing or artificially created body of standing water greater than twenty (20) acres in size. Lakes include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark within the stream, where the stream enters the lake. All such lakes meet the criteria of RCW Chapter 90.58 (Shoreline Management Act) and have been inventoried as "Shorelines of the State" found in the Shoreline Master Program, ~~for the Thurston Region in OMC 14.0818.20.~~

Land Use Approval. A written approval or permit issued by the Director or Hearing Examiner, or designee thereof, finding that a proposed project is consistent with applicable plans, regulations and standards and authorizing the recipient to make use of property in a certain manner. The land use approval consolidates various non-construction permit reviews of a project such as design review, environmental review, zoning conformance, and site plan review. Land Use Approval is a permit which does not directly authorize construction or improvements to real estate, but which is a necessary and required precursor to authorization of such construction or improvement. Land Use Approval includes, but is not limited to, applications for review and approval of a preliminary or final subdivision, short plat, binding site plan, conceptual or detailed master planned development, planned residential development, conceptual design review, site plan review, conditional use permit, variance, shoreline development permit, or other such reviews pertaining to land use.

Land Use Approval, Administrative. A Land Use Approval which may be issued by an authorized official or body, usually the Director, without an open record predecision hearing.

Land Use Approval, Quasi-Judicial. A Land Use Approval issued by an authorized official or body, usually the Hearing Examiner, following an open record predecision hearing.

Landscape Plan. A component of a site development plan on which is shown: proposed landscape species (number, spacing, size at time of planting, and plant details); proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features;

grade changes; buffers and screening devices; and any other information that can reasonably be required in order that an informed decision can be made by the approving

authority.

Landscape Structure. A fence, wall, trellis, statue or other landscape and ornamental object.

Landscaping. An area devoted to or developed and maintained predominantly with native or non-native plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

Landslide. Episodic down-slope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, earthflows and snow avalanches.

Large Lot Subdivision. The division of land into lots or tracts, each of which is 1/128 of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land.

Laundry and Laundry Pick-up Agency. An enterprise where articles of clothing, linen, etc. are washed, including self-service laundries as well as those where customers drop off articles to be laundered either on or off the premises, or dry-cleaned off the premises only. This includes diaper services, but not the following, which are classified as Light Industrial uses: dry-cleaning plants, linen supply services, carpet and upholstery cleaning plants, and industrial launderers.

Legal Lot of Record. A lot of a subdivision plat or binding site plan or a parcel of land described in a deed either of which is officially recorded to create a separate unit of property, provided that such plat, site plan, or deed shall accord with applicable local, state or federal law on the date created. Separate descriptions of adjoining parcels within a single deed shall not necessarily constitute separate legal lots of record.

Local Improvement. A public improvement for the benefit of property owners provided to a specific area that benefits that area and that is usually paid for, at least in part, by a special assessment.

Lodging House. See Dwelling, Transient.

Lot. Lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall also include tracts and parcels. Lot classifications are as follows:

- a. Lot, Corner. A lot that abuts two (2) or more intersecting streets.
- b. Lot, Flag or Panhandle. A lot with less than thirty (30) feet of street frontage which is typically connected to a public or private street by a narrow driveway. A lot where access is only provided by a private easement is not a flag lot.
- c. Lot, Interior. A lot that has frontage on one public or private street only, or is provided access by a private easement.
- d. Lot, Through. A lot that fronts on two (2) parallel or nearly parallel streets that do not intersect at the boundaries of the lot.
- e. Lot, Wedge-shaped. A lot with a street frontage which is no more than half as wide as the lot's width at the rear property line, as depicted in Figure 2-5b.

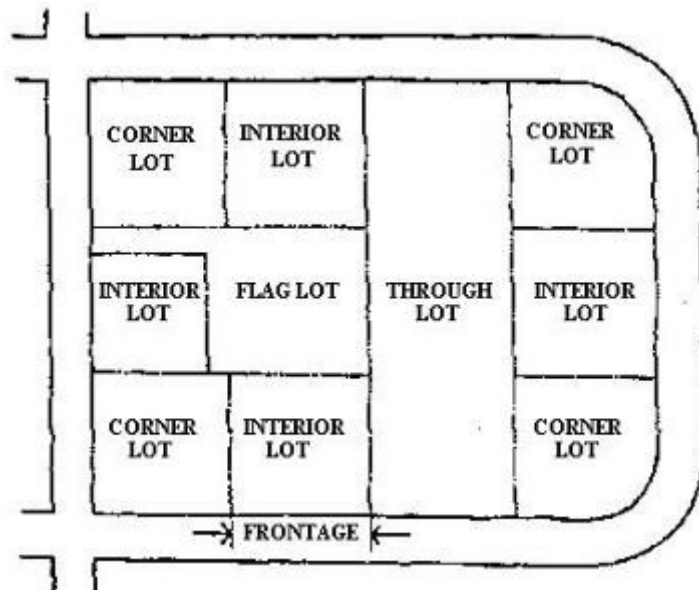
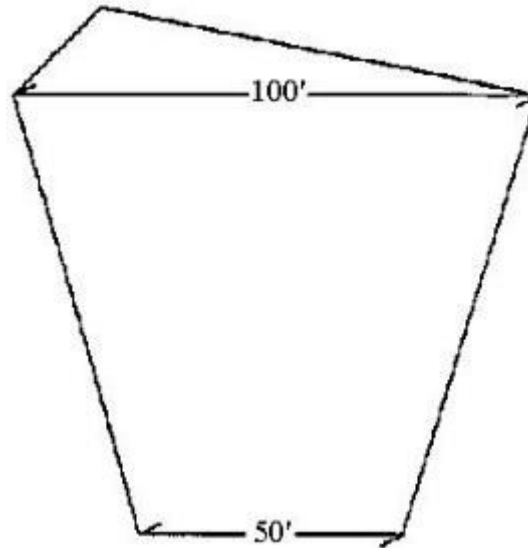


FIGURE 2-5



Example of a Wedge-Shaped Lot

FIGURE 2-5b

Lot Frontage. See Frontage.

Lot Line. A line dividing one lot from another lot or from a street rights-of-way or alley. (See also Property Line.)

Lot of Record. A lot, the plat, or deed to which is officially recorded as a unit of property and is described by metes and bounds.

Lot, Substandard. A parcel of land that is less than the minimum area or minimum dimensions required in the zone in which the lot is located. (See also Minimum Lot Size, Undersized Lots in development standards.)

Lot Width. The straight line distance measured between side lot lines parallel to the front setback line. (See also Section 18.04.080(G)(1) and Table 4.04.)

Low Income Housing. See Affordable Housing.

18.02.180 DEFINITIONS - SPECIFIC.

Object. A thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Off-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes or special incinerator ash generated on properties other than the property on which the off-site facility is located. (See also current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.)

Office. A building or portion thereof which is primarily used to transact the administrative or professional activities of a business. Such uses include, but are not limited to: medical (excluding veterinary), dental, chiropractic, optometric, legal, banking, insurance, real estate, security brokers, administrative, public, contractors, consultants, corporate, or manufacturers' offices. (See also Home Occupation.)

Office, Bank. Banks, savings and loans, credit unions, and other depository institutions.

Office, Business. The offices of real estate agencies, mortgage brokers, advertising agencies, credit agencies, mailing services and postal substations, employment agencies, insurance agencies, membership organizations except fraternal organizations, accountants, attorneys, security brokers, financial advisors, architects, engineers, surveyors, tax preparation services, computer software development, and other similar business services. This may also include the administrative offices for businesses whose primary activity may be construction, manufacturing, utility services, or some other non-office use conducted elsewhere.

Office, Government. The legislative, administrative, service delivery, or judicial offices of local, state, or federal agencies. It also includes federal post offices where mail processing takes place for local delivery. It does not include government land uses such as maintenance facilities for government-owned trucks, busses, or heavy equipment which are a Light Industrial use.

Office, Medical. This includes the offices of doctors, dentists, chiropractors, optometrists, and other health practitioners providing outpatient care. It also includes medical and dental laboratories, blood banks, and the like.

Office Supplies and Equipment Stores. Stores selling office products such as stationery, legal forms, writing implements, typewriters, computers, copiers, office furniture, and the like.

Office Uses, General. A room or group of rooms used for conducting the affairs of a business

and generally furnished with desks, tables, files, and communication equipment.

Office, Veterinary/Clinic. A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (See also Animal Hospital.)

Olympia Coordinate System. The horizontal ground scale coordinate system referenced to the Washington Coordinate System as established by the City Public Works Department.

On-Site. Located on the same lot that is the subject of an application for development.

On-Site Treatment and Storage Facility. A facility that treats or stores hazardous wastes generated on the same property, see current edition of "Zoning Guidelines for Hazardous Waste Treatment and Storage Facilities," prepared by the Solid and Hazardous Waste Program of the State Department of Ecology.

Open Record Hearing. A hearing conducted by a single hearing body or officer that creates the City's record through testimony and submission of evidence and information under procedures prescribed by this Title. [See RCW 36.70B.020(3)].

Open Record Appeal Hearing. A form of open record hearing held on request in response to a notice of decision when no open record predecision hearing was held on the project permit. [See RCW 36.70B.020(3)].

Open Record Predecision Hearing. A form of open record hearing held prior to the City's decision on a project permit. [See RCW 36.70B.020(3)].

Open Space, Common. Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and may include such complementary structures and improvements as are necessary and appropriate.

Open Space, Public. Undeveloped public land that is permanently set aside (as opposed to regulated) to protect the special natural character of a particular location. Open space may include, but is not limited to wetlands; wetland buffers; creek, stream or river corridors; forested areas; ravines, bluffs or other geologically hazardous areas; and undeveloped areas within parks.

Ordinary High Water Mark (OHWM). (Also referred to as Ordinary High Water Line OHWL) Per

WAC ~~22-110-020220-660-030~~, the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood. ~~OWHM-OHWM~~ is used to determine the location of standard buffer widths of streams as required under OMC 18.32.435(C)(1).

Ordinary Repair and Maintenance. Work for which a permit issued by the City is not required by law, and where the purpose and effect of such work is to prevent or correct any deterioration or decay of or damage to the real property or structure appurtenant thereto and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay or damage.

Outdoor Storage. The keeping of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 consecutive hours.

Over Water. Location above the surface of the water, including placement of buildings on piling or floats.

Overlay Zone. A zoning district or specific plan that encompasses one or more underlying zones or areas and which imposes requirements in addition to those required by the underlying zone. (See also Overlay Districts in Article III.)

Owner of Property. The fee simple owner of real property according to Thurston County Auditor records.

18.32.500 Wetlands - Purpose and Intent

In order to protect the natural function of wetlands and for floodwater storage, floodwater conveyance, sediment control, pollution control, surface water supply, aquifer recharge, wildlife habitat, and recreation, those lands with wetlands or which lie within three hundred (300) feet of wetlands shall be subject to the standards in OMC 18.32.100(~~LA~~) and OMC 18.32.505 through OMC 18.32.595. (Note: Further information regarding development within associated wetlands along marine shorelines, lakes over 20 acres in size, and streams can be found in OMC 18.20 Shoreline Master Program.)

18.32.515 Wetlands - Small Wetlands

A. Wetlands less than one thousand (1,000) square feet shall be exempt from the requirements of OMC 18.32.135.A; wetland buffers in OMC 18.32.535, compensation projects in OMC 18.32.545 and replacement ratios in OMC 18.32.550 provided that the wetland or pond:

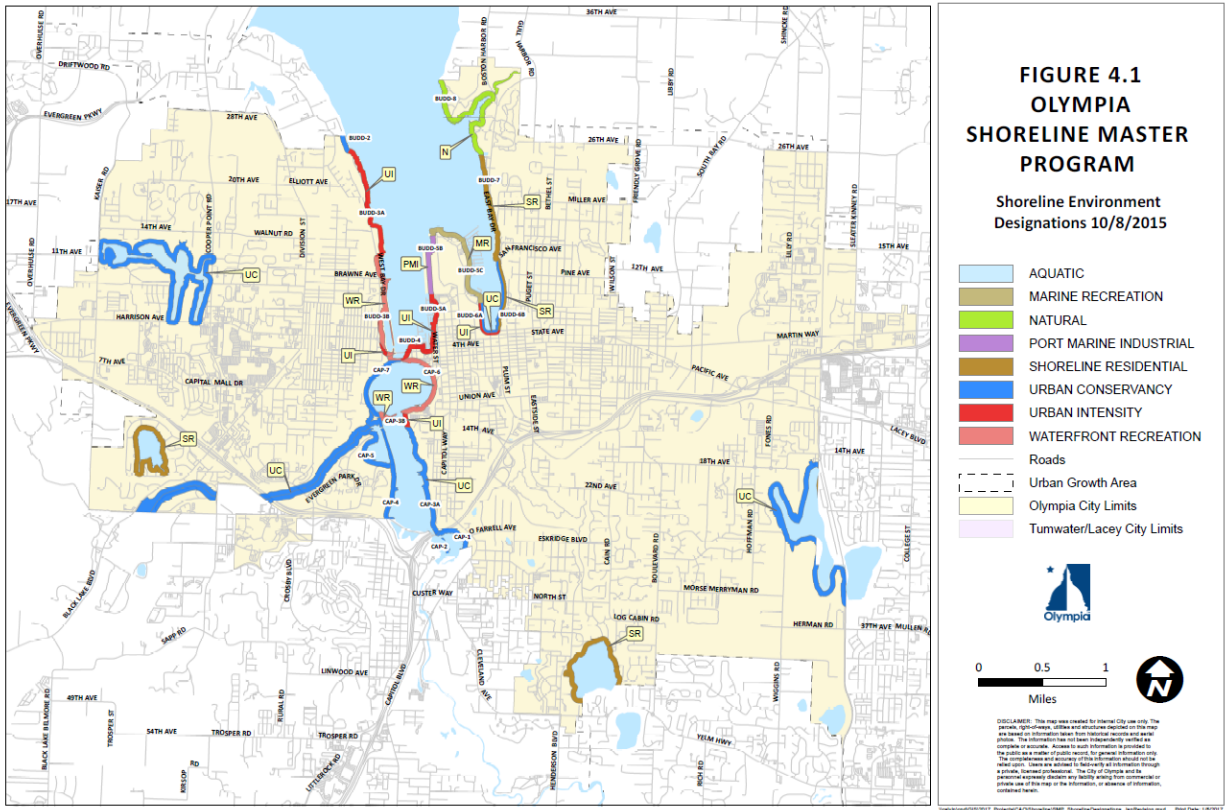
1. -Is an isolated Category III or IV wetland;
2. Is not associated with a riparian corridor;
3. Is not part of a wetland mosaic; ~~and~~
4. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; ~~and~~
5. No part of the wetland is within shorelines of the State of Washington, except as authorized by OMC 18.20.420(C)(3).

B. Wetlands between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 5 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2014),
5. Does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife, ~~and~~
6. A wetland mitigation report is provided as required by OMC 18.32.590; ~~and~~
7. No part of the wetland is within shorelines of the State of Washington.

THE FOLLOWING AMENDMENTS ARE TO BRING OMC 18.20 INTO CONSISTENCY WITH THE CITY'S SHORELINE MASTER PROGRAM:

18.20.320 – Official Shoreline Map



18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.
- B. If there are any conflicts or unclear distinctions between this chapter and Olympia’s critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
 - 1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 - 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~from OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.

~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~

4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.

5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).

6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).

~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~

8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.

9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).

10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

12.10. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).

~~13. In shoreline jurisdiction, the point scale used to separate wetland categories in OMC 18.32.510 does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score fewer than 16 points.~~

18.20.810 – Permitted Shoreline Modifications

Table 7.1 – Shoreline Modifications

P – Permitted C – Conditional Use X – Prohibited X/C – Allowed by conditional use only in specific cases.	Natural	All other Shoreline Environments	Aquatic (Same as adjacent shoreline environment designation)	Notes & Applicable Regulations
Dredging	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.820
Fill	C (Only for Ecological Restoration/ Enhancement Projects)	P	←	See OMC 18.20.830 through 837
Piers, Docks, Floats and Buoys	X	P	←	See OMC 18.20. 842-840 through 18.20.848
Ecological Restoration and Enhancement	P	P	←	See OMC 18.20.850 through 18.20.855
Instream Structures	P	P	←	See OMC 18.20.857
Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through 18.20.870
Shoreline Stabilization Soft Armoring	P	P	←	See OMC 18.20.860 through 18.20.870
Breakwaters, Jetties, Groins, and Weirs	X	X/C See OMC 18.20.874	←	See OMC 18.20.872 through 18.20.874
Stair Towers	X	X	←	Prohibited

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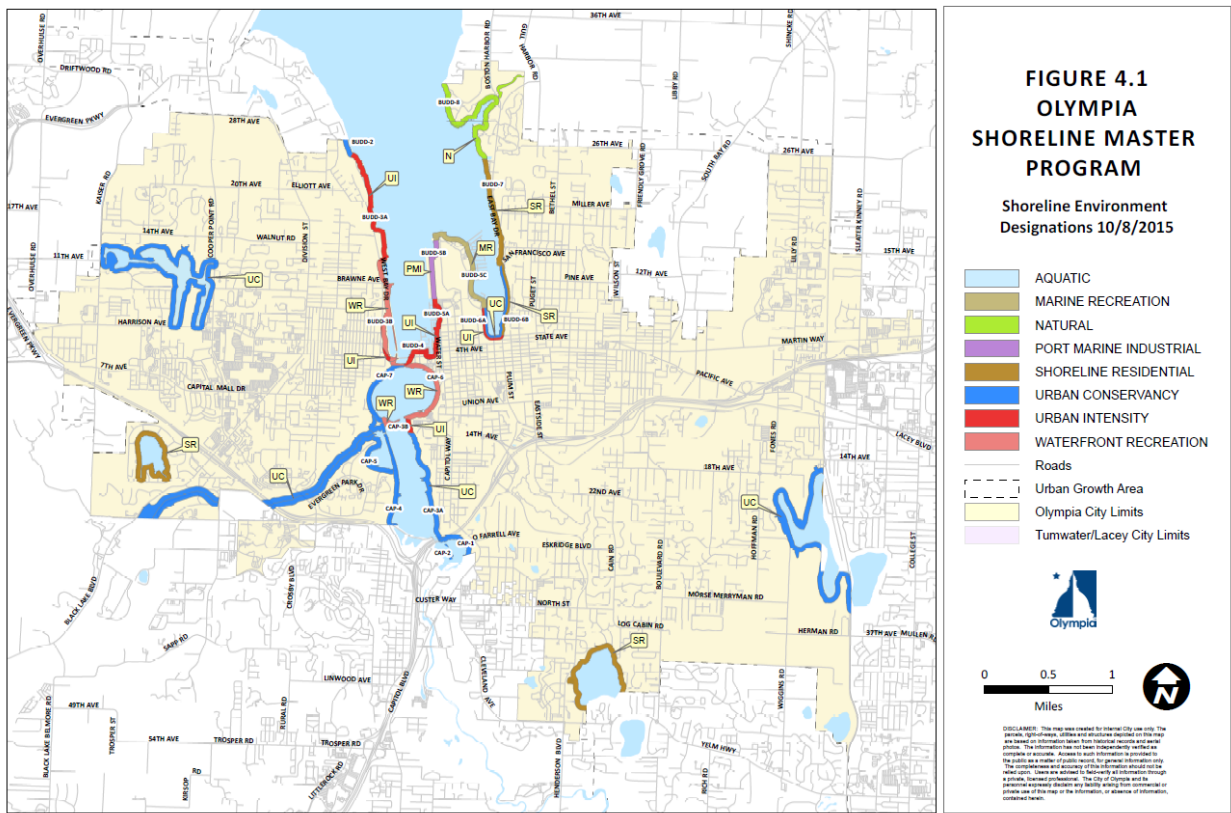
ATTACHMENT 3

SHORELINE MASTER PROGRAM AMENDMENTS

1.6 Regulations Adopted by Reference

The Critical Areas regulations ~~in effect on October 1, 2013~~ adopted on August 16, 2016, Ordinance Number 7030 and additional amendments adopted on _____, Ordinance Number _____ and contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.

3.17 18.20.320 – Official Shoreline Map



3.22 18.20.420 - Critical Areas

- A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) and Chapter 16.70 (flood damage prevention), except as modified in (C) below.

- B. If there are any conflicts or unclear distinctions between this chapter and Olympia's critical area or flood damage prevention regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.
- C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:
1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval.
 2. Stream and Important Riparian Area buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.435(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - ~~3. In shoreline jurisdiction, OMC 18.32.515(B) does not apply. Furthermore, OMC 18.32.515(A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).~~
 - 4.3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.
 - 5.4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(M)).
 - 6.5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530(E) and (G)).
 - ~~7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535(F)) and administrative wetland buffer reductions (OMC 18.32.535(G)) shall not be used together.~~
 - 8.6. Wetland buffer reductions beyond twenty-five percent (25%) ~~(OMC 18.32.535(H))~~ within shoreline jurisdiction shall require a shoreline variance.
 - 9.7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).
 - 10.8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.
 - 11.9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.

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3.58 18.20.810 – Permitted Shoreline Modifications

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Shoreline Stabilization Hard Armoring	X	X/C See OMC 18.20.870	←	See OMC 18.20.860 through

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Stair Towers	X	X	←	Prohibited



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501
Contact: Joyce Phillips
360.570.3722

Monday, April 3, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Commissioner Hoppe arrived after the roll call was taken.

Present: 7 - Chair Brian Mark, Commissioner Paula Ehlers, Commissioner Negheen Kamkar, Commissioner Missy Watts, Commissioner Darrell Hoppe, Commissioner Carole Richmond and Commissioner Rad Cunningham

Excused: 2 - Vice Chair Mike Auderer and Commissioner Travis Burns

OTHERS PRESENT

Community Planning and Development:
Senior Planner Amy Buckler
Senior Planner Linda Bentley
Office Specialist/Minutes Recorder Stacey Rodell

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0282](#) Approval of the March 6, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

3.B [17-0322](#) Approval of the March 20, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Buckler announced the following:

- Welcomed the newest Planning Commissioner, Rad Cunningham. Commissioner Cunningham said a few words about himself.
- Congratulated Commissioners Richmond and Hoppe for their reappointment to the Commission.
- Every three years members of the City advisory committees are required to complete Open Public Meetings training. The record indicates Commissioner Hoppe will need to complete the training by June 4, 2017 and Commissioner Watts will need to do so by July 21, 2017. The training can be accessed on the City's website. Inform Ms. Phillips once the training has been completed so she can update the record.
- On March 21, 2017 the City Council directed staff to move forward on an interim parks management plan for the isthmus. This will involve resurfacing the existing parking lots, removing blighted foundations from the old County Health and Health Authority sites, and designing and establishing a more attractive, flat base to serve as temporary event space until the area is more fully planned and developed. The City will scope a larger planning effort to consider long-term changes at the end of 2017 and the public process will begin in 2018. Meanwhile we will have something better in the interim 3-5 year period before what is ultimately planned can be completed. There will be a public meeting on the interim design later this year.
- An updated Planning Commission roster was handed out to each of the Commissioners.

6. BUSINESS ITEMS

6.A [17-0226](#) Recommendation on Draft Amendments to Critical Areas Ordinance (CAO)

Ms. Bentley reminded the Commission of changes to the proposed amended language that had been presented at the February 27, 2017 Planning Commission meeting.

The Commission completed its deliberation.

Commissioner Richmond moved, seconded by Commissioner Kamkar to approve staff recommendation as presented at this meeting and forward on to Council for adoption. Opposed: Chair Mark, Commissioner Hoppe and Commissioner Watts. Commissioner Richmond and Commissioner Kamkar were in favor of this motion. Commissioner Cunningham abstained from voting. Commissioner Ehlers recused herself from voting. The motion did not pass.

Chair Mark moved, seconded by Commissioner Hoppe, to write a letter to City Council with regard to OMC 18.32.300-330 proposed amendments stating a bulleted list of reasons as to why the Commission could not come to consensus. Commissioner Cunningham abstained and Commissioner Ehlers recused herself from voting. The motion passed unanimously by the

voting Commissioners.**7. REPORTS**

Commissioner Ehlers attended the Land Use Boot Camp. Sign code update and municipal regulation of homelessness were two of the items she valued most from the training.

Chair Mark provided a briefing on the recent Gateway Master Plan kick off meeting he attended. He also attended a portion of the Ad Hoc Committee on Housing Availability (AHCOHA) meeting prior to this meeting and provided a briefing.

8. OTHER TOPICS

Ms. Buckler provided some updates to the Downtown Strategy draft with regards to the Planning Commission's recommendation.

9. ADJOURNMENT

The meeting adjourned at 7:10 p.m.

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April 20, 2017

Olympia City Council
PO Box 1967
Olympia, WA 98507

Dear Mayor Selby and City Councilmembers:

The Olympia Planning Commission (OPC) has conducted its review of the City of Olympia's proposed Shoreline Master Program and Critical Areas Ordinance amendments proposed as the Critical Areas Ordinance Phase 2 Amendments – Locally Important Habitats and Species. Each planning commissioner engaged in a thoughtful evaluation of the proposed amendments.

At its February 27, 2017 meeting, the Planning Commission voted to recommend approval of the amendments to the Olympia Municipal Code and Shoreline Master Program in Attachments 2-4 (attachment 2 – Proposed OMC 18.02 and 18.32.500 amendments; attachment 3 - Proposed OMC 18.20 amendments; and attachment 4 - Proposed Shoreline Master Program amendments). These amendments were unanimously supported by the voting members (Commissioner Ehlers recused herself).

The Commission continued deliberation of the amendments in Attachment 1 (proposed amendments to OMC 18.32.300 - .330). The Commission is forwarding the materials to the City Council without a recommendation on the proposed amendments covered in Attachment 1.

The draft amendments in Attachment 1 include the following:

- a process by which additional locally important species and/or habitat could be nominated in the future as conditions change
- designation of the great blue heron as a locally important species, with the following approaches to protect heron nesting colonies when development is proposed:
 - Adopt fixed-width buffers around heron nesting colonies
 - Require tree and vegetative screening
 - Restrict the timing on some types of activities (e.g., loud noise, clearing, grading)
 - Require mitigation sequencing where appropriate
 - Require consultation with the City and the Washington State Department of Fish & Wildlife (WDFW) during project planning

The Commission was unable to reach consensus to support the proposed amendments in OMC 18.32.300 - .330 and a motion to recommend approval of these proposed amendments failed.

The motion that did pass was for me to write a letter to City Council with a bulleted list of the reasons why the Commission could not come to a consensus. Those reasons are summarized as follows:

- Some Commissioners believe the proposed development restrictions would make it highly unlikely that a new home could be constructed in only one building season.
- Some Commissioners believe the protection of a nesting colony for a period of ten years after the most recent sighting seems too long without knowing whether or not the heron would return.
- It was troubling that the heron may move to a new site, and potentially several times, which could lead to a multitude of sites that would need to be protected for at least a period of ten years.
- Some Commissioners believe the proposed protection measures are not adequate to protect the herons.
- Some Commissioners believe the proposed protection measures are too prescriptive and would negatively impact private property rights.
- Some Commissioners believe that since it is not a specific requirement to protect the heron that a regulatory approach is not needed and that non-regulatory measures are more appropriate at this time.

We appreciate the opportunity to provide feedback and recommendations to the City of Olympia City Council.

Sincerely,



Brian Mark
Chair, City of Olympia Planning Commission



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501

Contact: Joyce Phillips
360.570.3722

Monday, September 25, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Commissioner Burns arrived after the roll call was taken.

Present: 8 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Tammy Adams, Commissioner Travis Burns, Commissioner Rad Cunningham, Commissioner Paula Ehlers, Commissioner Darrell Hoppe and Commissioner Carole Richmond

OTHERS PRESENT

Community Planning and Development staff:

Deputy Director Leonard Bauer

Senior Planner Joyce Phillips

Minutes Recorder Stacey Rodell

Public Works staff:

Engineering and Planning Supervisor Eric Christensen

Water Resources Engineer Diane Utter

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0888](#) Approval of the August 21, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT

The following members of the public provided comment on Business Item 6.B: Daniel Einstein, Elizabeth Roderick and Joel Baxter.

5. STAFF ANNOUNCEMENTS

Ms. Phillips reminded the Commission of upcoming meeting dates and provided a brief update on building projects.

6. BUSINESS ITEMS

6.A [17-0975](#) Revisions to the Septic Tank Effluent Pumping (S.T.E.P.) System Regulations - Public Hearing

Ms. Utter reviewed the proposed revisions to the Septic Tank Effluent Pumping (S.T.E.P.) System regulations via a PowerPoint presentation. A copy of the presentation can be found in the meeting details on the City's website.

Chair Mark opened the public hearing.

The following members of the public provided testimony: Jerald Sanberg and Jim Zahn.

The Commission will begin deliberations at its October 2, 2017 meeting.

Chair Mark closed the public hearing.

The public hearing was held and closed. Written public comment will be accepted until 5:00 p.m. on Friday - September 29, 2017.

6.B [17-0856](#) Critical Areas Ordinance - Habitat and Species Protections for Great Blue Heron

Mr. Bauer reviewed the proposed Critical Area Ordinance - Habitat and Species Protections for Great Blue Heron via a PowerPoint presentation. A copy of the presentation can be found in the meeting details on the City's website.

The Commission requested additional information from staff. Mr. Bauer indicated he will provide that information at the Commission's next meeting.

The recommendation was discussed and continued to the October 2, 2017 Planning Commission meeting.

6.C [17-0968](#) Recommendation to Council regarding the Preliminary 2018-2023 Capital Facilities Plan

The Commission reviewed and discussed a preliminary draft letter of recommendation to Council regarding the 2018-2023 Capital Facilities Plan. Commissioner Richmond and Ms. Phillips will continue working on the draft letter and will present it to the Commission at its next meeting for review.

The recommendation was discussed and continued to the October 2, 2017 Planning Commission meeting.

7. REPORTS

Commissioner Hoppe reported on a meeting he attended regarding the Downtown Sanitation Plan. He also informed the Commission of an upcoming emergency preparedness workshop.

Chair Mark reported on the North East Neighborhood Association (NENA) potluck. He also reported on the Olympia Northeast Neighborhoods Alliance (ONNA) visioning meeting it had regarding its neighborhood center.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 8:52 p.m.



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501

Contact: Joyce Phillips
360.570.3722

Monday, October 2, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Chair Mark called the meeting to order at 6:30 p.m.

1.A ROLL CALL

Present: 6 - Chair Brian Mark, Vice Chair Mike Auderer, Commissioner Tammy Adams, Commissioner Travis Burns, Commissioner Darrell Hoppe and Commissioner Carole Richmond

Excused: 1 - Commissioner Paula Ehlers

Absent: 1 - Commissioner Rad Cunningham

OTHERS PRESENT

Community Planning and Development staff:

Deputy Director Leonard Bauer

Senior Planner Joyce Phillips

Minutes Recorder Stacey Rodell

Public Works staff:

Engineering and Planning Supervisor Eric Christensen

Project Engineer II Diane Utter

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-0995](#) Approval of the September 11, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

3.B [17-0994](#) Approval of the September 22, 2017 Finance Subcommittee of the Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips informed the Commission of upcoming meeting dates and provided a brief update on building projects.

6. BUSINESS ITEMS

- 6.A** [17-0975](#) Revisions to the Septic Tank Effluent Pumping (S.T.E.P.) System Regulations - Deliberations

Chair Mark moved, seconded by Commissioner Hoppe, to recommend City Council approve proposed revisions to the Septic Tank Effluent Pumping (S.T.E.P.) System regulations. The motion passed unanimously.

- 6.B** [17-0856](#) Critical Areas Ordinance - Habitat and Species Protections for Great Blue Heron

Mr. Bauer provided additional information to the Commission that was requested at a previous meeting.

Commissioner Richmond moved, seconded by Commissioner Hoppe, to approve the measures to protect the Great Blue Heron as proposed by staff, with the modification of the ten-year protection of nesting sites be changed to six years. The motion carried by the following vote:

- Aye:** 4 - Chair Mark, Commissioner Burns, Commissioner Hoppe and Commissioner Richmond
- Nay:** 2 - Vice Chair Auderer and Commissioner Adams
- Excused:** 1 - Commissioner Ehlers
- Absent:** 1 - Commissioner Cunningham

- 6.C** [17-0991](#) Briefing on Downtown Urban Infill Area State Environmental Policy Act (SEPA) Ordinance

Mr. Bauer presented a briefing on Downtown Urban Infill Area State Environmental Policy Act (SEPA) proposed ordinance via PowerPoint presentation. A copy of the presentation can be found in the meeting details on the City’s website.

The information was received.

- 6.D** [17-0968](#) Recommendation to Council regarding the Preliminary 2018-2023 Capital Facilities Plan

Commissioner Richmond reviewed the draft recommendation letter to Council regarding the Preliminary 2018-2023 Capital Facilities Plan. The letter will be finalized by Commissioner Richmond and Ms. Phillips and will be reviewed by the Commission prior

to being submitted to City Council.

The discussion was completed.

7. REPORTS

Chair Mark reported the Arts Commission open house on the draft Public Art Master Plan Olympia Crossings: An Art Plan for City Gateways is on Wednesday - October 4, 2017 at 6:30 p.m. at City Hall.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 8:47 p.m.

Joyce Phillips

From: Tom Schrader <schraderfour@gmail.com>
Sent: Friday, September 15, 2017 1:23 PM
To: Nancy Lenzi
Cc: Leonard Bauer; Joyce Phillips
Subject: Re: Olympia Critical Areas Ordinance

Hello.

- 1) Since the nesting site off West Bay has not had blue herons now for the second year, since Mr. "Einstein" and his crew removed all the ivy off the trees... Why is this area still considered a nesting site? Without the ivy to protect the nests, there won't be any nests for YEARS!
- 2) Is the city going to go after Einstein and his group to prosecute them for the total decimation of this sensitive habit in a Critical Area?
- 3) If the blue herons aren't nesting at West Bay, then where are they nesting? Perhaps Einstein (oxymoron) and his group might put positive productive energy into finding this out IF they really wanted to protect the species!
- 4) What is the city doing to preserve any REAL NESTING SITES, and finding our where the herons are now nesting (if they are) in this area?

Is the city really trying to protect these birds, or just hammer out unsupported new regulations?!?!?

Thank you.

Tom Schrader

++++
++++

On Fri, Sep 15, 2017 at 9:05 AM, Nancy Lenzi <nlenzi@ci.olympia.wa.us> wrote:



September 15, 2017

The Olympia Planning Commission will reconsider optional ordinances to amend the Olympia Critical Areas Ordinance at its September 25, 2017 meeting. The meeting will begin at 6:30 p.m., in Room 207 of Olympia City Hall, located at 601 4th Avenue East, Olympia, Washington. This notice is provided to you, as an interested party of record, should you want to attend and listen to the Planning Commission deliberate and develop a recommendation for City Council.

The development regulations that will be considered are for additional provisions to protect nesting colonies of the great blue heron as a locally-important species. In addition, the provisions include a process to allow for future nominations of additional species to be designated as locally important. The Planning Commission made no recommendation on these provisions when it considered the proposal earlier this year. The City Council is sending it back to the Planning Commission for a recommendation.

The staff report and additional information will be available on the City of Olympia web site (<https://olympia.legistar.com/Calendar.aspx>) five days prior to the September 25 Planning Commission meeting.

For more information, please see the City of Olympia's Critical Areas Ordinance webpage, <http://olympiawa.gov/city-government/codes-plans-and-standards/critical-areas-ordinance.aspx>.

Leonard Bauer, FAICP/Deputy Director

601 4th Avenue East

PO Box 1967

Olympia WA 98507-1967

360.753.8206

Joyce Phillips

From: hwbranch@aol.com
Sent: Friday, September 15, 2017 10:06 AM
To: Joyce Phillips; Nancy Lenzi
Cc: Leonard Bauer
Subject: Re: Olympia Critical Areas Ordinance

Dear Joyce Phillips,

As you point out, the reason the Great Blue Heron is not afforded special protection is because it is not endangered. They range throughout the state. The City is singling out a species for protection *because* it is not endangered.

In the year 2000 there were still plenty of grebes, scoters and murre in Budd Inlet. Something we are doing has stressed these birds to the brink of local extinction. Apparently adequate protection measures are not in place through the critical areas ordinance and shoreline master program.

Harry Branch

-----Original Message-----

From: Joyce Phillips <jphillip@ci.olympia.wa.us>
To: hwbranch <hwbranch@aol.com>; Nancy Lenzi <nlenzi@ci.olympia.wa.us>
Cc: Leonard Bauer <lbauer@ci.olympia.wa.us>
Sent: Fri, Sep 15, 2017 9:49 am
Subject: RE: Olympia Critical Areas Ordinance

Hello, Mr. Branch.

I wanted to let you know we did receive your email and question. Leonard Bauer is the primary staff person working on this. He is out of the office until Tuesday, September 19th and will respond to your email when he returns.

It is my understanding that when this planning effort began, several species that weren't otherwise specifically protected because they were not listed as either "threatened" or "endangered" by the state or federal government were considered. It was determined those species, other than the Great Blue Heron, had adequate protection measures in place through the critical ordinance and shoreline master program. So specific provisions to help protect the Great Blue Heron, and to create a process for other Locally Important Habitat and Species to be proposed for protection, were developed and proposed.

I hope that helps answer your question. Leonard may be able to provide more detail when he returns.

Thank you.

Joyce

Joyce Phillips, AICP, Senior Planner
City of Olympia | Community Planning and Development
601 4th Avenue East | PO Box 1967, Olympia WA 98507-1967
360.570.3722 | olympiawa.gov

Note: Emails are public records, and are potentially eligible for release.



From: hwbranch@aol.com [mailto:hwbranch@aol.com]

Sent: Friday, September 15, 2017 9:23 AM

To: Nancy Lenzi <nlenzi@ci.olympia.wa.us>

Cc: Leonard Bauer <lbauer@ci.olympia.wa.us>; Joyce Phillips <jphillip@ci.olympia.wa.us>

Subject: Re: Olympia Critical Areas Ordinance

By what criteria the Great Blue Heron is a "locally-important species"?

The word "important" is a comparative term. If something is important, it's important compared to other things that are less or non important. What species are non-important? Since we're referring to birds, how about grebes, murre and scoters? By what criteria?

Harry Branch

-----Original Message-----

From: Nancy Lenzi <nlenzi@ci.olympia.wa.us>

Cc: Leonard Bauer <lbauer@ci.olympia.wa.us>; Joyce Phillips <jphillip@ci.olympia.wa.us>

Sent: Fri, Sep 15, 2017 9:05 am

Subject: Olympia Critical Areas Ordinance



September 15, 2017

The Olympia Planning Commission will reconsider optional ordinances to amend the Olympia Critical Areas Ordinance at its September 25, 2017 meeting. The meeting will begin at 6:30 p.m., in Room 207 of Olympia City Hall, located at 601 4th Avenue East, Olympia, Washington. This notice is provided to you, as an interested party of record, should you want to attend and listen to the Planning Commission deliberate and develop a recommendation for City Council.

The development regulations that will be considered are for additional provisions to protect nesting colonies of the great blue heron as a locally-important species. In addition, the provisions include a process to allow for future nominations of additional species to be designated as locally important. The Planning Commission made no recommendation on these provisions when it considered the proposal earlier this year. The City Council is sending it back to the Planning Commission for a recommendation.

The staff report and additional information will be available on the City of Olympia web site (<https://olympia.legistar.com/Calendar.aspx>) five days prior to the September 25 Planning Commission meeting.

For more information, please see the City of Olympia's Critical Areas Ordinance webpage, <http://olympiawa.gov/city-government/codes-plans-and-standards/critical-areas-ordinance.aspx>.

Leonard Bauer, FAICP/Deputy Director

601 4th Avenue East

PO Box 1967

Olympia WA 98507-1967

360.753.8206



Community Planning & Development

Olympia

9/15/2017 9:03 AM



A Washington State Chapter of the National Audubon Society
P.O. Box 2524, Olympia, WA 98507
(360) 352-7299 www.blackhills-audubon.org

Black Hills Audubon Society is a volunteer, non-profit organization of more than 1,300 members in Thurston, Mason, and Lewis Counties whose goals are to promote environmental education and protect our ecosystems for future generations.

September 27, 2017

Dear Planning Commission:

My name is Elizabeth Rodrick. I am a retired wildlife biologist representing Black Hills Audubon Society. After reading the list of concerns of Planning Commission members in your April 20 letter regarding the proposed performance standards for Great Blue Herons, I reviewed the biological literature once again. I would like to address some of the concerns that were raised and suggest one revision to the proposed performance standards for Olympia's urban herons.

Status of great blue heron – The WDFW statewide status classification of this heron is “monitor” which means the species status and distribution is monitored and the population is managed to prevent it from becoming Sensitive, Threatened, or Endangered. However, the population status has not been reviewed in 13 years, since 2004. At that time, the regional Salish Sea population was estimated at 4700 nesting pairs, with 76% of the population occurring from Georgia Strait to the north. Twenty-four percent, or 1100 pairs, occupied colonies in Puget Sound with only a handful of small colonies in southern Puget Sound.⁴ In 1976 in Thurston County, there were 10 small colonies and in 2009, there were 5 small colonies.⁵ Based on this downward trend, it is unlikely that heron colonies will “proliferate”. The citizens of Olympia have already expressed their desire to retain this iconic bird in our nearshore habitat, so we should enact protective measures.

Regarding the nesting season - I agree with Mr. Einstein's testimony that the nesting period should not be shortened. The heron breeding season of Feb. 1 – Aug. 31 is a statewide recommendation. There is evidence that Pacific subspecies (*Ardea herodias fannini*), that occurs in Olympia, commences breeding earlier¹ and that colonies south of Seattle fledge earlier than inland herons². However, in south Puget Sound bald eagle predation is a significant source of nest and colony failure and/or relocation. This results in some herons laying a second clutch of eggs and in extending the breeding and fledging period. To ensure recruitment of young herons into our population, we need to protect them through fledging. A trained person can determine when the colony is no longer occupied, thus allowing activity to resume.

Regarding protection of former nesting sites – Heron colonies move for various reasons and protection of alternate nesting habitat (including potentially abandoned sites) is based on sound science, the conservation principle of redundancy. It is important to protect alternate nesting habitat in case of colony destruction by natural or human-caused disturbance.

However, I suggest shortening the protection period for former colonies in urban areas from 10 years to 6 years. While herons have been documented to re-nest at a site more than 10 years after being abandoned³, it is reasonable to assume that an urbanizing area may have increased development and disturbance during unoccupied years and that it is less likely that a site will be re-colonized after many years.

Regarding private property rights – Washington state laws already protect landowners from “takings” of property rights. If a landowner has a hardship that prevents her/him from complying with performance standards, I assume that the City of Olympia has an appeal process or variance provision to accommodate this.

Regarding the cost of colony occupancy determination – Volunteer “citizen scientists” can be trained to survey heron colonies to determine the beginning and the end of the nesting period. This would relieve landowners from having to hire a biologist.

Sincerely,

Elizabeth Rodrick

Citations 1-3 from Azerrad, J. M. 2012. Management recommendations for Washington’s priority species: Great Blue Heron. Washington Department of Fish and Wildlife, Olympia, Washington.

¹ Page 1. Citation #54.

² Page 5. Citation #38 and personal communication from Kate Stenberg, biologist.

³ Page 11. Citation personal communication from Chris Anderson, biologist.

⁴ Page 12. Eissinger, A.M. 2007. Great Blue Herons in Puget Sound. Puget Sound Nearshore Partnership Report No. 2007-06. Published by Seattle District, U.S. Army Corps of Engineers, Seattle, WA.

⁵ Washington Department of Fish and Wildlife. Wildlife Data System.



City Council

Approval of an Ordinance Establishing a Downtown Urban Infill Area in Accordance with the Washington State Environmental Policy Act

Agenda Date: 12/5/2017
Agenda Item Number: 6.B
File Number: 17-1218

Type: ordinance **Version:** 1 **Status:** Other Business

Title

Approval of an Ordinance Establishing a Downtown Urban Infill Area in Accordance with the Washington State Environmental Policy Act

Recommended Action

Committee Recommendation:

The Land Use and Environment Committee has received updates and provided direction during the process of developing this proposal following its inclusion in the Downtown Strategy adopted by the City Council.

At its November 6, 2017, meeting, the Olympia Planning Commission unanimously voted to recommend approval of the ordinance.

City Manager Recommendation:

Move to approve on first reading and forward to second reading the ordinance adopting an Urban Infill Area in accordance with the State Environmental Policy Act (SEPA).

Report

Issue:

Whether to adopt an ordinance establishing the Olympia downtown as a SEPA Urban Infill Exemption Allowance Area.

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning & Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director

Background and Analysis:

Background

In 2015, the City Council adopted a scope for the Downtown Strategy (DTS) which included exploring increased State Environmental Policy Act (SEPA) exemption levels for minor construction projects and/or urban infill development that is consistent with the Comprehensive Plan. During 2016, the

DTS planning team explored these options in light of Downtown goals. The DTS adopted by the City Council recommends designating a Downtown Urban Infill SEPA Exemption Area. The memo from the DTS explaining this recommendation is attached.

The purpose of designating an urban infill SEPA exemption area is not to reduce environmental risk assessment or mitigation. State law established the urban infill exemption option to reduce duplicative process in areas where a full Environmental Impact Statement (EIS) was previously conducted on potential impacts of a Comprehensive Plan that calls for urban infill development, such as Olympia's downtown.

The urban infill exemption is one of several SEPA options adopted into state law after the Regulatory Reform Act (1995) began requiring a public notice and comment period for all applications for land use review, and a combined public hearing for land use review and SEPA appeals. As the attachment showing Olympia's land use review process demonstrates, public notice and comment, as well as an opportunity to appeal land use decisions, remain in effect for all permit applications. The current SEPA review, comment and appeal process occurs *within* the land use review process, for projects that are not already exempt from SEPA due, for example, to their small size.

To be consistent with the Comprehensive Plan goals, the City has adopted mitigation measures for environmental issues directly into the City's codes and development requirements, which all new development proposals must meet. Because environmental issues are addressed upfront in the development code, it is duplicative to conduct an additional review for each development project that is subject to SEPA. Exempting projects from that duplicative SEPA review process helps reduce uncertain development costs, and is a way to incentivize development that meets Comprehensive Plan goals.

SEPA Urban Infill Area

The State's SEPA statute (RCW 43.21C.229) allows for urban infill exemptions in order to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. When an EIS has been prepared to analyze the development goals in the comprehensive plan (which is the case for Olympia), a city can exempt some or all of the following types of development from additional SEPA review:

- Stand-alone residential
- Mixed use residential/commercial
- Stand-alone commercial less than 65,000, excluding retail

The exemption would not apply to:

- Industrial uses
- Lands covered by water (in most cases)
- Projects where part of the proposal requires both exempt and non-exempt actions
- Some other very specific cases outlined under the SEPA statute

Gap Analysis

A first step was to identify any gaps in our environmental regulations where we have had to use SEPA in the past to address an environmental issue in Downtown. This would identify issues for

which the City would need to establish regulations because SEPA was the sole method of addressing an issue.

The gap analysis examined SEPA determinations for all downtown in the 13 years prior to the DTS. It revealed the City often used SEPA to reiterate regulations that are required regardless of SEPA (e.g., remediating contaminated soil and groundwater, controlling dust at the construction site). The gap analysis did identify three areas to be addressed by adopting new regulations before establishing a SEPA urban infill area:

- 1. Flood risk associated with sea level rise:** In the past, the City used SEPA to address flood risk due to sea level rise by requiring higher finished floor elevations in high risk areas of Downtown. To ensure this issue could still be addressed without SEPA, the City adopted increased flood-proofing standards in August of 2016.
- 2. Off-site traffic impact mitigation:** There may be areas where a large traffic-generating project could cause off-site traffic impacts needing to be mitigated through infrastructure improvements at the time of development (e.g., a traffic light.) To ensure this issue can still be addressed without SEPA, the 2017 annual update to the Engineering Design and Development Standards (EDDS) includes a proposal to incorporate current requirements for development applications to perform a traffic study to determine any needed improvements that would be required (attached). The urban infill exemption ordinance also clarifies that new development would still need to comply with city code requiring transportation concurrency (i.e., providing necessary transportation facilities concurrent with new development).
- 3. Cultural resources:** Tribal nations have in the past tended to use SEPA notice as their trigger to review development applications, and Downtown is of particular interest to tribes due to the historical and cultural significance of Downtown uplands and shorelines once used by the Tribes. Staff met with representatives of the Nisqually Tribe and State Department of Archaeology and Historic Preservation (DAHP), and corresponded with the Squaxin Island Tribes, regarding City code revisions to ensure concerns about development in historical or culturally significant areas will be addressed by proposed city code revisions. Those proposed revisions have been included in the downtown urban infill area ordinance (attached).

SEPA Ordinance

The attached ordinance would provide for designation of a Downtown Urban Infill SEPA Exemption Allowance Area. It also includes updates to the City's existing Environmental Policy, which establishes the City's SEPA authority in state law. SEPA review of projects in areas of the City outside of the downtown exemption area will continue under this authority. This ordinance updates references for consistency with state laws and rules, and other parts of the Olympia Municipal Code, regarding this authority.

In addition, the proposed ordinance includes the cultural resources provisions described above.

Neighborhood/Community Interests (if known):

The recommended action in the Downtown Strategy was shared with the public at open houses on October 29, 2016, and February 7, 2017, and the Planning Commission's public hearing on the DTS on February 27, 2017. The Downtown Strategy was adopted by the City Council on April 25, 2017. The Planning Commission held a hearing on the attached ordinance at its October 16, 2017,

meeting. There was testimony with some concern regarding lack of availability of the additional SEPA process downtown (attached), which was discussed by the Planning Commission prior to voting on its recommendation.

Options:

1. Move to approve on first reading and pass on to second reading the ordinance adopting an Urban Infill Area in accordance with the State Environmental Policy Act (SEPA).
2. Direct staff to make specific revisions to the proposed ordinance.
3. Do not approve the ordinance.

Financial Impact:

Staff work on this ordinance has been included in the City's base budget. Adoption of the downtown urban infill SEPA exemption ordinance will likely reduce staff costs in performing duplicative SEPA review on qualifying downtown development projects in the future.

Attachments:

Ordinance
Downtown Strategy SEPA Memo
Land Use Review Process
Draft EDDS Traffic Impact Analysis
Planning Commission Public Comments

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, REFINING THE CITY'S IMPLEMENTATION OF THE STATE ENVIRONMENTAL POLICY ACT, ESTABLISHING AN INFILL EXEMPTION ALLOWANCE FOR THE DOWNTOWN AREA, AMENDING CHAPTER 14.04 (ENVIRONMENTAL POLICY OF THE OLYMPIA MUNICIPAL CODE) PURSUANT TO THE STATE ENVIRONMENTAL POLICY ACT; ADDING NEW SECTIONS 18.12.130 AND 18.12.140 TO CHAPTER 18.12 (HISTORIC PRESERVATION) OF THE OLYMPIA MUNICIPAL CODE AND AMENDING SECTION 18.12.120 OF THE OLYMPIA MUNICIPAL CODE

WHEREAS, the City of Olympia has adopted a Comprehensive Plan complying with the Washington Growth Management Act that includes Policy PL 17.1 to adopt a Downtown Plan; and

WHEREAS, to guide the growth and redevelopment of downtown Olympia, the City engaged in an extensive public process to plan for the downtown area resulting in the City Council's adoption of a Downtown Strategy (DTS) on April 25, 2017, which implements Policy PL 17.1 of the Olympia Comprehensive Plan (the Comprehensive Plan); and

WHEREAS, the DTS establishes the City's strategies to achieve the vision for Olympia's downtown that is established in the Comprehensive Plan; and

WHEREAS, the State Environmental Policy Act (SEPA) and implementing rules provide for the integration of environmental review with land use planning and project review by jurisdictions planning under the Growth Management Act (GMA) through an exemption for infill development pursuant to RCW 43.21C.229; and

WHEREAS, on January 24, 2014, the City's SEPA responsible official issued a Final Supplemental Environment Impact Statement (FSEIS) on the Olympia Comprehensive Plan; and

WHEREAS, as part of the DTS process, the City of Olympia Planning Commission and the City Council considered several options allowed by state law to rely on final SEPA analysis documents completed on a comprehensive plan when permitting development projects which the City finds to be consistent with that plan; and

WHEREAS, the DTS adopted by the City Council recommends adoption of an infill exemption allowance pursuant to RCW 43.21C.229, to encourage residential and mixed use development in Olympia's downtown that meets the Comprehensive Plan's vision, goals and policies as further refined in the DTS; and

WHEREAS, also as part of the DTS process, the City conducted a gap analysis of SEPA determinations for the previous 13 years on downtown development projects to determine impacts that were identified as not mitigated through existing development regulations; and

WHEREAS, the gap analysis revealed only three types of impacts – flood risk associated with potential future sea level rise, off-site traffic mitigation, and cultural resources impacts – that were not mitigated through existing development regulations; and

WHEREAS, the City has since adopted development regulations and ordinances that will help protect the environment for these three types of impacts, and previously adopted regulations that help protect the environment for other potential impacts; and

WHEREAS, the City has and will continue to implement the DTS for the Downtown area that will guide the allocation, form and quality of desired development, consistent with the DTS and the Olympia Comprehensive Plan; and

WHEREAS, Chapter 14.04 OMC needs to be amended to correct typographical errors, to reflect changes in state statutes and administrative codes, and to reflect changes in Title 18, Unified Development Code; and

WHEREAS, on September 29, 2017, the City provided the State of Washington Department of Commerce the required sixty (60) day notification under RCW 36.70A.106, the sixty (60) day notice period has lapsed; and

WHEREAS, the Olympia Planning Commission received a briefing on the proposed amendments on October 2, 2017, held a public hearing on October 16, 2017, and deliberated on November 6, 2017; and

WHEREAS, following the public hearing and deliberations, the Planning Commission recommended amendments to the Olympia Municipal Code establishing an infill exemption allowance for Olympia's downtown area; and

WHEREAS, the Olympia City Council held a public meeting on December 5, 2017, to consider this Ordinance, and considered all staff reports and information in the public record and testimony provided at the public hearing held by the Olympia Planning Commission related to the attached ordinance; and

WHEREAS, the City of Olympia is committed to the protection of our community's heritage; and

WHEREAS, State and Federal law provide for the protection of human remains, archaeology, and other cultural resources, whether known or unknown, prior to the course of development; and

WHEREAS, the thresholds incorporated in this Ordinance, together with adopted City development regulations and State and Federal laws, will adequately mitigate significant impacts from development consistent with the Olympia Comprehensive Plan and the DTS within the Downtown Infill Exemption Allowance Area; and

WHEREAS, this Ordinance meets the goals and requirements of the Growth Management Act; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, along with other documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Purpose. The City Council declares that the purpose of this Ordinance is to:

A. Exempt residential, mixed use, and selected commercial infill development that is consistent with the Olympia Comprehensive Plan and its FSEIS, Olympia development regulations, and other applicable local, state and federal laws from additional SEPA review; and,

B. Establish criteria and procedures, consistent with state law, that will determine whether proposed exempt projects within the designated Downtown Infill Exemption Allowance Area qualify for exemption from SEPA review; and,

C. Protect important cultural resources during development activity and provide notice to the public, interested Tribes, and agencies of development activities that may affect cultural resources; and,

D. Apply the City's development regulations together with the infill exemption thresholds defined in this Ordinance to address the impacts of future development contemplated by this Ordinance.

Section 2. Amendment of OMC Chapter 14.04. Olympia Municipal Code Chapter 14.04 is hereby amended to read as follows:

Chapter 14.04
ENVIRONMENTAL POLICY

14.04.000 Chapter Contents

Sections:

- 14.04.010 Authority.
- 14.04.020 Adoption by reference.
- 14.04.030 Definitions.
- ~~14.04.040 Additional considerations in time limits applicable to the SEPA process.~~
- 14.04.050 Additional timing considerations.
- 14.04.060 Use of exemptions.
- 14.04.065 Categorical Exemptions.
- 14.04.070 Lead agency determination and responsibilities.
- 14.04.080 Environmental checklist.
- 14.04.090 Mitigated determination of nonsignificance.
- 14.04.100 Environmental impact statement--Preparation.
- 14.04.110 Environmental impact statement--Additional elements.
- 14.04.120 Public notice.
- 14.04.130 Designation of official to perform consulted agency responsibilities for the city.
- 14.04.140 Designation of responsible official.
- 14.04.150 Substantive authority.
- 14.04.155 Hearing Examiner Authority
- 14.04.160 Appeals.
- 14.04.170 Environmentally sensitive areas.

- 14.04.180 Responsibility of agencies--SEPA public information.
- 14.04.190 Fees.
- 14.04.200 Notice--Statute of limitations.
- 14.04.210 Severability

14.04.010 Authority

The city adopts this Chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.

14.04.020 Adoption by reference

The city adopts the following sections or subsections of Chapter 197-11 of the Washington Administrative Code, 1984 Edition, by reference:

- 197-11-040 Definitions
- 197-11-050 Lead Agency
- 197-11-055 Timing of the SEPA Process
- 197-11-060 Content of Environmental Review
- 197-11-070 Limitations on Action During SEPA Process
- 197-11-080 Incomplete or Unavailable Information
- 197-11-090 Supporting Documents
- 197-11-100 Information Required of Applicants
- 197-11-158 SEPA/GMA project review – Reliance on Existing Plans, Laws, and Regulations
- 197-11-164 Planned Actions – Definitions and Criteria
- 197-11-168 Ordinances or Resolutions Designating Planned Actions – Procedures for Adoption
- 197-11-172 Planned Actions – Project Review
- 197-11-210 SEPA/GMA Integration
- 197-11-220 SEPA/GMA Definitions
- 197-11-228 Overall SEPA/GMA Integration Procedures
- 197-11-230 Timing of an Integrated GMA/SEPA Process
- 197-11-232 SEPA/GMA Integration Procedures for Preliminary Planning, Environmental Analysis, and Expanded Scoping
- 197-11-235 SEPA/GMA Integration Documents
- 197-11-238 SEPA/GMA Integration Monitoring
- 197-11-250 SEPA/Model Toxics Control Act Integration
- 197-11-253 SEPA Lead Agency MTCA Actions
- 197-11-256 Preliminary Evaluation
- 197-11-259 Determination of Nonsignificance for MTCA Remedial Action
- 197-11-262 Determination of Significance and EIS for MTCA Remedial Actions

<u>197-11-265</u>	<u>Early Scoping for MTCA Remedial Actions</u>
<u>197-11-268</u>	<u>MTCA Interim Actions</u>
197-11-300	Purpose of this Part
<u>197-11-305</u>	<u>Categorical Exemptions</u>
197-11-310	Threshold Determination Required
197-11-315	Environmental Checklist
197-11-330	Threshold Determination Process
197-11-335	Additional Information
197-11-340	Determination of Nonsignificance (DNS)
197-11-350	Mitigated DNS
<u>197-11-355</u>	<u>Optional DNS Process</u>
197-11-360	Determination of Significance (DS)/Initiation of Scoping
197-11-390	Effect of Threshold Determination
197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS Types
197-11-406	EIS Timing
197-11-408	Scoping
197-11-410	Expanded Scoping
197-11-420	EIS Preparation
197-11-425	Style and Size
197-11-430	Format
197-11-435	Cover Letter or Memo
197-11-440	EIS Contents
197-11-442	Contents of EIS on Non-project Proposals
197-11-443	EIS Contents When Prior Non-project EIS
197-11-444	Elements of the Environment
197-11-448	Relationship of EIS to Other Considerations
197-11-450	Cost-Benefit Analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS
197-11-500	Purpose of this Part
197-11-502	Inviting Comment
197-11-504	Availability and Cost of Environmental Documents
197-11-508	SEPA Register
<u>197-11-510</u>	<u>Public Notice</u>
197-11-535	Public Hearings and Meetings

197-11-545	Effect of No Comment
197-11-550	Specificity of Comments
197-11-560	FEIS Response to Comments
197-11-570	Consulted Agency Costs to Assist Lead Agency
197-11-600	When to Use Existing Environmental Documents
197-11-610	Use of NEPA Documents
197-11-620	Supplemental Environmental Impact Statement--Procedures
197-11-625	Addenda--Procedures
197-11-630	Adoption--Procedures
197-11-635	Incorporation by Reference--Procedures
197-11-640	Combining Documents
197-11-650	Purpose of this Part
197-11-655	Implementation
197-11-660	Substantive Authority and Mitigation
197-11-680	Appeals
197-11-700	Definitions
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected Tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built Environment
197-11-720	Categorical Exemption
<u>197-11-721</u>	<u>Closed Record Appeal</u>
197-11-722	Consolidated Appeal
197-11-724	Consulted Agency
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197-11-728	County/City
197-11-730	Decision maker
197-11-732	Department
197-11-734	Determination of Nonsignificance (DNS)
197-11-736	Determination of Significance (DS)
197-11-738	EIS

197-11-740	Environment
197-11-742	Environmental Checklist
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197-11-746	Environmental Review
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197-11-750	Expanded Scoping
197-11-752	Impacts
197-11-754	Incorporation by Reference
197-11-756	Lands Covered by Water
197-11-758	Lead Agency
197-11-760	License
197-11-762	Local Agency
197-11-764	Major Action
197-11-766	Mitigated DNS
197-11-768	Mitigation
197-11-770	Natural Environment
197-11-772	NEPA
197-11-774	Non-project
<u>197-11-775</u>	<u>Open Record Hearing</u>
197-11-776	Phased Review
197-11-778	Preparation
197-11-780	Private Project
197-11-782	Probable
197-11-784	Proposal
197-11-786	Reasonable Alternative
197-11-788	Responsible Official
197-11-790	SEPA
197-11-792	Scope
<u>197-11-793</u>	<u>Scoping</u>
197-11-794	<u>Scoping Significant</u>
197-11-796	State Agency
197-11-797	Threshold Determination
197-11-799	Underlying Governmental Action
197-11-800	Categorical Exemptions
197-11-880	Emergencies

197-11-899	
<u>197-11-890</u>	Petitioning DOE to Change Exemptions
197-11-900	Purpose of this Part
197-11-902	Agency SEPA Policies
<u>197-11-904</u>	Agency SEPA Procedures
<u>197-11-906</u>	Content and Consistency of Agency Procedures
<u>197-11-908</u>	Critical Areas
<u>197-11-910</u>	Designation of Responsible Official
<u>197-11-912</u>	Procedures of Consulted Agencies
<u>197-11-914</u>	SEPA Fees and Costs
197-11-916	Application to Ongoing Actions
<u>197-11-918</u>	Lack of Agency Procedures
197-11-920	Agencies with Environmental Expertise
197-11-922	Lead Agency Rules
197-11-924	Determining the Lead Agency
197-11-926	Lead Agency for Governmental Proposals
197-11-928	Lead Agency for Public and Private Proposals
197-11-930	Lead Agency for Private <u>Projects</u> with One Agency with Jurisdiction
197-11-932	Lead Agency for Private Projects Requiring Licenses from more than one Agency, when One of the Agencies is a County/City
197-11-934	Lead Agency for Private Projects Requiring Licenses from a Local Agency, not a County/City, and one or more State Agencies
197-11-936	Lead Agency for Private Projects Requiring Licenses from more than State Agency
197-11-938	Lead Agencies for Specific Proposals
197-11-940	Transfer of Lead Agency Status to a State Agency
197-11-942	Agreements on Lead Agency Status
197-11-944	Agreements on Division of Lead Agency Duties
197-11-946	DOE Resolution of Lead Agency Disputes
197-11-948	Assumption of Lead Agency Status
<u>197-11-950</u>	Severability
<u>197-11-955</u>	Effective Date
197-11-960	Environmental Checklist
197-11-965	Adoption Notice
197-11-970	Determination of Nonsignificance (DNS)
197-11-980	Determination of Significance and Scoping Notice (DS)

197-11-985 Notice of Assumption of Lead Agency Status

197-11-990 Notice of Action

14.04.030 Definitions

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.
- B. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).
- C. "Environmental assessment" means a detailed technical report on one or more elements of the environment as listed in the environmental checklist where that report is prepared by person(s) with expertise in that particular field. Environmental assessments may include, but are not limited to, geotechnical reports, hydrological reports and traffic studies.
- D. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- E. "SEPA rules" means WAC Chapter 197-11 adopted by the Department of Ecology.

~~14.04.040 Additional considerations in time limits applicable to the SEPA process~~

~~The following time limits shall apply when the city processes license and permit applications for all private projects and those governmental proposals submitted to the city by other agencies:~~

- ~~A. When the responsible official requires additional information from the applicant or consultation with other agencies with jurisdiction:
 - ~~1. The city should request such further information within twenty eight (28) calendar days of receiving an adequate application and environmental checklist.~~
 - ~~2. The city should wait no longer than thirty (30) calendar days for a consulted agency to respond.~~~~
- ~~B. When a notice of application is required or provided regarding the subject action, a final determination of nonsignificance shall not be issued prior to expiration of the public comment period.~~

14.04.050 Additional timing considerations

In addition to timing requirements adopted by reference under OMC 18.04.020, and those set forth in OMC 18.72.170, the following provisions shall apply:

A. When a notice of application is required or provided regarding the subject action, a determination of nonsignificance or mitigated determination of nonsignificance shall not be issued prior to expiration of the public comment period.

B. After being issued, the DNS, MDNS or EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory or decision-making body, or official. OMC 18.72.060 and the current edition of the International Uniform Building Code ~~107.4~~ 105.3.2 notwithstanding, no complete project permit application shall expire during the period between issuance of a determination of significance and issuance of the final environmental impact statement so long as the statement is prepared within the time periods specified by this Chapter, Washington Administrative Code Chapter 197-11 and the State Environmental Policy Act. Instead, such application review periods shall be tolled during such period.

14.04.060 Use of exemptions

A. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

14.04.065 Categorical Exemptions

Pursuant to WAC 197-11-800(1)(c) and in addition to the provisions of WAC 197-11-800(1)(b), the following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

- A. The construction or location of any residential structures of nine units or less;
- B. The construction of an office, school, commercial, recreational, service or storage building with 8,000 square feet or less of gross floor area, and with associated parking facilities designed for thirty automobiles or less;
- C. The construction of a parking lot designed for thirty automobiles or less;
- D. Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

E. Development within the Downtown Infill Exemption Allowance Area designated under RCW 43.21C.229 for construction of the following types of development within the boundary shown on the map below:

1. residential developments

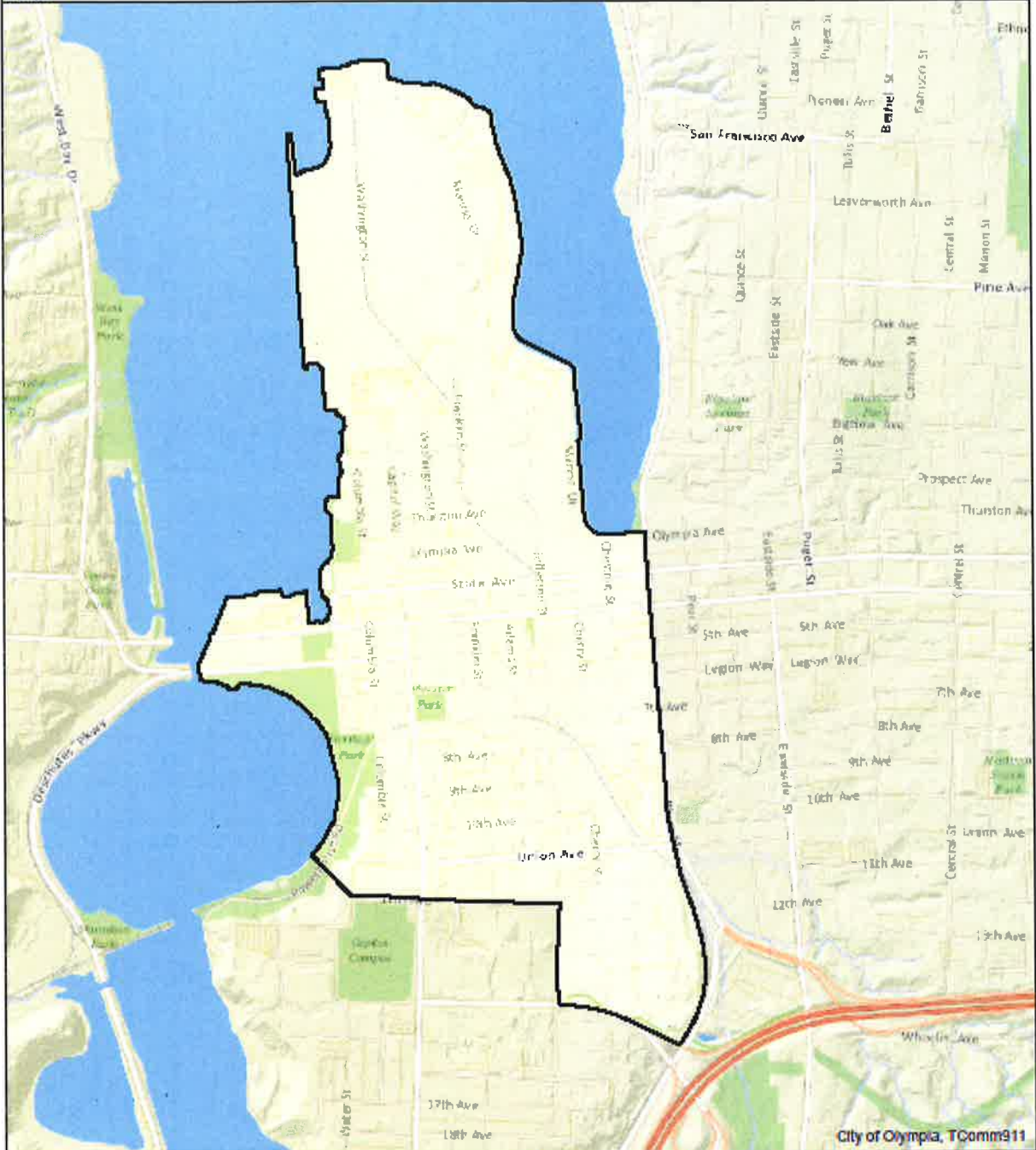
2. non-retail commercial developments of 65,000 square feet or less; and

3. mixed use developments



Downtown Infill Exemption Allowance Area

Map printed 10/9/2017



Community Planning & Development
 For more information, please contact:
 Amy Buckler, Senior Planner
 Abuckler@d.olympia.wa.us
 360.570.5847

This map is intended for 8.5x11" portrait printing.

The City of Olympia and its personnel cannot assume the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted herein are based on recent information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.



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For the purposes of this subsection:

1. "Infill" shall mean any development that meets Subsection A of this section.
2. "Retail" shall be construed liberally to include sales of products produced, assembled or otherwise created on-site or off-site.
3. "Mixed use" shall mean any development that includes two or more permitted or conditional uses on the same site, in one or more buildings.

F. To be considered for the Downtown Infill Exemption Allowance, the proposed development must:

1. not cause the area shown in the map above to exceed the density or intensity called for in the Comprehensive Plan, or be part of a series of proposals that would do so; and
2. be consistent with all requirements of the subject zoning district and all other applicable provisions of the Olympia Municipal Code and other local, state, and federal laws.

G. Developments that qualify for the Downtown Infill Exemption Allowance are still subject to Chapter 15.20 OMC, Transportation Concurrency.

H. The Director may condition development proposals that otherwise qualify for the Downtown Infill Exemption Allowance to:

1. incorporate site design measures that preserve the following landmark views identified in the Olympia Downtown Strategy on April 25, 2017:
 - a. West Bay Park to Mt Rainier
 - b. East Bay Overlook to the Capitol Dome
 - c. Deschutes Parkway to Mt Rainier
2. provide for public routes or trails to access the shoreline under the Shoreline Master Program or as provided in the Regional Trails Plan; parks, Arts and Recreation Master Plan, or Downtown Strategy.

14.04.070 Lead agency determination and responsibilities

A. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead

agency, unless required under WAC 19711-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

B. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within a fifteen-day (15) time period. Any such petition on behalf of the city may be initiated by the responsible official.

C. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement must approve the agreement.

D. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses).

14.04.080 Environmental checklist

A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency.

B. Except as provided in subsection C, the city will require the applicant to complete the environmental checklist for private proposals, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The city may complete all or a part of the environmental checklist for a private proposal with its own staff if either of the following exist:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

14.04.090 Mitigated determination of nonsignificance

A. As provided in this section and in WAC 197-11-350 and WAC 197-11-355, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarification of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency;
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 working days. The response shall:

1. Be written;
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the city to consider a DS;
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarification.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2).
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarification, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater

runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS issued under WAC 197-11-340(2), requires a 14 day comment period and public notice. However, a mitigated DNS may be issued under WAC 197-11-340(1) if intended only to minimize adverse impacts and not to eliminate the requirements for an EIS.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3) (a) (withdrawal of DNS).

I. The city's written response under subsection B of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarification or changes in its threshold determination.

14.04.100 Environmental impact statement –Preparation

A. Preparation of draft and final EIS and SEIS's is the responsibility of the planning department under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this Chapter and WAC Chapter 197-11.

B. The draft and final EIS or SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this Chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute).

D. A draft of any required environmental impact statement ~~shall~~ should be prepared and issued within 365 calendar days of issuance of the determination of significance. Draft environmental impact statements shall be

reviewed and a final environmental impact statement issued within those time periods prescribed by WAC 197-11-455 and WAC 197-11-460.

14.04.110 Environmental impact statement –Additional elements

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under this chapter:

- A. Economic impacts;
- B. Cultural factors;
- C. Social policy analysis;
- D. Impacts upon neighborhood character.

14.04.120 Public notice

A. Whenever the city issues a DNS under WAC 197-11-340(2) or WAC 197-11-355 or a DS under WAC 197-11-360(3), the city shall give public notice as follows:

1. If a public hearing has been scheduled on the subject action, notice of the threshold determination ~~shall~~ may be combined with notice of such hearing.
2. ~~If no public hearing is required for the proposed action, or if the public hearing notice will not be issued prior to expiration of the comment period for a DS or DNS, t~~The city shall give notice of the ~~DNS or DS by:~~
 - a. ~~Posting the specific site, if any, and providing notice to all record owners of property within 300 feet of such site;~~
 - b. ~~Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~
 - c. ~~Notifying the news media; a threshold determination using the procedures in OMC 18.17.~~

32. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408.

B. Whenever the city issues a draft EIS under WAC 197-11-455(5) or a supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by (1) indicating the availability of the DEIS in any public notice required for a nonexempt license; and (2) the methods noted in subsection A of this section.

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for city's nonexempt permit(s) or approval(s) required for the proposal.

D. The city may require an applicant to complete the public notice requirements for the applicant's proposal at the applicant's expense.

14.04.130 Designation of official to perform consulted agency responsibilities for the city

A. The planning director shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, or reviewing a draft EIS.

B. This person shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

14.04.140 Designation of responsible official

A. For those proposals for which the city is the lead agency, the responsible official shall be the planning director or designee.

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS, and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.

14.04.150 Substantive authority

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;

2. Such conditions are in writing;

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;

4. The city has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts;

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter;
2. A finding is made that there are not reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact;
3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural and natural aspects of our national heritage;
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. ~~The city adopts by reference the policies in the following city codes, ordinances and plans:~~The following plans, policies regulations, and all amendments thereto, are designated as potential bases for the exercise of the City's substantive authority under SEPA:

- a. ~~City of Olympia zoning ordinance~~RCW Chapter 43.21C, *State Environmental Policy*,
- b. ~~The plan for Olympia (Comprehensive Plan)~~Comprehensive Plan;
- c. ~~Uniform Building Code (as adopted by the city)~~Wastewater Management Plan;
- d. ~~Shoreline master program for the Thurston region~~Water Resources Management Plan;
- e. ~~Transportation system plan for the Thurston metropolitan area~~Water System Plan;
- f. ~~Olympia platting subdivision ordinance~~Storm and Surface Water Plan;
- g. Parks, Arts, and Recreation Master Plan;
- h. Shoreline Master Program;
- i. Regional Transportation Plan;
- j. Olympia Municipal Code;
- k. Engineering Design and Development Standards;
- l. Capital Facility Plan;
- m. Downtown Strategy;

E. The legislative appeals authorized by RCW 43.21C.060 are eliminated from this chapter.

14.04.155 Hearing Examiner Authority

In addition to the authority and power to modify mitigation measures pursuant to appeal, the Hearing Examiner is hereby authorized to modify such mitigating conditions or measures as appropriate when no administrative appeal opportunity was provided pursuant to OMC 14.04.160 or when deemed necessary by the Examiner to ensure consistency with any decision rendered by the Examiner on the underlying application or permit.

14.04.160 Appeals

A. The following administrative appeal procedures are established under RCW 43.21C.075, ~~and~~ WAC 197-11-680, and RCW Chapter 36.70B:

1. Any agency or person who may be aggrieved by an action may appeal to the Hearing Examiner the environmental review officers' conditioning, lack of conditioning or denial of an action pursuant to WAC Chapter 197-11. ~~When such conditioning, lack of conditioning or denial of action is attached to a recommendation of the Director to the Hearing Examiner regarding a land use application, no appeal shall be necessary for consideration and revision of such conditions, lack of conditions, or denial by the Hearing Examiner.~~
2. The responsible official's initial decision to require preparation of an environmental impact statement, i.e., to issue a determination of significance, is subject to an interlocutory administrative appeal upon notice of such initial decision and only to such appeal. Notice of such decision shall be provided as set forth in OMC 18.78.020. Failure to appeal such determination within 14 calendar days of notice of such initial decision shall constitute a waiver of any claim of error.
3. All appeals shall be in writing, be signed by the appellant, be accompanied by the appropriate filing fee, and set forth the specific basis for such appeal, error alleged and relief requested. Any appeal must be filed within seven calendar days ~~of the SEPA determination being final~~after the comment period expires. Where there is an underlying governmental action requiring review by the Hearing Examiner, any appeal and the action shall be considered together. ~~Where there is an underlying permit decision to be made by city staff~~Except for threshold determinations issued under the optional DNS process, any appeal periods shall conclude simultaneously with an underlying permit decision.
4. For any appeal under this subsection, the city shall keep a record of the appeal proceeding which shall consist of the following:
 - a. Findings and conclusions;
 - b. Testimony under oath; and
 - c. A taped or written transcript of any hearing.
5. Any procedural determination by the city's responsible official shall be given substantial weight in any appeal proceeding.
6. See OMC 18.75.020.B for additional requirements.

B. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

14.04.170 Environmentally sensitive areas

A. If the city designates environmentally sensitive areas under the standards of WAC 197-11-908, it shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the responsible official and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

14.04.180 Responsibilities of agencies--SEPA public information

The city shall retain all documents required by the SEPA rules WAC Chapter 197-11 and make them available in accordance with RCW Chapter 42.17.

14.04.190 Fees

The city shall require and collect fees as established by ordinance of the City Council for its activities in accordance with the provisions of this chapter:

A. **Threshold Determination.** A fee shall be collected for every environmental checklist the city will review when it is lead agency. The time periods provided by this chapter for making a threshold determination shall not begin to run until the accompanying application is deemed complete and all fees are paid.

B. **Environmental Impact Statement (EIS).**

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

2. When the city is the lead agency for a proposal and the applicant is preparing an EIS, the city shall collect a fee to cover the cost of reviewing the EIS. The fees are set forth in the fee schedule as

adopted and hereafter amended by the city, and shall reflect the actual costs, including all staff time spent in the review. The city shall require the applicant to post a cash deposit for the amount of the estimated total cost of the review prior to initiation of review; however, this is not necessary until after the scoping process is completed.

3. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals. The city shall require the applicant to post a cash deposit for the amount of the estimated costs prior to initiation of the project.

4. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1, 2 or 3 of this subsection which remain after incurred costs are paid.

C. Supplemental Studies or Information. When the city requires supplemental information or studies, a reasonable fee may be charged and collected from the applicant to cover the costs incurred by the city in reviewing such information. The fee shall be set forth in the fee schedule as adopted and hereafter amended by the city.

D. The city may collect a reasonable fee from an applicant to cover the costs of meeting the public notice requirements of this chapter relating to the applicant's proposal.

E. The city shall not collect a fee for performing its duties as a consulted agency.

F. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.7.

14.04.200 Notice –Statute of limitations

A. The city, applicant for, or proponent of any action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city, applicant or proponent pursuant to RCW 43.21C.080.

14.04.210 Severability

If any provision of this chapter or its application to any person is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

Section 3. Amendment of OMC 18.12.100. Olympia Municipal Code Section 18.12.100 is hereby amended to read as follows:

Chapter 18.12
HISTORIC PRESERVATION

18.12.000 Chapter Contents

Sections:

- 18.12.020 General Purpose and Intent
- 18.12.040 Heritage Commission Creation and Size
- 18.12.045 Heritage Commission Composition
- 18.12.050 Heritage Commission Term of Appointment
- 18.12.055 Heritage Commission Powers and Duties
- 18.12.065 Heritage Commission Compensation
- 18.12.070 Heritage Commission Rules and Officers
- 18.12.075 Heritage Commission Staff
- 18.12.080 Heritage Register - Criteria to Designate Property
- 18.12.085 Heritage Register - Process to Designate Property to the Heritage Register or Historic District
- 18.12.090 Heritage Register - Alteration and Construction
- 18.12.100 Demolition of a Historic Building or a Contributing Historic District Property
- 18.12.110 Removal of Designation
- 18.12.120 Archaeological Sites Cultural Resources
- 18.12.130 Tribal and Agency Consultation on Development Review
- 18.12.140 Cultural Resource Protection

Section 4. Amendment of OMC 18.12.120. Olympia Municipal Code Section 18.12.120 is hereby amended to read as follows:

18.12.120 Archaeological Sites Cultural Resources

A. Whenever in the course of excavation or development, archaeological materials (e.g. bones, collections of shells, stone tools, beads, ceramics, old bottles, hearths, etc and old building foundations.) or human remains are observed during project activities, all work in the immediate vicinity shall stop. The City of Olympia Historic Preservation Officer (HPO), Washington State Department of Archaeology and Historic Preservation (DAHP), the Building Official, the Preservation Officer, any the affected tribe(s) and the county coroner (if applicable) all interested Tribes, City of Olympia Building Official, and, in the case of humans remains, Olympia Police Department and Thurston County Coroner, shall be contacted immediately by the property owner, site manager, or the City staff in order to help assess the situation and determine how to preserve the resource(s) for immediate response to evaluate the discovered materials.

B. ~~Provided initial inspection indicates that the materials may be cultural resources or human remains, the City shall request DAHP and interest tribes to recommend an appropriate course of action prior to resumption of construction. The property owner shall arrange for an inspection of~~ may be required to hire a qualified archaeologist to evaluate the site within seven (7) calendar days, by one or more archaeology professionals at the expense of the property owner. The Department of Archaeology and Historic Preservation (DAHP) maintains a list of archaeology professionals. The archaeology professionals ~~ist shall make a~~ recommendations as to site restoration, site protection or removal of artifacts on the site's eligibility for the National Register of Historic Places (NRHP) as per the National Historic Preservation Act. This recommendation will be reviewed by DAHP and interested Tribes for determination of eligibility for the NRHP. The DAHP, Building Official, property owner, affected tribes, and archaeologist will consult on the treatment of the archaeological resources.

C. ~~If the archaeological inspection indicates the site is significant, or if the site has previously been recorded by the State Department of Archaeology and Historic Preservation, the Building Official and the Preservation Officer shall consult that agency for its recommendations~~ site is determined eligible for the NRHP, the HPO or designee shall consult with DAHP and all interested tribes for recommendations on appropriate mitigation of effects before construction resumes. The Building Official may revoke or temporarily suspend the permit, or add mitigation conditions based on the site's archaeological importance. Or, the Building Official shall add mitigating conditions to the project approval in order to protect these sites or artifacts. For sites that are not determined significant but are of local interest, the Building Official may add appropriate mitigating conditions. ~~In any case, t~~ The discovery of archaeological materials requires that the property owner must comply with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48). Failure to comply with this requirement could constitute a Class C Felony. If federal funds or permits are involved in the project, notification to the appropriate federal agency and the Advisory Council shall occur in addition to the above-listed parties, per 36 CFR Sec. 800.12.

D. ~~Where known previously recorded archeological sites, as identified by Department of Archaeology and Historic Preservation (DAHP), are proposed for development, the Review Authority Director shall consult DAHP and all interested tribes for their recommendations, and may deny or condition the permit where the archaeological value of the site outweighs the development value, if compensation is available or require recovery of the archaeological materials or other appropriate mitigation measures to avoid harm to or destruction of the archaeological site.~~

E. ~~The City of Olympia, through an agreement with the DAHP and the appropriate tribes, will reference identified archaeological sites in reviewing land use actions.~~

Section 5. Addition of OMC 18.12.130. A New Section 18.12.130 is hereby added to Olympia Municipal Code Chapter 18.12 to read as follows:

18.12.130 Tribal and Agency Consultation on Development Review

A. Interested Tribes and the State Department of Archaeology and Historic Preservation (DAHP) shall be notified when an application for land use approval has been submitted to the City of Olympia as described in

OMC 18.78.020 Public Notification Procedures. Additional notice of consultation may be provided by the City Historic Preservation Officer.

B. Consistent with law, any recommendations and/or requests by Consulting Tribes and/or DAHP on cultural resource protection will be given substantial weight in decisions on land use approval and subsequent permit issuance.

Section 6. Addition of OMC 18.12.140. A New Section 18.12.140 is hereby added to Olympia Municipal Code Chapter 18.12 to read as follows:

18.12.140 Cultural Resource Protection

A. Cultural Resources shall be protected from damage during construction and all other development activities in accordance with OMC Sections 18.12.120 and 18.12.140B.

B. Additional Protections for Cultural Resources.

1. Building permit recipients for development projects that meet the following criteria shall be required to sign an Inadvertent Discovery Plan (IDP) provided by the City of Olympia Historic Preservation Officer:

a. All projects subject to State Environmental Policy Act (SEPA) thresholds; and

b. All projects located within the Downtown SEPA Exemption Area.

The signed IDP shall be held on site throughout the duration of any ground-disturbing activities related to the project.

2. The Director may require additional actions to protect known or predicted cultural resources as a result of requests submitted by Consulting Tribes and/or DAHP during consultation for the following:

a. Projects subject to State Environmental Policy Act (SEPA) thresholds;

b. Projects located within the Downtown SEPA Exemptions Area; and

c. Projects subject to other State and Federal laws which protect cultural and historic resources, including but not limited to Executive Order 05-05 and Section 106 of the National Historic Preservation Act.

Section 7. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 8. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 9. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 10. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



BACKGROUND MEMO

January 2017

What is SEPA?

Enacted by the Washington Legislature in 1971, the **State Environmental Policy Act** – commonly called SEPA – helps state and local agencies in Washington identify possible environmental impacts that could result from governmental decisions such as:

- Issuing permits for private projects such as an office building, grocery store, or apartment complex.
- Constructing public facilities like a new school, highway, or water pipeline.
- Adopting regulations, policies, or plans such as a county or city comprehensive plan, critical area ordinance, or state water quality regulation.

SEPA Informs Decisions

State and local agencies in Washington use SEPA to evaluate proposed decisions. Information learned through the review process can be used to:

- Change a proposal to reduce likely impacts.
- Apply conditions to or deny a proposal when adverse environmental impacts are identified.

Using SEPA in Decision-Making

Under SEPA, project proponents are usually asked to provide information about the proposal and its potential impacts on the environment. When a proponent has gathered and submitted enough information about their proposal, the lead agency can:

- Issue a **determination of non-significance** – also called a DNS – if it finds the proposal is unlikely to have a significant adverse environmental impact.
- Issue a **mitigated determination of non-significance** – or **MDNS** – concluding that identified significant impacts will be reduced to a level of non-significance through specific mitigated measures.
- Require an **environmental impact statement** – or an **EIS** – if the information indicates the proposal is likely to have a significant adverse environmental impact. An EIS needs to include:
 - An evaluation of alternatives to the proposal.
 - Measures that would reduce or eliminate likely environmental impacts.

The DNS, MDNS or EIS may be appealed by parties who participated in the review process. SEPA gives state and local agencies the authority to require conditions on permits to offset or mitigate any identified adverse environmental impacts. Federal and state court decisions make clear that any conditions imposed must be directly related and proportional to the impacts of the project.



Some Projects Can be Exempt

SEPA also gives local governments the option to allow some minor projects to be exempt from review. Other projects may be exempt if they are consistent with adopted plans that underwent SEPA review. Various options include:

- **Increased exemption levels for minor construction projects** (WAC 197-11-800(1)(c))
- **Urban infill exemption levels** (RCW 43.21C.229)
- **Planned Action – Environmental Impact Statement (EIS)** (RCW 43.21C.440)

These are described in more detail on page 4.

Options for SEPA Exemptions Were Considered as Part of the Downtown Strategy

As part of the process to form a Downtown Strategy (DTS), the City explored various options for exempting projects in the Downtown from SEPA. The purpose is to reduce uncertain costs and permit review times associated with development. Environmental issues are still addressed, but rather than relying on the SEPA process for this, environmental issues are addressed upfront in the development code. The purpose of exempting SEPA is to reduce duplicative *process*, not to reduce environmental mitigation.

During scoping for the DTS, the City decided not to complete a planned action EIS for the entire Downtown, as the same objective could be achieved by increased exemption levels and/or a SEPA urban infill exemption. The DTS planning team reviewed available options in light of Downtown objectives. As a result, the Downtown Strategy is recommending the City establish Downtown as an Urban Infill Exemption Area.

A GAP Analysis was Completed

A first step was to identify any gaps in our environmental regulations where we have had to use SEPA in the past to address an environmental issue in Downtown. The next step is to establish regulations for these currently unaddressed environmental issues.

A gap analysis revealed the City has often used SEPA to reiterate regulations that are required regardless of SEPA (e.g., remediating contaminated soil & groundwater, controlling dust at the construction site). The gap analysis also identified three areas that should be addressed before establishing a SEPA exemption:

- 1) **Flood risk associated with sea level rise:** In the past, the City has used SEPA to address flood risk due to sea level rise by requiring higher finished floor elevations in high risk Downtown areas. To ensure this issue could still be addressed without SEPA, the City adopted increased flood-proofing standards for the Downtown in August of 2016.



- 2) **Off-site traffic impact mitigation:** There are a few areas where it's possible a large traffic generating project could cause traffic impacts needing to be mitigated through infrastructure improvements at the time of development (i.e., a traffic light.) To ensure this issue could still be addressed without SEPA, the Downtown Strategy will likely recommend adopting a threshold (i.e., size) at which Downtown projects require a traffic study (typically part of SEPA) to determine any needed improvements that would then be required.

- 3) **Cultural resources:** Tribal agencies tend to use SEPA notice as their trigger to comment on projects, and Downtown is of particular interest to these agencies due to the historical and cultural significance of Downtown lands. As a next step, City staff will meet with tribal and State Department of Archaeology and Historic Preservation (DAHP) representatives to discuss the other available opportunities for comment (e.g., at notice of application) and potential code revisions that could address the primary issues that could occur Downtown.

DTS Recommends Establishing Downtown as an Urban Infill Exemption Area

The State's SEPA statute allows for urban infill exemptions in order to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. When an EIS has been prepared to analyze the development goals in the comprehensive plan (which is the case for Olympia), a city can exempt some or all of the following types of development from additional SEPA review:

- Stand-alone residential
- Mixed use residential/commercial
- Stand-alone commercial less than 65,000, excluding retail

The exemption would not apply to:

- Industrial uses
- Lands covered by water (in most cases)
- Projects where part of the proposal requires both exempt and non-exempt actions
- Some other very specific cases outlined under the SEPA statute

Additional Considerations and Next Steps:

- City should define what is meant by retail to include certain uses that include sales of products produced on the premises (microbrewery, artist studio, etc.)
- Consider a threshold at which Downtown projects should require a traffic study
- Meet with DAHP and tribal agency representatives to address potential historic, cultural and archaeological issues



BACKGROUND: Options Considered for SEPA Exemption in Olympia’s Downtown

1. **Increased exemption levels for minor construction projects** (WAC 197-11-800(1)(c)) – The WA Department of Ecology has adopted rules to exempt permits for smaller-scale construction projects from SEPA review. Ecology recently amended those rules to provide cities and counties with the option to increase the exemption levels for certain types of projects that are consistent with an adopted comprehensive plan that underwent SEPA review.

For example, Olympia currently exempts projects that include construction of 9 dwelling units or less. The new rules allow the city to increase the exemption up to 30 single-family homes or 60 units of apartments or condominiums.

Example: Seattle has used this provision in five urban centers and urban villages, and in its Downtown, to tailor SEPA review thresholds to infill for those specific areas.

2. **Urban infill exemption levels** (RCW 43.21C.229) – This provision of the statute is intended to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. When an EIS has been prepared to analyze the development goals in the comprehensive plan (which is the case for Olympia), a city can exempt some or all of the following types of development from additional SEPA review:
 - Residential
 - Mixed Use
 - Stand-alone Commercial up to 65,000 square feet (excluding retail)

Example: Kent has adopted an urban infill exemption ordinance for a portion of its Downtown to encourage residential and mixed use development.

3. **Planned Actions** (RCW 43.21C.440) – Cities and counties may prepare a detailed EIS in conjunction with a comprehensive plan or subarea plan that evaluates the environmental impacts of all the types of development proposed in the plan. Using the information in the EIS, the city/county adopts a “planned action” ordinance that identifies the conditions that each type of development must meet. When a project application is submitted that meets the conditions specified in the planned action ordinance, no additional SEPA review of that project is required.

Examples: A 2009 review of the results of ten cities’ planned actions:
<http://www.mrsc.org/artdocmisc/munkberg.pdf>.



BACKGROUND: Factors to Consider with SEPA Options

	Increased Exemption Levels for Minor Construction Projects	Urban Infill Exemption Levels	Planned Action
City can designate geographic area	Yes	Yes	Yes
Additional EIS required of city	No	No	Yes (typical cost \$150,000 - \$250,000)
Additional SEPA review for project permits	None for types of development designated by city, subject to state maximum thresholds	None for types of development designated by city	None, in most cases; city could define exceptions
Development types eligible for SEPA exemption	Residential, office, school, commercial, recreational, service, storage, parking; subject to state maximum thresholds	Residential, mixed-use, stand-alone commercial up to 65,000 square feet (retail excluded)	Defined by city in planned action ordinance; must have been analyzed in city's EIS
Results in pre-defined conditions for new development (i.e., predictability)	In city codes and development standards	In city codes and development standards	Detailed in planned action ordinance, in addition to city codes and development standards
Possibility of appeal of SEPA review	None for exempted types of development	None for exempted types of development	For EIS only; none for development projects that are consistent with planned action
Length of time remains in effect	No end date; effective until City Council action to discontinue	No end date; effective until City Council action to discontinue	Defined in planned action ordinance; typically 10-20 years
Reduced time and cost of permit process (for applicant and city)	Yes, for exempted types of development	Yes, for exempted types of development	Yes, for nearly all development



LAND USE APPLICATION PROCESS

Presubmission Conference
Optional but strongly encouraged

Application/Intake Meeting
Intake appointments are scheduled for all submittals except boundary line adjustments, lot consolidations, short plats, and staff level design review. Includes materials such as SEPA checklist, technical reports (critical areas, stormwater, traffic, tree protection, etc.); site, landscape, and preliminary engineering plans; and architectural design concept.
*Application **completeness** determined during intake meeting. If items are missing, the intake meeting will be rescheduled. Once an application is deemed complete, it will be routed to applicable city departments, agencies, recognized neighborhood associations, and parties of record.*

Notice of Application
City issues Notice of Application; public comment period begins. Notice may also contain dates of other public meetings such as neighborhood meeting or Design Review Board.
Target: 8 days from complete application

Neighborhood Meeting (if required)
City staff will schedule informational meeting with neighborhood groups.
Target: 15-23 days from complete application

Staff Project Review - Preliminary Comments
City staff reviews project and provides preliminary review comments to applicant prior to Design Review Board meeting.
Target: 30 days from complete application.

Applicant may submit engineering and building permit applications for review if plans reflect preliminary review comments.
34 days from complete application

Design Review (if applicable)
Project undergoes concept design review by Design Review Board.
Target: 51-58 days from complete application

Land Use Review Letter
Planner finalizes review comments including design direction from Design Review Board.
Target: 63 days from complete application

Applicant Response Submitted
Applicant provided 6 months to respond to city comments. Revised plans and reports routed to city review team

Land Use Decision/Recommendation
City issues decision or recommendation to the Hearing Examiner with SEPA Threshold Determination, if project subject to SEPA.
Target: 40 days following resubmittal, 120 days from complete application

Appeal Period
Approximately 3 weeks.

Public Hearing, Review, and Examiner's Decision
If public hearing required, review is extended approximately 60 days

Appeal Hearing
Appeal process adds approximately 90 days

Final Decision

Building Plan Review & Permits
Includes Detail Design Review

Engineering Plan Review & Permits

Chapter 15.20

TRANSPORTATION CONCURRENCY

15.20.000 Chapter Contents

Sections:

- 15.20.010 Title, authority and purpose.
- 15.20.020 Definitions.
- 15.20.030 Level of service standards.
- 15.20.040 Concurrency districts.
- 15.20.050 Concurrency test.
- 15.20.060 Exemptions from the concurrency test.
- 15.20.070 Findings of concurrency.
- 15.20.080 Fees.
- 15.20.090 Concurrency system.
- 15.20.100 Monitoring the transportation system.
- 15.20.110 Intergovernmental coordination.
- 15.20.120 Appeals.

15.20.010 Title, authority and purpose

- A. This chapter shall be known as the "Transportation Concurrency Ordinance."
- B. This chapter is enacted pursuant to the City of Olympia's powers as a Code City, Article XI, Section 10 of the Washington State Constitution, Chapter 35A RCW, the Growth Management Act, Chapter 36.70A generally, and RCW 36.70A.070 specifically.
- C. It is the purpose of this chapter:
 - 1. To ensure adequate levels of service on transportation facilities for existing land uses as well as new development;
 - 2. To provide transportation facilities that achieve and maintain the City's level of service standards as established in the Comprehensive Plan; and
 - 3. To ensure that the City's level of service standards are achieved concurrently with development as required by the GMA.

(Ord. 5540 §1, 1995).

15.20.020 Definitions

Except as defined below, the words and terms used in this chapter shall have the meaning set forth in the

OMC Section 18.02.180.

- A. Adequate - the transportation facilities meet or exceed the City's adopted standard of service set forth in the City's Comprehensive Plan.
- B. Capacity - the maximum number of vehicles that can be accommodated during a specified travel period at a specified level of service. Capacity will be calculated according to the methodology used in the most current Highway Capacity Manual. An alternative methodology may be used only if it is preapproved by the Director of Public Works or his/her designee.

(Ord. 6607 §1, 2008; Ord. 5540 §2, 1995).

15.20.030 Level of service standards

The following level of service standards, established in the Olympia Comprehensive Plan, are hereby adopted for the purposes of this Chapter. If a conflict arises between a level of service standard identified in this Chapter and a standard identified in the Comprehensive Plan, the level of service established in the Comprehensive Plan shall control.

- A. Level of Service "F" for the intersections of:
 - 1. Jefferson and 14th;
 - 2. Plum Street and Union;
 - 3. Water and 5th;
 - 4. Capitol and 14th;
 - 5. Sleater-Kinney and Martin Way;
 - 6. Lilly and Martin Way; and
 - 7. Black Lake Boulevard and Cooper Point Road.
- B. Level of service "E" for the Downtown City Center and along High Density Residential Corridors as identified in the Comprehensive Plan; and
- C. Level of service "D" in the remainder of the City and its Urban Growth Area.

(Ord. 6607 §1, 2008; Ord. 5540 §3, 1995).

15.20.040 Concurrency districts

There are hereby established four concurrency districts within the City and its Urban Growth Area. The districts will be used to monitor and to allocate available transportation capacity. The districts are depicted in Map One, Attachment A, which is adopted as part of this Title.

(Ord. 6607 §1, 2008; Ord. 5540 §4, 1995).

15.20.050 Concurrency test

- A. Unless exempt under Section 15.20.060(A), the test for concurrency will be conducted as part of the building permit application.
- B. The City may conduct an alternative concurrency test for the applications identified in Section 15.20.060(B) by paying the fee set forth in Section 15.20.080.
- C. The test for concurrency will be conducted in the order in which the completed building permit application is received.
- D. The concurrency test will be performed only for the specific property uses(s), residential density(ies) and intensity(ies) of the use(s) described on the building permit application. The applicant shall describe the proposed development in a manner adequate for the City to determine the peak-hour traffic which is likely to be generated by the proposed development. The applicant shall also provide the City a legal description of the property. Revisions to the proposed development that may create additional impacts on transportation facilities will be required to undergo an additional concurrency test.
- E. In conducting the concurrency test, the City will use the trip generation tables set forth in the Transportation Impact Fee Rate Study (the "Rate Study"), adopted by reference in OMC Title 15. If the trip generation rates for a proposed development are not identified in the Rate Study, then the City shall use the trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report - Trip Generation. The presumption is that the rates used by the City are accurate unless proven otherwise.

F. If the applicant pays the fees identified in Section 15.20.080, the applicant may submit a calculation of alternative trip generation rates for the proposed development. The City shall review the alternate calculations and indicate in writing whether such calculations are acceptable in lieu of the standard trip generation rates.

G. The City may adjust the trip generation forecast of the proposed development in order to account for any transportation strategies proposed by the applicant that are acceptable to the City.

H. The City shall not make a finding of concurrency as part of the issuance of a building permit if the proposed development will result in the transportation facilities declining below the adopted level of service standards. If the level of service of the transportation facilities meets or exceeds the adopted level of service standards, the concurrency test is passed and the City shall make a finding of concurrency.

(Ord. 6607 §1, 2008; Ord. 5540 §5, 1995).

15.20.060 Exemptions from the concurrency test

A. Exemption from the concurrency test is not an exemption from the remaining requirements of OMC Title 15. The following applications for a building permit shall be exempt from the concurrency test:

1. Any proposed development that creates no additional impacts on any transportation facility;
2. Any project that is a component of another proposed development and that was included in a prior application for a finding of concurrency;
3. Any renewal of a previously issued but unexpired permit;
4. Any application for a residential building permit if the dwelling unit is a part of a subdivision or short plat that submitted an application after 1990 and that has undergone the analysis mandated by the State Subdivision Act, RCW 58.17.060 or .110 and
5. Any application that is exempt from OMC Title 14.

B. Unless otherwise exempted by the Director or Environmental Review Officer, a building permit application must be accompanied by a Traffic Impact Analysis (TIA) provided by the applicant in accordance with the City of Olympia Traffic Impact Analysis Guidelines for New Development dated November 3, 2006 (TIA Guidelines) in Chapter 4 of the current Engineering Design and Development Standards, or as hereafter amended by resolution of the City Council. Applications that do not meet the minimum requirements to conduct a TIA under Section B 'When Required' of the TIA Guidelines are exempt.

(Ord. 6607 §1, 2008; Ord. 5540 §6, 1995).

15.20.070 Findings of concurrency

A. The City shall make a finding of concurrency for each building permit application that passes the concurrency test.

B. The finding of concurrency shall be valid for the same time period as the underlying building permit, including any permit extensions.

C. A finding of concurrency shall expire if the underlying building permit expires or is revoked by the City.

D. A finding of concurrency accompanying a building permit for a particular parcel of property may be used by the heirs, executors, successors, or assigns of the applicant.

E. All building permits that require one or more transportation facilities to be provided by the applicant shall be and are hereby conditioned upon an appropriate financial commitment by the applicant which is binding upon subsequent owners, heirs, executors, successors, or assigns, and upon the completion of such transportation facilities in a timely manner, prior to the issuance of the certificate of occupancy or prior to occupancy, unless stated otherwise in writing by the City.

(Ord. 6607 §1, 2008; Ord. 5540 §7, 1995).

15.20.080 Fees

If the applicant requests an alternative calculation for the concurrency test, or if the City determines that an alternative calculation is required due to the size, scale, or other unusual characteristics of the proposed development, a fee for the alternative calculation shall be paid by the applicant prior to the initiation of review. The fee for conducting the review of the alternative calculation shall be Two Hundred Dollars (\$200.00), unless otherwise established by the Director of Public Works.

(Ord. 5540 §8, 1995).

15.20.090 Concurrency system

A. The City will provide, or arrange for others to provide, adequate transportation facilities by constructing needed transportation facilities and implementing transportation strategies within the six year horizon that:

1. Eliminate the level of service deficiencies for existing uses;
2. Achieve the level of service standards for anticipated future development and redevelopment resulting from previously issued building permits; and
3. Maintain existing facilities and repair or replace obsolete or worn out facilities.

The improvements to transportation facilities will be consistent with the Olympia Comprehensive Plan.

B. The City will appropriate sufficient funds during the appropriate fiscal year to meet the financial commitment for all the transportation facilities required to meet the level of service standards, except that the City may omit from its budget any capital improvements for which a binding agreement has been executed with another party.

(Ord. 5540 §9, 1995).

15.20.100 Monitoring the transportation system

The City will, on an annual basis, review and update its capital facilities plan and transportation element and shall identify those facilities necessary to achieve transportation concurrency. At a minimum, this review will include updates, as needed, to the City's traffic model, a comparison of actual and forecast traffic volumes, and an examination of conformance with the adopted level of service standards. In addition to annual reviews, emergency review of the concurrency management system will be conducted whenever traffic analysis reveals that 50 percent of the projected six-year capacity of any transportation facility or concurrency district has been assigned in any one year.

(Ord. 5540 §10, 1995).

15.20.110 Intergovernmental coordination

The City may enter into agreements with other local governments, Intercity Transit, and the State of Washington to coordinate the imposition of the level of service standards, the collection of impact fees, and the implementation of transportation strategies.

A. The City may apply level of service standards, fees, and other mitigation measures to developments in the City that impact other local governments and the State of Washington. Development permits issued by the City may include conditions and mitigation measures that will be imposed on behalf of and implemented by other local governments and the State of Washington.

B. The City may receive impact fees or other mitigation payments based on or as a result of development proposed in other jurisdictions that impact the City. The City may agree to accept such payments or may coordinate with other jurisdictions to implement the appropriate mitigation measures.

(Ord. 5540 §11, 1995).

15.20.120 Appeals

A. Any applicant may timely file an appeal of the approval or the denial of a finding of concurrency to the Olympia Hearing Examiner pursuant to OMC 18.75. The applicable appeal fee must be paid pursuant to OMC 4.40.010.

B. The appeal on the finding of nonconcurrency will not be conducted if the applicant refuses to pay the transportation impact fees required by OMC Title 15.

(Ord. 6607 §1, 2008; Ord. 5540 §12, 1995).

Inserted into Section 2.040 of the EDDS:

- c. Maintenance of the aboveground improvements including, but not limited to, sidewalks located between the curb and the abutting private property line is the responsibility of adjacent property owners.
- d. Pedestrian access will be provided to all new transit stops.

F. Public Notice. Prior to construction of any improvements within public right-of-way, the permittee shall provide notice to the public in a manner equal or better than that provided by City of Olympia Public Works Department for comparable projects.

G. Traffic Impact Analysis Guidelines. See OMC Chapter 15.20 and Chapter 4 of the EDDS for guidance on when a Traffic Impact Analysis (TIA) may be required for a proposed project, and what additional improvements may be required as a result of completing a TIA.

Proposed edits to the Introduction section of the TIA Guidelines (will be Appendix 7 of Chapter 4 of the EDDS):

June 26, 2017

DRAFT
Traffic Impact Analysis (TIA)
Guidelines for New Developments

A. INTRODUCTION

A Traffic Impact Analysis (TIA) is a specialized study of the impacts that a certain type and size of development will have on the surrounding transportation system. The TIA is an integral part of the development review process. It is specifically concerned with the generation, distribution, and assignment of traffic to and from the new development. New development includes properties that are redeveloped. The purpose of a TIA is to determine what impact development traffic will have on the existing and proposed street network and what impact the existing and projected traffic on the street system will have on the new development.

These guidelines have been prepared to establish the requirements for a TIA. Except as directed by other sections of the Olympia Municipal Code ~~†~~The Environmental Review Officer (ERO) will be the person responsible under the State Environmental Policy Act (SEPA), as well as city ordinances, for enforcing the need for a TIA. The ERO will consult with the Transportation Division of the Public Works Department and, based on their recommendation, determine the need for a TIA.



Meeting Minutes

Planning Commission

City Hall
601 4th Avenue E
Olympia, WA 98501

Contact: Joyce Phillips
360.570.3722

Monday, October 16, 2017

6:30 PM

Room 207

1. CALL TO ORDER

Vice Chair Auderer called the meeting to order at 6:33 p.m.

1.A ROLL CALL

Present: 5 - Vice Chair Mike Auderer, Commissioner Tammy Adams, Commissioner Travis Burns, Commissioner Rad Cunningham and Commissioner Carole Richmond

Excused: 3 - Chair Brian Mark, Commissioner Paula Ehlers and Commissioner Darrell Hoppe

OTHERS PRESENT

Community Planning and Development staff:

Deputy Director Leonard Bauer

Senior Planner Joyce Phillips

Minutes Recorder Stacey Rodell

Thurston Economic Development Council:

Executive Director Michael Cade

Business and Investor Relations Manager Aslan Meade

2. APPROVAL OF AGENDA

The agenda was approved.

3. APPROVAL OF MINUTES

3.A [17-1029](#) Approval of the September 25, 2017 Olympia Planning Commission Meeting Minutes

The minutes were approved.

4. PUBLIC COMMENT - None

5. STAFF ANNOUNCEMENTS

Ms. Phillips informed the Commission of upcoming meeting dates and provided a brief update on building projects.

6. BUSINESS ITEMS

6.A [17-1036](#) Public Hearing on Downtown Urban Infill Area State Environmental Policy Act (SEPA) Ordinance

Mr. Bauer presented information regarding the Downtown Urban Infill Area SEPA ordinance via a PowerPoint presentation. A copy of the presentation can be found in the meeting details on the City's website.

Vice Chair Auderer opened the public hearing.

The following members of the public provided testimony: Judy Bardin, Valerie Krull, Lisa Reiner, John Newman, Ryan Dewitt, Lon Freeman and Walt Jorgenson.

Vice Chair Auderer closed the public hearing.

The public hearing was held and closed.

6.B [17-1018](#) Thurston Community Economic Alliance - Presentation

Mr. Cade and Mr. Meade presented information on the Thurston Community Economic Alliance via PowerPoint. A copy of the presentation can be found in the meeting details on the City's website.

The information was received.

6.C [17-0984](#) Suggestions for the Preliminary 2018 - 2019 Planning Commission Work Plan

The Commission discussed suggestions for the preliminary 2018-2019 work plan and will discuss this topic further at its next meeting.

The discussion was continued to the November 6 Planning Commission meeting.

6.D [17-0992](#) Potential Topics for the Planning Commission Retreat

The Commission discussed possible topics for a retreat and will discuss this topic further at its next meeting.

The discussion was completed.

7. REPORTS

Vice Chair Auderer and Commissioner Richmond reported on the Land Use and Environment Committee meeting they attended on October 12, 2017 where neighborhood centers were discussed.

Commissioner Richmond informed the Commission of upcoming meetings that may be

of interest.

8. OTHER TOPICS - None

9. ADJOURNMENT

The meeting adjourned at 9:01 p.m.

Tiffany Reid

From: northbeachcomm@cs.com
Sent: Monday, October 16, 2017 1:42 PM
To: cpdinfo
Cc: CityCouncil
Subject: Comments to City of the SEPA analysis issues; Meeting Tonight, Monday, Oct 16

Oct 14, 2017
City of Olympia Staff;

The Comprehensive Plan (Comp Plan) for the City of Olympia is an important document, we all know that.

Currently it seems as if the City Planning Staff is trying to do an end run around SEPA. This end run will be discussed tonight, at the Oly. City Planning meeting, Monday 16, 2017, 6:30 P.M.

The City planning staff, will then, not just cut out the public and our comments in general regarding development proposals, but they will eliminating the requirement for individual project level SEPA EIS's at all!

This action will supplant current analyses of specific proposals with the SEPA analysis done on the Comp Plan.

This is not good. This will isolate both the public and the Council from major land use investigations.

We must have transparency with the public and the Planning within the City.

This action to be discussed Oct 16th, and will allow City of Olympia Planning Staff to be "in authority" by default.

This is wrong.

The City did a "gap analysis" (their term).

In this analysis they said that the only three City areas that needed to be addressed before establishing SEPA exemption areas were;

- 1) flood risk associated with sea level rise,
- 2) off site traffic impact mitigation,
- 3) cultural resources.

But this analysis , this decision is wrong.

We need a city SEPA analysis of city development proposals.

We do not need a "short cut".

We do not need the city to be "in authority". We need the SEPA analysis process, to stay in place.

Thank you,
L. Riner
2103 Harrison Ave
OLY., WA

98502
360-956-0254

Judy Bardin's comments to the Olympia Planning Commission's October 16, 2017 on the "Public Hearing on Downtown Urban Infill Area State Environmental Policy Act (SEPA) Ordinance."

I am opposed to creating Downtown as a SEPA urban infill exemption area for the following reasons.

1) It will shut out the public from being able to comment on environmental impacts for commercial buildings less than 65,000 sq. ft. (excluding retail) and units with a density of or less than 30-unit single-family homes or 60 units of apartments and condominiums. Current regulations exempt buildings of nine units or less from SEPA. This is a very large extension in the number and size of buildings exempt from SEPA. . Projects of this scope should be subject to SEPA scrutiny that is current and specific to their impact. The public has enough trouble tracking and commenting on land use decisions; this takes away another opportunity for the public to comment. It deprives the public of its right to be involved.

2) The City is relying on an EIS that was done for the Comprehensive Plan in 2014. The EIS at this point is somewhat outdated. A number of things have changed since the EIS was originally written, for example, sea level rise projections have worsened, development has revitalized, the Metropolitan Parks District measure has passed, and homelessness is a rising concern.

3) Do we really have a problem with density Downtown?

The perceived current need for a Downtown SEPA exemption area calls out (RCW 43.21C.229) – This provision of the statute is intended to encourage residential or mixed use development in urban areas where the density goals of the comprehensive plan are not being met. Has it been ascertained that the density goals for Downtown are not being met? Currently development in Downtown is booming; each month we hear of a new development scheduled or being planned Downtown. What is our density supposed to be and how far behind the curve are we? How much development has occurred or is in the pipeline? At what rate are we increasing density? How many new housing units and how much commercial/retail square footage have we added in a year? What's projected for the upcoming year?

The Comprehensive Plan supports measured increase in our urban density. It does not seem to stipulate that we have to rapidly meet this goal. The following paragraph from the Comprehensive Plan Land Use and Urban Design Chapter emphasizes this point.

This Plan envisions gradually increasing densities in Olympia accompanied by attractive streets and buildings arranged for the convenience of pedestrians. The location, mix and relationship of land uses to each other and to our streets will be crucial as will be the character of commercial and residential areas, parks, and open spaces. The Plan envisions new development that will reinforce the community's identity, urban design preferences, and historic form. Selected major

streets will gradually transform into attractive, higher density, mixed residential and commercial "urban corridors" with frequent transit

Downtown is in a High-Density Neighborhoods Overlay that calls for densities of at least 25 dwelling units per acre for residential uses that are not re-using or redeveloping existing structures. It emphasizes that it not include structures that are being reused or redeveloped so we are not forcing existing historical buildings to meet the 25 units per acre requirement. How far behind is the City in meeting this 25 unit per acre requirement? Has any data been provided? The Planning Commission initially set this density at 35 units per acre, but it was reduced by staff to 20 and then finally raised to 25 by Council. Should the density be higher?

4) A time frame for the SEPA exemption area has not been specified. RCW 43.21C.440 stipulates that a time period identified in the ordinance or resolution adopted be specified

5) Gap Analysis does not seem to be adequate. The gap analysis identifies three areas: flood risks associated with sea level rise (SLR), off-site traffic impact mitigation and cultural resources.

Flood risk associated with sea level rise

The City's 2016 flood proofing standards are cited as filling this gap, especially the higher finished floor elevation. However current regulations only require a one-foot increase in the finished floor elevation. The City Utility this year presented information on SLR. Currently the City is projecting 2 feet of SLR by 2050 with approximately 160 flooding events a year. By 2100 SLR is projected to increase to 4 feet with about 440 annual flooding events. Other agencies feel current projections are too low because published scientific literature lags what is happening in nature. Before a scientific article is published, data must first be collected then analyzed, written up and peer reviewed. This process is lengthy. In 2016, Margaret Davidson, NOAA's senior advisor for coastal inundation and resilience science and services, and Michael Angelina, executive director of the Academy of Risk Management and Insurance, offered their take on climate change data in a conference session titled "Environmental Intelligence: Quantifying the Risks of Climate Change." They projected that we could have about 3 meters or around 10 feet of SLR by 2050-2060.

If we experience just a few feet of SLR, are we really willing to accept roadways, sidewalks, and parking lots that are periodically under water even if the buildings they serve are high enough to keep their lower floors dry? What happens to basements?

Off-site traffic mitigation

Staff states that the Downtown Strategy will likely determine a threshold for a traffic analysis but that threshold has not been set.

Cultural Resources

Presently tribal agencies tend to use SEPA notice as their trigger to comment on projects. Plans are being formulated to meet with tribal and State Department of Archaeology and Historic Preservation (DAHP) representatives to discuss the other available opportunities for comment such as at notice of application and potential code revisions, however it is not known at this point if these groups will support their inability to comment on SEPA. Additionally, what mechanisms will be established to ensure that tribes and DAHP will be automatically informed of applications for new projects and revisions to the codes without having to make periodic inquiries?

Judy Bardin

1517 Dickinson Ave NW

Olympia, WA 98502

judybardin@comcast.net

360-352-9564

Public Comment on:

Olympia Planning Commission's October 16, 2017 on the "Public Hearing on Downtown Urban Infill Area State Environmental Policy Act (SEPA) Ordinance."

I have two main concerns with this ordinance:

The first has to do with the claim that the SEPA regulations are duplicative with the city's existing development regulations. Assuming they are duplicative, I am concerned about whether or not they will remain that way into the future. For example, I understand that the climate change and sea level rise guidance in SEPA is currently under review. If SEPA regulations were to change in the future to become more protective would Olympia then have some requirement to also update the City's regulations? Similarly, I imagine it is somewhat easier to modify a city regulation than it is to modify one through the State. Would there be any mechanism to prevent Olympia from modifying their regulations to be less protective than SEPA in the future? I would like to see some language in this ordinance which would hold the city accountable in this way.

My second concern has to do with limiting public involvement in planning and development. The background memo listed "Cultural Resources" as one of the three areas in which the city regulations are insufficient – relative to SEPA. The memo states that "tribal agencies tend to use SEPA notice as their trigger to comment on projects". I understand that SEPA notices often arrive late in the development process, and that by this point the public has already had chances to comment, but I think that the fact that tribal agencies – and others- so consistently use the SEPA notice as an access point is a big red flag. I think that it demonstrates that the public has a hard time keeping track of development process and timelines, and I think it demonstrates that a significant section of the public are unsatisfied by the City's level of responsiveness to them in the process. I feel that the SEPA exemption would act to further exclude people from the process.

Thank You,
Ryan DeWitt
2022 Dickinson Ave NW
Olympia, WA 98502

Sci Fri - Sept 1, 2017

Guest: Simon Roster
Principal - JDS Developers

Project in NYC

1st Ave (626 1st Ave)
Copper Building

@ time of H. Sandy
Modified plans to build
for "Resiliency"

Elec. Utilities/Systems

All went to 2nd Fl. location

Modification of NYC

Building Code

"Appendix G"

(Glass + (Marble?) Floor)
in Lobby

Lon Freeman
5040 78th Avenue NW
Olympia, WA 98502

Olympia Planning Commission
C/O Olympia Community Planning and Development Department
P.O. Box 1967
Olympia, WA 98507-1967

February 27, 2017

Comments to Olympia Planning Commission on Draft DTS: Some Thoughts on Sea Level Rise Response Planning

Dear Commissioners and Participants:

1. Introduction

First and foremost I wish to convey my sincere appreciation to the City of Olympia Community Planning and Development Department staff (Lead: Amy Buckler, CPD), to MAKERS Architecture and Urban Design (Consulting Group, John Owen, Rachel Miller et al), to Andy Haupt (Lead: Public Works [PW]) and all partners and participants for the sheer volume of work involved in undertaking an effort of such great complexity, for an urban design project of a relatively compact downtown core.

Although I had some doubts, even mistrust, at the outset of the (public) planning process, the efforts at engaging the challenges of both physical geography on the one hand, and the desire to incorporate a fully inclusive balance of distinct social and cultural groupings, has been evident and praiseworthy. At the same time there is a recognizable tacit acknowledgment of the overarching imperative to ensure the longevity of a municipality that continues to thrive in it's social, cultural, environmental and economic health and well-being.

It is my hope, without having great knowledge of such matters as urban planning, architectural construction design, provision of infrastructure, and Engineering Design and Development Standards (EDDS), that my comments in a particularly circumscribed area (Sea Level Rise Response) may be taken in a spirit of intended hopeful contribution.

2. Clarifying and Synchronizing Disparate Planning Horizons and Scenarios in Time

Issue: Currently, there are two distinct and disparate time-frame horizons evident in the DTS planning documents that do not correspond to each other in their impact outcomes, as relates to Sea Level Rise Response Planning.

2.A) The DTS proper; "Summary: Volume 1", along with other "Elements: Volume 2" chapters delineate an implied time horizon of 20 years for the relevant planning and design and (re)development actions of the construction projects under consideration in its text, and by verbal communication through the public planning process. The population growth and modeling projections of 5000 new residents in the DT Core are also based on this planning horizon.

An implied base reference year is 2015 followed by a 6 year implementation of updated design guidance and updated zoning and development standards, with marketing and full realization of the cohort of projects over a 20 year period, from 2015 – 2035.

2.B) The Sea Level Rise Response Plan (SLR, LU-1), however, although presumably integrated into the DTS at an appropriate and opportune time early in the process, is, in public presentations and discussion (Feb 8, 2017 and earlier presentations to City Council), indicating a preferred planning horizon, based on rational and accepted local sea level rise projections (by accepted authorities) in a 50 year horizon, this being down-selected from an even more severe 100 year impact and planning horizon.

2.C) Implications for scenario development:

2.C.1) If planned developments proceed as described in the planning documents (Land Use Element chapter, and Design Element chapter) north of Legion Avenue out to the Port Peninsula (the tidal flooding affected area), with “mixed use”, with 4 story, 5 story, 6 story and 7 story structures; and with mixed public/private mitigation measures being employed in design guidelines for such development (raised grade elevations and flood walls/automatic flood gates for developers; elevated walking pathway berms/levees and automatic tidal flood gates to prevent back-flow for surface and stormwater incursion into outfall pipes at waterfront for public works projects), then pursuing the 50 year **Horizon (to that design criteria)**, the Sea Level Rise Response plan would be advantageous for longevity of the built structures and infrastructure of those “character areas” affected (including “Tech/Artisanal” area in NE section) because Sea Level Rise Response planning would be to design for more stringent requirements – a 50 year flood mitigation design rather than a 20 year design criteria, because in 50 years Sea Level Rise is expected to be more severe than in 20 years time, and so is the corresponding potential for flooding.

2.C.2) If, on the other hand, another urban redevelopment planning effort ensues with an infusion of mixed investment funds and sources in the same area of the downtown core, in 25 – 30 years, at the end of the current 20 year cycle, – a scenario for which I have no idea of efficacy or likelihood, then it may be equivocal to plan currently at the 50 year design Horizon because the presumed knowledge of Sea Level Rise due to climate change, the specificity of its local impacts, the time and spatial resolution of its effects, would be presumed to be of greater reliability and experience. There would also likely be a more extensive configuration of mitigating, adaptive technologies to choose from, and a greater range of “materials” and methods to select in the design and construction of built structures and infrastructure to withstand the onslaught of saline marine incursion and inundation. **In this case a 50 year planning horizon would be obsolete.**

2.C.3) Sea Level Rise related tidal flooding in the affected area north of Legion Avenue will have a range of **variability** – in the frequency of flood events, in the severity or intensity of flood events, and in the duration of flood events. There would be typical expectations based on the scientific knowledge and understandings of the dynamics at work, even in the local case of our own community, and the typical expectations would tend to congregate around a central measure of how often the events occur, how severe or intense is the flood event, and the typical duration of an event. **But, there will be events that diverge from what is typical or expected.** The measure of dispersion or variability of these events remains to be observed, and experienced. Even if the Sea Level Rise Response Plan (SLR, LU-1) is adopted for the 50 year planning horizon, lending more stringent design criteria for flood mitigation, there would still be a chance for a severe departure from the expected (if the distribution is in fact Gaussian, [a Bell Shaped curve]). What if, by some slight chance, there is an event that exceeds the 100 year sea level rise expectation (this is a different metric than what we know as a 100 year flood in storm language). What if there is an event greater than 3 or 4 Standard Deviations from the mean in year 2027? Will the 50 year planning horizon design criteria be sufficient for a normal recovery with only minor inconveniences? I am not sure we have the knowledge and information base apropos to make reliable probability estimations with the corresponding temporal and spatial resolution necessary for design criteria precision (at this time). And if we did, at what probability level would it be appropriate to design for?

2.C.4) In the “Tech/Artisanal” character area delineated in the NE of the Port Peninsula, which is without doubt an exciting planning area for its varied function and design characteristics, (which I believe would be inclusive of some level of Light Industrial activity), is it foreseeable that any of the productive activities would necessitate NPDES Permits, or, even if within the SEPA exemption zone, how would

technological/environmental risk be assessed? Would effluent discharge be monitored in the dilution zone of East Bay discharge outfall or in the confluence of East Bay/West Bay discharges, or would effluent discharge be directed to traverse through the LOTT facility (as I am sure would sanitary waste discharge)?

3. Residential Building Structures as Technological Systems: (EDDS)

Issue/Assertion: Building structures (as well as street-scape structures [and their underlying infrastructure]) are technological systems, with distinct internal and external functions. The subsystems, and the social organization, that constitute these whole systems are subject to the ways and limits of nature's provisioning and the configuration of their fit.

3.A) With reference specifically to the Sea Level Rise Response Plan (SLR, LU-1); in the event of an exceptional, out-lier occurrence of a failure mode of the planned public/private mitigating measures for sea level rise flooding, in the most vulnerable, prone areas: are there ways to incorporate design guidelines for the materials and configuration of the buildings themselves to remain resilient to inundation and/or incursion?

3.A.1) In the **site plan** of a development project, are there ways to protect electrical power distribution, or on-site electrical power generation, and the provisioning of domestic, potable water, and relevant on-site HVAC pumps, condensers, machinery from the corrosive effects of saline, marine water that comes in contact with these facilities. If there are ways to configure these facilities for protection, in the case of contact, what are the likely marginal costs for such direct protection; would it be feasible? Or is prevention of direct contact really the only way to mitigate flood events in the physical geography of the affected areas?

3.A.2) Similarly, in the design guidelines for **building construction(s)** proper are there ways to design the structure for internal, resilient protection of the fore-mentioned subsystems in the case of marine water incursion, internally in the building? Are there “materials” to use in the subterranean and ground floor segments of the construction which would be resistant and impervious to flood waters at a moderate incursion for a limited time period? Or, if not, is it possible (and feasible) to design pass-through systems where incursion water passes through the structure and exits one of the other sides of the structure in appropriate timing and flows?

3.A.3) Is it feasible to locate **all** of the technological subsystems; power distribution and control, domestic water distribution (pumps, etc.) and control, and HVAC systems and control, in an upper story (perhaps a 2nd floor story would be sufficient) in a multistory, multi-unit structure, and still maintain sufficient insulation and isolation from the expected noise pollution?

3.A.4) If there is any reasonable response in the affirmative to these speculations, is it feasible to have them translated to an updated “Engineering Design and Development Standards” code which is in the City of Olympia purview, as a set of minimum performance codes for the affected area(s), and then to elaborate as an updated “design guidelines” with greater flexibility in accomplishing the implied functional design goals?

End

Thank you very much for the opportunity to participate and share my thoughts on the Sea Level Rise issue in this complex endeavor.

With appreciation and homage to Lewis Mumford and Jane Jacobs.

Lon Freeman

NYC Building Code - Appendix G

2014 Update

APPENDIX G

(Page 9 = Definitions)*

FLOOD-RESISTANT CONSTRUCTION

CHAPTER G1
GENERAL PROVISIONS

SECTION BC G101
PURPOSE AND OBJECTIVES

Re: Simon Kosten

Principal: JDS Developers

G101.1 Purpose. The purpose of this appendix is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas designed to:

1. Prevent unnecessary disruption of commerce, access and public service during times of flooding;
2. Manage the alteration of natural flood plains, stream channels and shorelines;
3. Manage filling, grading, dredging and other development which may increase flood damage or erosion potential;
4. Prevent or regulate the construction of flood barriers which will divert floodwaters or which can increase flood hazards;
5. Contribute to improved construction techniques in the flood plain; and
6. Comply with and exceed the minimum standards of the National Flood Insurance Program as administered by the Federal Emergency Management Agency (FEMA).

G101.2 Objectives. The objectives of this appendix are to:

1. Protect human life;
2. Minimize the expenditure of public money for flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding;
4. Minimize prolonged business interruption;
5. Minimize damage to structures located in areas of special flood hazard;
6. Minimize damage to public facilities and utilities such as water, electricity, telephone and sewer lines, and streets and bridges located in areas of special flood hazard;
7. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
8. Ensure that potential owners and occupants are notified that property is within areas of special flood hazard.

G101.3 Reserved.

G101.4 Reserved.

SECTION BC G102
APPLICABILITY

G102.1 General. This appendix, in conjunction with the *New York City Construction Codes*, provides minimum requirements for development located, in whole or in part, in areas of special flood hazard and shaded X-Zones within the jurisdiction of New York City, including:

1. **Subdivisions.** This appendix shall apply to the subdivision of land;
2. **Utilities.** This appendix shall apply to the installation of utilities;
3. **Group U buildings and structures.** This appendix shall apply to placement and replacement of Group U buildings as defined in Section 312;

4. **Site improvements.** This appendix shall apply to site improvements, including but not limited to, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, operations and other land disturbing activities;
5. **Prefabricated buildings and manufactured homes.** This appendix shall apply to placement and replacement of prefabricated buildings and manufactured homes;
6. **Post-FIRM construction.** This appendix shall apply to post-FIRM construction;
7. **Alterations to post-FIRM construction.** This appendix shall apply to repair, reconstruction, rehabilitation, or additions to post-FIRM construction;
8. **Substantial improvement of pre-FIRM construction.** This appendix shall apply to substantial improvement of pre-FIRM buildings and structures, including restoration after damage, as if hereafter erected;
9. **Horizontal enlargements of pre-FIRM construction.** This appendix shall apply to horizontal enlargements of pre-FIRM buildings and structures to the extent of such horizontal enlargement, including but not limited to additions, decks, carports, or similar appendages. The existing portions of the structure shall not be required to comply, unless otherwise required because the alteration is deemed a substantial improvement; and
10. **Other alterations to pre-FIRM construction.** This appendix shall apply to alterations or repairs to pre-FIRM buildings and structures, including installation of new components, materials, finishes and equipment, that increase the degree of noncompliance with this appendix. The following alterations or repairs, other than substantial improvements, shall not be deemed as an increase in the degree of noncompliance:
 - 10.1. Where the alteration or repair comprises the replacement of pre-FIRM components, materials, finishes or equipment;
 - 10.2. Where the alteration or repair comprises the installation of new components, materials, finishes or equipment in a space within the structure where similar pre-FIRM components, materials, finishes or equipment already exist; and
 - 10.3. Where such alteration is a change in use, occupancy or how such space is used, provided that such change would not increase the degree of noncompliance with requirements of this appendix. The conversion of any space below the design flood elevation from nonhabitable space into habitable space shall be deemed an increase in the degree of noncompliance.
11. **Retroactive requirements.** This appendix shall apply to retroactive requirements as provided for in Section G311.

G102.2 Establishment of areas of special flood hazard. The following flood hazard map and supporting data are adopted as referenced standards and declared to be a part of this appendix:

1. FEMA FIS 360497.
2. FEMA FIRMS 360497.

G102.2.1 Preliminary flood insurance study and rate maps. Until such time that the department by rule adopts revised FEMA FIS 360497 and FEMA FIRMS 360497 with a final effective date later than May 1, 2014, the following flood hazard maps and supporting data are also adopted as a referenced standard and declared a part of this appendix.

1. FEMA PFIS 360497.
2. FEMA PFRIMS 360497.

G102.2.2 Effect of preliminary flood insurance study and rate maps. Notwithstanding any other provision in this appendix to the contrary:

1. All references in this appendix to elevations in FEMA FIS 360497 and FEMA FIRMS 360497 shall be deemed to refer to the greater of (i) the elevations identified in the FEMA FIS 360497/FEMA FIRMS 360497 or (ii) the elevations identified in the FEMA PFIS 360497/FEMA PFRIMS 360497. In comparing elevations, the elevations identified in FEMA FIS 360497 and FEMA FIRMS 360497 that are expressed in relation to the National Geodetic Vertical Datum (NGVD) shall be converted to the North American Vertical Datum (NAVD).
2. All references in this appendix to areas of special flood hazard as delineated on FEMA FIRMS 360497 shall be deemed to refer to the area of special flood hazard as delineated on FEMA PFRIMS 360497 except that, where a

structure is located in an area of special flood hazard as delineated on FEMA PFIRMs 360497 and in a more restrictive area of special flood hazard as delineated on FEMA FIRMs 360497, such structure shall be deemed to be located in the more restrictive area of special flood hazard as delineated on FEMA FIRMs 360497.

G102.3 Letters of map change. Map changes to FEMA FIRMs 360497 shall be administered in compliance with Sections G102.3.1 through G102.3.3.

G102.3.1 Letters of map amendment (LOMA). Where FEMA FIRMs 360497 indicates that a structure or tax lot is within a delineated area of special flood hazard, but the pre-FIRM ground elevations adjacent to the structure or throughout the tax lot are at or above the base flood elevation, the commissioner shall deem such structure or tax lot as being within the area of special flood hazard and shall not approve plans except in compliance with this appendix, unless a letter of map amendment (LOMA) is issued by FEMA removing such structure or tax lot from the area of special flood hazard.

G102.3.1.1 Letters of map amendment (LOMAs) during pendency of PFIRMs. Until such time that the department by rule adopts revised FEMA FIS 360497 and FEMA FIRMs 360497 with a final effective date later than May 1, 2014, the commissioner shall not deem issuance of a LOMA by FEMA as removing such structure or tax lot from the area of special flood hazard unless the elevations specified in the LOMA equal or exceed the applicable corresponding elevations on the FEMA PFIS 360497/FEMA PFIRMs 360497.

G102.3.2 Letter of map revision based on fill (LOMR-F). Where FEMA FIRMs 360497 indicates that a structure or tax lot is within a delineated area of special flood hazard, but post-FIRM compacted fill is proposed to be added adjacent to the structure or throughout the tax lot to an elevation at or above the base flood elevation, the commissioner shall deem such structure or tax lot as being within the area of special flood hazard and shall not approve plans except in compliance with this appendix, unless a conditional or final letter of map revision based on fill (LOMR-F) is issued by FEMA removing such structure or tax lot from the area of special flood hazard. Buildings constructed with basements below the Base Flood Elevation on filled land shall maintain a minimum setback distance of 20 feet (6096 mm), at or above the Base Flood Elevation, from the edge of the Special Flood Hazard Area to the nearest wall of the basement, regardless of the design approach used. The commissioner shall promulgate rules establishing procedures for processing letters of map revision based on fill (LOMR-F).

G102.3.2.1 Letters of map revision based on fill (LOMR-Fs) during pendency of PFIRMs. Until such time that the department by rule adopts revised FEMA FIS 360497 and FEMA FIRMs 360497 with a final effective date later than May 1, 2014, the commissioner shall not deem issuance of a LOMR-F as removing such structure or tax lot from the area of special flood hazard unless the elevations specified in the LOMR-F equal or exceed the applicable corresponding elevations on the FEMA PFIS 360497/FEMA PFIRMs 360497.

G102.3.3 Certificates of occupancy. Certificates of occupancy shall indicate that the structure or tax lot is subject to a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F) as per Section G106.5.

SECTION BC G103 ADMINISTRATION

G103.1 Permit applications. The commissioner is hereby designated as the flood plain administrator for the City of New York and shall review permit applications to determine that:

1. Proposed development sites will be reasonably safe from flooding;
2. All site development activities, including grading, filling, utility installation and drainage modification, and all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) are designed and constructed with methods, practices and materials that minimize flood damage and that are in accordance with this code and ASCE 24; and
3. All other required state and federal permits have been obtained.

G103.2 Reserved.

G103.3 Determination of base flood elevations. Where the proposed development is within an area of special flood hazard but the base flood elevations are not specified in the FEMA FIRMs 360497, the commissioner shall require the applicant to request base flood elevation data from the New York State Department of Environmental Conservation (DEC); and

1. Submit to the commissioner either:

1.1. A letter from DEC making such a determination of base flood elevation; or

1.2. A letter from the DEC indicating that the data are not available. When such a letter from DEC indicates that the data are not available, the base flood elevation shall be equal to 3 feet (914 mm) above the highest adjacent pre-FIRM grade.

Exception: Large lots. Where the base flood elevation is not specified, the applicant shall submit a detailed engineering study establishing the base flood elevation, performed by an engineer in accordance with accepted hydrologic and hydraulic engineering techniques, in sufficient detail to allow review by the commissioner for any of the following conditions:

1. For a development which is located on a tax lot greater than 5 acres (2.02 hectares), or is located on property that was part of a tax lot that was greater than 5 acres (2.02 hectares) at the time of the adoption of the FIRM (October 1, 1984), or at any subsequent applicable map change thereto; or
2. For subdivisions resulting in 50 or more tax lots, including all tax lots previously subdivided from the same tax lot since the adoption of the FIRM (October 1, 1984), or since any subsequent applicable map changes thereto.

G103.3.1 Determination of 500-year flood elevations. Where 500-year flood elevations are not specified in the FEMA FIRMs 360497 or FEMA FIS 360497, such elevations shall be determined by a registered design professional using modeling based on generally accepted engineering methods or a review of available data from city, state and federal agencies.

G103.4 Reserved.

G103.5 Floodway encroachment. Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the commissioner shall require submission of a certification, along with supporting technical data, demonstrating that such development will not cause any increase of the level of the base flood. However, a floodway encroachment that increases the level of the base flood may be authorized if the applicant has:

1. Applied for a conditional Letter of Map Revision; and
2. Received the approval of the Federal Emergency Management Agency (FEMA).

G103.6 Watercourse alteration. Prior to issuing a permit for any alteration or relocation of any watercourse within an area of special flood hazard, the commissioner shall require the applicant to:

1. Notify any affected adjacent municipalities or government jurisdictions;
2. Notify the DEC;
3. Submit evidence of such notifications to the commissioner and the Regional Director, Region II, the Federal Emergency Management Agency (FEMA);
4. Submit to the commissioner evidence of all such notifications;
5. Submit an engineering analysis demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased; and
6. Submit evidence that such watercourses will be maintained in a manner which preserves the channel's flood-carrying capacity.

G103.7 Sand dune alterations in V-Zones. Prior to issuing a permit for any alteration of sand dunes in a V-Zone, the commissioner shall require submission of an engineering analysis demonstrating that the proposed alteration will not increase the potential for flood damage.

G103.8 Records. The commissioner shall maintain records of the following:

1. Applications and supporting documents for development in areas of special flood hazard;
2. Permits issued in areas of special flood hazard;
3. Inspection reports;
4. Certifications required in this appendix; and
5. Certificate of occupancy where applicable.

"ASCE 24"

G103.9 Violations. See Chapter 2 of Title 28 of the *Administrative Code*.

**SECTION BC G104
PERMITS**

G104.1 Permit required. Any person, owner or authorized agent who intends to conduct any development, as applicable pursuant to Section G102.1, within an area of special flood hazard, shall first apply to the commissioner and shall obtain the required permit in accordance with Section 28-105.1 of the *Administrative Code*, notwithstanding any exemption pursuant to Section 28-105.4 of the *Administrative Code*.

G104.2 Permit application requirements. The applicant shall file an application in writing on a form furnished by the commissioner. The commissioner shall not approve such application unless the applicant submits all plans, details, data and documents demonstrating that the development complies with Section G104 and all other provisions of this appendix.

G104.3 Site plan. The permit application shall include a site plan. The site plan shall include plans and drawings, shall be sealed by a registered design professional and shall include the following information and any other data as may be required by the department:

1. A delineation of the flood hazard areas, including identification of the base and design flood and elevations;
2. If applicable, the location of the regulatory floodway;
3. For all proposed structures, spot ground elevations at building corners and in 20-foot (6096 mm) or smaller intervals along the foundation footprint, or 1-foot (305 mm) contour elevations throughout the building site;
4. Proposed locations of water supply, sanitary sewer, and utilities;
5. Drainage patterns and facilities; and
6. Foundation design details, including but not limited to:
 - 6.1. Proposed elevation of the lowest floor including basement (for flood zone purposes) of all structures;
 - 6.2. For crawl spaces and enclosed parking, storage and building access that are wet floodproofed below the design flood elevation, location and total net area of foundation openings in accordance with ASCE 24;
 - 6.3. For dry floodproofed spaces in buildings or structures that are nonresidential (for flood zone purposes), the proposed elevation to which the enclosure will be dry floodproofed in accordance with ASCE 24; and
 - 6.4. Any proposed fill and excavation details.

Exception: Applications for subdivisions shall comply with Section G302.

G104.4 Water course alteration. The permit application shall include, if applicable, a description of the extent to which any watercourse will be altered or relocated as a result of proposed development, and any documentation required by Section G103.6.

G104.5 Certifications. The permit application shall include the applicable certifications in accordance with Sections G104.5.1 through G104.5.3.

G104.5.1 A-Zones. For construction in A-Zones, the permit application shall include the following certifications, as applicable:

1. **Wet floodproofing certification.** For wet floodproofed enclosures below the design flood elevation, construction documents shall include a certification by the applicant that the design provides for the automatic entry and exit of floodwaters for equalization of hydrostatic flood forces in accordance with Section 2.6.2, ASCE 24.
2. **Dry floodproofing certification for nonresidential buildings.** For dry floodproofed buildings and structures that are nonresidential (for flood zone purposes), construction documents shall include a certification by the applicant that the dry floodproofing is designed in accordance with ASCE 24.
3. **Utility certifications.** For all applications involving utility or mechanical work, including applications where such work is to be filed in a separate, related application, construction documents shall include a certification by the applicant that "all heating, ventilation, air conditioning, plumbing, electrical and other services facilities and equipment within the structure or site will be located or constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24."

G104.5.2 V-Zones and coastal A-Zones. For construction in V-Zones and coastal A-Zones the permit application shall include the following certifications, as applicable:

1. **Structural design certification.** Construction documents shall include a certification by the applicant that the "entire structure is designed in accordance with ASCE 24, including that the pile or column foundation and building or structure to be attached thereto is designed to be anchored to resist flotation, collapse and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16 of the *New York City Building Code*."
2. **Breakaway wall certification.** Where breakaway walls are provided, construction documents shall include a certification by applicant that "the breakaway walls meet the load requirements of Section 5.3.3 of ASCE 7, are designed in accordance with ASCE 24, and are of an open lattice-type construction only."
3. **Utility certifications.** For all applications involving utility or mechanical work, including applications where such work is to be filed in a separate, related application, construction documents shall include a certification by the applicant that "all heating, ventilation, air conditioning, plumbing, electrical and other services, facilities and equipment within the structure or site will be located or constructed so as to prevent water from entering or accumulating within the components during conditions of flooding, in accordance with ASCE 24."

G104.5.3 Floodway encroachment certification. For any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the applicant shall submit a certification, along with supporting technical data, demonstrating that such development will not cause any increase of the level of the base flood in accordance with the requirements of Section G103.5.

G104.6 Validity of permit. The issuance of a permit under this appendix shall not be construed to be a permit for, or approval of, any violation of this appendix or any other provision of this code. The issuance of a permit based on submitted documents and information shall not prevent the commissioner from requiring the correction of errors. The commissioner is authorized to prevent occupancy or use of a structure or site which is in violation of this appendix or other provisions of this code.

G104.7 Permit expiration. A permit shall become invalid if the proposed development:

1. Is not commenced within 180 days after its issuance; or
2. If the work authorized is suspended or abandoned for a period of 180 days after the work commences.

G104.8 Permit reinstatement. Permit reinstatements for a permit that has expired pursuant to Section G104.7 shall be requested in writing. The commissioner is authorized to grant such reinstatement, provided that the work shall comply with all of the requirements of this appendix, including any revised FEMA FIRMs 360497 in effect at the time the application for reinstatement is made, and provided further that the applicant shall pay all reinstatement fees as required in Article 112 of Title 28 of the *New York City Administrative Code*.

G104.9 Permit suspension or revocation. The commissioner is authorized to suspend or revoke a permit issued under this appendix wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of this code, in accordance with Section 28-105.

SECTION BC G105 PROGRESS AND SPECIAL INSPECTION REQUIREMENTS

G105.1 General. Progress and special inspections shall be performed in accordance with this section. All work applications, regardless of the scope of work, shall be subject to the progress and special inspection requirements of Sections G105.2 through G105.4.

G105.2 All work applications other than new buildings and substantial improvements. All work applications other than new buildings and substantial improvements, shall be subject to the following special inspection:

1. **Flood zone compliance special inspection.** Prior to sign-off of work, a special inspector or special inspection agency shall inspect during the course of construction and certify that: "the structure was constructed" or "alterations were performed," "with methods and practices that minimize flood damage and that are in accordance with approved plans, and with any applicable provisions of Appendix G of the *New York City Building Code* and ASCE 24."

G105.3 New buildings and substantial improvements. All applications for new buildings or substantial improvements shall be subject to the following inspections:

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1. **Elevation progress inspection.** Upon placement of the lowest floor, including the basement (for flood zone purposes), an engineer or licensed professional surveyor shall inspect the site and verify the elevation of such lowest floor. The inspection report verifying the elevation shall be submitted to the department prior to further vertical construction. The commissioner shall be permitted to issue a stop work order if such inspection report is not submitted.
2. **Flood zone compliance special inspection.** Prior to sign-off of work, a special inspector or special inspection agency shall inspect during the course of construction and certify that: "the structure was constructed" or "alterations were performed," "with methods and practices that minimize flood damage and that are in accordance with approved plans, and with any applicable provisions of Appendix G of the *New York City Building Code* and ASCE 24."
3. **Final elevation required items.** Prior to the sign-off of the flood zone compliance special inspection, the special inspector or special inspection agency shall verify that the following required items have been submitted to the department, as applicable:
 - 3.1. **Elevation certificate.** The elevation certificate shall be made utilizing FEMA Form 086-0-33 titled, "Elevation Certificate," and shall be signed by an engineer or surveyor.
 - 3.2. **Dry floodproofing certificate.** The Dry floodproofing certificate shall be made utilizing FEMA Form 086-0-34 titled, "Floodproofing Certificate," and shall be signed by an engineer.

G105.4 Flood shield inspection. Where floodshields or other flood control devices are installed as part of a dry floodproofing system in buildings and structures that are nonresidential (for flood zone purposes), the special inspector or special inspection agency responsible for the flood zone compliance special inspection shall inspect the shields or devices in their stored positions or locations, witness their activation or transportation to their installed positions, and witness their deactivation or transportation back to their stored locations. The special inspector or special inspection agency shall also confirm the installation of signage required by ASCE 24, Section 6.2.3, Item 3.

G105.5 Reserved.

G105.6 Reserved.

G105.7 Reserved.

**SECTION BC G106
CERTIFICATES OF OCCUPANCY**

G106.1 Applicability. This section shall apply to post-FIRM construction and substantial improvements where the work results in the issuance of a new or amended certificate of occupancy.

G106.2 Enclosed areas subject to flooding in A-Zones. The certificate of occupancy shall describe all wet floodproofed enclosed areas below the design flood elevation as "subject to flooding". Such wet floodproofed enclosed areas shall be usable solely for parking, storage, building access or crawl spaces.

G106.3 Enclosed areas subject to flooding in V-Zones and coastal A-Zones. The certificate of occupancy shall describe all enclosed areas below the design flood elevation as "subject to flooding". Such enclosed areas shall be usable solely for parking, storage and building access.

G106.4 Dry floodproofed spaces. The certificate of occupancy shall describe any dry floodproofed spaces as "dry floodproofed." For such buildings containing dwelling units, patient care areas (for flood zone purposes) or spaces intended to be used by persons for sleeping purposes, the certificate of occupancy shall also provide notations as required by Section G304.1.2, Item 2.2.5. Where flood shields or other flood control devices are installed, the certificate of occupancy shall also provide notations describing these features.

G106.5 Letters of map change. Where applicable, the certificate of occupancy shall indicate that "the structure is exempted from the area of special flood hazard pursuant to FEMA Letter of Map Amendment (LOMA) # (____)," or that "the structure is exempted from the area of special flood hazard pursuant to FEMA Letter of Map Revision Based on Fill (LOMR-F) # (____)," or that "the structure is exempted from the area of special flood hazard pursuant to FEMA Letter of Map Revision (LOMR) # (____)."

**SECTION BC G107
VARIANCES**

G107.1 General. The Board of Standards and Appeals shall hear and decide requests for variances from the requirements of this appendix. The Board of Standards and Appeals shall base its determination on technical justifications, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of this appendix.

G107.2 Conditions for variance.

G107.2.1 Historic structures. The Board of Standards and Appeals is authorized to issue a variance for the repair or rehabilitation of a historic structure provided that:

1. The application has received approval from the Landmark Preservation Commission and/or the New York State Historical Preservation Office, as applicable;
2. The proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and
3. The variance is the minimum necessary to preserve the historic character and design of the structure.

G107.2.2 Floodway restrictions. The Board of Standards and Appeals shall not issue a variance for any proposed development in a floodway if any increase in flood levels would result during the base flood discharge.

G107.2.3 General conditions for variance. Except for historic structures as provided for in Section G107.2.1, the Board of Standards and Appeals is authorized to issue a variance only upon:

1. A determination that the new construction, substantial improvement, or other proposed development is located on a tax lot that, on November 16, 1983, was no more than 1/2 acre (0.2 hectare) in size. However, where the tax lot has been determined to be larger than 1/2 acre (0.2 hectare), the technical justification required for issuing the variance increases with the lot size;
2. Showing of good and sufficient cause;
3. Determination that failure to grant the variance would result in exceptional hardship to the applicant;
4. Determination that the granting of a variance will not result in:
 - a. Increased flood heights;
 - b. Additional threats to public safety;
 - c. Extraordinary public expense;
 - d. Nuisances;
 - e. Fraud on or victimization of the public; or
 - f. Conflict with existing local laws or ordinances; and
5. Determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

G107.2.4 Functionally dependent facilities. The Board of Standards and Appeals is authorized to issue a variance for the construction or substantial improvement of a functionally dependent facility provided that:

1. The criteria for Sections G107.2.1 through G107.2.3 are met; and
2. All methods and materials utilized minimize flood damage during the base flood and create no additional threats to public safety.

G107.3 Standards for variance. In reviewing applications for variances, the Board of Standards and Appeals shall consider all technical evaluations, all relevant factors, all other portions of this appendix and the following:

1. The danger that materials and debris may be swept onto other lands resulting in injury or damage;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;

4. The importance of the services provided by the proposed development to the community;
5. The availability of alternate locations for the proposed development that are not subject to flooding or erosion;
6. The relationship of the proposed development to the comprehensive plan and flood plain management program for that area;
7. The safety of access to the property in times of flood for ordinary and emergency vehicles;
8. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
9. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

G107.4 Notification of risks. Upon issuance of a variance, the Executive Director of the Boards of Standards and Appeals shall provide written notice to the owner and the applicant that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for each one hundred dollars of insurance coverage; and
2. That such construction below the base flood level increases risks to life and property.

G107.5 Records. The Board of Standards and Appeals shall:

1. Maintain a record of all variance actions, including justification for their issuance; and
2. Report such variances issued in its biennial report submitted to the Federal Emergency Management Agency (FEMA).

CHAPTER G2 DEFINITIONS

* SECTION BC G201 * DEFINITIONS

G201.1 General. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein.

G201.2 Definitions.

① **500-YEAR FLOOD ELEVATION.** The elevation of the flood having a 0.2-percent chance of being equaled or exceeded in any given year, as specified on FEMA FIRM 360497 or FEMA FIS 360497.

② **A-ZONE.** An area of special flood hazard without high velocity wave action. When not shown on the FIRMs, the water surface elevation may be determined from available data by the registered design professional of record in accordance with Section G103.3. See also "Area of special flood hazard."

AREA OF SPECIAL FLOOD HAZARD. The land in the flood plain delineated as subject to a 1-percent or greater chance of flooding in any given year. Such areas are designated on the Flood Insurance Rate Map (FIRM) as A-Zones, Limit of Moderate Wave Action (Coastal A-Zones), or V-Zones. Such areas are also known as the base flood plain or 100 year floodplain. Areas designated as X-Zones shall not be deemed areas of special flood hazard for the purposes of this Appendix.

BASE FLOOD. The flood having a 1-percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION. The elevation of the base flood, including wave height, as specified on FEMA FIRMs 360497 or as determined in accordance with Section G103.3. In areas designated as ZONE AO, the base flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map.

BASEMENT (FOR FLOOD ZONE PURPOSES). The portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL. An open lattice wall that is not part of the structural support of the building to which it is attached and that is intended through its design and construction to collapse under specific later loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

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COASTAL A-ZONE. An area within a special flood hazard area, shown on FEMA FIRMs 360497 as an area bounded by a "Limit of Moderate Wave Action," landward of a V-Zone or landward of an open coast without mapped V-Zones. In a Coastal A-Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, and not riverine flooding. During the base flood conditions, the potential for breaking wave heights must be greater than or equal to 1 foot, 6 inches (457 mm). In no case shall an area of special flood hazard be deemed a coastal A-Zone unless and until it has been identified as such on the adopted FEMA FIRMs 360497.

DESIGN FLOOD ELEVATION. The applicable elevation specified in ASCE 24, Tables 2-1, 4-1, 5-1, 6-1, or 7-1, depending on the structural occupancy category designated in ASCE 24, Table 1-1.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, operations and other land disturbing activities.

EXISTING CONSTRUCTION. See "Pre-FIRM development."

EXISTING STRUCTURE. See "Pre-FIRM development."

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land from:

- ✓ 1. The overflow of inland or tidal waters.
- ✓ 2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD-DAMAGE-RESISTANT MATERIALS. Any construction material, including finishes, capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

FLOOD INSURANCE RATE MAP (FIRM). The flood official map on which the Federal Emergency Management Agency (FEMA) has delineated areas of special flood hazard, base flood elevations, and the flood boundary and floodways.

FLOOD INSURANCE STUDY (FIS). The official report provided by the Federal Emergency Management Agency (FEMA) containing the Flood Insurance Rate Map (FIRM), the water surface elevation of the base flood and supporting technical data.

FLOODPROOFING, DRY. For buildings and structures that are nonresidential (for flood zone purposes), a combination of design modifications that results in the building's or structure's being water tight to the design flood elevation, including the attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water and with structural components having the capacity to resist loads as identified in ASCE 7.

FLOODPROOFING, WET. A floodproofing method designed to permit parts of the structure below the design flood elevation that are used for parking, storage, building access, or crawl space to intentionally flood, by equalizing hydrostatic pressures and by relying on the use of flood damage-resistant materials and construction techniques.

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Floodways are mapped only in the Boroughs of the Bronx and Staten Island.

FUNCTIONALLY DEPENDENT FACILITY. A facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading or unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HISTORIC STRUCTURE. A pre-FIRM building or structure:

1. Designated as a landmark or located within an historic district designated by the New York City Landmarks Preservation Commission;
2. Listed or preliminarily determined to be eligible for listing in the National or State Register of Historic Places; or
3. Determined by the Secretary of the U.S. Department of the Interior or the New York State Department of Parks and Recreation as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district.

LETTER OF MAP AMENDMENT (LOMA). An official amendment to the FIRM, issued and approved by the Federal Emergency Management Agency (FEMA), removing structures or tax lots or portions of tax lots from areas of special flood

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hazard, resulting from a demonstration that the pre-FIRM ground elevations are at or above the base flood elevation.

LETTER OF MAP REVISION BASED ON FILL (LOMR-F). An official amendment to the FIRM, issued and approved by the Federal Emergency Management Agency (FEMA), removing structures or tax lots or portions of tax lots from areas of special flood hazard, resulting from the post-FIRM placement of compacted fill, such that the new ground elevation is at or above the base flood elevation.

LETTER OF MAP REVISION (LOMR). An official amendment to the FIRM, issued and approved by the Federal Emergency Management Agency (FEMA), removing or adding structures or tax lots or portions of tax lots from areas of special flood hazard, which generally results from physical measures implemented that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area.

LOWEST FLOOR. The lowest floor of the lowest enclosed area, including crawl spaces and basements (for flood zone purposes).

Exception: The lowest floor shall not include any wet floodproofed spaces usable solely for vehicle parking, building access, storage or crawl space, provided that such enclosure is not built so as to render the structure in violation of this appendix, including that:

1. Such enclosure shall allow for the automatic entry and exit of floodwaters;
2. Such enclosure shall be constructed solely of flood-resistant materials and finishes;
3. Such enclosure shall have a floor elevation equal to or higher than the outside adjacent grade on at least one side; and
4. Such outside adjacent grade shall slope down, towards the source of flooding, providing positive drainage by gravity, thus preventing accumulations of water under or in the structure after the floodwaters recede without the use of pumps, pipes or drains.

MANUFACTURED HOME. A structure that is transportable in one or more sections, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Mobile Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE OF STRUCTURE. The price that a buyer is willing, but is not under any duty, to pay for a particular structure to an owner who is willing, but not obligated, to sell, exclusive of the value of the land, or of other buildings or structures on the same tax lot. The market value of a structure shall be determined in accordance with rules promulgated by the commissioner.

NATIONAL GEODETIC VERTICAL DATUM (NGVD). The national vertical datum standard established in 1929; used as a reference for establishing elevations within a flood plain.

NEW CONSTRUCTION. See "Post-FIRM development."

NONRESIDENTIAL (FOR FLOOD ZONE PURPOSES).

A building or structure that either:

1. Contains no space classified in Group I-1, R-1, R-2, or R-3, and contains no space that is accessory, as such term is defined in the *New York City Zoning Resolution*, to any Group I-1, R-1, R-2, or R-3 occupancy; or
2. Contains such space(s), but also contains space on the lowest floor that is not accessory, as such term is defined in the *New York City Zoning Resolution*, to a Group I-1, R-1, R-2, or R-3 occupancy.

NORTH AMERICAN VERTICAL DATUM (NAVD). The national vertical datum standard established in 1988, used as a reference for establishing elevations within a flood plain.

PATIENT CARE AREA (FOR FLOOD ZONE PURPOSES). Any space meeting the following conditions:

1. The space is located within a building or structure, or portion thereof, that is classified in Group I-2; and
2. The space is primarily used for the provision of medical services to persons, including, but not limited to, consultation,

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evaluation, monitoring and treatment services.

Exceptions: The following spaces shall not be considered patient care areas (for flood zone purposes):

1. "Emergency rooms or departments" as defined in 10 NYCRR 700.2(a)(2) and
2. Spaces primarily used for the provision of medical services identified in 10 NYCRR 703.6(c)(2)(i).

PRE-FIRM DEVELOPMENT. Any development:

1. Completed prior to November 16, 1983;
2. Under construction on November 16, 1983 provided that the start of construction was prior to said date; or
3. Completed on or after November 16, 1983 but that:
 - 3.1. Was not located within an area of special flood hazard at the start of construction; and
 - 3.2. Is now located within an area of special flood hazard as a result of a subsequent change to the FIRM.

PRE-FIRM STRUCTURE. See "Pre-FIRM development."

POST-FIRM DEVELOPMENT. Any development that is not pre-FIRM development.

POST-FIRM STRUCTURE. See "Post-FIRM development."

RECREATIONAL VEHICLE. A vehicle that is built on a single chassis, 400 square feet (37.16 m²) or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices and has no permanently attached additions.

RESIDENTIAL (FOR FLOOD ZONE PURPOSES). A building or structure containing any space that is either:

1. Classified in Group I-1, R-1, R-2, or R-3; or
2. Accessory, as such term is defined in the *New York City Zoning Resolution*, to any Group I-1, R-1, R-2, or R-3 occupancy.

Exception: Such a building or structure shall be considered nonresidential (for flood zone purposes) when also containing space on the lowest floor that is not accessory, as such term is defined in the *New York City Zoning Resolution*, to a Group I-1, R-1, R-2, or R-3 occupancy.

SAND DUNES. Naturally occurring accumulations of sand in ridges or mounds landward of a beach.

SHADED X-ZONE. The land in the floodplain delineated as subject to a 0.2-percent or greater chance of flooding, but less than one percent chance of flooding, in any given year. Such areas are designated on the Flood Insurance Rate Map (FIRM) as shaded X-Zones.

SPECIAL FLOOD HAZARD AREA. See "Area of special flood hazard."

START OF CONSTRUCTION. The date of permit issuance for: (i) post-FIRM developments; (ii) substantial improvements to pre-FIRM structures; and (iii) those pre-FIRM developments that, at the time of permit issuance, were not within an area of special flood hazard but that, prior to completion, were within an area of special flood hazard as a result of map change; provided the actual commencement of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of permit issuance and such construction activity is not thereafter suspended or abandoned for 180 days or more. For the purposes of this definition:

1. The actual commencement of construction means the first placement of permanent construction of a building (including a manufactured home or prefabricated building) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.
2. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for abasement (for flood zone purposes), footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building.
3. For a substantial improvement, the actual commencement of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, regardless of whether that alteration affects the external dimensions of the building.

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SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct pre-FIRM health, sanitary or safety code violations identified by the commissioner, the Fire Commissioner, the Commissioner of Housing Preservation and Development, or the Commissioner of Health and Mental Hygiene, and that are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

VARIANCE. A grant of relief from the requirements of this appendix, which permits construction in a manner otherwise prohibited by this appendix.

V-ZONE. An area of special flood hazard subject to high-velocity wave action.

**CHAPTER G3
CONSTRUCTION STANDARDS
SECTION BC G301
GENERAL**

G301.1 All developments. To the extent required by Section G102.1, all developments, including but not limited to utility installation, site improvements, placement of prefabricated buildings and manufactured homes, new building construction, alterations and repairs, shall be designed and constructed to resist the effects of flood hazards and flood loads in accordance with this appendix and ASCE 24.

G301.1.1 Multiple flood zones. For a structure that is located in more than one zone (for instance both an A-Zone and an X-Zone, or both an A-Zone and a V-Zone), the provisions associated with the most restrictive area of special flood hazard shall apply to the entire structure.

G301.2 Design requirements and load combinations. Any construction within the scope of Section G102.1, located in a special flood hazard area, shall be designed and constructed to resist the loads and load combinations specified in Chapter 16.

**SECTION BC G302
SUBDIVISIONS**

G302.1 General. Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development within an area of special flood hazard shall demonstrate that:

1. All such proposals are consistent with the need to minimize flood damage;
2. All public utilities and facilities, such as sewer, gas, electric and water systems, are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards.

G302.2 Subdivision requirements. The following requirements shall apply to any proposed subdivision, including proposals for manufactured home parks and subdivisions, any portion of which lies within an area of special flood hazard:

1. The area of special flood hazard, including floodways and V-Zones, as appropriate, shall be delineated on tentative and final subdivision plats;
2. Base flood elevations shall be shown on tentative and final subdivision plats;
3. Building lots shall be provided with adequate buildable area, in accordance with the *New York City Zoning Resolution*, outside the floodway; and
4. The design criteria for any utilities and facilities, as set forth in this appendix and appropriate *New York City Construction Codes*, shall be met.

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**SECTION BC G303
SITE IMPROVEMENT**

G303.1 Development in floodways. Development or land disturbing activity is prohibited in floodways unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the level of the base flood, in accordance with Section G103.5.

G303.2 Sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, or impairment of the facilities and systems.

G303.3 Water facilities. All new and replacement water facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24 to minimize or eliminate infiltration of floodwaters into the systems.

G303.4 Storm drainage. Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property and shall meet the requirements of ASCE 24.

G303.5 Streets and sidewalks. Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels and shall meet the requirements of Section G303.7.

G303.6 Retaining walls and driveways. Retaining walls and driveways shall meet the requirements of Section G303.7.

G303.7 Grading and fill. In areas of special flood hazard grading and/or fill shall not be approved:

1. Unless such fill is placed, compacted and sloped to minimize shifting, slumping and erosion during the rise and fall of flood water and, as applicable, wave action, in accordance with ASCE 24.
2. In floodways, unless it has been demonstrated through hydrologic and hydraulic analyses performed by an engineer in accordance with standard engineering practice that the proposed grading or fill, or both will not result in any increase in the flood levels during the occurrence of the design flood, in accordance with Section G103.5.
3. In coastal A-Zones and V-Zones, unless such fill is conducted and or placed to avoid diversion of water and waves towards any building or structure.

**SECTION BC G304
POST-FIRM CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS**

G304.1 A-Zone construction standards. In addition to the requirements of ASCE 24, the following standards shall apply to post-FIRM construction and substantial improvements located within A-Zones, other than Coastal A-Zones.

G304.1.1 Residential. For buildings or structures that are residential (for flood zone purposes), all post-FIRM new buildings and substantial improvements shall comply with the applicable requirements in Chapter G3 of this code and ASCE 24, and shall be elevated as follows:

1. **Lowest floor.** The lowest floor, including the basement (for flood zone purposes), shall be elevated to at or above the design flood elevation specified in ASCE 24, Table 2-1;
2. **Enclosures below the design flood elevation.** Enclosed spaces below the design flood elevation specified in ASCE 24, Table 2-1, shall be useable solely for parking of vehicles, building access, storage, or crawlspace, and shall be wet floodproofed in accordance with ASCE 24. Breakaway walls are not required in A-Zones;
3. **Under-floor spaces.** The finished ground level of an under-floor space, such as a crawl space, shall be equal to or higher than the outside finished ground level on at least one side.
4. **Materials.** Only flood-damage-resistant materials and finishes shall be utilized below the design flood elevation specified in ASCE 24, Table 5-1;
5. **Utilities and equipment.** Utilities and attendant equipment shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, or shall be constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24;
 - 5.1. **Fire protection systems and equipment.** The following fire protection systems and equipment shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, except that where the system or equipment or

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portion thereof serves only spaces located below such design flood elevation, the system or equipment or portion thereof may be located below such design flood elevation:

- ✓ 5.1.1. Sprinkler control valves that are not outside stem and yoke valves;
 - ✓ 5.1.2. Fire standpipe control valves that are not outside stem and yoke valves;
 - ✓ 5.1.3. Sprinkler booster pumps and fire pumps;
 - ✓ 5.1.4. Dry pipe valve-related electrically operated alarm appurtenances;
 - ✓ 5.1.5. Alarm control panels for water and non-water fire extinguishing systems;
 - ✓ 5.1.6. Alarm control panels for sprinkler systems, pre-action sprinkler systems, deluge sprinkler systems, and combined dry pipe and pre-action sprinkler systems;
 - ✓ 5.1.7. Electrically operated waterflow detection devices serving sprinkler systems; and
 - ✓ 5.1.8. Air compressors serving sprinkler systems and pre-action sprinkler systems.
- ✓ 5.2. Fire alarm systems and components. Where a zoning indicator panel is provided at the main building entrance in accordance with Section 907.6.3.1 and such panel is located at or below 5 feet (1524 mm) above the design flood elevation specified in ASCE 24, Table 7-1, at least one secondary zoning indicator panel complying with the following requirements shall be provided:
- 5.2.1. The secondary zoning indicator panel, associated controls, power supplies and means of transferring control shall be provided at least 5 feet (1524 mm) above the design flood elevation specified in ASCE 24, Table 7-1, in a location accessible to responding Fire Department personnel and approved by the department and the Fire Department; and
 - 5.2.2. Where the secondary zoning indicator panel or associated controls are only operable upon transfer of control from another zoning indicator panel, such transfer shall be by a means that is approved by the Fire Department.
- ✓ 5.3. Fuel-oil piping systems. The following requirements shall apply to fuel-oil piping systems, as defined by Section 202 of the *New York City Mechanical Code*:
- 5.3.1. Fill piping that does not terminate in a watertight terminal approved by the department shall terminate at least 3 feet (914 mm) above the design flood elevation specified in ASCE 24, Table 7-1; and
 - 5.3.2. Normal vent piping and emergency vent piping shall terminate at least 3 feet (914 mm) above the design flood elevation specified in ASCE 24, Table 7-1.
- ✓ 5.4. Plumbing systems and components. The structure shall comply with the following requirements:
- 5.4.1. Relief vents and fresh air intakes. Relief vents and fresh air intakes serving building traps in accordance with Section 1002.6 of the *New York City Plumbing Code* shall be carried above grade and shall terminate in a screened outlet that is located outside of the building and at or above the design flood elevation specified in ASCE 24, Table 7-1; and
 - 5.4.2. Reduced pressure zone backflow preventers. Reduced pressure principle backflow preventers complying with Section 608.13.2 of the *New York City Plumbing Code* and backflow preventers with intermediate atmospheric vents complying with Section 608.13.3 of the *New York City Plumbing Code* shall be located at or above the design flood elevation specified in ASCE 24, Table 7.1.
6. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and
7. **Special inspections.** Special inspections shall be as required by Section G105.

G304.1.2 Nonresidential. For buildings or structures that are nonresidential (for flood zone purposes), all post-FIRM new buildings and substantial improvements shall comply with the applicable requirements in Chapter G3 of this code and ASCE 24, and shall comply with either of the following:

- 1. **Elevation option.** The structure shall comply with Items 1 through 7 of Section G304.1.1; or

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2. **Dry floodproofing option.** The structure shall comply with the following:

2.1. **Elevation of dry floodproofing.** The structure shall be dry floodproofed to at or above the design flood elevation specified in ASCE 24, Table 6-1;

2.2. **Dwelling units, patient care areas (for flood zone purposes) and sleeping areas.** Where dwelling units, patient care areas (for flood zone purposes) or spaces intended to be used by persons for sleeping purposes are located in a building utilizing the dry floodproofing option, the following additional requirements shall be met:

2.2.1. All rooms and spaces within dwelling units, patient care areas (for flood zone purposes) and all spaces intended to be used by persons for sleeping purposes shall be located at or above the design flood elevation;

2.2.2. A restrictive declaration noting the above restriction shall be filed with the City Register or County Clerk, and the page number and liber number shall be identified in the permit application and on the certificate of occupancy.

2.3. **Utilities and equipment.** Utilities and attendant equipment shall be located within the dry floodproofed enclosure, or may be located outside the dry floodproofed enclosure provided that they are located at or above the design flood elevation specified in ASCE 24, Table 7-1, or are constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24.

2.3.1. **Additional requirements.** The structure shall comply with Items 5.1 through 5.4 of Section G304.1.1.

2.4. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and

2.5. **Special inspections.** Special inspections shall be as required by Section G105.

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G304.2 V-Zone construction standards. In addition to the requirements of ASCE 24, the following standards shall apply to post-FIRM construction and substantial improvements located within V-Zones.

1. **Foundation.** The lowest floor shall be elevated on adequately anchored pilings or columns and securely anchored to such piles or columns to prevent floatation, collapse and lateral movement resulting from wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16 and this appendix.

2. **Lowest horizontal member.** The lowest portion of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) shall be at or above the design flood elevation specified in ASCE 24, Table 4-1.

3. **Below the lowest horizontal member.** Spaces below the lowest horizontal member shall be either:

3.1. Free of obstructions; or

3.2. Enclosed with breakaway walls providing unconditioned space useable solely for parking of vehicles, building access, storage or crawl space. Such breakaway walls shall:

3.2.1. Be of an open lattice type construction only;

3.2.2. Meet the load requirements of Section 5.3.3 of ASCE 7; and

3.2.3. Meet the additional requirements of ASCE 24.

4. **Materials.** Only flood-damage-resistant materials and finishes shall be utilized below the design flood elevation specified in ASCE 24, Table 5-1;

5. **Utilities and equipment.** Utilities and attendant equipment shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, or shall be constructed so as to both resist the wave action and prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24;

5.1 **Additional requirements.** The structure shall comply with Items 5.1 through 5.4 of Section G304.1.1.

* 6. **Prohibitions.** The following shall be prohibited in V-Zones:

6.1. Development, including land-disturbing activities, seaward of the reach of mean high tide;

6.2. Use of fill for structural support of buildings; and

6.3. Man-made alterations of sand dunes that would increase potential damage to buildings.

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7. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and
8. **Special inspections.** Special inspections shall be as required by Section G105.

* **G304.3 Coastal A-Zone construction standards.** In addition to the requirements of ASCE 24, all post-FIRM new buildings and substantial improvements in a Coastal A-Zone shall comply with the V-Zone construction standards of Section G304.2.

Exceptions: The following structural systems shall be permitted in a Coastal A-Zone:

1. **Wave-resisting stem wall foundation.** Stem walls supporting a floor system above, and backfilled with soil or gravel to the underside of the floor system, shall be permitted in Coastal A-Zones. The design and construction of the shallow foundation system shall comply with the following:

1.1 The underside of such floor system shall be located at or above the design flood elevation specified in ASCE 24, Table 4-1.

1.2 Stem walls enclosing areas below the design flood elevation shall not be permitted. Stem walls shall be designed to transfer all vertical and lateral forces to the slab above and to the foundation elements below;

* 1.3 The design shall consider all forces resulting from flooding, including wave action, debris impact, erosion, and local scour;

1.4 The design shall consider all forces resulting from soil pressure behind the walls, including the effect of hydrostatic loads, and all live and dead surcharge loads from the slab above;

1.5 Flood openings shall not be required in stem walls constructed in accordance with this section;

1.6 Where soils are susceptible to erosion and local scour, stem walls shall be supported by deep footings;

* 1.7 Shallow foundations including spread footing, mat and raft foundations shall be designed to prevent sliding, uplift, or overturning when exposed to the combination of loads in ASCE Section 1.6.2.

2. **Wave-resisting dry floodproofing wall and foundation system.** Buildings that are nonresidential (for flood zone purposes) and that are located in Coastal A-Zones shall be permitted to be dry floodproofed in accordance with Section G304.1.2 provided the structure is dry floodproofed to at or above the design flood elevation specified in ASCE 24, Table 6-1. For buildings or structures utilizing this exception, construction documents shall include calculations demonstrating that the foundation and building, including flood shields if provided, will resist the wave action, including the combination of loads in ASCE Section 1.6, to at or above the design flood elevation specified in ASCE 24, Table 4-1.

G304.4 Construction standards for shaded X-Zones. In shaded X-Zones, buildings that include I-2 occupancies that are hospitals shall comply with the requirements of this chapter and the applicable provisions of ASCE 24 for A-Zone construction.

G304.5 Additional construction standards with respect to connections for temporary external generators, boilers and chillers. In addition to the other requirements of this chapter, connections for temporary external generators, boilers and chillers shall be provided in accordance with Sections G304.5.1 through G304.5.4.

G304.5.1 Group I-1 and adult homes, enriched housing, community residences and intermediate care facilities. An occupancy that is classified as Group I-1, or that is an adult home, enriched housing, community residence or intermediate care facility and classified as Group R pursuant to an exception to Section 308.2.1 or 308.2.2, shall comply with the following requirements:

1. **Connections for temporary external generators.** Electrical connections shall be provided allowing for the connection of temporary external generators capable of providing power for at least 72 hours for, at a minimum, the following systems:

1.1. Exit signs and means of egress illumination required by Chapter 10 and serving such occupancy;

1.2. Fire alarm systems serving such occupancy;

1.3. For buildings having occupied floors located more than 75 feet (22 860 mm) above the lowest level of fire

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department vehicle access, at least one elevator that serves all floors; and

1.4. Lighting in such occupancy, sufficient to maintain illumination in accordance with Section 1205.3, for (i) spaces primarily used for the provision of medical services to persons, including, but not limited to, consultation, evaluation, monitoring and treatment services and (ii) spaces intended to be used by persons for sleeping purposes.

Exception: Connections for temporary external generators shall not be required for buildings with emergency or standby power systems that are permanently installed above the design flood elevation specified in Table 7-1 of ASCE 24 and capable of providing power for at least 72 hours to the systems identified in Item 1 of Section G304.5.1. Natural gas shall be a permitted fuel supply.

2. **Flood protection for temporary external generator connections.** Electrical connections installed in accordance with Item 1 of Section G304.5.1 shall be located at or above the design flood elevation specified in Table 7-1 of ASCE 24.

3. **Emergency connection plan.** Prior to sign-off of work by the department, a plan shall be submitted to the department that identifies how the temporary external generators will be connected and capable of providing power for the occupancy in accordance with Item 1 of Section G304.5.1 within 72 hours after failure of the normal power supply.

G304.5.2 Group I-2 hospitals. An occupancy that is a Group I-2 hospital shall comply with the following requirements:

1. **Connections for temporary external generators.** Electrical connections shall be provided allowing for the connection of temporary external generators capable of providing power for at least 72 hours for, at a minimum, the following systems:

1.1. All electrical services serving such occupancy for which emergency or standby power must be provided in accordance with any other applicable local, state or federal law or rule; and

1.2. Air conditioning and cooling systems serving such occupancy, sufficient to maintain temperature and humidity in accordance with Section 1204, for (i) spaces primarily used for the provision of medical services to persons, including, but not limited to, consultation, evaluation, monitoring and treatment services and (ii) spaces intended to be used by persons for sleeping purposes.

Exception: Connections for temporary external generators shall not be required for buildings that have emergency or standby power systems that are permanently installed above the design flood elevation specified in Table 7-1 of ASCE 24 and capable of providing power for at least 72 hours to the systems identified in Item 1 of Section G304.5.2. Natural gas shall be a permitted fuel supply.

2. **Connections for temporary external boilers and chillers.** Where boiler and chiller plants are located below the design flood elevation specified in Table 7-1 of ASCE 24 and serve (i) spaces primarily used for the provision of medical services to persons, including, but not limited to, consultation, evaluation, monitoring and treatment services or (ii) spaces intended to be used by persons for sleeping purposes, connections shall be provided to allow for the connection of temporary external boilers and chillers capable of maintaining temperature and humidity for such spaces in accordance with Section 1204 for at least 72 hours.

3. **Flood protection for temporary external generator, boiler and chiller connections.** Electrical connections installed in accordance with Item 1 of Section G304.5.2 and connections installed in accordance with Item 2 of Section G304.5.2 shall be located at or above the design flood elevation specified in Table 7-1 of ASCE 24.

4. **Emergency connection plan.** Prior to sign-off of work by the department, the following shall be submitted to the department:

4.1. For an occupancy required to comply with Item 1 of Section G304.5.2, a plan that identifies how the temporary external generators will be connected and capable of providing power for the occupancy in accordance with such item within 72 hours after failure of the normal power supply; and

4.2. For an occupancy required to comply with Item 2 of Section G304.5.2, a plan that identifies how the temporary external boilers and chillers will be connected and capable of maintaining temperature and humidity for specified spaces in accordance with Section 1204 within 72 hours after failure of the primary boiler and chiller plants.

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G304.5.3 Group I-2 nursing homes. An occupancy that is a Group I-2 nursing home shall comply with Section G304.5.2.

Exception: Such occupancy is not required to comply with Items 1.2, 2 and 4.2 of Section G304.5.2.

G304.5.4 Group I-2 occupancies, other than hospitals and nursing homes. A Group I-2 occupancy, other than a hospital or a nursing home, shall comply with Section G304.5.1.

SECTION BC G305 MANUFACTURED HOMES

G305.1 General. Manufactured homes shall be prohibited in V-Zones. Within A-Zones, all new, replaced or substantially improved manufactured homes shall be:

1. Installed using methods and practices that minimize flood damage;
2. Elevated to or above the design flood elevation specified in ASCE 24, Table 2-1;
3. Placed on a permanent, reinforced foundation that is designed in accordance with ASCE 24; and
4. Securely anchored to a foundation system designed to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

SECTION BC G306 RECREATIONAL VEHICLES

G306.1 General. The following shall apply to placement of all recreational vehicles within areas of special flood hazard:

1. Placement in V-Zones and floodways prohibited. The placement of recreational vehicles is prohibited in V-Zones and floodways.
2. Temporary placement in A-Zones. Within A-Zones, recreational vehicles shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.
3. Permanent placement in A-Zones. Within A-Zones, recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for 180 or more consecutive days, shall meet the requirements of Section G305 for manufactured homes.

SECTION BC G307 TANKS

G307.1 Underground tanks. Underground tanks in areas of special flood hazard shall be designed, constructed, installed, and anchored to prevent flotation, collapse and lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of flooding to the design flood elevation, in accordance with ASCE 24.

G307.2 Above-ground tanks. Above-ground tanks in areas of special flood hazard shall be:

1. Elevated to or above the design flood elevation specified in ASCE 24, Table 7-1; or
2. Designed, constructed, installed, and anchored to prevent flotation, collapse and lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of flooding to the design flood elevation, in accordance with ASCE 24.

G307.3 Tank inlets and vents. In areas of special flood hazard, tank inlets, fill openings, outlets and vents shall be:

1. Installed at or above the design flood elevation specified in ASCE 24, Table 7-1, or fitted with covers designed to prevent the inflow of floodwater and outflow of the contents of the tanks during conditions of flooding to the design flood elevation, in accordance with ASCE 24; and
2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of flooding to the design flood elevation, in accordance with ASCE 24.

G307.4 Additional fuel-oil storage capacity. Fuel-oil storage capacity in areas of special flood hazard and shaded X-Zones shall comply with the following:

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1. In areas of special flood hazard, fuel oil on the lowest story having its floor above the applicable design flood elevation shall be limited to 3,000 gallons (11 356 L) and no storage tank may exceed the lesser of 1,500 gallons (5678 L) or the quantity of fuel-oil needed to operate the emergency or standby generator(s) served by such tank for 24 hours and
2. In shaded X-Zones, fuel oil on the lowest story having its floor above the 500-year flood elevation shall be limited to 3,000 gallons (11 356 L) and no storage tank may exceed the lesser of 1,500 gallons (5678 L) or the quantity of fuel-oil needed to operate the emergency or standby generator(s) served by such tank for 24 hours.

G307.4.1 Additional requirements. Where fuel-oil storage capacity exceeds the quantity set forth in Section 1305.11.1.3 of the *New York City Mechanical Code*, the fuel-oil storage shall comply with Sections G307.4.1.1 and G307.4.1.2 in addition to Section 1305 of the *New York City Mechanical Code*.

G307.4.1.1 Vault. Each fuel-oil storage tank shall be separately enclosed in a vault complying with the following requirements:

1. The walls, floor, and top of such vault shall have a fire resistance rating of not less than 3 hours;
2. The walls of such vault shall be bonded to the floor of such vault;
3. The top and walls of such vault shall be independent of the building structure;
4. An exterior building wall having a fire resistance rating of not less than 3 hours shall be permitted to serve as a wall of such vault and
5. The vault shall be located in a dedicated room or area of the building that is separated vertically and horizontally from other areas of the building by construction having a fire resistance rating of not less than 2 hours.

G307.4.1.2 Extinguishing system. Fuel-oil storage shall be protected with an alternative automatic fire-extinguishing system complying with Section 904.

G307.5 Elevation of certain tanks and containers serving critical facilities. The following tanks and containers shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, unless such tanks and containers serve buildings that include I-2 occupancies that are hospitals, in which case such tanks and containers shall be located at or above the greater of (i) the design flood elevation specified in ASCE 24, Table 7-1, or (ii) the 500-year flood elevation. Such tanks and containers must be designed to maintain service to such structure during flood conditions and shall comply with section 9.6 of ASCE 24;

1. Medical and compressed gas storage tanks, oxygen tanks, and other cryogenic system storage tanks;
2. Hazardous material storage tanks;
3. Stationary compressed gas containers;
4. Stationary cryogenic containers; and
5. Stationary flammable gas storage containers.

SECTION BC G308 OTHER BUILDING WORK

G308.1 Detached accessory structures. Detached accessory structures shall be anchored to prevent flotation, collapse and lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of flooding to the design flood elevation. Enclosed accessory structures usable solely for parking or storage shall be wet floodproofed and shall have flood openings to allow for the automatic entry and exit of flood waters designed in accordance with ASCE 24.

G308.2 Fences. Fences in floodways that may block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the requirement of Section G103.5.

G308.3 Oil derricks. Oil derricks located in areas of special flood hazard shall be designed in conformance with ASCE 24.

G308.4 Retaining walls, sidewalks and driveways. Retaining walls, sidewalks and driveways shall meet the requirements of Section G303.7.

G308.5 Prefabricated swimming pools in floodways. Prefabricated swimming pools in floodways shall meet the requirements of Section G103.5.

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G308.6 Temporary flood shields. Temporary flood shields shall be permitted in accordance with Section 6.2.3 of ASCE 24.

G308.7 Temporary stairs and ramps. Temporary stairs and ramps shall comply with the requirements of Sections G308.7.1 and G308.7.2.

G308.7.1 Evacuated buildings. Temporary stairs and ramps shall be permitted to provide elevated ingress and egress in compliance with Item 3 of Section 6.2.2 of ASCE 24 for buildings or portions of buildings that are planned to be evacuated during design flood conditions, except for maintenance and emergency personnel, provided that such temporary stairs and ramps shall not be permitted to serve as a required means of egress for a dwelling unit or for any area described in Item 2.2.1 of Section G304.1.2 required to be located at or above the design flood elevation.

G308.7.2 Existing buildings. Temporary stairs and ramps for an existing building or portions thereof shall be permitted to provide elevated ingress and egress in compliance with Item 3 of Section 6.2.2 of ASCE 24, including as a required means of egress for dwelling units or for areas described in Item 2.2.1 of Section G304.1.2 required to be located at or above the design flood elevation, where such temporary stairs and ramps comply with Sections 1009 and 1010.

SECTION BC G309

TEMPORARY STRUCTURES AND TEMPORARY STORAGE

G309.1 Temporary structures. Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings to allow for the automatic entry and exit of floodwaters.

G309.2 Temporary storage. Temporary storage includes storage of goods and materials for a period of fewer than 180 days. Stored materials shall not include hazardous materials.

G309.3 Floodway encroachment. Temporary structures and temporary storage in floodways shall meet the requirements of Section G103.5.

SECTION BC G310

UTILITY AND MISCELLANEOUS GROUP U BUILDINGS AND OTHER SIMILAR STRUCTURES

G310.1 Utility and miscellaneous Group U buildings and other similar structures. Section G310 shall govern utility and miscellaneous Group U buildings that are identified in Section 312 and other similar structures, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, sheds, stables, and towers.

G310.2 Flood loads. Utility and miscellaneous Group U buildings and similar structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.

G310.3 Elevation. Utility and miscellaneous Group U buildings and similar structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is at or above the design flood elevation specified in ASCE 24.

G310.4 Enclosures below design flood elevation. Fully enclosed areas below the design flood elevation shall comply with Section G304.

G310.5 Flood-damage-resistant materials. Flood-damage-resistant materials shall be used below the design flood elevation.

G310.6 Protection of mechanical, plumbing and electrical systems. Mechanical, plumbing and electrical systems, including plumbing fixtures, shall be elevated to or above the design flood elevation.

Exception: The following shall be permitted to be located below the design flood elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation in compliance with the flood-resistant construction requirements of this code:

1. Electrical systems, equipment and components;
2. Heating, ventilating, air conditioning, and plumbing appliances;

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3. Plumbing fixtures;
4. Duct systems; and
5. Other service equipment.

Electrical wiring systems shall be permitted to be located below the design flood elevation provided they conform to the provisions of the *New York City Electrical Code*.

SECTION BC G311 RETROACTIVE REQUIREMENTS

G311.1 General. Notwithstanding any other provision of the *New York City Construction Codes*, the provisions of this section shall apply retroactively to all buildings and structures specified herein.

G311.2 Connections for temporary external generators. The following buildings shall be provided with connections for temporary external generators in accordance with Sections G304.5.1 through G304.5.4, as applicable, by January 1, 2033, and a report detailing compliance with such requirements shall be filed with the department in accordance with Section G311.2.2 by such date:

1. Buildings whose main use or dominant occupancy is Group I-1 and that are located in an area of special flood hazard;
2. Buildings whose main use or dominant occupancy is an adult home, enriched housing, community residence or intermediate care facility that is classified as occupancy Group R pursuant to an exception to Section 308.2.1 or 308.2.2 and that are located in an area of special flood hazard;
3. Buildings whose main use or dominant occupancy is Group I-2 hospital and that are located in an area of special flood hazard or shaded X-Zone;
4. Buildings whose main use or dominant occupancy is Group I-2 nursing home and that are located in an area of special flood hazard; and
5. Buildings whose main use or dominant occupancy is Group I-2, other than hospitals and nursing homes, and that are located in an area of special flood hazard.

G311.2.1 Modification to the area of special flood hazard or shaded X-Zone. Where the area of special flood hazard or shaded X-Zone is modified on or after the effective date of this section, any building identified in Section G311.2 and newly identified as being within such modified area of special flood hazard or shaded X-Zone shall, no later than 20 years following the adoption of such modification, comply with the retroactive requirements of Section G311.2. The owner of such building shall, no later than 20 years following the adoption of such modification, file with the department a report detailing compliance with such requirements in accordance with Section G311.2.2.

G311.2.2 Report of compliance. The owner of a building required to comply with the provisions of Section G311.2 shall file with the department, by January 1, 2033, a report prepared by a registered design professional or licensed master electrician (i) certifying that the requirements of Section G311.2 have been satisfied and detailing how such requirements were satisfied or (ii) certifying that the building met or was altered to meet the provisions of any applicable exception in Sections G304.5.1 or G304.5.2.

G311.2.3 Filing. The department may promulgate rules establishing filing fees for the review and examination of such reports.

G311.3 Connections for temporary external boilers and chillers. Buildings whose main use or dominant occupancy is Group I-2 hospital that are located in an area of special flood hazard or shaded X-Zone shall be provided with connections for temporary external boilers and chillers in accordance with Section G304.5.2 by January 1, 2033, and a report detailing compliance with such requirements shall be filed with the department in accordance with Section G311.3.2 by such date.

G311.3.1 Modification to the area of special flood hazard or shaded X-Zone. Where the area of special flood hazard or shaded X-Zone is modified on or after the effective date of this section, any building whose main use or dominant occupancy is Group I-2 hospital and that is newly identified as being within such modified area of special flood hazard or shaded X-Zone shall comply with the retroactive requirements of Section G311.3 no later than 20 years following the adoption of such modification. The owner of such building shall file with the department a report detailing compliance with such requirements in accordance with section G311.3.2 no later than 20 years following the adoption of such modification.

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G311.3.2 Report of compliance. The owner of a building required to comply with the provisions of Section G311.3 shall file with the department, by January 1, 2033, a report prepared by a registered design professional (i) certifying that the requirements of Section G311.3 have been satisfied and detailing how much requirements were satisfied or (ii) certifying that any boiler and chiller plants that serve the spaces specified in Item 2 of Section G304.5.2 are located at or above the design flood elevation specified in Table 7-1 of ASCE 24.

G311.3.3 Filing. The department may promulgate rules establishing filing fees for the review and examination of such reports.

* **CHAPTER G4** *

REFERENCED STANDARDS

SECTION BC G401

GENERAL ✓

G401.1 General. This chapter lists the standards that are referenced in various sections of this appendix. The standards are listed herein by the promulgating agency of the standard, the standard identification, the effective date and title and the section or sections of this document that reference the standard.

G401.2 Subsequent additions, modifications or deletions. Refer to the rules of the department for any subsequent additions, modifications or deletions that may have been made to these standards in accordance with Section 28-103.19 of the *Administrative Code*.

G401.3 Applicability. The application of the referenced standards shall be as specified in Section 102.4.

G401.4 Reserved.

G401.5 Reserved.

G401.6 Reserved.

SECTION BC G402

STANDARDS

✓	<u>ASCE 7-05</u>	<u>Minimum Design Loads for Buildings and Other Structures</u>	G104.5.2, G201.2, G304.2
*	<u>ASCE 24-05*</u>	* <u>Flood-Resistant Design and Construction</u>	G103.1, G104.3, G104.5.1, G104.5.2, G105.2, G105.3.1, G201.2, G301.1, G303.2, G304.1.2, G304.2, G305.1, G307.1, G307.2, G307.3, G308.1, G308.3

*As modified in Chapter G5.

FEMA FIS 360497	Flood Insurance Study, Community Number 360497, Revised September 5, 2007; Federal Emergency Management Agency	G102.2
FEMA PFIS 360497	Preliminary Flood Insurance Study, Community Number 360497, Federal Emergency Management Agency	G102.2.1, G102.2.2, G102.3.1.1, G102.3.2.2
FEMA FIRMs 360497	Flood Insurance Rate Map, Community Number 360497, Panel Numbers 1 through 0457, Revised September 5, 2007;	G102.2, G102.3, G102.3.1, G102.3.2,

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	Federal Emergency Management Agency, with the following Letter of Map Revision:	G103.3, G201.2
	<i>Letter of Map Revision effective September 29, 2008, FEMA case # 08-02-0948P, revising FIRM panel 0111.</i>	
FEMA FIRMs 360497	Preliminary Flood Insurance Rate Map, Community Number 360497, Federal Emergency Management Agency	G102.2.1, G102.2.2, G102.3.1.1, G102.3.2.1
FEMA FORM 086-0-34	Floodproofing Certificate; Federal Emergency Management Agency	G105.3
FEMA FORM 086-0-33	Elevation Certificate; Federal Emergency Management Agency	G105.3
HUD 24 CFR Part 3280-94	Manufactured Home Construction and Safety Standards, 1994	G201.2

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 CHAPTER G5
 MODIFICATIONS TO REFERENCED STANDARDS
 SECTION BC G501
 MODIFICATIONS

 * *

The following amendments are hereby made to the referenced standards listed in Section G401.

G501.1 Amendments to ASCE 24-05. The following amendments are hereby made to the applicable sections of ASCE 24-05. Refer to the rules of the department for any subsequent additions, modifications or deletions that may have been made to this standard in accordance with Section 28-103.19 of the *Administrative Code*.

Section 1.1. Section 1.1 (Scope) is amended by deleting Items 1 through 4, and by adding the following paragraph to read as follows:

The scope of this standard is as provided for in Section G102.1 of the *New York City Building Code, Appendix G.*

* Section 1.1.2. A new Section 1.1.2 is added to read as follows:

1.1.2 High-risk flood hazard areas. Notwithstanding any other provision in this standard, no special flood hazard in New York City shall be classified as alluvial fan area, flash flood area, mudslide area, ice jam and debris area, erosion-prone area, high-velocity flow area.

* Section 1.2. Section 1.2 (Definitions) is amended by modifying only the following definitions: “Definitions”

→ **Design flood elevation**—The applicable elevation specified in Table 2-1, 4-1, 5-1, 6-1, or 7-1, depending on the structural occupancy category designated in Table 1-1.

→ **High-risk flood hazard area**—An area designated as a coastal high hazard area, being those areas identified on the FIRM as a V-Zone or Coastal A-Zone.

Nonresidential—As defined in Section G201 of the *New York City Building Code, Appendix G.*

Residential—As defined in Section G201 of the *New York City Building Code, Appendix G.*

Section 1.4.3. Table 1-1 of Section 1.4.3 (Classification of Structures) is amended to read as follows:

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Structural Occupancy Categories for Flood-Resistant Design/Construction requirements

TABLE 1-1

CLASSIFICATION OF STRUCTURES FOR FLOOD-RESISTANT DESIGN AND CONSTRUCTION
(CLASSIFICATION SAME AS NEW YORK CITY BUILDING CODE TABLE 1604.5)

STRUCTURAL OCCUPANCY/ CATEGORY	NATURE OF OCCUPANCY
I	Buildings and other structures that represent a low hazard to human life in the event of failure, including but not limited to: <ol style="list-style-type: none"> 1. Agricultural facilities. 2. Certain temporary facilities. 3. Minor storage facilities.
II	Buildings and other structures except those listed in Structural Occupancy Categories I, III and IV
III	Buildings and other structures that represent a substantial hazard to human life in the event of failure, including but not limited to: <ol style="list-style-type: none"> 1. Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300. 2. Buildings and other structures containing elementary school, secondary school or day care facilities with an occupant load greater than 250. 3. Buildings and other structures containing adult education facilities, such as colleges and universities with an occupant load greater than 500. 4. Group I-2 occupancies with an occupant load of 50 or more resident patients but not having surgery or emergency treatment facilities. 5. Group I-3 occupancies. 6. Any other occupancy with an occupant load greater than 5,000^a. 7. Power-generating stations, water treatment facilities for potable water, waste water treatment facilities and other public utility facilities not included in Structural Occupancy Category IV. 8. Buildings and other structures not included in Structural Occupancy Category IV containing sufficient quantities of toxic or explosive substances to be dangerous to the public if released.
IV	Buildings and other structures designated as essential facilities, including but not limited to: <ol style="list-style-type: none"> 1. Group I-2 occupancies having surgery or emergency treatment facilities. 2. Fire, rescue, ambulance and police stations and emergency vehicle garages. 3. Designated earthquake, hurricane or other emergency shelters. 4. Designated emergency preparedness, communications and operations centers and other facilities required for emergency response. 5. Power-generating stations and other public utility facilities required as emergency backup facilities for Structural Occupancy Category IV structures. 6. Structures containing highly toxic materials as defined by Section 307 where the quantity of the material exceeds the maximum allowable quantities of Table 307.1(2). 7. Aviation control towers, air traffic control centers and emergency aircraft hangars. 8. Buildings and other structures having critical national defense functions. 9. Water storage facilities and pump structures required to maintain water pressure for fire suppression.

a. For purposes of occupant load calculation, occupancies required by Table 1004.1.1 to use gross floor area calculations shall be permitted to use net floor areas to determine the total occupant load.

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Old Elevation Requirements

Section 2.3. Table 2-1 of Section 2.3 (Elevation Requirements) is amended to read as follows:

**TABLE 2-1
MINIMUM ELEVATION OF THE TOP OF LOWEST FLOOR
RELATIVE TO DESIGN FLOOD ELEVATION (DFE)—A-ZONES^a**

STRUCTURAL OCCUPANCY CATEGORY ^a	MINIMUM ELEVATION OF LOWEST FLOOR
I	DFE=BFE
II (1- and 2-family dwellings)	DFE=BFE+ 2 ft
II ^{c, d} (all others)	DFE=BFE+ 1 ft
III ^{c, d}	DFE=BFE+ 1 ft
IV ^{c, d}	DFE=BFE+ 2 ft

- a. Minimum elevations shown in Table 2-1 do not apply to V Zones (see Table 4-1). Minimum elevations shown in Table 2-1 apply to A-Zones unless specific elevation requirements are given in Section 3 of this standard.
- b. See Table 1-1 or Table 1604.5 of the *New York City Building Code*, for structural occupancy category descriptions.
- c. For nonresidential buildings and nonresidential portions of mixed-use buildings, the lowest floor shall be allowed below the minimum elevation if the structure meets the floodproofing requirements of Section 6.
- d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

Section 4.4. Table 4-1 of Section 4.4 (Elevation Requirements) is amended to read as follows:

**TABLE 4-1
MINIMUM ELEVATION OF BOTTOM OF LOWEST SUPPORTING
HORIZONTAL STRUCTURAL MEMBER OF LOWEST FLOOR
RELATIVE TO DESIGN FLOOD ELEVATION (DFE)—V-ZONES AND COASTAL A-ZONES**

STRUCTURAL OCCUPANCY CATEGORY ^a	MEMBER ORIENTATION RELATIVE TO THE DIRECTION OF WAVE APPROACH	
	Parallel ^b	Perpendicular ^b
I	DFE=BFE	DFE=BFE
II (1- and 2-family dwellings)	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft
II ^c (all others)	DFE=BFE	DFE=BFE+ 1 ft
III ^c	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft
IV ^c	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft

New Elevation Requirements

- a. See Table 1-1, or Table 1604.5 of the *New York City Building Code*, for structural occupancy category descriptions.
- b. Orientation of lowest horizontal structural member relative to the general direction of wave approach; parallel shall mean less than or equal to +20 degrees from the direction of approach; perpendicular shall mean greater than +20 degrees from the direction of approach.
- c. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

Section 4.6.1. Section 4.6.1 (Breakaway Walls) is amended by adding the following sentence:

All breakaway walls enclosing spaces below the DFE in V-Zones shall be open lattice, and not solid, with such enclosed spaces constructed as unconditioned per the *New York State Energy Conservation Construction Code*.

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Flood-Damage-Resistant-Materials Use: Minimum Elevation for Must Use

Section 5.1. Table 5-1 of Section 5.1 (Materials, General) is amended to read as follows:

TABLE 5-1
MINIMUM ELEVATION, RELATIVE TO DESIGN FLOOD ELEVATION (DFE), BELOW WHICH FLOOD-DAMAGE-RESISTANT MATERIALS SHALL BE USED

STRUCTURAL OCCUPANCY CATEGORY ^a	A-ZONE	Coastal High Hazard Areas and Coastal A-Zones	
		Orientation Parallel ^b	Orientation Perpendicular ^b
I	DFE=BFE	DFE=BFE	DFE=BFE
II (1- and 2-family dwellings)	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft
II ^c (all others)	DFE=BFE+ 1 ft	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft
III ^c	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft	DFE=BFE+ 3 ft
IV ^c	DFE=BFE+ 3 ft	DFE=BFE+ 2 ft	DFE=BFE+ 3 ft

- a. See Table 1-1, or Table 1604.5 of the *New York City Building Code*, for structural occupancy category descriptions.
- b. Orientation of lowest horizontal structural member relative to the general direction of wave approach; parallel shall mean less than or equal to +20 degrees from the direction of approach; perpendicular shall mean greater than +20 degrees from the direction of approach.
- c. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

Section 5.2.6. Section 5.2.6 (Finishes) shall be amended to read as follows:

5.2.6 Finishes and other materials. Interior and exterior finishes, as well as any materials not otherwise provided for in Sections 5.2.1 through 5.2.5, shall be flood damage-resistant materials in accordance with FEMA Technical Bulletin 2/August 2008, Flood Damage-Resistant Materials Requirement for Buildings Located in Special Flood Hazard Areas, or shall be required to be approved by the authority having jurisdiction.

Section 6.2. Table 6-1 of Section 6.2 (Dry Floodproofing) is amended to read as follows:

TABLE 6-1
MINIMUM ELEVATION OF FLOODPROOFING, RELATIVE TO DESIGN FLOOD ELEVATION (DFE)—A-ZONES

STRUCTURAL OCCUPANCY CATEGORY ^a	MINIMUM ELEVATION OF FLOODPROOFING ^b
I	DFE=BFE+ 1 ft
II ^{c, d}	DFE=BFE+ 1 ft
III ^d	DFE=BFE+ 1 ft
IV ^d	DFE=BFE+ 2 ft

- a. See Table 1-1, or Table 1604.5 of the *New York City Building Code*, for structural occupancy category descriptions.
- b. Wet or dry floodproofing shall extend to the same level.
- c. Dry floodproofing of residential buildings and residential portions of mixed use buildings shall not be permitted.
- d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

Section 6.2.2. Item 3 of Section 6.2.2 (Dry Floodproofing Requirements) is amended to read as follows:

3) Have either:

- 3.1. All required means of egress elevated to or above the applicable DFE specified in Table 6-1, capable of providing human ingress and egress during the design flood; or
- 3.2. At least one elevated door located in close proximity to each required means of egress to the exterior that is to be blocked by flood shields or flood control devices, such that the face of the elevated door itself, and not merely its directional signage, is clearly visible to a person approaching the blocked egress door(s). Such door(s) shall be elevated to at or above the applicable DFE specified in Table 6-1, capable of providing human ingress and egress during the design flood. Such door(s) shall meet all *New York City Building Code* requirements for a required means of egress to the exterior of the structure including hardware and signage, but shall not be required to comply with the occupant load calculations, unless the structure is intended for occupancy during the design flood. Such door may be accessed by open steps and shall not be required to comply with Chapter 11 of the *New York City Building Code* if its only purpose is to provide supplemental egress and ingress during conditions of flooding and to provide emergency egress at other times.

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Section 6.2.3, Section 6.2.3 (Limits on Human Intervention) is amended to read as follows:

Section 6.2.3 Limits on human intervention. Dry floodproofing measures that require human intervention to activate or implement prior to or during a flood, including temporary stairs or ramps, shall be permitted only when all of the following conditions are satisfied:

1. The flood warning time (alerting potential flood victims of pending flood situation) shall be a minimum of 12 hours, unless the community operates a flood warning system and implements an emergency plan to ensure safe evacuation of flood hazard areas, in which case human intervention is allowed only if the community can provide a minimum flood warning time equal to or longer than the cumulative;
 - (a) time to notify person(s) responsible for installation of floodproofing measures, plus
 - (b) time for responsible persons to travel to structure to be floodproofed, plus
 - (c) time to install, activate, or implement floodproofing measures, plus
 - (d) time to evacuate all occupants from the flood hazard area;
2. All removable shields or covers for openings such as windows, doors, and other openings in walls and temporary stairs or ramps shall be designed to resist flood loads specified in Section 1.6; and
3. Where removable shields or temporary stairs or ramps are to be used, a flood emergency plan shall be approved by the authority having jurisdiction and shall specify, at a minimum, the following information: storage location(s) of the shields and temporary stairs and ramps; the method of installation and removal; conditions activating installation and removal; maintenance of shields and attachment devices and temporary stairs and ramps; periodic practice of installing and removing shields and temporary stairs and ramps; testing sump pumps and other drainage measures; and inspecting necessary material and equipment to activate or implement floodproofing. The flood emergency plan shall be permanently posted in at least two conspicuous locations within the structure.

Section 7.1. Table 7-1 of Section 7.1 (General) is amended to read as follows (see Table 7-1 below):

Utilities Elevations

TABLE 7-1
MINIMUM ELEVATION OF UTILITIES AND ATTENDANT EQUIPMENT RELATIVE TO DESIGN FLOOD ELEVATION (DFE)

STRUCTURAL OCCUPANCY CATEGORY ^a	LOCATE UTILITIES AND ATTENDANT EQUIPMENT ABOVE ^b		
	A-Zones	Coastal High Hazard Area and Coastal A-Zones	
		Orientation Parallel ^c	Orientation Perpendicular ^c
I	DFE=BFE	DFE=BFE	DFE=BFE
II (1- and 2-family dwellings)	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft
II ^{e, 4} (all others)	DFE=BFE+ 1 ft	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft
III ⁴	DFE=BFE+ 1 ft	DFE=BFE+ 2 ft	DFE=BFE+ 3 ft
IV ⁴	DFE=BFE+ 2 ft	DFE=BFE+ 2 ft	DFE=BFE+ 3 ft

- a. See Table 1-1, or Table 1604.5 of the *New York City Building Code*, for structural occupancy category descriptions.
- b. Locate utilities and attendant equipment above elevations shown unless otherwise provided in the text.
- c. Orientation of lowest horizontal structural member relative to the general direction of wave approach; parallel shall mean less than or equal to +20 degrees from the direction of approach; perpendicular shall mean greater than +20 degrees from the direction of approach.
- d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

Section 7.2.4. Section 7.2.4 (Disconnect Switches and Circuit Breakers) is amended to read as follows:

7.2.4 (Disconnect switches and circuit breakers). The main disconnect switch, all service disconnecting means, and all circuit breakers shall be located above and be accessible from the elevation specified in Table 7-1. Switches, all service disconnecting means, and circuit breakers shall be located no more than 6 feet 7 inches (2 m) above the floor, or a platform shall be installed to provide access.

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Section 7.3.3. Section 7.3.3 is amended to read as follows:

7.3.3 Plumbing systems installed below minimum elevations. Plumbing systems and components, including plumbing fixtures, shall be elevated above the elevation specified in Table 7-1. Where plumbing systems and components have openings below the elevation specified in Table 7-1, the openings shall be protected with automatic backwater valves or other automatic backflow devices. Devices shall be installed in each line that extends below the DFE to prevent release of sewage into floodwaters and to prevent infiltration by floodwaters into the plumbing. Redundant devices requiring human intervention shall be permitted. Plumbing systems shall be provided with backwater valves in the building drain at its point of exit from the building and downstream of the building trap.

Section 7.3.4. Section 7.3.4 is amended to read as follows:

7.3.4 Sanitary systems. Sanitary systems shall be designed to minimize infiltration of flood waters into the systems and discharges from the systems into floodwaters. Vents and openings shall be above the elevation specified in Table 7-1. Sanitary system storage tanks shall be designed, constructed, installed, and anchored to resist at least 1.5 times the potential buoyant and other flood forces acting on an empty tank during design flood conditions. Tanks and piping shall be installed to resist local scour and erosion. Sanitary systems shall be provided with backwater valves at the point of exit from the building and downstream of the building trap. Sanitary systems that must remain operational during or immediately after the design flood or lesser floods shall be equipped with a sealed storage tank that is sized to store at least 150% of the anticipated sewage flow associated with occupancy during flood conditions and during subsequent periods of saturated soil when sewage will not percolate.

Section 7.5.1. A new section 7.5.1 is added to read as follows:

7.5.1 Elevator signage. Where there is potential for an elevator cab to descend below the elevation specified in Table 7-1 into a wet floodproofed space, the elevator shall be equipped with controls that will prevent the cab from descending into floodwaters. Permanent, durable, and washable signage shall be placed in the elevator cab and in the elevator lobby on any story subject to flooding, stating that "In the event of flooding, water sensors in the elevator shaft will prevent the elevator from descending to [description of story, e.g., ground floor, first floor, parking level, etc.] and will automatically cause the elevator to rise to [description of story, e.g., second floor, mezzanine, etc.]."

Section 9.3.1. The second sentence of the first paragraph of Section 9.3.1 (Attached Garages and Carports) is amended to read as follows:

Wet floodproofed garages and carports are permitted below elevations specified in Table 2-1 provided the lowest level of the garage or carport is at or above grade on at least one side, the garage or carport walls meet the opening requirements of Section 2.6, and the lowest level of the garage or carport is not classified as a "lowest floor" pursuant to Appendix G of the *New York City Building Code*.

Section 9.5. Section 9.5 (Pools) is amended by adding a new paragraph to read as follows:

Mechanical equipment for pools such as pumps and water heaters, and associated electrical wiring, shall comply with Section 7.2 and 7.4.

G501.2 Reserved.

G501.3 Reserved.

**SECTION BC G601
RESERVED**

**SECTION BC G701
RESERVED**

**SECTION BC G702
RESERVED**

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13 ACTIVE RENTALS IN THIS BUILDING

MURRAY HILL
626 First Avenue #W...
\$2,975

Studio | 1

MURRAY HILL
626 First Avenue #W...
\$3,675

Studio | 1

MURRAY HILL
626 First Avenue #W...
\$4,025

Studio | 1



Building: American Copper Buildings

626 First Avenue, New York, NY, 10016

761 units | 48 stories | 2 buildings | Built in 2016

New Development

Rental Building in Murray Hill

☆ SAVE

✉ SHARE

CONTACT US FOR AVAILABILITY



American Copper Buildings

+19179244974

Presented By JDS Development Group

Your email

Message (optional)

CONTACT

AMERICAN COPPER BUILDINGS DESCRIPTION

The future is coming. Sorry, it's not for sale.

At American Copper, two copper-clad towers are connected by a three-story skybridge, creating the ultimate vertical community.

Designed inside and out by SHoP Architects, each tower offers over 300 one-of-a-kind layouts with sweeping, enviable views of the Empire State Building, East River, and the Manhattan skyline.

Two grand lobbies with soaring... [more]

AMERICAN COPPER BUILDINGS AMENITIES

- Bike Room
- Community Recreation Facilities
- Children's Playroom
- Gym
- Live-in Super
- Swimming Pool

OUTDOOR SPACE
Roof Deck

Sign In Register

LOCATION
NYC Storm Zone 1

SALES RENTALS BUILDINGS RESOURCES BLOG

e.g. address, building, agent

BUILDING FACTS

Facts 761 units | 48 stories | 2 buildings | Built in 2016
 District Community District 106 | City Council District 4 | Police Precinct 17
 Floorplans 114 floorplans available
 Documents and Permits 82 documents and permits

1 previous sale (\$1,044 per ft² avg, \$710,000 avg price)
 Rentals Listings 13 active rentals (\$5,853 avg price)
 97 previous rentals (\$46 per ft² avg, \$5,296 avg price)

Architect: SHoP Architects
 Developer: JDS Development Group
 Leasing and marketing: Citi Habitats New Developments
 Manager: First Service Residential

UNITS

Filter this table

Unit	Price	Beds	Baths	ft ²
#W34G - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$12,555 NO FEE	4 rooms, 2 beds	2 baths	
#W32C - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$8,570 NO FEE	4 rooms, 2 beds	2 baths	
#W9E - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$6,750 NO FEE	4 rooms, 2 beds	2 baths	
#W42A - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$6,590 NO FEE	3 rooms, 1 bed	1 bath	
#W34J - 626 First Avenue	\$6,350 NO FEE	3 rooms, 1 bed	1 bath	
#W41E - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$5,550 NO FEE	3 rooms, 1 bed	1 bath	
#W9B - 626 First Avenue Open House: Sat, Oct 21 (12:00 PM - 2:00 PM) ADD TO PLANNER	\$4,990 NO FEE	3 rooms, 1 bed	1 bath	

Unit	Price	Beds	Baths	ft ²	Sign In	Register
#W401H - 626 First Avenue SALES RENTALS BUILDINGS RESOURCES	\$4,900 NO FEE BLOG	2 rooms, studio	1 bath		e.g. address, building, agent <input type="text"/>	
#W10D - 626 First Avenue	\$4,800 NO FEE	3 rooms, 1 bed	1 bath			
Open House: Sat, Oct 21 (12:00 PM - 2:00 PM)						
<input type="button" value="ADD TO PLANNER"/>						
#W33E - 626 First Avenue	\$4,360 NO FEE	2 rooms, studio	1 bath			
Open House: Sat, Oct 21 (12:00 PM - 2:00 PM)						
<input type="button" value="ADD TO PLANNER"/>						
#W33D - 626 First Avenue	\$4,025 NO FEE	2 rooms, studio	1 bath			
Open House: Sat, Oct 21 (12:00 PM - 2:00 PM)						
<input type="button" value="ADD TO PLANNER"/>						
#W33K - 626 First Avenue	\$3,675 NO FEE	2 rooms, studio	1 bath			
Open House: Sat, Oct 21 (12:00 PM - 2:00 PM)						
<input type="button" value="ADD TO PLANNER"/>						
#W11H - 626 First Avenue	\$2,975	2 rooms, studio	1 bath			

NEAR AMERICAN COPPER BUILDINGS

TRANSPORTATION

Subways and Ferries

- Ferry at E 34th Street Ferry Landing **under 500 feet**
- S 4 5 6 7 at 42 Street - Grand Central **0.48 miles**
- 6 at 33rd St **0.55 miles**
- S 4 5 6 7 at Grand Central **0.55 miles**
- 6 at 28th St **0.65 miles**

[View subway lines on Google Maps ▶](#)



[VIEW ON GOOGLE](#)

SCHOOLS

District 2 - Schools zoned for this address:

- J.H.S. 104 Simon Baruch (06,07,08,SE)
- P.S. 116 Mary Lindley Murray (PK,0K,01,02,03,04,05,06,SE)
- the River School (PK,0K,01,02,03,04,05,SE)

SIMILAR BUILDINGS

326 East 35th Street	210 East 35th Street	134 East 36th Street
Rental Building in Murray Hill	Rental Building in Murray Hill	Rental Building in Murray Hill
4 ACTIVE LISTINGS	2 ACTIVE LISTINGS	1 ACTIVE LISTINGS

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