

ORDINANCE NO. 1036

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, RELATING TO LAND USE; INTEGRATING THE CITY'S CRITICAL AREAS REGULATIONS, CHAPTER 18.12, WITH THE WETLAND REGULATIONS, CHAPTER 18.08; ADDING NEW DEFINITIONS TO THE CHAPTER ON CRITICAL AREAS AND WETLANDS; ADOPTING NEW WETLAND RATING CATEGORIES, CONSISTENT WITH THE DOE WETLAND RATINGS; ESTABLISHING NEW WETLAND, RAVINE SIDEWALL AND BLUFF BUFFER WIDTHS; AMENDING THE CRITERIA FOR WETLAND BUFFER ALTERATIONS; ADOPTING A WETLAND BUFFER AVERAGING PROCEDURE; AMENDING THE CRITERIA FOR WETLAND REPLACEMENT; ADOPTING STREAM CLASSIFICATIONS, BUFFER WIDTHS AND STREAM PROTECTION AND MITIGATION REGULATIONS; ADDING NEW PROVISIONS TO FISH AND WILDLIFE HABITAT FOR SPECIAL CONSIDERATIONS FOR SALMONIDS; REPEALING CHAPTER 18.12 OF THE GIG HARBOR MUNICIPAL CODE; AMENDING SECTIONS: 18.08.010, 18.08.020, 18.08.030, 18.08.040, 18.08.050, 18.08.070, 18.08.080, 18.08.090, 18.08.100, 18.08.110, 18.08.120, 18.08.140, 18.08.150, 18.08.160, 18.08.170, 18.08.180; REPEALING SECTIONS: 18.08.060, 18.08.130, 18.08.200, 18.08.220, 18.08.230, 18.08.260; ADDING NEW SECTIONS: 18.08.032, 18.08.034, 18.08.038, 18.08.182, 18.08.183, 18.08.184, 18.08.185, 18.08.186, 18.08.188, 18.08.190, 18.08.192, 18.08.194, 18.08.196, 18.08.200, 18.08.202, 18.08.204, 18.08.206, 18.08.208, 18.08.220 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor plans under the Washington State Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the City is required to take action to review and, if needed, revise the comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of the Growth Management Act (GMA) on or before December 1, 2004 (RCW 36.70A.130 (4)(a)); and

WHEREAS, the City adopted a revised comprehensive plan, consistent with the requirements of the Growth Management Act (RCW 36.70A.130 (4)(a)) on December 13, 2004 (Ordinance No. 981); and

WHEREAS, the City is required to consider critical areas ordinances and utilize best available science in designation and protection critical areas as part of the mandated review (RCW 36.70A.130 (1)(a) & .172)

WHEREAS, the City is required to provide public notice of and hold a public hearing on any amendments to the Comprehensive Plan and implementing development regulations (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, the City Community Development Director notified the Washington State Office of Community Development of the City's intent to amend the Comprehensive Plan and development regulations on October 21, 2004 and on December 20, 2004 pursuant to RCW 36.70A.106; and

WHEREAS, the City Community Development Director notified the Washington State Department of Ecology of the City's intent to amend Title 18 of the Gig Harbor Municipal Code on January 7, 2005; and

WHEREAS, on October 20, 2004, the City's SEPA Responsible Official issued a Determination of Non-Significance with regards to the proposed adoption of a revised Comprehensive Plan, as well as the amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, no appeals of the issuance of the Determination of Non-Significance were filed; and

WHEREAS, the City anticipated this requirement the review and revision of the Comprehensive Plan and included an objective in the 2004 Annual Budget for the update of the Comprehensive Plan; and

WHEREAS, on April 12, 2004 the City Council approved a consultant services contract with AHBL, Inc. for the services necessary to assist the City in the review and update of the Comprehensive Plan and development regulations; and

WHEREAS, in order to ensure that the review and update of the Comprehensive Plan is completed in a timely fashion consistent with State law it was necessary to establish a timeline and work program; and

WHEREAS, the City Council adopted Resolution No. 629 on September 13, 2004, which was subsequently revised by Resolution No. 631, which established a timeline and work program for the review and revision of the City of Gig Harbor Comprehensive Plan; and

WHEREAS, the City Planning Commission reviewed the recommendations for the update of the Comprehensive Plan and development regulations as outlined in the scope of work in Resolutions Nos. 629 and 631; and

WHEREAS, the City Planning Commission conducted work-study sessions for the 2004 review and update of the Comprehensive Plan and development regulations on September 16, 2004, October 7, 2004, October 21, 2004 and November 18, 2004; and

WHEREAS, the City Planning Commission held a legally advertised public hearing on the 2004 review and update of the Comprehensive Plan and development regulations on November 4, 2004 and recommended adoption of a revised City of Gig Harbor Comprehensive Plan and certain amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, the Gig Harbor City Council held a public hearing and first reading of an Ordinance implementing the recommendations of the Planning Commission amending the Comprehensive Plan and development regulations on November 22, 2004; and

WHEREAS, the Gig Harbor City Council held a second public hearing and second reading of an Ordinance implementing the recommendations of the Planning Commission amending the Comprehensive Plan and development regulations on December 13, 2004;

WHEREAS, the Gig Harbor City Council held a third public hearing and first reading of an Ordinance implementing the recommendations of the Planning Commission amending the Critical Areas regulations on November 28, 2005;

WHEREAS, the Gig Harbor City Council moved the recommendations of the Planning Commission amending the Critical Areas regulations be reviewed by the Community Development Committee on January 23, 2006;

WHEREAS, the Gig Harbor City Council Community Development Committee held public meetings on February 7, 2006 and February 21, 2006 to review recommendations of the Planning Commission amending the Critical Areas regulations;

WHEREAS, the Gig Harbor City Council held a fourth public hearing and first reading of an Ordinance implementing the recommendations of the City Council Community Development Committee amending the Critical Areas regulations on March 13, 2006;

WHEREAS, the Gig Harbor City Council held a second reading of an Ordinance implementing the recommendations of the City Council Community Development Committee amending the Critical Areas regulations on March 27, 2006;

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Critical Areas Findings of Fact. The City Council hereby adopts the Critical Areas Findings of Fact, as set forth in Exhibit A, which are incorporated herein by reference.

Section 2. Implementing Development Regulations.

A. **Notice.** The City Clerk confirmed that public notice of the public hearing held by the City Council was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive land plan and amendments to the Gig Harbor Municipal Code is a legislative act. The Appearance of Fairness doctrine does not apply.

C. Testimony.

The following persons testified/submitted written testimony at the November 22, 2004 public hearing:

James A. Wright, testified and submitted a letter for consideration by the Council regarding the use of Planned Residential Developments; and

The Washington State Department of Ecology submitted a letter dated November 22, 2004 regarding the draft Critical Areas Ordinance via facsimile.

The following person's testified/submitted written testimony at the December 13, 2004 public hearing:

Jim Wright, submitted a letter dated December 8, 2004 regarding densities and diversity of housing;

The Puget Sound Regional Council submitted a letter dated December 8, 2004 regarding the Transportation Element;

The Olympic Property Group submitted a letter dated December 10, 2004 regarding wetland buffer width averaging;

Marilyn Owel submitted a letter dated December 13, 2004 regarding wetland buffer width recommendations;

The Friends of Pierce County submitted a letter dated December 13, 2004 regarding low impact development techniques and wetlands;

Carl Halsan testified that the City likely has very few Category I wetlands;

John Chadwell, Olympic Property Group referenced the December 10, 2004 letter and commented on wetland buffers width averaging;

Dennis Reynolds, Davis Wright Tremaine submitted a letter written on behalf of four clients regarding the wetland issues;

Chris Wright, Raedeke Associates, Inc. referenced his December 10, 2004 letter attached to the Olympic Property Group correspondence regarding wetland buffer width averaging;

Doug Sorenson testified that his wetland consultant indicated that he has a Category I wetland; and

Scott Wagner testified regarding the wetland buffer issues.

The Washington State Department of Ecology submitted a letter dated February 1, 2005 regarding the amendments to the draft Critical Areas Ordinance.

The following person's testified/submitted written testimony at the November 28, 2005 public hearing:

Doug Sorensen commented on the buffer widths and setbacks and recommended a delay action.

Eric Barta asked how salmon runs affect wetland category ratings.

Maureen Barta voiced concern that not enough people knew about the amendments and they should be delayed.

Carl Halsan asked whether estuarine areas are considered wetlands and if they will fall under the jurisdiction of the Shoreline Management Act. He asked about best science for estuarine wetlands.

David Fisher discussed the creation of wetlands by construction. He asked why the city standards should be the same as for rural areas.

Eva Jacobsen was concerned that the wetland process is cumbersome. She recommended the Council obtain more input. She stressed the need to consider the effects on buildable lands as well as parks.

Chuck Meacham suggested adding a Fisheries Biologist to the definitions list.

Beverly Simpson was concerned with the removal of reference to Crescent Creek. She was concerned with the Wheeler street end Category I wetland. She recommended clarification on permitted uses in wetland buffer areas adjacent to a spawning creek.

Matt Halvorsen said that the Category I buffers should not be at the low end of the Department of Ecology recommendations for the most critical of wetlands. Mr. Halvorsen agreed that more time should be taken to consider the impacts of this ordinance as there seems to be many misunderstandings.

Rob Hayden commented that the majority of concerns are from those wanting to build something. He asked if the buffers are effective in protecting the wetlands and then develop the means of pro-rating the buffers in designated.

Wade Perrow addressed conflicting information in the technical report on page 52. He wasn't sure how to score a Category I Wetland as defined by the city. He suggested city should know exactly where the Category I Wetlands are located to determine what buffer should apply. He said the city should consider the "takings" aspect if they determine they need buffers of that size. He said the science doesn't support the proposed buffering requirements.

The Friends of Pierce County submitted a letter dated February 9, 2005 regarding the amendments to the draft Critical Areas Ordinance.

Joel and Lucinda Wingard submitted an e-mail on February 16, 2006 requesting the Council follow the recommendations of Ecology and Friends of Pierce County.

The following person's testified/submitted written testimony at the March 13, 2006 public hearing:

Doug Sorenson did not support the amendment. He asked that the Council ask the Department of Ecology why the current city buffers were not effective. He asked the Council to look at the impacts this ordinance had on his property that had wetlands. He asked if salmon runs have decreased in Crescent Creek.

Del Stutz said that he has four properties within Gig Harbor that are impacted by the ordinance. Mr. Stutz urged Council not to pass this ordinance after the hearing.

Rachael Villa submitted written testimony from Marian Berejikian, Executive Director of Friends of Pierce County, which supports the passage of the critical areas ordinance with the recommendations from the Department of Ecology. She said that this is a very complex issue.

Section 3. Chapter 18.12 of the Gig Harbor Municipal Code is hereby repealed.

Section 4. Chapter 18.08, Wetland Management Regulations is hereby renamed to Chapter 18.08, Critical Areas.

Section 5. Section 18.08.010 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.010 Purpose.

~~This chapter contains guidelines, criteria, standards and requirements designed to analyze and mitigate potential impacts to city wetland resources. The intent of these regulations is to avoid where possible, or in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands. This chapter also contains planning and implementation requirements for submission and approval of wetland mitigation projects. The ordinance codified in this chapter is intended to promote the maintenance, enhancement and preservation of critical areas and environmentally sensitive natural systems by avoiding or minimizing adverse impacts from construction and development. This chapter implements the goals and objectives of the state Growth Management Act of 1990 through the development and implementation of policies and interim regulations to manage critical areas in the public's interest and welfare. It is not the intent of this chapter to deny a reasonable use of private property, but to assure that development on or near critical areas is accomplished in a manner that is sensitive to the environmental resources of the community.~~

Section 6. Section 18.08.020 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.020 Goal.

~~The general goal of these regulations is to avoid impacts to wetlands where such avoidance is feasible and reasonable. Where such impacts are unavoidable, the standards of this chapter seek to minimize impacts on wetlands as a result of land development by:~~

~~A. Maintaining and enhancing the biological and physical functions and values of wetlands;~~

~~B. Maintaining the natural value of wetlands to control flooding and stormwater runoff through the storage and regulation of natural flow;~~

~~C. Maintaining the habitat value of wetlands for the many species of fish, wildlife and vegetation which are dependent upon wetlands for their survival;~~

~~D. Providing open space and visual relief from intense development within the urban area;~~

~~E. Providing opportunities for recreation, scientific study and natural resources education;~~

~~F. Providing for reasonable buffers around wetlands in order to stabilize soil, filter suspended solids and excess nutrients, moderate impacts from stormwater runoff, provide a local habitat for wetland plant and animal communities, and to reduce or minimize intrusions from humans and domestic animals;~~

~~G. Implement the goals, objectives and policies of the state Growth Management Act, the state Environmental Policy Act, the city comprehensive land use plan and the city environmental policy ordinance;~~

~~H. Promote and protect the public's health, safety, welfare and interest in maintaining and protecting wetlands as a valuable natural resource;~~

~~I. Protecting private property rights by allowing for a reasonable use of property where wetlands are present.~~

In implementing the purposes stated in GHMC 18.08.010, it is the intent of this chapter to accomplish the following:

A. Protect environmentally sensitive natural areas and the functions they perform by the careful and considerate regulation of development;

B. Minimize damage to life, limb and property due to landslides and erosion on steep or unstable slopes, seismic hazard areas and areas subject to subsidence;

C. Protect wetlands and their functions and values;

D. Protect and maintain stream flows and water quality within the streams;

E. Minimize or prevent siltation to the receiving waters of Gig Harbor Bay for the maintenance of marine water quality and the maintenance and preservation of marine fish and shellfish;

F. Preserve natural forms of flood control and stormwater storage from alterations to drainage or stream flow patterns;

G. Protect aquifer recharge areas from undesirable or harmful development;

H. Protect, maintain and enhance areas suitable for wildlife, including rare, threatened or endangered species;

I. Protect, maintain and enhance fish and wildlife habitat conservation areas within their natural geographic distribution so as to avoid the creation of subpopulations;

J. Implement the goals, policies and requirements of the Growth Management Act.

Section 7. Section 18.08.030 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.030 Definitions.

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

A. "Alteration" means any activity which materially affects the existing condition of land or improvements.

~~B.~~ "Applicant" means the person, party, firm, corporation, or other legal entity that proposes any activity. The applicant is either the owner of the land on which the proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

"Aquifer" means a subsurface, saturated geologic formation which produces, or is capable of producing, a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge areas" means those areas which serve as critical ground water recharge areas and which are highly vulnerable to contamination from intensive land uses within these areas.

B. "Best management plan" means a plan or program developed by the local Soil Conservation District (U.S.D.A.) which specifies best management practices for the control of animal wastes, stormwater runoff and erosion.

"Bluff" means a steeply rising, near vertical slope which abuts and rises from the Puget Sound shoreline. Bluffs occur in the east area of the city, fronting the Tacoma Narrows, and are further identified in the Coastal Zone Atlas, Volume 7, for Pierce County. The toe of the bluff is the beach and the top is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in a slope, the top is the line of vegetation separating the unvegetated slope from the vegetated uplands, or, if the bluff is vegetated, that point where the bluff slope diminishes to 15 percent or less.

“Buffer” means a natural area adjacent to hillsides or ravines which provides a margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage from natural disaster.

“Building setback line” means a distance, in feet, beyond which the footprint or foundation of a building or structure shall not extend.

C. “City” means the city of Gig Harbor.

D. “Clearing” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site which exposes the earth’s surface of the site.

E. “Compensatory mitigation” means mitigation for wetland losses or impacts resulting from alteration of wetlands and/or their buffers. It includes, but is not limited to, creation, enhancement and restoration.

“Contaminant” means any chemical, physical, biological or radiological material that is not naturally occurring and is introduced into the environment by human action, accident or negligence.

F. “Creation” means the producing or forming of a wetland through artificial means from an upland (nonwetland) site.

“Critical areas” consist of those lands which are subject to natural hazards, contain important or significant natural resources or which have a high capability of supporting important natural resources.

G.D. “Department” means the city department of community development.

H. “Designated wetland” means those lands identified through the classification process established by this chapter.

I. “Development” means alteration (see definition for alteration).

“DRASTIC” means a model developed by the National Water Well Association and Environmental Protection Agency and which is used to measure aquifer susceptibility to contamination.

J.E. “Earth/earth material” means naturally occurring rock, soil, stone, sediment, organic material, or combination thereof.

K. “Enhancement” means actions performed to improve the conditions of existing degraded wetlands and/or buffers so that the functions they provide are of a higher quality (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or garbage).

L. “Erosion” means the wearing away of the earth’s surface as a result of the movement of wind, water, or ice.

“Erosion hazard areas” means those areas which are vulnerable to erosion due to natural characteristics including vegetative cover, soil texture, slope, gradient or which have been induced by human activity. Those areas which are rated severe or very severe for building site development on slopes or cut banks, in accordance with the United States Department of Agriculture Soil Conservation Service Soil Survey for Pierce County Area (February 1979), are included within this definition.

M. “Excavation” means the mechanical removal of earth material or fill.

N. “Existing and on-going agricultural activities” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an on-going activity. An operation ceases to be on-going when the area on which

it was conducted has been converted to a non-agricultural use or has lain idle both more than five years and so long that modifications to the hydrological regime are necessary to resume operations, unless the idle land is registered in a federal or state soils conservation program.

~~O.-F.~~ “Fill/fill material” means a deposit of earth material, placed by human or mechanical (machine) means, and which is not defined by solid waste according to Chapter 70.95 RCW.

~~P.~~ “Filling” means the act of placing fill material on any surface.

“Fish and wildlife habitat areas” means those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife and natural vegetation including waters of the state, and as further identified in GHMC 18.08.190.

“Flood hazard areas” mean those areas within the city of Gig Harbor which are determined to be at risk of having a one percent or greater chance of experiencing a flood in any one year, with those areas defined and identified on the Federal Emergency Management Administration (FEMA) flood insurance rate maps for the city of Gig Harbor.

~~Q.~~ “Floodplain development permit” means the permit required by the city flood hazard construction ordinance.

G. “Geologically hazardous areas” means those areas as designated in the city of Gig Harbor comprehensive plan as “landslide hazards,” in the Washington Department of Ecology Coastal Zone Atlas, Volume 7, and which are further defined in WAC 365-190-080(5) and this title.

~~R.~~ “Grading” means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

~~S.~~ “Grading permit” means the permit required by the city grading and clearing ordinance.

H. “Habitat management plan” means a report prepared by a qualified wildlife biologist.

“Hazardous substance” means any material that exhibits any of the characteristics or criteria of hazardous waste, inclusive of waste oil and petroleum products, and which further meets the definitions of “hazardous waste” pursuant to Chapter 173-303 WAC.

“Hillsides” means geologic features with slopes of 15 percent or greater. The ordinance codified in this chapter provides four classes of hillsides in order to differentiate between the levels of protection and the application of development standards.

~~T.-I.~~ “In-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.

J. [Reserved]

K. [Reserved]

L. “Landslide” means an abrupt downslope movement of soil, rock or ground surface material.

“Landslide hazard area” means those areas which are susceptible to risk of mass movement due to a combination of geologic, topographic and hydrologic factors.

~~U.-M.~~ “Mitigation” means to avoid, minimize, or compensate for adverse wetland impacts.

N. [Reserved]

~~V.-O.~~ “Out-of-kind mitigation” means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

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

X. "Person" means an individual, firm, co-partnership, association or corporation.

Q. "Qualified biologist" means a person with a minimum of a four-year degree in wildlife sciences, biology, environmental sciences, soil science, limnology or an equivalent academic background who also has at least two years of experience in stream restoration.

"Qualified wetland specialist" is a person with a minimum of a four-year degree in wildlife sciences, biology, environmental sciences, soil science, limnology or an equivalent academic background who also has experience in performing wetland delineations, analysis of wetland functions and values and project impacts, and wetland mitigation and restoration techniques. The person must be familiar with the Washington State Department of Ecology Wetland Identification and Delineation Manual (1997), which is consistent with the 1987 Federal Manual used by the U.S. Army Corps of Engineers, city grading and clearing regulations and the requirements of this chapter.

"Qualified wildlife biologist" means a person having, at a minimum, a bachelor's degree in wildlife biology, wildlife science, wildlife ecology, wildlife management or zoology, or a bachelor's degree in natural resource or environmental science plus 12 semester or 18 quarter hours on wildlife course works and two years of professional experience.

R. "Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the normal erosive action of the stream. Ravine sidewalls are characterized by slopes predominantly in excess of 25 percent although portions may be less than 25 percent. The base of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top shall be that point where the slope diminishes to 15 percent or less.

Y. "Restoration" means the reestablishment of a viable wetland from a previously filled or degraded wetland site.

S. "Seismic hazard areas" means those areas which are susceptible to severe damage from earthquakes as a result of ground shaking, slope failure, settlement or soil liquefaction.

Z. "Significant impact" means a meaningful change or recognizable effect to the ecological function and value of a wetland-critical area, which is noticeable or measurable, resulting in a loss of ~~wetland~~ function and value.

AA. "Single-family ~~residence~~" or "dwelling" means a building or structure, or portion thereof, which is designed for and used to provide a place of abode for human beings, including mobile homes, as defined in the city zoning code (~~GHMC 17.04.300 and 17.04.305~~).

BB. "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's ownership or control where the proposed project impacts a wetland(s)critical area(s).

CC. "Slope" means an inclined earth surface, the inclination of which is expressed as the ratio (percentage) of horizontal vertical distance to vertical horizontal distance by the following formula: V (vertical distance)/H (horizontal distance) x 100 = % slope.

"Species of local importance" means a species of animal which is of local concern due to their population status or their sensitivity to habitat manipulation. This term also includes game species.

DD. "Stockpiling" means the placement of material with the intent to remove at a later time.

“Streams” means those areas where surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction in such watercourses. For the purpose of this definition, a defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round.

“Stream buffer zone” means a designated area contiguous or adjacent to a stream that is required for the continued maintenance, function, and structural stability of the stream. Functions of a buffer include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, protection from intrusion, or maintenance of wildlife habitat.

EE.—“Substrate” means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland.

T. [Reserved]

FF.—U. “Utility line” means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas and communications.

V. [Reserved]

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

HH. “Wetland buffer zone” means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and structural stability of the wetland. Functions of a buffer include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, protection from intrusion, or maintenance of wildlife habitat. For further information on permitted uses, see GHMC 18.08.020.

II.—“Wetland class” means the U.S. Fish and Wildlife Service wetland classification scheme using a hierarchy of systems, subsystems, classes and subclasses to describe wetland types (refer to USFWS, December 1979, Classification of Wetlands and Deepwater Habitats of the United States for a complete explanation of the wetland classification scheme). Eleven class names are used to describe wetland and deepwater habitat types. These include: forested wetland, scrub-shrub wetland, emergent wetland, moss-lichen wetland, unconsolidated shore, aquatic bed, unconsolidated bottom, rock bottom, rocky shore, streambed, and reef.

~~JJ. “Wetland specialist” is a person with a minimum of a four-year degree in wildlife sciences, biology, environmental sciences, soil science, limnology or an equivalent academic background who also has experience in performing wetland delineations, analysis of wetland functions and values and project impacts, and wetland mitigation and restoration techniques. The person must be familiar with the Federal Manual for~~

~~Identifying and Delineating Jurisdictional Wetlands, city grading and clearing ordinance, and the city wetlands management ordinance.~~

X. [Reserved]

Y. [Reserved]

Z. [Reserved]

Section 8. A new Section 18.08.032 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.032 Best Available Science

A. The Growth Management Act requires jurisdictions to include the best available science when designating and protecting critical areas. The Growth Management Act also requires the implementation of conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat (WAC 365-195-900 through WAC 365-195-925). Anadromous fish are those that spawn and rear in freshwater and mature in the marine environment, including salmon and char (bull trout).

B. Best available science shall be used in developing policies and development regulations to protect the functions and values of critical areas. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

Section 9. A new Section 18.08.034 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.034 Applicability.

A. Critical Area Review. All development proposals in critical areas, whether on public or private property, shall comply with the requirements of this chapter. The Community Development Director or his/her designee shall utilize the procedures and rules established in the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC (Environmental Review (SEPA)) and the applicable provisions of GHMC Title 19, to implement the provisions of this chapter. Development proposals include any development project which would require any of the following:

1. Building permit for any construction,
2. Clearing and grading permit,
3. Any shoreline management permit as authorized under Chapter 90.58 RCW,
4. Site plan review,
5. Subdivision, short subdivision or planned unit development,
6. Zoning variance or conditional use permit.

B. Special Studies Required. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area is located on the site. The Community Development Director or designee shall visit the site, and in conjunction with the review of the information provided by the applicant and any other suitable information, shall make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient to adequately evaluate a proposal, the planning director shall notify the applicant that additional studies as specified herein shall be provided.

C. Appeals. A decision of the Community Development Director to approve, conditionally approve or deny a permit, or any official interpretation in the administration of this chapter may be appealed in accordance with the procedures established under GHMC Title 19.

Section 10. A new Section 18.08.038 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.038 Wetlands – Designation and mapping.

A. Pursuant to WAC 197-11-908, the city designates wetlands as critical areas defined in this chapter.

B. The approximate location and extent of critical areas are shown on the City's critical area map. These maps are to be used as a guide and may be updated as new critical areas are identified. They are a reference and do not provide final critical area designations. Mapping sources include:

1. Areas designated on the National Wetland Inventory maps;
2. Areas which have been designated as wetlands on the Pierce County wetland atlas.

Section 11. Section 18.08.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.040 Wetlands – eClassification guidelines/ ratings.

~~A. A wetland~~ Wetland rating and classification shall be established based upon the completion of a delineation report prepared by a qualified wetland specialist to determine boundary, size, function and value. Guidelines for preparing a wetland delineation report are defined in GHMC 18.08.070 090 and the Department of Ecology Wetland Identification and Delineation Manual (1997), which is consistent with the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, in use as of January 1, 1995, used by the U.S. Army Corps of Engineers.

~~A. Wetlands shall be classified as Category I, II, III and IV, in accordance with the following criteria:~~

- ~~1. Category I.~~
 - ~~a. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies, or~~
 - ~~b. Regionally rare wetland communities which are not high quality, but which have irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps, or~~
 - ~~c. Wetland types with significant functions which may not be adequately replicated through creation or restoration. These wetlands may be demonstrated by the following characteristics:~~
 - ~~i. Significant peat systems, or~~
 - ~~ii. Forested swamps that have three canopy layers, excluding monotypic stands of red alder averaging eight inches diameter or less at breast height, or~~
 - ~~iii. Significant spring fed systems, or~~
 - ~~d. Wetlands with significant habitat value based on diversity and size, including wetlands which are:~~
 - ~~i. Ten acres or greater in size; and two or more wetland classes together with open water at any time during a normal year, or~~

- ~~ii. Ten acres or greater in size; and three or more wetland classes; and five or more subclasses of vegetation in a dispersed pattern, or~~
 - ~~iii. Five acres or greater in size; and 40 to 60 percent open water at any time during a normal year; and two or more subclasses of vegetation in a dispersed pattern, or~~
 - ~~e. Regulated wetlands which are contiguous with both year-round and intermittent salmonid fish-bearing waters, or~~
 - ~~f. Wetlands with significant use by fish and wildlife.~~
 - ~~2. Category II. Regulated wetlands that do not contain features outlined in Category I or III.~~
 - ~~3. Category III.~~
 - ~~a. Regulated wetlands which do not meet the criteria of a Category I or II wetland and which are greater than 10,000 square feet in area; and~~
 - ~~b. Hydrologically isolated wetlands that are greater than 10,000 square feet but less than or equal to one acre in size, and have only one wetland class, and have only one dominant plant species (monotypic vegetation).~~
 - ~~c. Hydrologically isolated wetlands less than 10,000 square feet in area which contain a rare or unique species or which have significant biological function and value.~~
 - ~~4. Category IV Criteria.~~
 - ~~a. All streams designated as Type 3 – 5 waters by the Department of Natural Resources, Forest Practices Rules and Regulations pursuant to WAC 222-16-020 and 222-16-030.~~

B. Wetland ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State Wetland Rating System for Western Washington, revised April 2004 (*Ecology Publication #04-06-025*). These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland rating categories

- a. Category I. Category I wetlands are those wetlands of exceptional resource value based on their functional value and diversity. Category I wetlands are:
 - i. Undisturbed estuarine wetlands larger than one acre,
 - ii. Wetlands designated by Washington Natural Heritage Program as high quality,
 - iii. Bogs,
 - iv. Mature and old-growth forested wetlands larger than one acre,
 - v. Wetlands in coastal lagoons,
 - vi. Wetlands that perform high functions (wetlands scoring 70 points or more on the Ecology wetland rating form).
- b. Category II. Category II wetlands are those wetlands of significant resource value based on their functional value and diversity. Category II wetlands are:
 - i. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre, or
 - ii. Wetlands scoring between 51 and 69 points on the Ecology wetland rating form.
- c. Category III. Category III wetlands are those wetlands of important resource value based on their functional value and diversity. Category III wetlands are wetlands with a moderate to low level of functions (wetlands scoring 30 to 50 points on the wetland rating form).
- d. Category IV. Category IV wetlands are those wetlands with the lowest level of functions scoring less than 30 points on the Ecology wetland rating form.

Hydrologically isolated Category IV wetlands less than 1,000 square feet are exempt as per GHMC 18.08.202H.

Section 12. Section 18.08.050 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.050 Wetlands – Regulated activities.

A. Unless specifically exempted by GHMC 18.08.060~~202~~, the following activities in a wetland and/or its associated buffer shall be regulated pursuant to the requirements of this chapter. The regulated activities are as follows:

1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
2. Dumping, discharging or filling with any material;
3. Draining, flooding or disturbing the water level or water table;
4. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, except repair of an existing structure or infrastructure, where the existing square footage or foundation footprint is not altered;
5. Destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting vegetation that would alter the character of a wetland;
6. Activities from construction or development that result in significant, adverse changes in water temperature, physical or chemical characteristics of wetland water sources, including quantity and pollutants.

B. Activities listed in subsection (A) above which do not result in alteration in a wetland and/or its associated buffer, may require fencing along the outside perimeter of the buffer or erosion control measures ~~as provided in GHMC 18.08.160(B).~~

Section 13. Section 18.08.060 of the Gig Harbor Municipal Code is hereby repealed.

Section 14. Section 18.08.070 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.070 Wetlands – Permitting process.

A. Overview. Inquiries regarding conduct of a regulated activity in a wetland can be made to the ~~city planning d~~Department. The department shall utilize the National Wetlands Inventory (NWI) maps and the ~~Department of Natural Resources Stream Type maps~~ Pierce County wetland atlas to establish general location of wetland sites. If the maps indicate the presence of a wetland, a wetland delineation report shall be filed, unless the department determines that a wetland is not on or within the site. This determination may be based on information provided by the applicant and from other sources. If the map does not indicate the presence of a wetland or wetland buffer zone within the site, but there are other indications that a wetland may be present, the department shall determine whether a wetland analysis report is required.

B. Permit Requirements. No separate application or permit is required to conduct regulated activities within a wetland or its associated buffer. Review of regulated activities within a wetland and buffers is subject to the permit processing procedure for the required permit type as defined under GHMC Title 19. The department shall utilize existing environmental review procedures, city SEPA Ordinance, Chapter 18.04 GHMC, to assess impacts to wetlands and impose required mitigation. Department review of

proposed alterations to wetlands and buffer areas and a wetland mitigation plan may be required prior to issuance of a SEPA determination by the city's responsible official.

~~C. This chapter applies to all regulated activities, public or private, which will occur within wetlands, including but not limited to, the following:~~

- ~~1. Building, grading, filling, special and sanitary sewer permits;~~
- ~~2. Subdivisions, short plats, and planned unit developments;~~
- ~~3. Site plan approvals, variance and conditional use permits;~~
- ~~4. Any activity which is not categorically exempt within the environmental review procedures of the state Environmental Policy Act for environmentally sensitive areas, pursuant to WAC 197-11-908, and the city SEPA Ordinance, Chapter 18.04 GHMC.~~

~~D.C.~~ Prior to submittal of a wetland delineation report, recommendation on wetland category, proposed alterations to wetlands and buffer areas, or wetland mitigation plan, the applicant may request a pre-filing pre-application conference in accordance with the procedures established in GHMC 19.02.001.

~~E.D.~~ Request for Official Determination. A request for an official determination of whether a proposed use or activity at a site is subject to this chapter must be in writing and made to the city office of community development. The request can be accompanied by a SEPA environmental checklist. The request shall contain plans, data and other information in sufficient detail to allow for determination, including a wetland delineation report. The applicant shall be responsible for providing plans and the wetland delineation report to the department.

F. A wetland analysis report shall be submitted to the department for review of a proposal for activity which lies within a wetland, or within 450 300 feet of a wetland. The purpose of the wetland analysis report is to determine the extent and function of wetlands to be impacted by the proposal. ~~This analysis and report may be waived for Category IV wetlands if the proposed activity includes the required minimum streamside buffer as established under GHMC 18.08.100.~~

G. Preliminary Site Inspection. Prior to conducting a wetland analysis report, the applicant may request that the department conduct a preliminary site inspection to determine if a wetland may be present on the proposal site. Upon receipt of the appropriate fee, the department shall make a site inspection. If the department determines that a wetland is not on the site, this shall be indicated to the applicant in writing, and a wetland analysis report shall not be required.

H. Prior to submittal of the wetland analysis report or the development of a lot which has a classified wetland ~~as identified on the city wetland map~~, boundaries of wetlands ~~2,500 square feet or more~~ shall be staked and flagged in the field by a qualified wetland specialist and surveyed by a licensed professional surveyor registered in the state. Field flagging shall be distinguishable from other survey flagging on the site.

I. If alteration of a wetland or buffer is proposed, a wetland mitigation plan shall be submitted pursuant to requirements of this chapter, subsequent to staff review of the wetland analysis report. In no event will a wetland mitigation plan be required prior to a determination of whether a designated wetland is present on a site.

Section 15. Section 18.08.080 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.080 Wetlands – Administration.

A. Filing Fees. A wetland regulatory processing fee in an amount established under the city's development fee ordinance, GHMC Title 3, shall be paid at the time of a request for official determination of whether a proposed use or activity at a site is subject

to this chapter. The fee shall be paid prior to administrative review, including environmental review. It shall include all costs of administrative and environmental review, including the preliminary site inspection, and review and approval of a wetland analysis report. It shall be in addition to any other fees for environmental assessment and environmental impact review, provided by the city environmental policy ordinance, Chapter 18.04 GHMC.

B. Notice and Title.

1. Notice. Upon submission of a complete application for a wetland development approval, notice shall be provided in accordance with the city zoning code for site plan review for notification of property owners within 300 feet of the subject property.

2. Notice of Title. The owner of any property with field verified presence of wetland or wetland buffer on which a development proposal is submitted shall file for record with the Pierce County auditor a notice approved by the department in a form substantially as set forth below. Such notice shall provide notice in the public record of the presence of a wetland or wetland buffer, the application of this chapter to the property, and that limitations on actions in or affecting such wetlands and their buffers may exist. The notice shall be notarized and shall be recorded prior to approval of any development proposal for such site. The notice shall run with the land and shall be in the following form:

WETLAND AND/OR
WETLAND BUFFER NOTICE
Legal Description:

Present Owner:_____

NOTICE: This property contains wetlands or their buffers as defined by City of Gig Harbor Ordinance. Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations.

Date Signature Owner

C. Other Laws and Regulations. No approval granted pursuant to this chapter shall remove an obligation to comply with the applicable provisions of any other federal, state or local law or regulation.

D. Atlas. As part of its review, the department shall include the appropriately designated wetland in the Pierce County wetlands atlas or in the city wetland atlas, as may be adopted.

Section 16. Section 18.08.090 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.090 Wetlands – ~~a~~Analysis report requirements.

A. A wetland analysis report shall be prepared by a qualified wetland specialist and submitted to the department as part of the SEPA review process established by the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC. A wetlands analysis report is not required for those wetlands mapped and classified per the city of Gig Harbor wetlands map. A wetlands analysis report is required with all annexation

petitions and land use applications for properties which do not have wetlands mapped and classified per the city of Gig Harbor wetlands map.

B. The wetland analysis report shall be prepared in accordance with the Uniform Federal Methods for Wetland Delineation methods outlined in the Ecology 1997 wetland Identification and Delineation Manual and submitted to the department for review for any proposals that are within ~~450~~300 feet of a wetland.

C. Within 30 days of receipt of the wetland analysis report and other information, the department shall determine the appropriate wetland category, buffering requirement, and required mitigation. The report shall be accorded substantial weight and the department shall approve the report's findings and approvals, unless specific, written reasons are provided which justify not doing so. Once accepted, the report shall control future decision-making related to designated wetlands unless new information is found demonstrating the report is in error.

Section 17. Section 18.08.100 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.100 Wetlands – Buffer areas.

A. Following the department's determination of the category for a wetland associated with a proposal, the department shall determine appropriate buffer widths. Wetland buffer zones shall be evaluated for all development proposals and activities adjacent to wetlands to determine their need to protect the integrity, functions and values of the wetland. Wetland buffer widths are determined by the category of wetland, the intensity of impacts of a land use and the functions or special characteristics of the wetland that need to be protected as determined by the rating system. All wetland buffer zones are measured perpendicular from the wetland ~~edge as marked in~~ boundary as surveyed in the field. Except as otherwise permitted by this chapter, wetland buffers they shall consist of ~~an undisturbed area of a relatively intact native vegetation and existing non-native vegetation.~~ community adequate to protect the wetland functions and values at the time of proposed activity. If the vegetation is inadequate then the buffer width shall be planted to maintain the buffer width. ~~The following buffer widths are required:~~

Wetland Category	Buffer Width
Category I	100 feet
Category II	50 feet
Category III	25 feet
Category IV	Type 3 water: 35 feet
(as measured from	Type 4 water: 25 feet
ordinary high water)	Type 5 water: 15 feet

B. Impact of land use. Different uses of land can result in a high, moderate or low level of impact to adjacent wetlands. Types of land use are categorized into impact levels as shown on the following table:

<u>Level of impact from land use.</u>	<u>Types of land uses based on common use categories.</u>
High	Residential uses (greater than 1 unit per acre); schools; churches; public facilities, public/private services and government administrative uses (excluding parks, right-of-way and utilities); lodging uses; personal, professional, product and automotive services; health care services; commercial and sales uses; animal clinics and kennels; marine-related uses; industrial uses; restaurant uses; museum, club

	<u>and recreation hall uses; high-intensity parks, outdoor and indoor recreation (golf courses, ballfields, tennis clubs, swimming pools etc.); conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.); hobby farms.</u>
<u>Moderate</u>	<u>Residential uses (less than 1 unit per acre); moderate-intensity parks and outdoor recreation (parks with biking, jogging, etc.); conversion to moderate-intensity agriculture (orchards, hay fields, etc.) and paved trails; building of logging roads; utility corridor or right-of-way shared by several utilities and including access/maintenance road.</u>
<u>Low</u>	<u>Forestry (cutting of trees only); Low-intensity parks and open space (hiking, bird-watching, preservation of natural resources, etc.) and unpaved trails; utility corridor without a maintenance road and little or no vegetation management.</u>

C. If a wetland meets more than one of the wetland characteristics listed in the tables of subsections D,E, F or G below, the buffer width required to protect the wetland is the widest buffer width.

D. Category I wetlands. The following buffer widths for Category I wetlands are required:

<u>Wetland Characteristics</u>	<u>Buffer Widths by Impact of Land Use</u>	<u>Other Protection Measures Required</u>
<u>Natural Heritage Wetlands</u>	<u>Low - 125 feet</u> <u>Moderate – 190 feet</u> <u>High – 250 feet</u>	<u>No additional surface discharges to wetland or its tributaries</u> <u>No septic systems within 300 feet of wetland</u> <u>Restore degraded parts of buffer</u>
<u>Bogs</u>	<u>Low - 125 feet</u> <u>Moderate – 190 feet</u> <u>High – 250 feet</u>	<u>No additional surface discharges to wetland or its tributaries</u> <u>Restore degraded parts of buffer</u>
<u>Forested</u>	<u>Buffer width to be based on score for habitat functions or water quality functions</u>	<u>If forested wetland scores high for habitat, need to maintain connections to other habitat areas</u> <u>Restore degraded parts of buffer</u>
<u>Estuarine</u>	<u>Low - 100 feet</u> <u>Moderate – 150 feet</u> <u>High – 200 feet</u>	<u>None required</u>
<u>Wetlands in Coastal Lagoons</u>	<u>Low - 100 feet</u> <u>Moderate – 150 feet</u> <u>High – 200 feet</u>	<u>None required</u>
<u>High level of function for habitat (score for habitat 29 - 36 points)</u>	<u>Low – 150 feet</u> <u>Moderate – 225 feet</u> <u>High – 300 feet</u>	<u>Maintain connections to other habitat areas</u> <u>Restore degraded parts of buffer</u>

<u>Wetland Characteristics</u>	<u>Buffer Widths by Impact of Land Use</u>	<u>Other Protection Measures Required</u>
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None required
High level of function for water quality improvement (24 – 32 points) and low for habitat (less than 20 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	N/A

E. Category II wetlands. The following buffer widths for Category II wetlands are required:

<u>Wetland Characteristics</u>	<u>Buffer Widths by Impact of Land Use</u>	<u>Other Protection Measures Required</u>
High level of function for habitat (score for habitat 29 - 36 points)	Low - 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 feet Moderate – 110 feet High – 150 feet	None required
High level of function for water quality improvement and low for habitat (score for water quality 24 - 32 points; habitat less than 20 points)	Low - 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Estuarine	Low - 75 feet Moderate – 110 feet High – 150 feet	None required
Interdunal	Low - 75 feet Moderate – 110 feet High – 150 feet	None required
Not meeting above characteristics	Low - 50 feet Moderate – 75 feet High – 100 feet	None required

F. Category III wetlands. The following buffer widths for Category III wetlands are required:

<u>Wetland Characteristics</u>	<u>Buffer Widths by Impact of Land Use</u>	<u>Other Protection Measures Required</u>
<u>Moderate to high level of function for habitat (score for habitat 20 - 36 points)</u>	<u>Low - 75 feet</u> <u>Moderate – 110 feet</u> <u>High – 150 feet</u>	<u>None required</u>
<u>Not meeting above characteristic</u>	<u>Low - 40 feet</u> <u>Moderate – 60 feet</u> <u>High – 80 feet</u>	<u>None required</u>

G. Category IV wetlands. The following buffer widths for Category IV wetlands are required:

<u>Wetland Characteristics</u>	<u>Buffer Widths by Impact of Land Use</u>	<u>Other Protection Measures Required</u>
<u>Score for all 3 basic functions is less than 30 points</u>	<u>Low - 25 feet</u> <u>Moderate – 40 feet</u> <u>High – 50 feet</u>	<u>None required</u>

B.H. Landscape buffering between the wetland boundary and the building setback will be evaluated. If it is determined that such uses could cause secondary impacts to the wetlands, a maximum 15-foot setback may be imposed. A 15-foot building setback is required from the edge of a wetland buffer.

I. Where a legally established developed roadway transects a wetland buffer, the Director may approve a modification of the minimum required buffer width to the edge of the roadway if the part of the buffer on the other side of the road does not provide any buffer functions to protect the wetland in question.

J. Where a legally established bulkhead transects a wetland buffer, the Director may approve a modification of the minimum required buffer width as long as the biologic, hydrologic and water quality functions of the wetland are protected. This modification would be evaluated on a case-by-case basis and rely upon a sensitive areas study provided by a qualified biologist where it can be demonstrated that an equal or greater protection of the wetland would occur. Measures may include bioengineering of shoreline protection, revegetation with native species, or other shoreline or buffer enhancement measures.

Section 18. Section 18.08.110 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.110 Wetlands – Alteration of buffers.

Alteration of a buffer may occur in two ways: (1) quantitative alteration, in which the boundaries of the designated buffer area are adjusted, so that the actual area within the buffer is altered ~~from the parameters of subsection A of this section~~; and (2) qualitative alteration, in which permitted activities within the buffer area alter its character. In

determining appropriate buffer alterations, quantitative and qualitative alterations are generally reviewed concurrently.

~~A. Buffer zones may be modified under the following conditions (quantitative alteration):~~

~~1. A. Wetland buffer reductions. Buffer width reductions shall be considered on a case-by-case basis to take varying values of individual portions of a given wetland into consideration. Buffers shall not be reduced where the buffer has been degraded as a result of a documented code violation. Reductions may be allowed where the applicant demonstrates to the department that the wetland contains variations in sensitivity due to existing physical characteristics and that reducing the buffer width would not adversely affect the wetland functions and values, and the minimum buffer shall not be less than 50 percent of the widths established in GHMC 18.08.100;~~

1. Maximum Buffer Reductions. The buffer widths required for uses of land with “high” impacts to wetlands can be reduced to those required for “moderate” impacts under the conditions below:

a. For wetlands that score moderate or high for habitat (20 points or more for the habitat functions), the width of the buffer can be reduced if both of the following conditions are met:

i. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. Priority Habitats include, but may not be limited to, wetlands, riparian zones, aspen stands, cliffs, prairies, caves, stands of Oregon White Oak, old-growth forests, estuaries, marine/estuarine shorelines, eelgrass meadows, talus slopes and urban natural open space. The corridor must be protected for the entire distance between the wetland and the Priority Habitat via some legal protection such as a conservation easement; and

ii. Measures to minimize the impacts of different land uses on wetlands are applied, as summarized in the following table:

<u>Examples of Disturbance</u>	<u>Activities that Cause Disturbances</u>	<u>Examples of Measures to Minimize Impacts</u>
<u>Lights</u>	<u>Parking lots, warehouses, manufacturing, residential</u>	<u>Direct lights away from wetland.</u>
<u>Noise</u>	<u>Manufacturing, residential</u>	<u>Locate activity that generates noise away from wetland.</u>
<u>Toxic runoff¹</u>	<u>Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping</u>	<u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.</u> <u>Establish covenants limiting use of pesticides within 150 ft of wetland.</u> <u>Apply integrated pest management.</u>
<u>Stormwater runoff</u>	<u>Parking lots, roads, manufacturing, residential areas, commercial, landscaping</u>	<u>Retrofit stormwater detention and treatment for roads and existing adjacent development.</u> <u>Prevent channelized flow from lawns that directly enters the buffer.</u>
<u>Change in water regime</u>	<u>Impermeable surfaces, lawns, tilling</u>	<u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.</u>

<u>Examples of Disturbance</u>	<u>Activities that Cause Disturbances</u>	<u>Examples of Measures to Minimize Impacts</u>
<u>Pets and human disturbance</u>	<u>Residential areas</u>	<u>Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract.</u>
<u>Dust</u>	<u>Tilled fields</u>	<u>Use best management practices to control dust.</u>
<u>This is not a complete list of mitigation measures. Additional mitigation measures that minimize impacts may be proposed.</u>		

¹ These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site

b. For wetlands that score less than 20 points for habitat functions, the width of the buffer can be reduced if measures to minimize the impacts of different uses of land are applied, as summarized in the table in subsection a above.

2. Buffer widths may be increased by the department on a case-by-case basis provided that the maximum buffer for Category II or III wetlands shall not exceed 100 feet;

2. Decision Criteria. Prior to approval, a buffer reduction proposal shall meet all of the decisional criteria listed below. The buffer modification will be approved in a degraded wetland buffer only if:

a. It will provide an overall improvement in water quality protection for the wetland; and

b. It will not adversely affect fish or wildlife species and will provide an overall enhancement to fish and wildlife habitat; and

c. It will provide a net improvement in drainage and/or storm water detention capabilities; and

d. All exposed areas are stabilized with native vegetation, as appropriate; and

e. It will not lead to unstable earth conditions or create an erosion hazard;

and

f. It will not be materially detrimental to any other property or the City as a whole.

3. Buffer Enhancement Plan. As part of the buffer reduction request, the applicant shall submit a buffer enhancement plan prepared by a qualified wetland specialist. The report shall assess the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the six (6) criteria listed in this subsection. The buffer enhancement plan shall also provide the following:

a. A map locating the specific area of enhancement;

b. A planting plan that uses native plant species indigenous to this region including groundcover, shrubs, and trees;

c. Provisions for monitoring and maintenance over the monitoring period.

B. Wetland buffer width averaging. Buffer width averaging shall be considered on a case-by-case basis when the proposed averaging is in accordance an approved wetland mitigation plan and the best available science. Buffer averaging shall not be used in conjunction with the provisions for buffer reductions in this section. Averaging of buffer widths may only be allowed where a qualified wetland specialist demonstrates that:

1. It will not reduce wetland functions or values;
2. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
3. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion.
4. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
5. The buffer width is not reduced, at any single point, to less than seventy-five percent (75%) of the standard buffer width.

3. C. Wetland buffer increases. The department may require increased buffer widths in accordance with the recommendations of a qualified wetland specialist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on ~~local conditions~~ site-specific characteristics. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

- a. A larger buffer is necessary to maintain viable populations of existing species, or
- b. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas, or
- c. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impact, or
- d. The adjacent land has minimum vegetative cover or slopes greater than ~~45~~30 percent.

B. Alteration of Character of Buffer (Qualitative Alteration).

1. Qualitative alteration of buffer for Categories II ~~and III and IV~~ wetlands shall be allowed when it is demonstrated that modification of the existing character of the buffer would not reduce the functions and values of the wetland; and
2. That the alteration does not include structures associated with the development unless identified in GHMC 18.08.120(A)(2) and (3), i.e. wells and associated access; and
3. No net loss of wetland acreage due to the alteration occurs.

Section 19. Section 18.08.120 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.120 Wetlands – Permitted uses in buffer areas.

The following activities are permitted within the wetland buffer provided that any impacts are mitigated through the requirements of this chapter:

- A. Wells and necessary appurtenances associated with single-family dwellings, including a pump and appropriately sized pump house, including a storage tank, may be allowed on each site in a wetland buffer if all the following conditions are met:
 1. The well is either an individual well (serving only one residence) or a Class B well (a maximum of 15 connections including necessary storage tanks);
 2. For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is not less ~~50~~75 percent of the buffer widths

established ~~in the table~~ in GHMC 18.08.100. A decrease in the required buffer width through buffer reduction or buffer width averaging or other means does not indicate a corresponding decreased distance is allowed from the wetland edge to the well and appurtenances;

3. Access to the well and pump house shall be allowed.

B. Pervious trails and associated viewing platforms, provided that, in the case of Category I wetlands, the minimum distance from the wetland edge is not less than ~~50~~75 percent of the Category I buffer width established ~~in the table~~ in GHMC 18.08.100. A decrease in the required buffer width through buffer width averaging or other means does not indicate a corresponding decreased distance from a Category I wetland edge for trails and viewing platforms.

C. The placement of underground utility lines, on-site septic drainfields meeting the requirements of the Pierce County health code, and grass-lined swales and detention/retention facilities for water treated by biofiltration or other processes prior to discharge, provided the minimum distance from the wetland edge is not less than ~~50~~75 percent of the buffer widths established ~~in the table~~ in GHMC 18.08.100.

D. Placement of access roads and utilities across Category II, III and IV wetland-buffers, if the department determines that there is no reasonable alternative location for providing access and/or utilities to a site and mitigation is provided as designated in this chapter.

Section 20. Section 18.08.130 of the Gig Harbor Municipal Code is hereby repealed.

Section 21. Section 18.08.140 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.140 Wetlands –Alteration of wetlands and ~~S~~sequence of mitigation actions.

A. Alteration of Category I wetlands is prohibited.

~~A-B.~~ Alteration of Category II, III and IV wetlands may be allowed when all significant adverse impacts to wetland functions and values can be shown to be fully mitigated. Criteria to be considered by the applicant or the property owner are:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

4. Compensating for the impact by replacing or providing substitute resources or environments.

B-C. Mitigation may include a combination of the above measures and may occur concurrently, unless a phased schedule is agreed.

Section 22. Section 18.08.150 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.150 Wetlands – Mitigation plan submittal requirements.

A. Following submittal of any proposed alterations to wetland and buffer areas, the applicant shall submit to the department a wetland mitigation plan substantially in the following form:

1. Conceptual Phase. A conceptual ~~compensatory~~ wetland mitigation plan shall be submitted to the department. In cases in which environmental review is required, a threshold determination may not be made prior to department review of the conceptual wetland mitigation plan. The conceptual wetland mitigation plan shall include:

- a. General goals of the ~~compensatory~~ wetland mitigation plan, including an overall goal of no net loss of wetland function and acreage, and to strive for a net resource gain in wetlands over present conditions,
- b. A review of literature or experience to date in restoring or creating the type of wetland proposed,
- c. Approximate site topography following construction,
- d. Location of proposed wetland compensation area,
- e. General hydrologic patterns on the site following construction,
- f. Nature of compensation, including wetland types (in-kind and out-of-kind), general plant selection and justification, approximate project sequencing and schedule, and approximate size of the new wetland buffer,
- g. A conceptual maintenance plan,
- h. Conceptual monitoring and contingency plan.

2. Detailed Phase. Following approval of the conceptual wetland mitigation plan by the department, a detailed wetland mitigation plan shall be submitted to the department. The detailed wetland mitigation plan shall contain, at a minimum, the following components, and shall be consistent with the standards in GHMC 18.08.480~~160~~ and 18.08.490~~180~~:

a. Text and map of the existing condition of the proposed compensation area, including:

- i. Existing vegetation community analysis,
- ii. Hydrological analysis, including topography, of existing surface and significant subsurface flows into and out of the area in question,
- iii. Soils analysis providing both Soil Conservation Service mapping and data provided by on-site verified determinations,
- iv. Detailed description of flora and fauna existing on the site,
- v. Description of existing site conditions in relation to historic conditions for those sites which have been recently altered or degraded;

b. Text and map of the proposed alterations to the compensation area, including:

- i. Relationship of the project to the watershed and existing water bodies,
- ii. Topography of site using one foot contour intervals,
- iii. Water level data, including depth and duration of seasonally high water table,
- iv. Water flow patterns,
- v. Grading, filling and excavation, including a description of imported soils,
- vi. Irrigation requirements, if any,
- vii. Water pollution mitigation measures during construction,
- viii. Aerial coverage of planted areas to open water areas (if any open water is to be present),

ix. Appropriate buffers; The ~~compensation~~ wetland mitigation plan shall include detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings

appropriate to show construction techniques or anticipated final outcome. The wetland mitigation plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data;

c. As part of the ~~compensation~~ wetland mitigation plan, a landscaping plan shall be designed by a registered landscape architect or contractor working with a qualified wetland scientist/ecologist specialist, describing what will be planted where and when. The landscape plan shall include the following:

- i. Soils and substrate characteristics,
- ii. Specification of substrate stockpiling techniques,
- iii. Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirement,

- iv. Specification of where plant materials will be procured. Documentation shall be provided which guarantees plant materials are to be procured from licensed regional nurseries, or from wetlands on site which are part of the wetland mitigation plan;

d. A schedule shall be provided showing dates for beginning and completing the mitigation project, including a sequence of construction activities;

e. A monitoring and maintenance plan, consistent with GHMC 18.08.180. The plan shall include all the following:

- i. Specification of procedures for monitoring and site maintenance,
- ii. A schedule for submitting monitoring reports to the department;

f. A contingency plan, consistent with GHMC 18.08.180;

g. A detailed budget for implementation of the wetland mitigation plan, including monitoring, maintenance and contingency phases;

h. A guarantee that the work will be performed as planned and approved, consistent with GHMC 18.08.180;

- i. The wetland mitigation plan shall be signed by the qualified wetland specialist to indicate that the plan is according to specifications determined by the qualified wetland specialist. A signed original wetland mitigation plan shall be submitted to the department.

3. ~~Approval of the detailed mitigation plan~~ Following the approval of the detailed wetland mitigation plan by the department, the plan shall be ~~signified by a notarized memorandum of agreement signed and notarized~~ by the applicant and ~~director of the department~~ Community Development Director, and recorded with the Pierce County auditor. ~~The agreement shall refer to all mitigation requirements for the project.~~

4. Approval of the detailed wetland mitigation plan shall occur prior to the issuance of building permits or other development permits. No development activity shall occur on the site prior to approval. Required mitigation may also be required prior to issuance of permits or prior to commencing development activity. Timing of required mitigation shall be determined on a case by case basis.

Section 23. Section 18.08.160 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.160 Wetlands – Criteria for compensatory mitigation/location criteria and timing of compensatory mitigation.

A. The applicant shall develop a wetland mitigation plan that provides for construction, maintenance, monitoring and contingencies of the replacement wetland. In addition, the applicant and landowner shall meet the following criteria:

- 1. The restored, created, or enhanced wetland shall be as persistent as the wetland it replaces;

2. The applicant shall demonstrate sufficient capability to carry out the compensation project;

3. The compensation area shall be provided with permanent protection and management to avoid further development or degradation and to provide for the long term persistence of the compensation area as designed.

B. In cases in which it is determined that compensatory mitigation is appropriate, the following shall apply:

1. Compensatory mitigation shall be provided on-site, except where on-site mitigation is not scientifically feasible or practical due to physical features of the site. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on-site.

2. When compensatory mitigation cannot be provided on-site, mitigation shall be provided in the immediate vicinity of and within the same watershed as the permitted activity.

3. Compensatory mitigation shall duplicate the overall functions and values and standards of the wetland to be replaced and shall include at least 50 percent in-kind compensation mitigation unless it can be demonstrated by the applicant that the overall wetland values of the mitigation area and adjacent or connecting wetlands can be enhanced by a higher percentage of out-of-kind mitigation.

4. Only when it is determined by the department that ~~subdivisions~~ subsections 1, 2 and 3 above are inappropriate and/or impractical shall off-site, compensatory mitigation be considered.

5. Mitigation projects shall be completed concurrent with other activities on the site, unless a phased schedule is agreed upon between the department and the applicant. Refer to GHMC 18.08.170 for guidelines on determining wetland acreage replacement ratios.

Section 24. Section 18.08.170 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.170 Wetlands – ~~r~~Replacement criteria.

A. Where wetlands are altered, the applicant shall meet the minimum requirements of this section.

B. When it is proposed to alter or eliminate a wetland and the department is considering the alteration or elimination, the applicant shall be required to replace or ~~preferably~~ enhance the functionals and ~~biological~~ values of the affected wetland. The wetland values will be based on an approved evaluation procedure ~~such as Wetlands Evaluation Technique (WET), Habitat Evaluation Procedure (HEP) etc.~~ A reduction in overall wetland acres is allowed if the conditions in subsection E of this section are met. The recommended ratios for replacement/compensation are as established in the following table:

Wetland Type	Replacement Ratio
Category I: (No Alteration or Replacement)	
Category II:	
Forested:	2:1
Scrub/Shrub:	1.5:1
Emergent:	1:1
Open Water:	1:1
Category III:	

Forested: 1.5:1
 Scrub/Shrub: 1:1
 Emergent: 1:1
 Open Water: 1:1
 Category IV: 1:1

~~Note that within Category II and III wetlands replacement ratios vary depending on wetland class. For example, it will be required to replace the forested portion of a wetland at a higher ratio than the other portions of the wetland.~~

Category I	6-to-1 (for unauthorized wetland impact only)
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

C. Ratios provided are for proposed projects with on-site, in-kind replacement which occurs prior to development of the site. Replacement ratio for unauthorized wetland elimination impact requires resurface replacement at a ratio two times that listed for the wetland categorical type. The increased ratio is based on the uncertainty of probable success of proposed replacement, projected losses of wetland functionals and values, or significant period of time between elimination and replacement of wetland. Such required increases in replacement ratios will be made by the department after review of all pertinent data relating to the proposed or committed alteration.

D. The department will allow the ratios to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise which demonstrate to the satisfaction of the department that no net loss of wetland function or value is attained under the decreased ratio.

E. The replacement ratio may be decreased to a ratio of ~~less than~~ 1:1, if the following criteria are met:

1. The applicant shows to the satisfaction of the department that a replacement ratio of greater than 1:1 is either not feasible on-site, would be likely to result in substantial degradation of other natural features or results in an increase of wetland function and values; and

2. The applicant submits to the department a wetland mitigation plan according to requirements of GHMC 18.08.150 and 18.08.160 which shows to the satisfaction of the department that a net increase in wetland functionals and values will result from the mitigation; and

3. The mitigation is completed and monitored by the department for one year after completion of the mitigation. After one year the department shall make a determination of whether or not the mitigation has been successful.

- a. If the department is satisfied that the mitigation will successfully meet the anticipated final outcome of the wetland mitigation plan, development permits may be issued and development activity on the site may begin.

- b. If the department is not satisfied that the mitigation will successfully meet the anticipated final outcome of the wetland mitigation plan, development permits shall not be issued and development activity on the site shall not begin. Modifications to the wetland mitigation plan and further monitoring may be required until the department is satisfied that the mitigation will be successful.

F. In-kind compensation shall be provided except where the applicant can demonstrate to the satisfaction of the department that:

1. The wetland system is already significantly degraded and out-of-kind replacement will result in a wetland with greater functional value; or

2. Scientific problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impossible; or

3. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types);

4. Where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functionals and values.

G. Site specific quantifiable criteria shall be provided for evaluating whether or not the goals and objectives for the proposed compensation are being met. Such criteria include but are not limited to water quality standards, survival rates for planted vegetation, habitat diversity indices, species abundance or use patterns, hydrological standards including depths and durations of water patterns. Detailed performance standards for mitigation planning shall include the following criteria:

1. Use only plants indigenous to Pierce County (not introduced or foreign species);

2. Use plants appropriate to the depth of water at which they will be planted;

3. Use plants available from local sources;

4. Use plant species high in food and cover value for fish and wildlife;

5. Plant mostly perennial species;

6. Avoid committing significant areas of site to species that have questionable potential for successful establishment;

7. Plant selection must be approved by a qualified wetland scientist/ecologist specialist;

8. Water depth is not to exceed 6.5 feet (two meters);

9. The grade or slope that water flows through the wetland is not to exceed six percent;

10. Slopes within the wetland basin and the buffer zone should not be steeper than 3:1 (horizontal to vertical);

11. The substrate should consist of a minimum of one foot, in depth, of clean (uncontaminated with chemicals, or solid/hazardous wastes) inorganic/organic materials;

12. Planting densities and placement of plants shall be determined by a qualified wetlands biologist/ecologist specialist and shown on the design plans;

13. The wetland (excluding the buffer area) should not contain more than 60 percent open water as measured at the seasonal high water mark;

14. The planting plan must be approved by a qualified wetland scientist/ecologist specialist;

15. Stockpiling shall be confined to upland areas and contract specifications should limit stockpile durations to less than four weeks;

16. Planting instructions shall describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock;

17. Apply controlled release fertilizer at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process), and only to the extent that the release would be conducted in an environmentally sound manner;

18. Install an irrigation system, if necessary, for initial establishment period;

19. Construction specifications and methods shall be approved by a qualified wetland scientist/ecologist specialist and the department;

20. All mitigation shall be consistent with requirements of ~~the city flood hazard construction ordinance~~ Chapter 15.04 GHMC and city storm drainage comprehensive plan;

21. As appropriate, and if impacts to natural wetland functionals and values can be fully mitigated, capacity of the wetland to store surface water should be equal to or greater than surface water storage capacity prior to the proposed activity;

22. As appropriate, and if impacts to natural wetland functionals and values can be fully mitigated, ability of the wetland to intercept surface water runoff on the site should be equal to or greater than such ability prior to the proposed activity;

23. As appropriate, and if impacts to natural wetland functionals and values can be fully mitigated, the ability of the wetland to perform stormwater detention functions should be equal to or greater than such functions prior to the proposed activity.

H. Wetland mitigation shall occur according to the approved wetland mitigation plan, and shall be consistent with all provisions of this regulation.

I. On completion of construction required to mitigate for impacts to wetlands, the wetland mitigation project shall be signed off by an approved qualified wetland scientist/ecologist specialist and the ~~county's~~ city's environmental official. Signature will indicate that the construction has been completed as planned.

Section 25. Section 18.08.180 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.180 Wetlands – Monitoring program and contingency plan.

A. If the wetland mitigation plan includes compensatory mitigation, a monitoring program shall be implemented to determine the success of the compensatory mitigation project.

B. Specific criteria shall be provided for evaluating the mitigation proposal relative to the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

C. A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails. ~~A cash deposit, assignment of funds, or other acceptable security device is required for the duration of the monitoring period specified in the approved mitigation plan, to ensure the applicant's compliance with the terms of the mitigation agreement. The amount of the security device shall equal 125 percent of the cost of the mitigation project.~~

D. Requirements of the monitoring program and contingency plan are as follows:

1. During monitoring, use scientific procedures for establishing the success or failure of the project;

2. For vegetation determinations, permanent sampling points shall be established;

3. Vegetative success equals 80 percent per year survival of planted trees and shrubs and 80 percent per year cover of desirable understory or emergent species;

4. Submit monitoring reports of the current status of the mitigation project to the department. The reports are to be prepared by a qualified wetland biologist/ecologist specialist and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:

- a. At time of construction,
- b. Thirty days after planting,
- c. Early in the growing season of the first year,
- d. End of the growing season of first year,
- e. Twice the second year,
- f. Annually;

5. Monitor a minimum of three and up to 10 growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;
6. If necessary, correct for failures in the mitigation project;
7. Replace dead or undesirable vegetation with appropriate plantings;
8. Repair damages caused by erosion, settling, or other geomorphological processes;
9. Redesign mitigation project (if necessary) and implement the new design;
10. Correction procedures shall be approved by a qualified wetlands biologist/ecologist specialist and the Pierce County city's environmental official.

Section 26. A new Section 18.08.182 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.182 Streams – Designation and rating of streams.

A. Streams are waterbodies with a defined bed and banks and demonstrable flow of water as defined in the chapter. Streams are designated as environmentally critical areas.

B. Stream Classification. Streams shall be designated Type 1, Type 2, Type 3, and Type 4 according to the criteria in this subsection.

1. Type 1 Streams are those streams identified as "Shorelines of the State" under Chapter 90.58 RCW.

2. Type 2 Streams are those streams which are:

- a. natural streams that have perennial (year-round) flow and are used by salmonid fish, or
- b. natural streams that have intermittent flow and are used by salmonid fish.

3. Type 3 Streams are those streams which are:

- a. natural streams that have perennial flow and are used by fish other than salmonids, or
- b. natural streams that have intermittent flow and are used by fish other than salmonids.

4. Type 4 Streams are those natural streams with perennial or intermittent flow that are not used by fish.

C. Ditches. Ditches are artificial drainage features created in uplands through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. Purposeful creation must be demonstrated through documentation, photographs, statements and/or other evidence. Ditches are excluded from regulation as streams under this section. Artificial drainage features with documented fish usage are regulated as streams. Drainage setbacks are required as per the City's Surface Water Manual.

Section 27. A new Section 18.08.183 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.183 Streams – Critical areas report.

A. A stream analysis report shall be prepared by a qualified biologist and submitted to the department as part of the SEPA review process established by the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC.

B. The stream analysis report shall be prepared in accordance with the methods provided by Washington Department of Fish and Wildlife or Pierce County Planning and

Land Services or other acceptable scientific method and submitted to the department for review for any proposals that are within 200 feet of a stream.

C. Within 30 days of receipt of the stream analysis report and other information, the department shall determine the appropriate stream category, buffering requirement, and required mitigation. The report shall be accorded substantial weight and the department shall approve the report's findings and approvals, unless specific, written reasons are provided which justify not doing so. Once accepted, the report shall control future decision making related to designated streams unless new information is found demonstrating the report is in error.

Section 28. A new Section 18.08.184 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.184 Streams – Performance Standards - General.

A. Establishment of stream buffers. The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to streams. The purpose of the buffer shall be to protect the integrity, function, and value of the stream. Buffers shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the stream, and implementation of appropriate erosion and sedimentation controls. Native vegetation removal or disturbance is not allowed in established buffers.

Required buffer widths shall reflect the sensitivity of the stream or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the sensitive area. Buffers or setbacks shall be measured as follows:

B. Stream Buffers

1. The following buffers are established for streams:

Stream Type	Buffer Width (feet)
Type 1	200
Type 2	100
Type 3	50
Type 4	25

2. Measurement of stream buffers. Stream buffers shall be measured perpendicularly from the ordinary high water mark.

3. Increased stream buffer widths. The Director shall require increased buffer widths in accordance with the recommendations of a qualified biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect stream functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

- a. A larger buffer is needed to protect other critical areas;
- b. The buffer or adjacent uplands has a slope greater than thirty percent (30%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland.

4. Buffer conditions shall be maintained. Except as otherwise specified or allowed in accordance with this Title, stream buffers shall be retained in an undisturbed condition.

5. Degraded buffers shall be enhanced. Stream buffers vegetated with non-native species or otherwise degraded shall be enhanced with native plants, habitat features or other enhancements.

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

a. Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;

b. Passive recreation. Passive recreation facilities designed in accordance with an approved critical area report, including:

i. Walkways and trails, provided that those pathways that are generally parallel to the perimeter of the stream shall be located in the outer twenty-five percent (25%) of the buffer area;

ii. Wildlife viewing structures; and

iii. Fishing access areas.

c. Stormwater management facilities. Grass lined swales and dispersal trenches may be located in the outer 25% of the buffer area. All other surface water management facilities are not allowed within the buffer area.

7. Building setback. A 15-foot building setback is required from the edge of the stream buffer.

C. Stream crossings. Stream crossings may be allowed and may encroach on the otherwise required stream buffer if:

1. All crossings use bridges or other construction techniques which do not disturb the stream bed or bank, except that bottomless culverts or other appropriate methods demonstrated to provide fisheries protection may be used for Type 2 or 3 streams if the applicant demonstrates that such methods and their implementation will pose no harm to the stream or inhibit migration of fish;

2. All crossings are constructed during the summer low flow and are timed to avoid stream disturbance during periods when use is critical to salmonids;

3. Crossings do not occur over salmonid spawning areas unless the City determines that no other possible crossing site exists;

4. Bridge piers or abutments are not placed within the FEMA floodway or the ordinary high water mark;

5. Crossings do not diminish the flood-carrying capacity of the stream;

6. Underground utility crossings are laterally drilled and located at a depth of four feet below the maximum depth of scour for the base flood predicted by a civil engineer licensed by the state of Washington. Temporary bore pits to perform such crossings may be permitted within the stream buffer established in this Title; and

7. Crossings are minimized and serve multiple purposes and properties whenever possible.

D. Stream relocations.

1. Stream relocations may be allowed only for:

a. All Stream types as part of a public project for which a public agency and utility exception is granted pursuant to this Title; or

b. Type 3 or 4 streams for the purpose of enhancing resources in the stream if:

i. appropriate floodplain protection measures are used; and

ii. the location occurs on the site except that relocation off the site may be allowed if the applicant demonstrates that any on-site relocation is impracticable, the

applicant provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage sub-basin as the original stream.

2. For any relocation allowed by this section, the applicant shall demonstrate, based on information provided by a civil engineer and a qualified biologist, that:

- a. The equivalent base flood storage volume and function will be maintained;
- b. There will be no adverse impact to local groundwater;
- c. There will be no increase in velocity;
- d. There will be no interbasin transfer of water;
- e. There will be no increase in the sediment load;
- f. Requirements set out in the mitigation plan are met;
- g. The relocation conforms to other applicable laws; and
- h. All work will be carried out under the direct supervision of a qualified

biologist.

E. Stream enhancement. Stream enhancement not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direction of a qualified biologist.

F. Minor stream restoration. A minor stream restoration project for fish habitat enhancement may be allowed if:

1. The project results in an increase in stream function and values.
2. The restoration is sponsored by a public agency with a mandate to do such work;
3. The restoration is not associated with mitigation of a specific development proposal;
4. The restoration is limited to removal and enhancement of riparian vegetation, placement of rock weirs, log controls, spawning gravel and other specific salmonid habitat improvements;
5. The restoration only involves the use of hand labor and light equipment; or the use of helicopters and cranes which deliver supplies to the project site provided that they have no contact with sensitive areas or their buffers; and
6. The restoration is performed under the direction of a qualified biologist.

Section 29. A new Section 18.08.185 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.185 Streams – Mitigation Requirements.

A. Stream mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub drainage basin as the habitat impacted.

B. Alternative mitigation for stream areas. The performance standards set forth in this Subsection may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.

Section 30. A new Section 18.08.186 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.186 Critical fish and wildlife habitat areas.

Critical fish and wildlife habitat areas are those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife and natural vegetation. Areas which are identified or classified as fish and wildlife habitat areas subject to this section shall be subject to the requirements of this section.

A. General. Critical fish and wildlife habitat areas are identified as follows:

1. Areas with which federal or state endangered, threatened and sensitive species of fish, wildlife and plants have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;
2. Habitats and species of local importance, including:
 - a. Areas with which state-listed monitor or candidate species or federally listed candidate species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term,
 - b. Special habitat areas which are infrequent in occurrence in the city of Gig Harbor and which provide specific habitats as follows:
 - i. Old growth forests,
 - ii. Snag-rich areas,
 - iii. Category 2 wetland areas,
 - iv. Significant stands of trees which provide roosting areas for endangered, threatened, rare or species of concern as identified by the Washington Department of Wildlife;
3. Commercial and public recreational shellfish areas;
4. Kelp and eelgrass beds;
5. Herring and smelt spawning areas;
6. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
7. Lakes, ponds and streams planted with fish by a governmental agency, and agency-sponsored group or tribal entity;
8. State natural area preserves and natural resource conservation areas;

B. Classification. Critical fish and wildlife habitat areas are identified in the following documents:

1. Puget Sound Environmental Atlas (Puget Sound Water Quality Authority);
2. Coastal Zone Atlas of Washington, Volume IV, Pierce County (Washington Department of Ecology);
3. Commercial and Recreational Shellfish Areas in Puget Sound (Washington Department of Health);
4. The Department of Natural Resources stream typing maps and natural heritage data base;
5. The Washington Department of Wildlife priority habitats and species program, the Nongame data base, and the Washington rivers information system.

C. Regulation.

1. Habitat Assessment. For all regulated activity proposed on a site which contains or is within 300 feet of critical fish and wildlife habitat, a habitat assessment shall be prepared by a qualified wildlife biologist. The habitat assessment shall include, at a minimum, the following:
 - a. An analysis and discussion of species or habitats known or suspected to be located within 300 feet of the site;
 - b. A site plan which clearly delineates the critical fish and wildlife habitats found on or within 300 feet of the site.

2. Habitat Assessment Review. A habitat assessment shall be forwarded for review and comment to agencies with expertise or jurisdiction on the proposal, including, but not limited to:

- a. Washington Department of Fish and Wildlife;
- b. Washington Department of Natural Resources;
- c. United States Fish and Wildlife Service.

Comments received by the requested review agencies within 45 days of the submittal of the assessment shall be considered by the department. If it is determined, based upon the comments received, that critical fish and wildlife habitat does not occur on or within 300 feet of the site, the development may proceed without any additional requirements under this section. If it is determined that a critical fish and wildlife habitat is on or within 300 feet of the site, a habitat management plan shall be prepared.

3. Habitat Management Plan. Habitat management plans required under this section shall be prepared in coordination with the Washington Department of Fish and Wildlife by a qualified wildlife biologist. A habitat management plan shall contain, at a minimum, the following:

- a. Analysis and discussion on the project's effects on critical fish and wildlife habitat;
- b. An assessment and discussion on special management recommendations which have been developed for species or habitat located on the site by any federal or state agency;
- c. Proposed mitigation measures which could minimize or avoid impacts;
- d. Assessment and evaluation of the effectiveness of mitigation measures proposed;
- e. Assessment and evaluation of ongoing management practices which will protect critical fish and wildlife habitat after development of the project site, including proposed monitoring and maintenance programs;
- f. Assessment of project impact or effect on water quality in Crescent or Donkey (north) Creeks, and any proposed methods or practices to avoid degradation of water quality. Upon a review of the habitat management plan by appropriate federal and state agencies, comments received by the agencies within 45 days of the submittal of the proposed plan shall be considered by the city and, if mitigation is recommended, may be incorporated into conditions of project approval, as appropriate. If it is determined, based upon the comments received, that a project or proposal will result in the extirpation or isolation of a critical fish or wildlife species, including critical plant communities, the project or proposal may be denied.

D. Buffer Requirements. If it is determined, based upon a review of the comments received on the habitat management plan, that a buffer would serve to mitigate impacts to a critical fish or wildlife habitat, an undisturbed buffer shall be required on the development site. The width of the buffer shall be based upon a recommendation of at least one of the appropriate review agencies but, in no case, shall exceed 150 feet, nor be less than 25 feet.

E. Buffer Reduction. A buffer required under this section may be reduced or eliminated if the local conservation district has approved a best management plan (BMP) for the site which would provide protection to a critical fish or wildlife habitat.

F. Specific Habitats - Anadromous fish

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

b. An alternative alignment or location for the activity is not feasible;

c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and

d. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

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

3. Fills, when authorized by the City of Gig Harbor's Shoreline Management Master Program, SEPA review or clearing and grading, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

Section 31. A new Section 18.08.188 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.188 Aquifer recharge areas.

Aquifer recharge areas are particularly susceptible to contamination and degradation from land use activities. Areas which have a high potential for ground water resource degradation are identified as aquifer recharge areas under this section and shall be subject to the requirements herein.

A. Designation/Classification. For the purposes of this section, the boundaries of any aquifer recharge areas within the city shall consist of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range. Any site located within these boundaries is included in the aquifer recharge area.

B. Regulation.

1. Hydrogeologic Assessment Required. The following land uses shall require a hydrogeologic assessment of the proposed site if the site is located within an aquifer recharge area:

a. Hazardous substance processing and handling;

b. Hazardous waste treatment and storage facility;

c. Wastewater treatment plant sludge disposal categorized as S-3, S-4 and S-5;

d. Solid waste disposal facility.

2. Hydrogeologic Assessment Minimum Requirements. A hydrogeologic assessment shall be submitted by a firm, agent or individual with experience in hydrogeologic assessments and shall contain, at a minimum, and consider the following parameters:

a. Documentable information sources;

b. Geologic data pertinent to well logs or borings used to identify information;

c. Ambient ground water quality;

d. Ground water elevation;

e. Depth to perched water table, including mapped location;

f. Recharge potential of facility site, respective to permeability and transmissivity;

g. Ground water flow vector and gradient;

- h. Currently available data on wells and any springs located within 1,000 feet of the facility site;
 - i. Surface water location and recharge potential;
 - j. Water supply source for the facility;
 - k. Analysis and discussion of the effects of the proposed project on the ground water resource;
 - l. Proposed sampling schedules;
 - m. Any additional information that may be required or requested by the Pierce County environmental health department.
3. Review of Hydrogeologic Assessment. A hydrogeologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.
4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section.

Section 32. A new Section 18.08.190 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.190 Hillsides, ravine sidewalls and bluffs.

A. Disturbance Limitations. If a hillside, ravine sidewall or bluff is located on or adjacent to a development site, all activities on the site shall be in compliance with the following requirements:

1. Ravine Sidewalls and Bluffs.

a. Buffers. An undisturbed buffer of natural vegetation equal to the height of the ravine sidewall or bluff shall be established and maintained from the top, toe and sides of all ravine sidewalls and bluffs. All buffers shall be measured on a horizontal plane.

b. Buffer Delineation. The edge of a buffer shall be clearly staked, flagged and fenced prior to any site clearing or construction. Markers shall be clearly visible and weather resistant. Site clearing shall not commence until such time that the project proponent or authorized agent for the project proponent has submitted written notice to the city that the buffer requirements of this section have been met. Field marking of the buffer shall remain in place until all phases of construction have been complete and an occupancy permit has been issued by the city.

c. Buffer Reduction. A buffer may be reduced upon verification by a qualified professional and supporting environmental information, to the satisfaction of the city that the proposed construction method will:

- i. Not adversely impact the stability of ravine sidewalls;
- ii. Not increase erosion and mass movement potential of ravine sidewalls;
- iii. Use construction techniques which minimize disruption of existing topography and vegetation;
- iv. Includes measures to overcome any geological, soils and hydrologic constraints of the site. The buffer may be reduced to no less than the minimum rear yard setback established in the respective zoning district, pursuant to GHMC Title 17.

d. Building Setback Lines. A building setback line of 10 feet is required from the edge of any buffer of a ravine sidewall or bluff.

2. Hillside of 15 Percent Slope and Greater – Studies Required. Developments on hillsides shall comply with the following requirements:

a. Site Analysis Reports Required. The following chart sets forth the level of site analysis report required to be developed based upon the range of the slope of the site and adjacent properties:

Slope of Site and/or Adjacent Properties	Length of Slope (feet)	Parameters of Report (see key)	Report Prepared by
0% to 15%	No limit	Report not required	
15% to 25%	> 50	1, 2, 3	Building contractor or other technical consultant
25% to 40%	> 35	1, 2, 3, 4	Registered civil engineer
40% +	> 20	1, 2, 3, 4	Registered engineer or geotechnical engineer

Report Key Contents

1. Recommended maximum site ground disturbance.
2. Estimate of storm drainage (gpm) for preconstruction, during construction and post-construction.
3. Recommended methods to minimize erosion and storm water runoff from site during construction and post-construction.
4. Seismic stability of site, preconstruction, during construction and post-construction.

b. Development Location. Structures and improvements shall be located to preserve the most sensitive portion of the site, its natural land forms and vegetation.

c. Landscaping. The disturbed areas of a development site not used for buildings and other developments shall be landscaped according to the landscape standards of the zoning code (Chapter 17.78 GHMC).

d. Project construction shall be required to implement all recommended requirements of the report referenced in subsection A2a of this section, and any additional requirements as determined by city staff. In addition, should adjacent properties be adversely impacted by the implementation or construction, additional mitigation measures necessary to minimize or eliminate these impacts shall be implemented by the applicant.

Section 33. A new Section 18.08.192 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.192 Landslide and erosion hazard areas.

Areas which are identified as landslide or erosion hazard areas shall be subject to the requirements established in this section.

A. Regulation. Applications for regulated activities proposed within designated landslide and erosion hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a civil engineer with the state. If it is satisfactorily demonstrated to the Community Development Director that a landslide or erosion hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. A geotechnical report required under this section shall include, at a minimum, the following information:

1. Topographic data at a minimum scale of 1:240 (1 inch = 20 feet). Slope ranges shall be clearly delineated in increments of 15 percent to 25 percent, 25 percent to 40 percent and greater than 40 percent;

2. Subsurface data, including boring logs and exploratory methods, soil and rock stratigraphy, ground water levels and any seasonal variations of ground water levels;

3. Site history, including description of prior grading and clearing, soil instability or slope failure.

If a geotechnical report has been prepared and accepted by the Community Development Director within the previous two years for a specific site and the proposed land use development and site conditions have not changed, the report may be utilized without the requirement for a new report.

C. Development Standards. Upon submission of a satisfactory geotechnical report or assessment, site development may be authorized by the director subject to the following:

1. Buffers shall comply with the requirements of GHMC 18.08.060(A);

2. Approved erosion-control measures are in place prior to, or simultaneous, with site clearing or excavation;

3. Such other conditions as deemed appropriate by the administrator to ensure compliance with the provisions of this chapter.

Section 34. A new Section 18.08.194 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.194 Seismic hazard areas.

Designated seismic hazard areas shall be subject to the requirements of this section. At a minimum, seismic hazard areas shall include areas of alluvial and recessional outwash surficial geologic units as identified in "Water Resources and Geology of the Kitsap Peninsula and Certain Adjacent Lands, Water Supply Bulletin Number 18, Plate One," U.S. Department of the Interior, Geological Survey, Water Resources Division, and any lot, tract, site or parcel which has been modified by imported or excavated earthen fill material.

A. Regulation. Applications for regulated activities proposed within designated seismic hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a civil engineer with the state. If it is satisfactorily demonstrated that a seismic hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. The required report shall evaluate the existing site conditions, including geologic, hydrologic and site capability to accommodate the proposed activity. At a minimum, the following shall be included:

1. Analysis of subsurface conditions;

2. Delineation of the site subject to seismic hazards;
3. Analysis of mitigation measures which may be employed to reduce or eliminate seismic risks, including an evaluation of the effectiveness of mitigation measures.

If a proposal is required to submit a seismic risk analysis pursuant to any requirements of the most recently adopted edition of the International Building Code by the city of Gig Harbor, the report requirements of this section may be waived by the department.

Section 35. A new Section 18.08.196 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.196 Flood hazard areas.

Areas which are prone to flooding and which are identified in the Federal Emergency Management Administration flood insurance rate maps for the city of Gig Harbor (September 2, 1981) shall be subject to the requirements of this section.

A. Regulation. All development within flood hazard areas shall be subject to the requirements of the city of Gig Harbor flood hazard construction standards (Chapter 15.04 GHMC).

Section 36. Section 18.08.200 of the Gig Harbor Municipal Code is hereby repealed.

Section 37. A new Section 18.08.200 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.200 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements. Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply.

Section 38. A new Section 18.08.202 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.202 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the

department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

A. Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter where necessary to:

1. Prevent an imminent threat to public health or safety, or
2. Prevent an imminent danger to public or private property, or
3. Prevent an imminent threat of serious environmental degradation.

The department shall determine on a case-by-case basis emergency action which satisfies the general requirements of this subsection. In the event a person determines that the need to take emergency action is so urgent that there is insufficient time for review by the department, such emergency action may be taken immediately. The person undertaking such action shall notify the department within one working day of the commencement of the emergency activity. Following such notification the department shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the department determines that the action taken or part of the action taken is beyond the scope of allowed emergency action, enforcement action according to provisions of this chapter is warranted

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities;

E. The placement of signs consistent with Chapter 17.80 GHMC.

F. Existing and ongoing agricultural activities, as defined in this chapter;

G. Forestry practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations;

H. Activities affecting a hydrologically isolated Category IV wetland, if the functional wetland size is less than 1,000 square feet, except that such activities shall comply with the city flood hazard construction code and the city storm drainage management plan;

I. Maintenance, operation and reconstruction of existing roads, streets, utility lines and associated structures, provided that reconstruction of any such facilities does not extend outside the scope of any designated easement or right-of-way;

J. Activities on improved roads, rights-of-way, easements, or existing driveways;

K. Normal maintenance and reconstruction of structures, provided that reconstruction may not extend the existing ground coverage;

L. Activities having minimum adverse impacts on wetlands, such as passive recreational uses, sport fishing or hunting, scientific or educational activities;

Section 39. A new Section 18.08.204 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.204 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section. The burden is upon the applicant in meeting the required showings for the granting of a variance.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Variance. Before any variance may be granted, it shall be shown:

a. That there are special circumstances applicable to the subject property or the intended use such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a variance from the minimum requirements; and

b. That such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which, because of the ordinance codified in this chapter, is denied to the property in question; and

c. That the granting of such variance will not be materially detrimental to the public welfare.

2. Granting a Variance. When granting a variance, the examiner shall determine that the circumstances do exist as required by this section, and attach specific conditions to the variance which will serve to accomplish the standards, criteria and policies established by this chapter.

C. To apply for a variance, the applicant shall submit to the city a complete variance application. Such application shall include a site plan, pertinent information, a cover letter addressing the required showings for a variance and required fees.

Section 40. A new Section 18.08.206 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.206 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;
2. The proposed development does not present a threat to the public health, safety or welfare;
3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;
4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;
5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;
6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property. The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas.

Section 41. A new Section 18.08.208 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.208 Performance Bonding.

A. As part of the any mitigation plan the City shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.

1. A performance bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

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

3. Bonds or other security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

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

5. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section.

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

7. Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

Section 42. Section 18.08.220 of the Gig Harbor Municipal Code is hereby repealed.

Section 43. A new Section 18.08.220 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.220 Penalties and enforcement.

A. The Community Development director shall have authority to enforce this chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof. The Community Development Director is authorized to issue violation notices and administrative orders, levy fines and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. The Community Development Director may serve upon a person a cease and desist order if any activity being undertaken in a designated critical area or its buffer is in violation of this chapter. Whenever any person violates this chapter or any approval issued to implement this chapter, the Community Development Director may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

C. Any person who undertakes any activity within a designated critical area or within a required buffer without first obtaining an approval required by this chapter, except as specifically exempted, or any person who violates one or more conditions of any approval required by this chapter or of any cease and desist order issued pursuant to this chapter shall incur a civil penalty as provided for in Chapter 17.07 GHMC.

D. The city's enforcement of this chapter shall proceed according to Chapter 17.07 GHMC.

Section 44. Section 18.08.230 of the Gig Harbor Municipal Code is hereby repealed.

Section 45. Section 18.08.260 of the Gig Harbor Municipal Code is hereby repealed.

Section 46. Transmittal to State. The City Community Development Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Office of Community Development within ten days of adoption, pursuant to RCW 36.70A.106.

Section 47. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 48. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 27th day of March, 2006.

CITY OF GIG HARBOR

STEVEN K. EKBERG, MAYOR PRO TEM

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 3/8/06
PASSED BY CITY COUNCIL: 3/27/06
PUBLISHED: 4/5/06
EFFECTIVE DATE: 4/10/06
ORDINANCE NO: 1036