ORDINANCE NO. 343

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, REPEALING TITLE 17 OF THE UNIVERSITY PLACE MUNICIPAL CODE AND ADOPTING A NEW TITLE 17 "CRITICAL AREAS".

WHEREAS, the University Place City Council adopted a GMA Comprehensive Plan on July 6, 1998 which became effective July 13, 1998; and,

WHEREAS, the Revised Code of Washington 36.70A.040 requires the City to adopt development regulations which are consistent with and implement the comprehensive plan; and

WHEREAS, in September 2000 the Planning Commission began work to develop a new critical areas code that would be consistent with and implement the Growth Management Act and Comprehensive Plan; and

WHEREAS, pursuant to RCW 36.70A.172 the Planning Commission considered best available science when developing the Critical Areas Code, and

WHEREAS, the Planning Commission has recommended buffer widths consistent with local development patterns, pursuant to WAC 365-195-915(1)(c).

WHEREAS, pursuant to WAC 365-195-925 Planning Commission has given special consideration to protection measures necessary to preserve and/or enhance anadromous fisheries.

WHEREAS, The Planning Commission considered the Endangered Species Act and the 4(d) rule with regard to threatened Chinook salmon when developing the Critical Areas Code, and

WHEREAS, a request for comments was sent to special interest groups and individuals, including but not limited to the Master Builders Association, University Place School District, the Chamber of Commerce, Pierce County, the City of Lakewood, the Audubon Society, individuals who had commented in previous meetings and representatives from the local development industry; and

WHEREAS, the Planning Commission held more than 15 public meetings including a public hearing on the critical areas code before recommending by resolution a critical areas code to the City Council on July 18th 2001: and

WHEREAS, the proposed draft critical areas code was submitted for State agency 60-day review period pursuant to RCW 36.70A.106 that concluded October 19, 2001 and the City received no comments from state agencies; and

WHEREAS, state agencies and surrounding jurisdictions were provided a SEPA checklist for comment in accordance with SEPA requirements; and

WHEREAS, on October 23, 2001 the City issued a SEPA Determination of Non-significance with a 14-day comment period ending on November 6, 2001 and appeal deadline of November 20, 2001; and

WHEREAS, the City Council held two study sessions during public meetings to consider the proposed amendments; and

WHEREAS, the City Council held a public meeting on March 4, 2002 and a second public meeting on April 1, 2002 to consider public comments and questions; and

WHEREAS, staff held an Open House on April 29, 2002 to consider public comments and questions; NOW THEREFORE

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

- Section 1. Adopt A New Title 17 Critical Areas. Title 17 Critical Areas of the University Place Municipal Code is hereby repealed and replaced with a new Title 17 "Critical Areas" in the form attached as Exhibit A and incorporated by this reference.
- Section 2. <u>Applicability.</u> This code shall apply to all new applications filed with the City. Pending violations that are vested under the current Title 17 shall continue to be processed under the current Title.
- Section 3. <u>Copy To Be Available.</u> One copy of this ordinance shall be available in the office of the City Clerk for use and examination by the public.
- Section 4. <u>Severability.</u> If any section, sentence, clause, or phrase of this ordinance shall be 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, sentence, clause, or phrase of this ordinance.
- Section 5. <u>Publication And Effective Date.</u> A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JUNE 3, 2002.

Jean Brooks, Mayor

ATTEST:

Catrina Craig, City Clerk

APPROVED AS TO FORM:

Timothy X. Sulliyan, City Attorney

Date of Publication: June 5, 2002 Effective Date: June 10, 2002

CHAPTER 17 CRITICAL AREAS

Table of Contents

DIVISION I CRITICAL AREAS

Chapters:

17.05 Authority And Purpose
17.10 General Requirements
17.15 Geologically Hazardous Areas

17.20 Aquifer Recharge Areas

17.25 Fish and Wildlife Habitat Areas

17.30 Flood Hazard Areas

17.35 Wetlands

DIVISION II

SEPA REGULATIONS

Chapters:

17.40 Environmental regulations

CHAPTER 17.05 AUTHORITY AND PURPOSE

Sections:

17.05.005 Authority and title. 17.05.010 Purpose and goals. 17.05.015 Intent. 17.05.020 Interpretation.

17.05.005

17.05.025

Authority and title.

Severability.

This title is established pursuant to the requirements of the Growth Management Act (RCW 36.70A.060) and the State Environmental Policy Act (Chapter 43.21C RCW).

This title shall be known as "Critical Areas."

17.05.010 Purpose and goals.

The purpose of this title is to establish regulations pertaining to development in critical areas. The purpose of these regulations is to protect critical areas in the City of University Place. This title seeks to implement the following goals:

- A. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to water, and develop parks.
- B. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- C. Protect habitat for fish and wildlife.
- D. Protect the public from unsafe and unstable development.

17.05.015 Intent.

Erosion hazard areas, landslide hazard areas, flood hazard areas, wetlands, fish and wildlife habitat areas, aquifer recharge areas and buffers associated with the above listed areas constitute critical areas. All of these areas are of special concern to the people of University Place, Pierce County and the state of Washington. The intent of this title is to protect critical areas of the city by establishing minimum standards for development of sites that contain critical areas and thus promote the public health, safety, and welfare by:

- A. Mitigating unavoidable impacts by regulating development:
- B. Protecting from impacts of development;
- C. Protecting the public against losses from:
 - 1. Costs of public emergency rescue and relief operations where the causes are avoidable:
 - Degradation of the natural environment and the expense associated with repair or replacement;
 - 3. Long term costs to the community resulting from incremental disturbances to, and loss of environmental resources.
- D. Preventing adverse impacts on water availability, water quality, wetlands, and creeks.
- E. Protecting and improving the essential livability of the urban environment.
- F. Providing city officials with necessary information to adequately protect critical areas when approving, conditioning, or denying public or private development proposals;
- G. Providing the public with necessary information and notice of potential risks associated with development in critical areas;

H. Implementing the goals and requirements of the Growth Management Act, the State Environmental Policy Act, the Puget Sound Water Quality Management Plan, the City Comprehensive Plan, and the Endangered Species Act including all updates and amendments, and other land use policies formally adopted or accepted by the city.

17.05.020 Interpretation.

In the interpretation and application of this title, all provisions shall be:

- A. Considered the minimum necessary except as pursuant to a variance or reasonable use exception permit;
- B. Liberally construed to serve the purposes of this title; and
- C. Deemed neither to limit nor repeal any other powers under state statute.

17.05.025 Severability.

If any provision of this Title or its application to any person or circumstance is held invalid, the remainder of this Title or the application of the provision to other persons or circumstances shall not be affected.

CHAPTER 17.10 GENERAL REQUIREMENTS

Sections:	
17.10.005	Definitions.
17.10.010	Acronyms.
17.10.015	Applicability and mapping.
17.10.020	Permitted uses.
17.10.025	Regulated uses/activities.
17.10.030	Process.
17.10.035	Exemptions.
17.10.040	Variances.
17.10.045	Reasonable use exception permits.
17.10.050	Current use assessment.
17.10.055	Nonconforming structures and uses.
17.10.060	Financial guarantees.
17.10.065	Penalties, enforcement and civil infractions.
17.10.070	Fees.
17.10.075	Title and plat notification.
17.10.080	Appeals.
17.10.085	Appendixes.

17.10.005 Definitions.

For the purpose of this title, the following definitions shall apply:

- "Activity" means any use conducted on a site.
- "Agricultural activities" means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW and WAC Title 222 are not included in this definition.
- "Animal containment area" means a site where three or more animal units are kept per acre, and/or where a high volume of waste material is deposited in quantities capable of impacting ground water resources.
- "Animal unit" means the equivalent of 1,000 pounds of animal.
- "Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development on a site.
- "Aquifer" means a saturated geologic formation that will yield a sufficient quantity of water to serve as a private or public water supply.
- "Aquifer recharge area" means areas where the prevailing geologic conditions allow infiltration rates, which create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.
- "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the "100-year flood."
- "Best Management Practices" means systems of practices and management measures that: 1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins; 2) control the movement of sediment and erosion caused by land alteration activities; 3) minimize adverse impacts to surface and ground water quality, flow and circulation patterns; and 4) minimize adverse impacts to the chemical, physical and biological characteristics of a critical area.

- "Buffer" means an area contiguous with a Landslide hazard area, erosion hazard area, fish and wildlife habitat area or wetland, that is required for the integrity, maintenance, function, and structural stability of the above referenced area.
- "Building footprint" means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and/or accessory buildings on a lot.
- "Class" means one of the wetland classes in the United States Fish and Wildlife Service (USFWS)

 December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United

 States.
- "Classification" means defining value and hazard categories to which critical areas will be assigned.
- "Clearing" means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site.
- "Compensatory mitigation" means mitigation to compensate for loss of critical area functions due to regulated activities occurring within critical areas.
- "Creation" means producing or forming a wetland through artificial means from an upland (non-wetland) site.
- "Creek" means surface waters that flow into or become connected to other surface waters no less frequently than once per year. Creeks include natural waterways modified by man. Creeks do not include irrigation or roadside ditches, canals, operational spillways, storm or surface water runoff facilities or other entirely artificial watercourses, unless they are used by salmonids, are used to convey naturally occurring creeks or result from modification to a natural watercourse.
- "Critical areas" means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, geologically hazardous areas and associated buffer areas.
- "Degraded" means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.
- "Delineation" means a wetland study conducted in accordance with the Washington State Wetland Identification and Delineation Manual
- "Delineation report" means a written document prepared by a wetland specialist, which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.
- "Department" means the city Department of Community and Economic Development.
- "Development" means any manmade change to improved or unimproved real estate including but not limited to buildings or other structures, placement of manufactured homes/mobile homes, mining, dredging, clearing, filling, grading, stockpilling, paving, excavation, drilling, or the subdivision or short subdivision of property.
- "Director" means the director of the Department of Community and Economic Development or his or her designee.
- "Drastic" means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.
- "Enhancement" means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or solid waste).
- "Erosion hazard areas" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

- "Existing" means those uses legally established prior to incorporation whether conforming or nonconforming.
- "Fill/fill material" means a deposit of earth material, placed by human or mechanical means.
- "Filling" means the act of placing fill material on any surface, including temporary stockpiling of fill material.
- "Fish and wildlife habitat areas" means:
 - A. areas which have a primary association with federally listed endangered, threatened or candidate species, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term, or;
 - B. areas that have been documented by WDF&W as habitat for state listed endangered or threatened species, or;
 - C. creeks listed in UPMC 17.25.040
- "Fisheries biologist" means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years' professional experience as a fisheries biologist.
- "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - A. The overflow of inland or tidal waters; and/or
 - B. The unusual and rapid accumulation of runoff of surface waters from any source.
- "Flood hazard areas" means areas of land located in floodplains that are subject to a one- percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.
- "Floodplain" means the total area subject to inundation by the base flood, including the flood fringe and the floodway areas.
- "Floodway" means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.
- "Geological assessment" means an assessment that details the surface and subsurface conditions of a site and delineates the areas of a property that might be subject to specified geologic hazards.
- "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, or other geological events, may pose a risk to the siting of commercial, residential, or industrial development consistent with public health, environmental or safety concerns.
- "Geotechnical report" means a report evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.
- "Grading" means any excavating, filling, clearing, or creating of impervious surfaces or combination thereof.
- "Ground water" means all water found beneath the ground surface, including slowly moving subsurface water present in aquifers and recharge areas.
- "Habitat assessment" means a report that identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.
- "Habitat management plan" means a report that discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

- "Hazardous substance(s)" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.
- "Hazardous substance processing or handling" means use, manufacture, storage or treatment authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Chapter 173-303 WAC and any pertinent local ordinances, such as sewer discharge standards.
- "Hazardous waste" means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.
- "Hydrogeologic assessment" means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of ground water supplies.
- "Impervious surface" means natural or human-produced material on the ground that does not allow surface water to penetrate into the soil. Impervious surfaces may consist of buildings, parking areas, driveways, roads, sidewalks, and any other areas of concrete, asphalt, plastic, compacted gravel, etc.
- "In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics, functions and values are required to replicate those destroyed or degraded by a regulated activity.
- "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a land spreading disposal facility.
- "Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.
- "Mitigation" means to avoid, minimize or compensate for adverse critical area impacts.
- "Ordinary high water mark" means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of the ordinance codified in this chapter or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the city, state or federal regulatory agency. Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water.
- "Out-of-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.
- "Permeable surfaces" means sand, non-compacted gravel, and other penetrable deposits on the ground which permit movement of ground water through the pore spaces, and which permit the movement of fluid to the ground water
- "Person" means an individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons, however organized.
- "Regulated activities" means creation of lots or building sites, construction or alteration of any structure or improvement or alteration of the condition of any land, water or vegetation that could adversely affect any critical area.
- "Restoration" means the re-establishment of a viable wetland from a previously filled or degraded wetland site.

- "Riparian habitat areas" means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems, which mutually influence each other.
- "Seismic" means subject to, or caused by an earthquake or earth tremor.
- "Site" means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed, in progress or completed.
- "Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.
- "Sludge" means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or system or other sources, including septage sludge, sewage sludge, and industrial sludge.
- "Sludge land application site" means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

Sludge land application sites are classified under the following five-category system:

- A. Sites of less than one acre with an application rate of less than 10 dry tons of sludge per acre per five-year period.
- B. Sites with an application rate of less than 20 dry tons of sludge per acre per 10-year period or less than an annual application of two dry tons of sludge per acre.
- C. Sites with an application rate of more than 20, but less than 43, dry tons of sludge per 10-year period or 4.3 dry tons per acre per year.
- D. Sites with one-time applications greater than 43 dry tons per acre and cumulative limits for metals greater than state designated practices for agricultural cropland application.
- E. Sites that are permanent landfill disposal facilities.
- "Stockpiling" means the placement of material with the intent to remove it at a later time.
- "Toe of slope" means a distinct topographic break in slope at the lower-most limit of the landslide or erosion hazard area.
- "Top of slope" means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.
- "Underground tank" means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
- "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, telecommunications, cable television and sanitary sewers.
- "Wetland" or "wetlands" means those areas that are inundated or saturated by surface 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 generally do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the city.
- "Wetland specialist" means a person with experience and training in wetlands issues, and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

- A. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Washington State Wetlands Identification and Delineation Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or
- B. Four years of related work experience and training, with a minimum of two years' experience delineating wetlands using the Washington State Wetlands Identification and Delineation Manual and preparing wetland reports and mitigation plans.
- The person should also be familiar with the city site development regulations, the city wetland management policies, and the requirements of this title.

"Wildlife biologist" means a professional with a degree in wildlife, or certification by the Wildlife Society, or with five years' professional experience as a wildlife biologist.

17.10.010 Acronyms.

"BMP" means Best Management Practices.

"DOE" means Department Of Ecology.

"EIA" means Environmental Impact Assessment.

"EIS" means Environmental Impact Statement.

"ESA" means Endangered Species Act.

"FEIS" means Final Environmental Impact Statement.

"SEPA" means State Environmental Policy Act.

"TPCHD" means Tacoma Pierce County Health Department.

"UPMC" means University Place Municipal Code.

"WDF&W" means Washington Department of Fish and Wildlife.

17.10.015 Applicability and mapping.

- This title shall apply to all properties within the city of University Place that contain critical areas. When the requirements of this title are more stringent than those of other city codes and regulations, the requirements of this title shall apply. Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this title.
- Maps have been developed by the city that show the general location of critical areas for informational purposes. The actual presence of critical areas and the applicability of these regulations shall be determined by field conditions and the classification criteria established for each critical area.

17.10.020 Permitted uses.

Uses permitted on properties identified, as critical areas shall be the same as those permitted in the zone classification shown in the Comprehensive Plan Map unless specifically prohibited by this title.

17.10.025 Regulated uses/activities.

Unless the requirements of this title are met, no person shall create lots or building sites, or construct or alter any structure or improvement or alter the condition of any land, water or vegetation that adversely effects any critical area. Appendix A lists examples of regulated uses/activities.

17.10.030 Process.

- A. The department shall perform a critical areas review of any regulated activity on a site, which includes one or more critical areas unless otherwise provided in this title.
- B. As part of all development applications the department shall:
 - 1. Require and evaluate any studies or plans required by this Chapter, which are needed to determine the type and extent of the critical area;
 - 2. Determine whether the development proposal is consistent with this title;
 - 3. Determine whether any proposed alterations to the development are necessary to mitigate impacts;
 - 4. Determine if the mitigation and monitoring plans proposed by the applicant are sufficient to protect the public health, safety and welfare consistent with the goals, purposes, objectives and requirements of this title.
- C. A SEPA threshold determination may not be made prior to departmental review of any special studies or technical reports required by this title, except where the applicant requests a determination of significance so that an environmental impact statement review is required.
- D. The department may approve, approve with conditions, or deny any development proposal in order to comply with the requirements and carry out the goals, purposes, objectives and requirements of this title.
- E. Approval of a development proposal does not discharge the obligation of the applicant to comply with the provisions of this title.
- F. Unless otherwise specified in this chapter, permits shall be processed in accordance with UPMC Title 22, Administration of Development Regulations.

17.10.035 Exemptions.

The following activities are exempt from the provisions of this title:

- A. Existing agricultural activities. The activities cease to be existing when the area on which they were conducted has been converted to a non-agricultural use or has lain idle more than five years or so long that modifications to the hydrological regime are necessary to resume agricultural activities. Land registered in a federal or state soils conservation program shall meet the criteria for this exemption.
- B. Reconstruction, repair or maintenance of existing roads, paths, bicycle ways, trails, bridges, and storm drainage facilities; provided, that reconstruction does not involve expansion of facilities, and provided that work is conducted pursuant to BMP's. This exemption shall not apply to reconstruction that is proposed as a result of structural damage associated with a critical area, such as, but not limited to slope failure in a landslide hazard area.
- C. The following utility line activities, when undertaken pursuant to BMPs to avoid impacts to critical areas:
 - Normal and routine maintenance or repair of existing utility structures or right-of-way.
 - 2. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency or utility purveyor, which approves the new location of the facilities.
 - 3. Installation or construction in improved city road rights-of-way, and replacement, operation, relocation or alteration of all electric facilities, lines, equipment, or appurtenances with an associated voltage of 55,000 volts or less. Substations shall not be considered exempt.
- D. Regular maintenance of existing structures.
- E. Remodeling of an existing structure provided there is no further intrusion into the critical area.

- F. Reconstruction or repair of an existing structure unless the reconstruction or repair is necessitated by structural damage occurring as a result of landsliding, slumping or related earth movement.
- G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities, provided that large construction vehicles are not used, and provided disturbed areas are restored to their pre-existing condition immediately following completion of work.
- H. Emergency action necessary to prevent serious environmental degradation: imminent threat or danger to public health or safety, or imminent threat to public or private property. The department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken. Permits may be required subsequently.
- I. Control of invasive species, including but not limited to, Scotch Broom, Himalayan Blackberry and Evergreen Blackberry, and noxious weeds, that are included on the state noxious weed list. Control may be by clipping, pulling, digging, or by an alternative plan, such as an integrated pest management plan, upon approval of a plan by the department.
- J. Activities undertaken to comply with a United States Environmental Protection Agency administrative superfund enforcement order or a Washington Department of Ecology administrative enforcement order pursuant to the Model Toxics Control Act, including the following activities:
 - 1. Remediation or removal of hazardous or toxic substances;
 - 2. Source control; and
 - 3. Natural resource damage restoration.
- K. A residential building permit for a lot which was subject to previous reports and assessments as required under this title; provided that the impacts associated with the current development proposal are addressed and provided the permit is issued subject to the mitigation recommendations of said reports or assessments.

17.10.40 Variances.

- A. Authority. The examiner shall have the authority to grant a variance to the buffer width provisions of this chapter.
- B. Granting of variances. The examiner must find that the requested buffer width reduction satisfies all of the following criteria:
 - 1. That the granting of such variance is consistent with the intent of the City Comprehensive Plan;
 - 2. That there are special circumstances applicable to the subject property, that do not apply generally to other property or class of use in the same vicinity;
 - 3. That granting of such variance shall not have a detrimental impact on fish and wildlife habitat within critical areas;
 - 4. That granting of such variance shall not have a detrimental impact on water quality or water temperature;
 - 5. That granting of such variance shall not result in increased erosion or sedimentation;
 - 6. That the variance is necessary for preservation of a substantial property right or use possessed by other property owners in the same vicinity.

17.10.045 Reasonable use exception permit.

A. If the application of this title would deny all reasonable use of a site, development may be allowed, which is consistent with the general purposes of this title and the public interest, pursuant to a reasonable use exception permit. A reasonable use exception permit may be granted only if the provisions of this title physically eliminate all options for reasonable use of the property.

- B. Nothing in this title is intended to preclude all reasonable use of property. An applicant for a development proposal may file a request for a reasonable use exception, which shall be considered by the city hearings examiner at a public hearing, following notice, as required by Title 22. The request shall include the following information:
 - 1. A site plan that identifies the portions of the site which are critical areas and the location of the proposed development;
 - 2. A description of the amount of the site that is within setbacks required by other development regulations;
 - 3. A description of the proposed development;
 - 4. An analysis of the impact that the proposed development would have on the critical areas;
 - 5. An analysis of whether any other reasonable use with less impact on the critical area(s) is possible;
 - A design of the proposed development that has the least impact practicable on the critical area(s);
 - 7. An analysis of the modifications needed to the standards of this title to accommodate the proposed development;
 - 8. A description of any modifications needed to the required front, side and rear setbacks, building height, and buffer widths to provide for a reasonable use while providing protection to the critical area(s);
 - 9. Such other information as the department determines is necessary.
- C. The hearings examiner may approve the reasonable use exception, if the examiner determines all of the following criteria are met:
 - 1. There is no other reasonable use or feasible alternative to the proposed development, including phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning and density considerations that would allow a reasonable economic use with less impact on the critical area(s); and
 - 2. The proposed development does not pose a threat to the public health, safety or welfare on or off the site; and
 - 3. Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable use of the property; and
 - 4. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the non-developable condition after the effective date of the ordinance codified in this title; and
 - 5. The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable use of the site.
 - 6. The proposed activities will not jeopardize the continued existence of species listed by the federal government as endangered, threatened or candidate_species.

17.10.050 Current use assessment.

An owner of agricultural land, timberland, or open space desiring current use classification under Chapter 84.34 RCW may file for such current use classification as provided in the City of University Place Zoning Code.

17.10.055 Nonconforming structures and uses.

An established use or existing structure that was lawfully permitted prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the nonconforming use, nonconforming lot and nonconforming structure provisions of UPMC Title 19, except that the substantial destruction clause, of UPMC 19.80.050(A)(4) shall not apply. In no case shall this section be construed to allow reconstruction or repair necessitated by structural damage occurring as a result of landsliding, slumping or related earth movement.

17.10.060 Financial guarantees.

The city shall require an applicant to submit a financial guarantee to the city to guarantee any performance, mitigation or monitoring required as a condition of permit approval. The permit shall not be granted until the department receives the financial guarantee.

- A. Financial guarantees required under this title shall:
 - Be in addition to the site development construction guarantee required by the city's public works standards;
 - 2. Be submitted on financial guarantee forms provided by the city.
 - Be 125 percent of the estimate of the cost of installation, mitigation or monitoring to allow for inflation and administration should the city have to complete the installation, mitigation or monitoring;
 - 4. Be released by the city only when city officials have inspected the site(s) and the applicant's engineer and/or appropriate technical professional has provided written confirmation that the performance, mitigation or monitoring requirements have been met.

17.10.065 Penalties, enforcement and civil infractions.

All violations of this title shall be subject to the provisions of UPMC 19.15.

17.10.070 Fees.

The city shall establish an appropriate fee structure for administrative and technical review by separate resolution.

17.10.075 Title and plat notification.

Title Notification. The owner of any site within an erosion hazard area, aquifer recharge area, fish and wildlife habitat area, flood hazard area or wetland area in which a development proposal is submitted, shall record a notice with the Pierce County auditor in the form set forth below:

FORM OF NOTICE:	
(AREA NOTICE)	
Parcel Number:	
Address:	
Legal Description:	
Present Owner:	
Notice: This site lies within a(n)	area as defined by Chapter 17 UPMC. The site
was the subject of a development proposal for (date).	application number filed on
Restrictions on use or alteration of the site may e regulation. Review of such application has provided area and any restrictions.	
Signature of Owner(s)	iction on use.

NOTARY ACKNOWLEDGMENT AND NOTARY SEAL

Plat and Planned Development District Notification.

For all proposed short subdivision, subdivision and Planned Development District proposals within landslide hazard areas, erosion hazard areas, aquifer recharge areas, fish and wildlife habitat areas, flood hazard areas, and wetland areas, the applicant shall include a note on the face of the plat or final development plan. The note shall be as set forth below:

Notice: This site lies within a(n)	area as defined in Chapter 17	_ UPMC.
Restrictions on use or alteration of the site may	exist due to natural conditions of the site a	and resulting
regulation.		-

If more than one critical area exists on the site subject to the provisions of this title, then one notice that addresses all of the critical areas shall be sufficient.

17.10.080 Appeals.

Appeals of a decision issued under this title shall be considered in accordance with UPMC Title 22, Administration of Development Regulations.

17.10.085 Appendixes.

Appendix A

Examples of regulated uses/activities

This list is intended to provide examples of regulated uses and activities. The list is not intended to be inclusive. All uses and activities included in this list may not be a regulated use or activity in every situation. Examples of regulated uses and activities include, but are not limited to:

- A. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
- B. Dumping, discharging or filling;
- C. Draining, flooding or disturbing the water level or water table. In addition, an activity that involves draining, flooding or disturbing the water level or water table in a wetland or creek, in which the activity itself occurs outside the wetland and buffer, shall be considered a regulated activity;
- D. Driving piling or placing obstructions;
- E. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, except as specifically exempted;
- F. Altering the character of a critical area by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting;
- G. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland or creek water sources, including changes in quantity of water and pollutant level;
- H. Application of pesticides, fertilizers and/or other chemicals, unless demonstrated not to be harmful to habitat or wildlife.

CHAPTER 17.15 GEOLOGICALLY HAZARDOUS AREAS

Sections:	
17.15.005	Purpose.
17.15.010	Erosion hazard areas criteria.
17.15.015	Landslide hazard areas criteria.
17.15.020	Mapping.
17.15.025	Restrictions on building.
17.15.030	Exemptions.
17.15.035	Assessments and reports.
17.15.040	Geological assessments.
17.15.045	Geotechnical reports.
17.15.050	Existing geotechnical reports.
17.15.055	Regulation.
17.15.060	Title notification.

17.15.005 Purpose.

The purpose of this chapter is to protect, preserve and enhance areas that are sensitive to human activities, including steep slopes, and landslide and erosion hazard areas. Additionally, the purpose of this chapter is to regulate development in geologically hazardous areas and associated buffers to avoid unstable slopes and adverse impacts to such areas and adjacent up-slope and down-slope areas.

17.15.010 Erosion hazard areas criteria.

Erosion hazard areas are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions vulnerable to erosion.

17.15.015 Landslide hazard areas criteria.

Landslide hazard areas are those areas meeting any of the following criteria:

- A. Areas of historic failures, including areas of old and recent landslides;
- B. Areas with both of the following characteristics:
 - (1) Slopes steeper than 15 percent; and
 - (2) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock.
- C. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems, and fault planes, in subsurface materials;
- D. Slopes having a gradient steeper than 80 percent subject to rock fall during seismic shaking;
- E. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;
- F. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;
- G. Any area with a slope of 30 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least 10 feet of vertical relief:
- H. Areas that have a "severe" limitation for building site development because of slope conditions, according to the National Resource Conservation Service.

17.15.020 Mapping.

Mapping. Landslide and erosion hazard areas meeting the criteria established above are delineated on hazard maps created by the Department. The actual presence or absence of landslide or erosion hazard areas shall be determined by field conditions and the classification criteria listed above.

17.15.025 Restrictions on building.

Restrictions on Building. In areas meeting both of the following characteristics no structure or disturbance of vegetation is permitted:

- A. An area with a slope of 100 percent or steeper (45 degrees); and
- B. Hillsides intersecting geological contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock.

17.15.030 Exemptions.

Exemptions. In addition to the exemptions contained in UPMC 17.10.035, the following activities shall be exempt from the requirements of this chapter.

- A. Trimming and limited cutting of trees. Any person wishing to engage in clearing activity pursuant to this exemption shall arrange a site visit with department staff. Staff shall issue a letter of exemption if the proposed activity is consistent with the intent of this chapter and provided;
 - 1. The applicant can clearly demonstrate the activity will not result in a detrimental impact to the landslide or erosion area on or off site;
 - 2. Groundcover shall be retained and the ground surface shall not be disturbed;
 - 3. The clearing activity does not exceed the provisions of the city zoning code.

17.15.035 Assessments and reports.

Regulation. For all regulated activities proposed within landslide and erosion hazard areas, a geotechnical report shall be submitted. The requirements for a geotechnical report shall be waived where the applicant can clearly demonstrate to the department through submittal of a geological assessment that the regulated activity will not occur within the landslide or erosion hazard area.

17.15.040 Geological assessments.

A geological assessment shall be prepared by a professional engineer licensed by the state of Washington with expertise in geotechnical engineering or by a professional geologist/hydrologist or soils scientist who has earned a bachelor's degree in geology, hydrology, soils science, or closely related field from an accredited college or university, or equivalent educational training, and has five years experience assessing erosion and landslide hazards. The geological assessment shall include at a minimum the following:

- A. A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
- B. An evaluation of the analysis area's inherent landslide and erosion hazards; and
- C. A site plan of the area delineating all portions of the site subject to landslide and erosion hazards based on mapping and criteria referenced in this chapter.
- D. The submittal must include a contour map of the proposed site at a scale of one inch = 20 feet or as deemed appropriate by the department. Slopes shall be clearly identified and differentiated for the ranges between 15 and 29 percent, and 30 percent or greater.

17.15.045 Geotechnical reports.

The geotechnical report shall be prepared by a professional engineer licensed by the state of Washington with experience in geotechnical engineering and shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. Geotechnical reports shall include an analysis of the impacts that a regulated activity may have on adjacent properties. The geotechnical report shall include at a minimum the following:

A. Site Geology Information Required.

- 1. Topographic data. Submittal must include a contour map of the proposed site, at a scale of one inch = 20 feet or as deemed appropriate by the department. Slopes shall be clearly identified and differentiated for the ranges between 15 and 29 percent, and 30 percent or greater, including figures for aerial coverage of each slope category on the site. When site-specific conditions indicate the necessity, the department may require the topographic data to be field surveyed.
- 2. Subsurface data. Submittal must include boring logs and exploration method, soil and rock stratigraphy, ground water levels and seasonal changes of ground water levels.
- 3. Site history. Submittal must include a description of any prior grading, soil instability, or slope failure.
- 4. Seismic hazard. Submittal of data concerning the vulnerability of the site to seismic events.
- B. Geotechnical Engineering Information Required.
 - 1. Slope stability studies and opinion(s) of slope stability;
 - 2. Proposed angles of cut and fill slopes and site grading requirements;
 - 3. Structural foundation requirements and estimated foundation settlements;
 - 4. Soil compaction criteria;
 - 5. Proposed surface and subsurface drainage;
 - 6. Lateral earth pressures;
 - 7. Vulnerability of the site to erosion;
 - 8. Suitability of on-site soil for use as fill;
 - 9. Laboratory data and soil index properties for soil samples; and
 - 10. Building limitations including setback recommendations.
 - 11. Analysis of any potential landslide run-out associated with the hazard area.
- C. Performance standards. All geotechnical reports shall contain a section that addresses each of the performance standards identified in section 17.15.055.
- D. Impacts on adjacent properties. Geotechnical reports shall address any impacts to adjacent properties that may result from the proposed regulated activity. Reports shall address both short-term (during construction) impacts and long term (post construction) impacts. All such impacts shall be mitigated per subsection (E) below.
- E. Mitigation recommendations. Geotechnical reports shall include a section that identifies mitigation measures necessary to preserve the stability of geologically hazardous and adjacent areas.

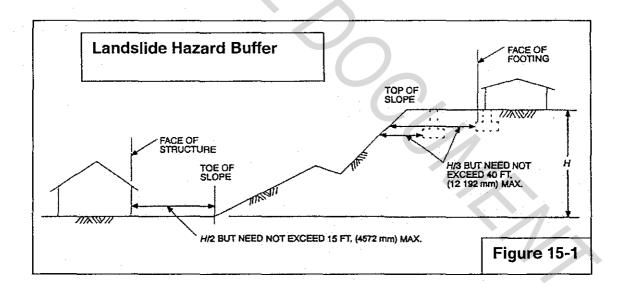
17.15.050 Existing geotechnical reports.

Where a geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, the report may be utilized and a new report may not be required. If any changed environmental conditions are associated with the site, or surrounding the site, the applicant shall submit an amendment to the geotechnical report.

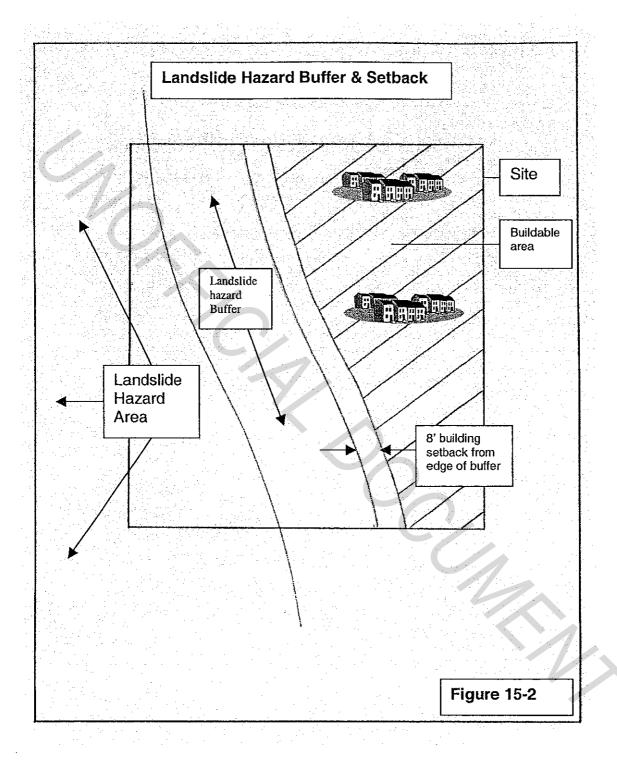
17.15.055 Regulation.

- A. Department approval. The development proposal may be approved, approved with conditions, or denied based on the department's evaluation of the geotechnical report, including, but not limited to:
 - The ability of the proposed mitigation or engineering measures to reduce risks to the proposed structure and risks to the erosion or landslide hazard area; and adjacent property;
 - 2. The proposed development's conformance with the following performance standards.
 - a. Location and extent of development:

- Development shall be located to minimize disturbance and removal of vegetation;
- 2. Structures shall be clustered where possible to reduce disturbance and maintain natural topographic character; and
- 3. Structures shall conform to the natural contours of the slope and foundations should be tiered where possible to conform to existing topography of the site.
- b. Design of development:
 - All development proposals shall be designed to minimize the building footprint and other disturbed areas; and
 - 2. All development shall be designed to minimize impervious lot coverage; and
 - Roads, walkways and parking areas shall be designed to parallel the natural contours; and
 - 4. Access shall be in the least sensitive area of the site, as feasible.
- B. Buffer Requirement. A buffer, consisting of undisturbed natural vegetation and measured (as shown in Figure 15-1) in a perpendicular direction from all landslide and erosion hazard areas, shall be required. The buffer shall be required from the top of slope and toe of slope of all landslide or erosion hazard areas that measure 10 feet or more in vertical elevation change from top to toe of slope. The minimum buffer distance requirements from the top of slope and toe of slope of landslide or erosion hazard areas shall be the same as for setbacks from slopes as identified in the Uniform Building Code, as amended from time to time. Regulated uses/activities that occur outside the buffer required by this subsection, the setback required by subsection (C), and any potential landslide run-out do not require a geotechnical report. The other provisions of this chapter shall apply.



C. Building Setback and Construction Adjacent to Buffer. Eight-foot minimum setback lines (as shown in Figure 15-2) shall be required from the buffer area required in this section for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within the eight foot setback shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged. The setback is required in addition to the buffer regardless of buffer width, except as provided in subsection (D) below.



D. Modifications to Buffer Width. When the geotechnical report demonstrates that a lesser or eliminated buffer and/or setback, together with design and engineering solutions, will meet the intent of this chapter, such reduced or eliminated buffer and/or setback and design and engineering solutions may be permitted. Reduced or eliminated buffer and/or setback width shall not be permitted unless the proposed design, engineering and mitigation provisions adequately reduce risk to proposed structures and to landslide and erosion hazard areas and adjacent areas.

- Should the geotechnical report indicate that a greater buffer than that required by this section is needed to meet the intent of this chapter, the greater buffer shall be required.
- E. Buffer protection. To increase the functional attributes of the buffer, the department may require that the buffer be enhanced through planting of indigenous species. The edge of the buffer area shall be clearly staked, flagged, and/or fenced prior to any site clearing or construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field marking shall remain until all construction and clearing phases are completed, and the department has granted final project approval. Prior to final approval for subdivisions, short subdivisions binding site plans, planned development districts and commercial developments the buffer and slope shall be placed in a separate critical area tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the department. All protected areas identified above shall remain undeveloped in perpetuity, except as they may be altered pursuant to this title.
- F. Temporary erosion and sedimentation control plan. Temporary erosion and sedimentation control plans shall be required for all regulated activities in landslide and erosion hazard areas. The temporary erosion and sedimentation control plan shall be consistent with the City's Public Works Standards and must be implemented prior to the start of development activity on-site.

17.15.60 Title notification.

The owner of any site within a landslide hazard area shall record a notice with the Pierce County Auditor on a form provided by the department, and generally in the form set forth below. This notice shall be in addition to any other title notification statement required by this title, although any such notices may be combined.

Owner(s) on his/her own behalf and on behalf of his/her heirs, successors and assigns hereby waives any right to assert any claim against the City for any loss, or damage to people or property either on or off the site resulting from soil movement by reason of or arising out of issuance of the permit(s) by the City for development on the property except only for such losses that may directly result from the sole negligence of the City. Furthermore, the City makes no promise that in the event of soil movement that adversely affects abutting streets or utilities that such streets or utilities will be restored following such soil movement.

CHAPTER 17.20 AQUIFER RECHARGE AREAS

Sections:

17.20.005 Purpose.

17.20.010 Identification and classification.

17.20.015 Regulation.

17.20.005 Purpose.

The purpose of this chapter is to protect ground water resources in the aquifer system from hazardous substances and hazardous waste pollution by controlling or abating future pollution from new land uses or activities. Additionally, it is the purpose of this chapter to increase public awareness regarding potential impacts to aquifer recharge areas arising from land use and site design.

17.20.010 Identification and classification.

- A. Identification. Aquifer recharge areas are areas where the prevailing geologic conditions allow infiltration rates, which create a high potential for contamination of ground water resources or contribute to the replenishment of ground water.
- B. Classification. The entire city is located within an aquifer recharge area as defined by Clover/Chambers Creek Aquifer Basin Boundary, the 10-year wellhead protection areas as identified by TPCHD and the DRASTIC zones that are rated 180 and above.

17.20.015 Regulation.

- A. Permeable Surfaces. Uses that are not identified as a threat to the aquifer shall provide as much open permeable space as possible and impervious surfaces shall be minimized. Carefully planned site layout and design may significantly reduce the need for impervious surfaces, which in turn can help promote the health of the city's water resources and reduce costs associated with development of surface water control and treatment systems. Property owners shall practice appropriate disposal of hazardous substances and other pollutants to protect aquifer health.
- B. Prohibited uses. The following uses shall be prohibited within the aquifer recharge area.
 - 1. Landfills.

- C. Conditionally permitted uses.
 - Uses identified in the table below shall only be permitted after review of a hydrogeologic assessment. All mitigation measures required pursuant to the references in table 1 below shall be implemented.

Table 1. Statutes, Regulations and Guidance Pertaining to groundwater Impacting Activities

Activity	Statute-Regulation-Guidance
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generators (Boat Repair Shops, Biological Research Facilities, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc)	Chapter 173-303 WAC
Above ground Storage Tanks	Chapter 173-303-640 WAC
Below Ground Storage Tanks	Chapter 173-360 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, BMP's to Prevent Stormwater Pollution at Vehicle Recycler Facilities (WDOE 94-146)
On-Site Sewage Systems (Large Scale)	Chapter 173-240
On-site Sewage Systems > 14,500 gal/day	Chapter 246-272 WAC
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC BMP's to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18-015 WAC

- 2. In addition to the uses noted in the table above, the following uses of land shall require a hydrogeologic assessment of the proposed site:
 - a. Hazardous substance processing or handling;
 - b. Sludge land application sites categorized as S-3, S-4 and S-5
 - c. Animal containment areas;
 - d. Wood treatment facilities.
- 3. The hydrogeologic assessment shall include information as required by TPCHD. Uses requiring a hydrogeologic assessment may be approved, conditioned or denied by the city based upon the TPCHD's evaluation of the hydrogeologic assessment.

- 4. The director may grant relief from some or all of the provisions of this chapter if those provisions would be ineffective at a particular site. Alternative measures may be required.
- D. Use of existing laws and regulations. Other uses, including, but not limited to septic systems and surface water management facilities shall be regulated pursuant to existing laws, regulations and programs including, but not limited to Title 13, City Public Works Standards, the King County Surface Water Design Manual, and the TPCHD Source Protection Program.

CHAPTER 17.25 FISH AND WILDLIFE HABITAT AREAS

Sections:	
17.25.005	Purpose.
17.25.010	Applicability and identification.
17.25.015	Mapping.
17.25.020	Habitat assessments.
17.25.025	Habitat management plans.
17.25.030	Regulation.
17.25.035	Habitat protection for Puget Sound.
17.25.040	Habitat protection for creeks.
17.25.045	Riparian buffer regulations.
17.25.050	Allowable activities within riparian buffers.

17.25.005 Purpose.

The purpose of this chapter is to protect fish and wildlife habitat areas, particularly habitat areas for threatened and endangered species. Additionally, the purpose of this chapter is to provide protection for creeks and riparian habitat areas.

17.25.010 Applicability and identification.

- A. Applicability. This chapter applies to regulated activities within fish and wildlife habitat areas.
- B. Identification of Fish and Wildlife Habitat areas. Fish and Wildlife Habitat Areas regulated pursuant to this chapter include:
 - areas which have a primary association with federally listed endangered, threatened or candidate species and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term, or;
 - 2. areas that have been documented by WDF&W as habitat for state listed endangered or threatened species, or;
 - creeks identified in UPMC 17.25.040.

17.025.015 Mapping.

Fish and wildlife habitat areas are identified, to the extent possible, on maps provided by the department. The resources listed below provide additional information on fish and wildlife habitat areas:

- A. Puget Sound Environmental Atlas, Puget Sound Water Quality Authority.
- B. Coastal Zone Atlas of Washington, Volume VII, Pierce County, Washington Department of Ecology.
- C. The following Washington Department of Natural Resources documents and data sources:
 - 1. Stream typing maps.
 - Natural heritage database.
- D. The following Washington Department of Fish and Wildlife documents and data sources:
 - 1. Priority habitats and species program list and maps.
 - 2. Wildlife Heritage Database.
 - 3. Streamnet database.
- E. Washington Department of Ecology information for Water Resource Index Area 12.

17.25.020 Habitat assessments.

- A. A habitat assessment shall be required for a site that may contain fish and wildlife habitat areas identified in this chapter. The habitat assessment shall be prepared by a wildlife biologist with a degree in wildlife biology. At a minimum the habitat assessment shall contain the following:
 - 1. A discussion of the species or habitats known or expected to be located on the site.
 - 2. A site plan that clearly identifies and delineates fish and wildlife habitats found on the site.
 - 3. Such other information as the director determines is necessary to adequately evaluate the impact of the regulated activity on fish and wildlife habitat.
- B. If a habitat assessment demonstrates to the satisfaction of the director that fish and wildlife habitat or species are not located on the site, the development can proceed without further requirements under this section; otherwise, a habitat management plan shall be submitted pursuant to section 17.25.025 below.

17.25.025 Habitat management plans

- A. Where fish and wildlife habitat is present on a proposed development site, a habitat management plan shall be prepared by a wildlife biologist with a degree in wildlife biology. The habitat management plan shall contain at a minimum the following:
 - 1. A discussion of the project's impacts on fish and wildlife habitat.
 - 2. A discussion of federal and/or state management recommendations for species or habitats located on the site.
 - 3. A discussion of measures proposed to preserve existing habitats.
 - 4. A discussion of proposed measures that mitigate impacts of the project.
 - 5. A discussion of ongoing management practices that will protect fish and wildlife habitat after the site has been fully developed; including proposed monitoring and maintenance programs.
 - 6. Such further information as the director determines is necessary to adequately assess the impact of the regulated activity upon the habitat or species.
- B. Habitat management plans shall be sent to the WDF&W and appropriate state and federal agencies for comment.

17.25.030 Regulation

- A. Development proposals shall consolidate habitat and vegetated open space in linked corridors to provide connectivity to offsite wildlife habitat.
- B. Where habitat for federally listed endangered or threatened species is present, development proposals must comply with the provisions of ESA. Consultation with federal agencies may be required. Development proposals in such areas shall be denied unless the applicant can show conclusively that the project would not result in the taking of a federally listed species.
- C. Protection of fish and wildlife habitat shall not be required where such habitat is isolated or severely fragmented due to previous development and urbanization. Where an applicant can demonstrate to the satisfaction of the director, through submittal of a habitat assessment, that protection of on-site fish and wildlife habitat would not result in a viable long-term population, such protection measures shall not be required.
 - The above language does not apply in the case of federally listed endangered and threatened species and habitat areas that must be preserved pursuant to subsection (B) above.
- D. All projects may be conditioned based on agency comments and the director's evaluation of impact to fish and wildlife habitat and species. Projects may be denied if the proposal will result in extirpation or isolation of a regulated fish or wildlife population, species or habitat area.
- E. Habitat assessments, habitat management plans and the provisions of this section shall not be required for fish habitat areas where all development is outside of prescriptive creek and/or wetland buffers per section 17.25.040.

- F. Additional laws and procedures used to implement this chapter shall include, but not be limited to the Washington State Environmental Policy Act (Chapter 43.21C RCW), the city's environmental regulations, the Shorelines Management Act (Chapter 90.58 RCW), the City Shoreline Master Program and Use Regulations, the Federal Endangered Species Act and UPMC Title 22, Administration of Development Regulations.
- G. Impacts to fish and wildlife habitat shall be considered and addressed during SEPA environmental review, if required.

17.25.035 Habitat protection for Puget Sound.

Habitat protection for Puget Sound shall be provided through education and existing laws, including, but not limited to those referenced in UPMC 17.25.030(F).

17.25.040 Habitat protection for creeks.

Regulated activities proposed along creeks shall provide for habitat protection.

- A. Habitat protection for creeks shall be provided through riparian buffers.
 - 1. Except as provided in this title, no development activity shall occur in riparian buffers.
 - 2. The riparian buffer shall consist of undisturbed natural vegetation and shall be required along all creeks identified in table 2 below. The buffer shall extend landward from the ordinary high water mark on each side of the water body a distance specified in Table 2 below.
 - 3. The buffers specified in this section are the minimum buffers required. Larger buffers may be required to provide adequate protection for fish and wildlife habitat. Larger riparian buffers may be required when the department demonstrates that:
 - a. A larger buffer is necessary to maintain viable populations of existing species; or
 - b. The adjacent land is susceptible to severe erosion and erosion control measures will not prevent adverse water quality impacts.
 - 4. The riparian buffer of a creek shall not extend landward beyond an existing substantial linear improvement such as an improved road, dike, or levee, when an applicant can show that such existing improvement significantly reduces the impact the proposed activities would have on the creek.
- B. Required Riparian Buffer Widths. Buffers shall be required as shown in Table 2 below.

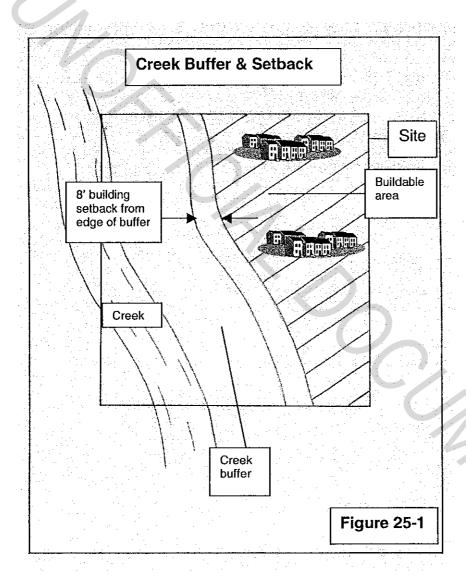
Table 2 - Riparian Buffer Widths

Creek Name	Buffer Width
Chambers Creek	200'
Leach Creek	100'
Peach Creek	75'
Crystal and Day Creeks	25'
Non Listed Creeks	10'

17.25.045 Riparian buffer regulations.

- A. Marking of the Buffer Area. The edge of the riparian buffer area shall be clearly staked, flagged and/or fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground, during construction.
- B. Prior to final approval of any project requiring riparian buffers, the creek and required riparian buffer area shall be placed in a separate fish and wildlife habitat tract, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism pursuant to department approval. The boundary between a fish and wildlife habitat tract, easement, land trust dedication or similarly preserved area and the adjacent land shall be identified with permanent signs. Sign location, size, wording and design specifications

- shall be subject to department approval. All protected areas identified above shall remain undeveloped in perpetuity, except as they may be altered pursuant to this title.
- C. Building Setback and Construction Adjacent to Buffer. A minimum construction setback of eight feet from the outside edge of the riparian buffer (as shown in Figure 25-1) shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage. The construction setback shall be required in addition to any buffer required pursuant to this chapter. Clearing, grading, and filling within the eight foot construction buffer shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged.



 Fencing from Farm Animals. Farm animals shall be permanently fenced from creek and buffer areas.

17.25.050 Allowable activities within riparian buffers

The following activities may occur within the riparian buffer, after notification to the department, provided that BMP's are implemented and any required permits are obtained.

A. Removal of diseased trees and trees that present a hazard to improvements. Trees that present a hazard to improvements shall only be removed if trimming or other modification would not

- eliminate the hazard. Dead trees that provide habitat value and do not threaten existing improvements shall not be removed.
- B. Repair of existing fences.
- C. Reconstruction, repair or maintenance of existing docks and bulkheads as authorized and pursuant to shoreline management regulations, and as approved pursuant to a hydraulic permit from WDF&W and a section 404 permit from Army Corps of Engineers.
- D. Construction, reconstruction, repair or maintenance of a pervious path, primarily running perpendicular to the creek, less than four feet in width, for purposes of private access to the shoreline.
- E. Construction, reconstruction, repair or maintenance of public trails and accessory facilities. The width of the trail shall be added to the required buffer width where possible.
- F. Reconstruction, repair or maintenance of existing roadways, bridges, rights-of-way, and utility lines where no feasible alternative exists, and where the development minimizes impacts on the stream and buffer area.
- G. Placement of utility lines where no feasible alternative exists.
- H. Construction or reconstruction of single-family, duplex or condominium units on a lot that was platted, or approved pursuant to a planned development district (PDD), prior to adoption of this ordinance. Structures shall be located outside of buffers in effect when the lot was created and shall be subject to fish and wildlife habitat regulations in effect at that time. A completed building permit application for the construction or reconstruction must be submitted within 5 years of final plat or PDD approval, or this exemption does not apply.
- I. Enhancements to natural buffers consistent with education and restoration activities (such as revegetation or nest boxes).

CHAPTER 17.30 FLOOD HAZARD AREAS

Sections:

17.30.005 Purpose.

17.30.010 Applicability and classification.

17.30.015 Mapping. 17.30.020 Regulation.

17.30.005 Purpose.

The purpose of this chapter is to regulate land use activity within flood hazard areas to avoid adverse impacts to on-site and off site improvements, property and persons. Additionally, the purpose of this chapter is to protect water quality in the event flooding should occur.

17.30.010 Applicability and classification.

- A. Applicability. This chapter applies to regulated activities within flood hazard areas.
- B. Classification. All flood hazard areas shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying flood insurance rate maps prepared by the Federal Emergency Management Agency (FEMA).

17.30.015 Mapping.

Flood Hazards are delineated on maps created by the department.

17.30.020 Regulation.

All development in flood hazard areas shall be according to city codes including, but not limited to Uniform Building Code, City Public Works Standards and UPMC 14.15, Flood Damage Prevention.

- A. No activity that increases flooding impacts on adjacent properties shall be permitted.
- B. No new development served by septic system shall be permitted in the floodway or floodplain.

CHAPTER 17.35 WETLANDS

Sections:	
17.35.005	Purpose.
17.35.010	Applicability and mapping.
17.35.015	Application and review procedure.
17.35.020	Exemptions.
17.35.025	Delineation and wetland analysis requirements.
17.35.030	Wetland categories.
17.35.035	Establishing buffer widths.
17.35.040	Buffer provisions.
17.35.045	Mitigation.
17.35.050	Residential density and on-site density transfer.
17.35.055	Alternative review process, Corps of Engineers Section 404 individual permits.

17.35.005 Purpose.

The purpose of this chapter is to avoid, or, in appropriate circumstances, to minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands. Additionally, the purpose of this chapter is to maintain and enhance the biological and physical functions of wetlands with respect to water quality maintenance, storm water and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, education, and historic and cultural preservation. When avoiding impacts is not reasonable, mitigation should be implemented to achieve no net loss of wetlands in terms of acreage, function and value.

17.35.010 Applicability and mapping.

This chapter shall apply to all areas satisfying the criteria for wetland presence. The department has created wetland maps for general informational purpose. The presence or absence of wetlands on a site shall be based on field conditions observed at the site.

17.35.015 Application and review procedure.

- A. When any regulated activity is proposed on a site that may be within 200 feet of a wetland, an application containing the following shall be submitted to the department:
 - 1. Site Plan(s);
 - Wetland analysis report and/or delineation prepared by a qualified wetland specialist, if required;
 - 3 Mitigation plan, if required;
 - 4 Such other information as the director determines is necessary to adequately evaluate the impact of the regulated activity on the wetland and buffer.
- B. The procedure to obtain approval for a regulated activity on a site that contains wetlands and/or buffers shall be in accordance with UPMC Title 22, Administration of Development Regulations, which provides for consolidated and timely permit review.
- C. Review and Approval. Approval of a regulated activity on a site that contains wetlands and/or wetland buffers shall be granted upon a determination that the wetland analysis report and mitigation plan meet all applicable requirements and that the mitigation plan, monitoring program and contingency plan, if required, are tied to an acceptable financial guarantee. Except as specifically exempted, regulated activities within wetlands and wetland buffers shall not be permitted unless the applicant demonstrates that mitigation sequencing is considered pursuant to the mitigation section of this chapter.
- D. Expiration. Approvals shall be valid for a period of time equal to the time that any associated land use permit or approval is valid.

17.35.020 Exemptions.

In addition to the activities and uses listed in UPMC 17.10.035, the following activities are exempt from the provisions of this chapter:

- A. Subject to BMP's, construction or reconstruction of single-family, duplex or condominium units on a lot that was platted, or approved pursuant to a planned development district (PDD), prior to adoption of this ordinance. Structures shall be located outside of buffers in effect when the lot was created and shall be subject to the wetland regulations in effect at that time. A completed building permit application for the construction or reconstruction must be submitted within 5 years of final plat or PDD approval, or this exemption does not apply.
- B. Pursuant to BMP's, construction of a one-family dwelling and regulated activities accessory to a one-family dwelling on a lot of record that was legally created prior to the effective date of this regulation shall be allowed in the buffer if all of the following provisions are met:
 - 1. Development outside the buffer is not feasible.
 - 2. The applicant demonstrates to the department that adverse impacts to wetlands will be mitigated to the greatest extent possible.
 - 3. The residence and accessory structures are located to minimize intrusion into the buffer to the greatest extent possible.
- Activities in artificial wetlands, except those artificial wetlands intentionally created for replacement, enhancement or similar purposes.
- D. Activities affecting:
 - 1. Category II wetlands which are less than 1,000 square feet.
 - 2. Category III wetlands which are less than 2,500 square feet;
 - 3. Category IV wetlands which are less than 10,000 square feet.
- E. Placement of access roads, utility lines and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative and if construction activity is conducted in accordance with BMP's.
- F. For legally established gardens and landscaped areas existing on the effective date of this regulation, activities to maintain their existing condition and appearance. Activities may include, but are not limited to, mowing lawns, weeding, harvesting and replanting of garden crops, pruning and planting of vegetation. Use of pesticides and chemical fertilizers is prohibited.
- G. Activities designed for protection, maintenance and enhancement of wetlands, if approved by the director.
- H. Pursuant to BMP's, activities undertaken on the site of an existing holding pond, water quality facility or similar facility, intended to improve water quality, flow control or other primary function of the facility.
- I. Public stormwater retention/detention facilities and stormwater conveyance facilities such as bioswales, open trenches and culverts, not designed to drain wetlands may be constructed within Category II, III and IV wetland buffers; provided, that the following conditions are met: 1) no untreated stormwater is released from the facility into the wetland or buffer; 2) the applicant demonstrates that water levels within the wetland will be maintained at pre-existing levels; 3) water levels are monitored annually to ensure that pre-existing functions of the wetland are not significantly lost through fluctuations in wetland hydrology; 4) maintenance activity is limited to removal of invasive vegetation and/or removal of sediment accumulation at inflow structures in a manner acceptable to the Department; 5) all construction activity is conducted in accordance with accepted BMP's. This conditional exemption would not apply in situations where there are threatened or endangered species, or sensitive plants, unless approved by the State Department of Fish and Wildlife or Department of Natural Resources, respectively. All permits from other regulatory agencies must be obtained.

- J. A utility line may be placed in an underground trench within a Category II, III or IV wetland or its buffer. There must be no resulting changes in pre-construction contours, and trench excavation materials that are temporarily sidecast must be stabilized to prevent erosion and sedimentation. All sidecast materials shall be replaced within the trench or removed after 90 days, unless the Department grants an extension. The trench shall be the minimum size required to construct the utility line. The top 12 inches of the trench shall be backfilled with topsoil from the trench excavation. Trenches in wetlands shall be backfilled with wetland topsoil from the excavation. Trench excavation should be restricted to the dry season. All permits from other regulatory agencies must be obtained.
- K. Subject to BMP's, placement of utility lines which do not require excavation or utility poles, in any part of a buffer for a category III or IV wetland. They may be placed in a buffer for a category I or II wetland; provided they are not located closer than one half the buffer width from the edge of the wetland.
- L. Public park improvements, including construction of public trails and associated viewing platforms, subject to BMP's, provided no net loss of wetlands occurs.

17.35.025 Delineation and wetland analysis requirements.

Regulated activities shall comply with the following requirements:

- A. The department may require a delineation report per the Washington State Wetland Identification & Delineation Manual, latest addition, to determine if a regulated wetland is present on the site or to determine if the proposed activity is within 200 feet of a wetland. A wetland delineation report shall be prepared by a qualified wetland specialist. The delineation report indicates wetland and/or buffer boundaries that may extend onto the site. While the delineation report shall discuss all wetland areas within 200 feet of the site, only those boundaries within the site property lines need be marked in the field. A preliminary site inspection may be required by the department to determine whether a delineation report is needed.
- B. If the department determines that a regulated wetland is on the site, or within 200 feet of the site so that a wetland buffer boundary may extend onto the site, then the department shall require a wetland analysis report. A wetland analysis report must be prepared by a qualified wetland specialist. A wetland analysis report shall include the following:
 - 1. Vicinity map;
 - 2. When available, a copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service) and/or a city wetland inventory map identifying the wetlands on or adjacent to the site;
 - 3. A site map setting forth all of the following:
 - a. Surveyed wetland boundaries based upon a delineation by a wetland specialist;
 - b. Site boundary property lines and roads;
 - c. Internal property lines, rights-of-way, easements, etc.;
 - d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - e. Contours at the smallest readily available intervals, preferably at two-foot intervals;
 - f. Hydrologic mapping showing patterns of surface water movement and known subsurface water movement into, through, and out of the site area;
 - g. Location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets;
 - h. The department may require an air photo with overlays displaying the site boundaries and wetland delineation;
 - 4. A report that includes the following:
 - a. Location information (legal description, parcel number and address);
 - b. Delineation report. The wetland boundaries on the site established by the delineation shall be staked and flagged in the field. If the wetland extends outside the site, the

- delineation report shall discuss all wetland areas within 200 feet of the site, but need only delineate those wetland boundaries within the site;
- General site conditions including topography, acreage, and surface areas of all wetlands identified in the city wetland atlas and water bodies within one-quarter mile of the subject wetland(s);
- d. Hydrological analysis, including topography, of existing surface and known significant subsurface flows into and out of the subject wetland(s):
- e. Analysis of functional values of existing wetlands, including vegetative, faunal, and hydrologic conditions;
- 5. A summary of proposed activity and potential impacts to the wetland(s);
- 6. Recommended wetland category, including rationale for the recommendation;
- 7. Recommended buffer boundaries, including rationale for boundary locations;
- 8. Proposed on-site residential density transfer from wetlands and/or buffers to upland areas;
- Site plan of proposed activity, including location of all parcels, tracts, easements, roads, structures, and other modifications to the existing site. The location of all wetlands and buffers shall be identified on the site plan.
- C. The department shall review and approve the wetland analysis report to determine the appropriate wetland category and buffer, and shall include the wetland in the city wetland maps and inventory if not already included. The department shall approve the report's findings and proposals unless specific, written reasons are provided which justify not doing so.

17.35.030 Wetland categories.

Wetland categories shall be determined based upon the Washington State Wetland Rating System, Western Washington version, current edition published by DOE. Wetlands shall be generally categorized as follows:

- A. Category I wetlands are those regulated wetlands that: 1) provide a life support function for a threatened or endangered species that has been documented and the wetland is on file in databases maintained by state agencies; 2) represent a high quality example of a rare wetland type; 3) are rare within a given region; or 4) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, if at all. Category I wetlands are not common and would constitute a small percentage of wetlands statewide.
- B. Category II wetlands are those regulated wetlands that provide habitat for very sensitive wildlife or plants; 2) are either difficult to replace; or 3) provide very high functions, particularly for wildlife habitat. These wetlands occur more commonly than category I wetlands, but still need a high level of protection.
- C. Category III wetlands are those regulated wetlands that provide important functions. They are important for a variety of wildlife species and occur more commonly throughout the state than either category I or II wetlands. Generally these wetlands are smaller, less diverse, and/or more isolated in the landscape than category II wetlands. They are somewhat difficult to replace and require a moderate level of protection.
- D. Category IV wetlands are those regulated wetlands of ordinary resource value based on monotypic vegetation of similar age and class, lack of special habitat features, small size and isolation from other aquatic systems. These wetlands do provide important functions and should to some degree be protected.

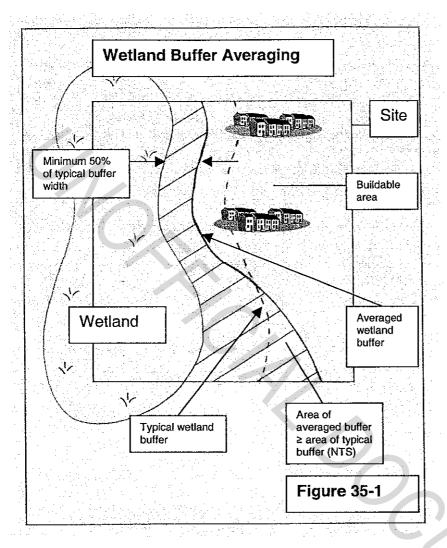
17.35.035 Establishing buffers.

A. Buffers shall be measured perpendicularly to the wetland edge. Buffer widths shall be determined according to table 3 and the provisions of this section:

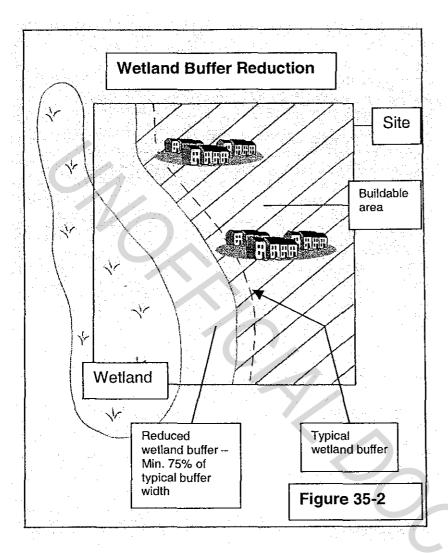
Table 3 - Wetland Buffer Widths

	Category I	Category II	Category III	Category IV
High Impact Land Use	200' Buffer	150' Buffer	75' Buffer	50' Buffer
Low Impact Land Use	150' Buffer	100' Buffer	50' Buffer	35' Buffer

- B. The Director shall determine that a use is either high impact or low impact based upon the following performance standards. A proposed use must satisfy 5 of the following 7 criteria to be considered low impact. All other uses shall be considered high impact.
 - 1. No more than 30% of the site may be covered with impervious surfacing.
 - 2. Pier, piling or pin foundation systems or other measures that reduce on-site soil compaction shall be used where appropriate.
 - 3. A minimum of 60% of the site shall be retained in an undisturbed naturally vegetated state.
 - 4. Permeable paving systems shall be implemented where appropriate.
 - 5. Measures shall be taken to ensure that use of pesticides, herbicides and fertilizers incompatible with wetland functions does not occur.
 - 6. Bio-retention features shall be employed. Examples include rain gardens, roof gardens, tree filter boxes and similar vegetated systems.
 - 7. Roads, driveways and parking areas shall be minimized. Roads and driveways shall primarily run perpendicular to the wetland edge. Parking areas shall be located the maximum distance feasible from the buffer edge.
- C. An applicant may propose an alternative plan for achieving low impact development. The director and the city wetland specialist shall review the plan. If the alternative plan is determined to provide greater than or equal benefit to wetland functions than could be achieved by following the provisions of subsection B, development activity implemented subject to such plan shall be considered low impact and a low impact buffer, per Table 3, shall be permitted.
- D. Buffer widths may be modified by averaging or reducing. Buffer averaging and buffer reduction shall not be applied to the same wetland.
 - 1. Buffer width averaging may be allowed only where the applicant demonstrates the following:
 - a. The wetland contains variations in sensitivity due to existing physical characteristics; and
 - b. Width averaging will not adversely impact the wetland; and
 - c. The total buffer area after averaging is no less than the buffer area prior to averaging; and
 - d. The minimum buffer width will not be less than 50 percent of the width established in subsection (A) of this section. See Figure 35-1 below.



- 2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a 25 percent reduction in the buffer width established in subsection (A) of this section. See Figure 35-2 below.
 - a. The proposed buffer area is extensively vegetated and has less than 15 percent slopes, and the reduction will not result in adverse impacts to the wetland; or
 - b. The project includes a buffer enhancement plan, as part of the mitigation required by UPMC 17.35.045. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or
 - c. The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan that ensures the reduction will not result in adverse impacts to the wetland.

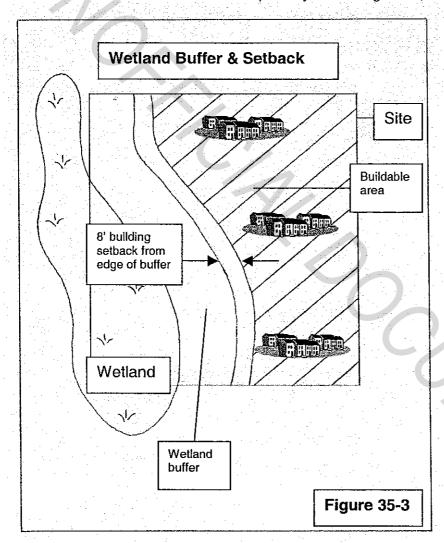


- E. The department may require increased buffer width when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:
 - 1. A larger buffer is necessary to maintain viable populations of existing species; or
 - The wetland is used by species listed by the federal government or the state as endangered or threatened species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas; or
 - The adjacent land is susceptible to severe erosion and erosion control measures will not
 effectively prevent adverse wetland impacts; or
 - 4. The adjacent land has minimal vegetative cover or slopes greater than 15 percent.

17.35.040 Buffer provisions.

- A. When buffer boundaries have been determined they shall be marked in the field by a licensed surveyor. The markers shall be clearly visible, durable, and permanently affixed to the ground.
- B. Prior to final project approval, the part of the wetland and/or buffer that is on the site shall be placed in a separate wetland tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the city. All wetland tracts, protective easements, land trust dedications and other

- similarly preserved areas shall remain undeveloped in perpetuity, except as they may be altered pursuant to this chapter.
- C. Prior to final project approval of any wetland application, the common boundary between a wetland tract, protective easement, land trust dedication, or other similarly preserved area and the adjacent land shall be identified with permanent signs and/or fencing. Sign and fencing locations, wording, and size and design specifications shall be as required by the department.
- D. A building setback line of eight feet shall be required from the outside edge of the buffer (See Figure 35-3). The 8' building setback shall be required regardless of the width of the buffer. The 8' building setback shall be considered a minimum setback and shall not be construed to reduce or eliminate additional setbacks as required by another regulation, code, or state or federal law.



E. At any time after a wetland tract, protective easement, land trust dedication, or other similarly preserved area has been established, the owner may submit a delineation report to the department. If the owner can demonstrate that a natural boundary change has occurred, or that a wetland no longer exists, the wetland tract, protective easement, land trust dedication, or other similarly preserved area may be altered or eliminated, as appropriate. If a wetland boundary has changed or a wetland has been eliminated due wholly or in part to illegal activity, a change or elimination of wetland tract, protective easement, land trust dedication, or other similarly preserved area shall not be permitted.

- F. A wetland tract, protective easement, land trust dedication, or other similarly preserved area is not required for utility lines in easements on lands not owned by the jurisdiction conducting the regulated activity.
- G. Except as otherwise specified, buffers shall be retained in a natural condition.
- H. The wetland buffer shall not extend away from the wetland beyond an existing substantial linear improvement such as an improved road, dike, or levee, where an applicant can show that such existing improvement significantly reduces the impact the proposed activities would have on the wetland.
- I. The department may require protection measures or erosion control measures such as temporary or permanent fencing to provide for protection of a wetland and buffer when any regulated activities are proposed on a site, but are not proposed within a wetland and/or buffer.

17.35.045 Mitigation.

Regulated activities within wetlands and buffers shall be mitigated pursuant to this chapter. Where SEPA environmental review is required, a threshold determination may not be made prior to department review of the mitigation plan.

- A. All activities in wetlands and/or buffers shall be mitigated according to this section and the Department of Ecology manual: Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, current edition, as published by DOE. Except as specifically exempted, regulated activities shall not be permitted within wetlands and or buffers unless an applicant demonstrates that all reasonable attempts have been made to avoid impacts to the wetland and/or buffer. Mitigation is considered in order of preference as noted below with (1) being most preferable and (5) being the least preferable. Applicants must establish that mitigation has been considered in order of preference prior to permit issuance. There may be circumstances when an alternative mitigation strategy is preferable.
 - 1. Avoiding the impact altogether by not taking a certain action or parts of actions within the wetland and/or buffer:
 - 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 reduce impacts;
 - 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
 - 5. Compensating for the impact by replacing or providing substitute resources or environments. Mitigation for individual actions may include a combination of the above measures. Monitoring may be a part of one or more of the above measures.
- B. Regulated activities which occur in buffers, and which will not eliminate wetland habitat, shall be mitigated according to a mitigation plan approved by the department. A mitigation plan for regulated activities in buffers shall contain the following components:
 - 1. General goals of the mitigation plan;
 - 2. Approximated site topography before and after alteration;
 - 3. Location of proposed mitigation area;
 - 4. General hydrologic patterns on the site before and after construction;
 - 5. General plant selection and justification, planting instructions, and approximate planting sequencing and schedule;
 - 6. A maintenance plan:
 - 7. A monitoring and contingency plan.
 - 8. A financial guarantee to ensure maintenance and or implementation of the contingency plan. The financial guarantee must be equal or greater than 20% of the estimated cost of the mitigation work, but in no case shall be less than is necessary to implement the contingency plan.

- B. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands. Compensatory mitigation shall be accomplished per the Department of Ecology manual: Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, current addition. The above referenced document was developed jointly by six agencies including the Washington State Department of Ecology and Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These agencies, together with the city, have regulatory authority over wetland filling and related mitigation. Consistency with the above referenced document will ensure that submitted plans are adequately detailed for review by all responsible agencies. Replacement ratios for compensatory mitigation shall be pursuant to the subsection below.
 - 1. When regulated activities occur in wetlands, the applicant shall restore, create, or enhance equivalent areas of wetlands. Equivalent areas shall be determined according to acreage, functional value, type, location, time factors, and projected success. No overall net losses shall occur in wetland acreage, functions and/or values, and any restored, created, or enhanced wetland shall be as persistent as the wetland it replaces. Buffers pursuant to 17.35.035 shall be provided for created, restored or enhanced wetlands.
 - 2. When an applicant proposes to alter or eliminate wetland, the applicant shall replace, restore and/or enhance acreage at the following ratios:

Table 4 - Replacement Ratios

Wetland Category	Creation and Restoration	Enhancement	
Category I	6:1	12:1	
Category II and III			
●Forested	3:1	6:1	
●Other	2:1	4:1	
Category IV	1.25:1	2.5:1	

^{*}Ratios read as foliows: Acreage replaced: Acreage lost

- 3. Ratios provided are for proposed projects with in-kind replacement that occurs prior to regulated activities on the site. Replaced, restored or enhanced wetlands must be located within the same drainage basin as the filled wetland, but are not required to be located on the same property. The department may increase the ratios under the following circumstances:
 - a. Uncertainty as to the probable success of the proposed restoration, enhancement or creation; or
 - b. Significant period of time between destruction and replication of wetland functions; or
 - c. Projected losses in wetland functional value; or
 - d. Out-of kind compensation.
- 4. The department may allow the minimum acreage replacement ratio to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise, which demonstrate that, no net loss of wetland function or value results from the decreased ratio. In no case shall the department approve a ratio less than 1:1.
- 5. In-kind compensation shall be provided except where the applicant demonstrates that:
 - a. Greater functional and habitat values can be achieved through out-of-kind mitigation; or
 - b. The wetland system is already significantly degraded; or
 - c. Problems such as the presence of exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation infeasible; or
 - d. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

- C. Financial guarantees. Mitigation shall be accomplished prior to the start of any regulated activity that impacts wetland area.
 - 1. If development permits are issued prior to completion of mitigation work, financial guarantees shall be required to ensure mitigation is completed. Financial guarantees shall be 125% of the estimated cost of implementation of the mitigation plan.
 - 2. Appropriate financial guarantees shall be in place to ensure that maintenance; monitoring and/or contingency plans shall be accomplished. Financial guarantees for contingency plans should be 20% of the cost of implementation of the mitigation plan.
- E. Wetland mitigation banking may be permitted as a flexible alternative to standard compensatory mitigation. Wetland mitigation banking shall be conducted per the requirements of 173-700 WAC. The department may adopt additional administrative rules to administer wetland mitigation banking.

17.35.050 Residential density and on-site density transfer.

The purpose of on-site density transfer is to cluster development in a manner that provides protection for wetlands and allows transfer of residential density from a wetland and/or wetland buffer area to an area on the same site that is neither wetland nor buffer. Those portions of the wetland and/or wetland buffer in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

A. For sites containing regulated wetland buffer areas, full density credit may be transferred from the buffer area to the non-buffer area. For sites containing regulated wetland areas, density transfer shall be calculated from the following table.

Table 5 - On-Site Density Transfer

Percentage of site in wetland	Amount of credit	
0 – 25%	75%	
26 50%	50%	
50 – 100%	25%	

B. A request for on-site density transfer shall be reviewed as part of a planned development district (PDD) application. Residential density shall be less than or equal to the base density permitted in the underlying zone, based on the total area of the site.

17.35.055 Alternative review process, Corps of Engineers Section 404 individual permits. When an Army Corps of Engineers Section 404 permit is required for a project involving wetlands, the Army Corps permitting process may be substituted for the city permitting process. If a proposal reviewed and conditioned by the Corps satisfies the intent of this chapter, no further wetland review shall be required by the city. All permits and approvals required by other city development regulations shall be required.

CHAPTER 17.40	
ENVIRONMENT	AL REGULATIONS
Sections:	
17.40.005	Authority.
17.40.010	Purpose, applicability and intent.
17.40.015	Acronyms.
17.40.020	Definitions.
17.40.025	Substantive authority.
17.40.030	Designation of responsible official.
17.40.035	Lead agency determination and responsibilities.
17.40.040	Time limits applicable to SEPA
	review process.
17.40.045	Categorical exemptions.
17.40.050	Use of exemptions.
17.40.055	Critical areas.
17.40.060	Emergency action exemption.
17.40.065	Environmental checklist.
17.40.070	Determination of nonsignificance (DNS).
17.40.075	Mitigated DNS.
17.40.080	Scoping.
17.40.085	Expanded scoping (optional).
17.40.090	Determination of significance.
17.40.095	Withdrawal of threshold determination.
17.40.100	Environmental impact statement.
17.40.105	Public notice.
17.40.110	Administrative appeals of SEPA determination.
17.40.115	Public notice of appeal.
17.40.120	Dismissal of appeal.
17.40.125	Public hearing on appeal.
17.40.130	Judicial appeals.
17.40.135	Hearings examiner – Decision.
17.40.140	Violation – Civil infraction.

17.40.005 Authority.

The following regulations concerning environmental policies and procedures are established and adopted pursuant to Chapter 43.21C RCW, as amended, entitled, "The Environmental Policy Act of 1971" (SEPA), and Chapter 197-11 WAC, entitled, "State Environmental Policy Act".

17.40.010 Purpose, applicability and intent.

- A. The purpose of this chapter is to provide the City of University Place regulations implementing the State Environmental Policy Act of 1971 (SEPA) which are consistent with the SEPA rules.
- B. This chapter is applicable to all city departments/divisions, commissions, boards, committees, and the city council.
- C. This chapter is not intended to require city compliance with the National Environmental Policy Act of 1969 (NEPA). When the City of University Place is required by federal law or regulations to be in compliance with NEPA, such compliance shall be governed by the applicable federal statute and/or regulations and not by this chapter.

17.40.015 Acronyms.

The abbreviations used in this chapter are defined as follows:

- A. DEIS Draft Environmental Impact Statement;
- B. DNS Determination of Non-significance;

- C. DS Determination of Significance;
- D. EIS Environmental Impact Statement;
- E. FEIS Final Environmental Impact Statement;
- F. NEPA National Environmental Policy Act;
- G. SEIS Supplemental Environmental Impact Statement;
- H. SEPA State Environmental Policy Act;
- WAC Washington Administrative Code.

17.40.020 Definitions.

The City of University Place adopts by reference the definitions stated in WAC 197-11-700 through 197-11-799 as now or hereafter amended. In addition to those definitions, the following terms shall have the following meanings unless the context indicates otherwise:

- A. "Aggrieved person" means an applicant, a sponsor of a proposal, or any person alleging that it will sustain a specific injury in fact from the proposed action, which will affect interests protected by SEPA. The alleged injury must be a perceptible present or future harm and may not be merely conjectural or hypothetical. The interest affected must be more than just the abstract interest of the general public in having others comply with the law.
- B. "Council" means the University Place city council.
- C. "Department" means any division, subdivision, or organizational unit of University Place, established by regulations, resolution or order.
- D. "Early notice" means any division, subdivision, or organizational unit of the city established by ordinance, rule or order.
- E. "Hearings examiner" means the University Place city hearings examiner, as appointed by the city council.
- F. "Ordinance" means the ordinance, resolution or other procedure used by the City of University Place to adopt regulatory requirements.
- G. "SEPA rules" means Chapter 197-11 WAC adopted by Washington State Department of Ecology as now or hereafter amended.

17.40.025 Substantive authority.

- A. The City of University Place adopts by reference WAC 197-11-010 through 197-11-990 as now or hereafter amended. The policies and goals set forth in this chapter supplement existing state and city laws.
- B. The city may attach conditions to a permit or approval for a proposal; provided, that:
 - 1. Such conditions mitigate specific adverse environmental impacts clearly identified in environmental documents prepared pursuant to this chapter; and
 - 2. Such conditions are in writing; and
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - 5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.
- C. The city may deny a permit or approval for a proposal on the basis of SEPA; provided, that:

- A finding is made that approval of the proposal would likely result in significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
- 3. The denial is based on one or more policies identified in subsection (D) of this section and identified in writing in the decision document.
- D. The city adopts the following policies as the basis for the city's exercise of authority pursuant to this section:
 - The city shall use all practicable means, consistent with other essential considerations of state
 policy, to improve and coordinate plans, functions, programs, and resources to the end that the
 state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - Endeavor to achieve for the people of University Place safe, healthful, and aesthetically pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - f. Achieve a balance between population and resource use; and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling
 of depletable resources.
 - 2. Policies and procedures included in the following documents, as adopted or hereafter amended by the city, shall supplement this chapter:
 - a. The comprehensive plan;
 - The zoning code and zoning map;
 - c. The subdivision regulations;
 - d. Chapter 12.10 UPMC, Water Quality Standards;
 - e. The King County surface water design manual;
 - f. UPMC Title 17, Critical Areas;
 - g. The shorelines management use regulations and master program;
 - h. The wetland management regulations;
 - i. Public works standards;
 - j. The interim policies for the Bridgeport Way corridor;
 - k. The flood damage prevention ordinance;
 - Interim HUD flood insurance study for Pierce County;
 - m. PCC Title 8, Health and Welfare;
 - n. State Environmental Policy Act.
 - o. Chapter 22, Administration of Development Regulations

17.40.030 Designation of responsible official.

For those proposals for which the City of University Place is the lead agency, the responsible official shall be the director of the Department of Economic and Community Development or his/her designee.

17.40.035 Lead agency determination and responsibilities.

- A. The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-944, unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.
- B. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.
- C. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-944, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the city may be initiated by the planning director.
- D. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.
- E. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.
- F. For all proposals for which the City of University Place is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by the SEPA rules.
- G. In addition, the responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and/or reviewing a DEIS.
- H. This person shall be responsible for the city's compliance with WAC 197-11-502, and 197-11-545, and 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.
- The City of University Place shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with applicable regulations.

17.40.040 Time limits applicable to SEPA review process.

The SEPA review process shall be integrated with the non-exempt action review process in accordance with University Place Municipal Code, Title 22. SEPA decisions shall be made as early in the process as possible. The following time limits shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies:

A. Threshold Determinations.

- If it is possible to make a threshold determination based solely upon review of the environmental checklist for the proposal, said determination shall be completed no less than 14 days and no later than 30 days from the date of submittal of the applicant's complete application and checklist.
- 2. If the responsible official determines that it is necessary to obtain information in addition to that contained on the environmental checklist:
 - a. Such further information shall be requested within 30 days of receiving a complete application.

- b. If neither the requested information nor a response asking for additional time is received within 30 days of the date of request, the responsible official shall find that said information is unavailable and proceed to make a determination without said information unless the applicant requests that the time for response be extended.
- c. The threshold determination shall be completed within 30 days of receipt of the requested additional information from the applicant or the consulted agency; or within 30 days of finding that said information is unavailable.
- 3. If the city must initiate further studies, including, but not limited to, field investigations, to obtain the information necessary to make the threshold determination, such studies and the threshold determination shall be completed within 30 days of receipt of a complete application.

B. Other.

- For nonexempt proposals, the DNS or Final EIS for the proposal shall accompany the city's staff
 recommendation to any appropriate advisory body, such as the planning commission.
- 2. If the city's only action on a proposal is a decision on a building permit or other administrative license that requires detailed project plans and specifications, the applicant may request in writing or the city may require that an environmental review be conducted prior to submission of the detailed plans and specifications. If the applicant requests, the city shall conduct environmental review at that time, providing that the responsible official determines that adequate information about the proposal has been submitted.

17.40.045 Categorical exemptions.

The City of University Place adopts by reference WAC 197-11-300 and 197-11-800. In addition thereto, University Place establishes the following exempt levels for minor new construction under WAC 197-11-800(1):

- A. For residential dwelling units in WAC 197-11-800(1)(b)(i): 10 dwelling units or less if within one structure:
- B. For parking lots in WAC 197-11-800(1)(b)(iv): 30 or fewer automobile parking spaces;
- C. For landfills and excavations in WAC 197-11-800(1)(b)(v): 250 cubic yards or less.

17.40.050 Use of exemptions.

- A. When receiving an application for a license, or when receiving a city-initiated proposal, the responsible official shall determine whether the license and/or the proposal is exempt. The responsible official's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.
- B. In assessing whether or not a proposal is exempt, the responsible official shall determine that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the official shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:
 - 1. The city shall not give authorization for:
 - a. Any nonexempt action:
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of responsible alternatives;

- The city may withhold approval of an exempt action that would lead to modification of the physical environment when such modification would serve no purpose if later approval of a related major action is not secured; and
- The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if later approval of a major related action is secured.

17.40.055 Critical areas.

- A. In accordance with WAC 197-11-908, the City of University Place designates environmentally sensitive areas:
 - Areas designated natural by the city's shoreline management master program environment maps.
 - 2. Fish and wildlife habitat conservation areas, erosion hazard areas, landslide hazard areas, aquifer recharge areas, steep slopes, wetlands and streams, as described in this Title.
 - 3. The following categorical exemptions set forth in WAC 197-11-800 shall not apply when a project proposal is located in or partially within sensitive areas: WAC 197-11-800(1), (2c), (2e), (2f), (2g), (6a), and (25h).
- B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
- C. Certain exemptions do not apply to lands covered by water, regardless of whether such lands covered by water are mapped.

17.40.060 Emergency action exemption.

- A. The following actions, which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter, are exempt from the procedural requirements of this chapter:
 - 1. Actions necessary to prevent an imminent threat to public health or safety;
 - 2. Actions necessary to prevent an imminent danger to public or private property; or
 - 3. Actions necessary to prevent an imminent threat of serious environmental degradation.
- B. The responsible official shall determine on a case-by-case basis emergency action that satisfies the general requirements of this section.
- C. Adoption of interim zoning or moratorium.

17.40.065 Environmental checklist.

- A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed for any permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA review has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and for making the threshold determination.
- B. All private applicants shall complete their own environmental checklist, with assistance from the city as necessary. City departments initiating a proposal shall complete the environmental checklist for that proposal.
- C. The city may require that it, rather than the private applicant, complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
 - 1. The city has access to technical information not available to the private applicant; or
 - 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

17.40.070 Determination of non-significance (DNS).

- A. If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the responsible official shall prepare and issue a determination of non-significance (DNS) substantially in the form provided in WAC 197-11-970. If the responsible official adopts another environmental document in support of a threshold determination, the notice of adoption in WAC 197-11-965 and the DNS shall be combined or attached to each other.
- B. A DNS issued under the provisions of this section is final and effective as set forth in WAC 197-11-390. The filing of an appeal of a DNS pursuant to this chapter shall stay the effect of such DNS and no major action in regard to a proposal may be taken during the pendency of an appeal and until the appeal is finally disposed of by the city. A decision to reverse the determination of the responsible official and uphold the appeal shall further stay any decision, proceedings, or actions in regard to the proposal.
- C. When a DNS is issued for any of the proposals listed in subsection (C)(1) of this section, the requirements in this subsection shall be met.
 - 1. An agency shall not act upon a proposal for 14 days after the date of issuance of a DNS if the proposal involves:
 - a. Another agency with jurisdiction;
 - Demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or UPMC 17.40.045;
 - c. Issuance of clearing or grading permits not exempted in Part Nine of the SEPA rules;
 - d. A DNS under WAC 197-11-350(2), 197-11-350(3) or 197-11-360(4).
 - The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the Department of Ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11-510.
 - 3. Any person, affected tribe, or agency may submit comments to the lead agency within 14 days of the date of issuance of the DNS.
 - 4. The date of issuance for the DNS is the date the DNS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.
 - 5. An agency with jurisdiction may assume lead agency status only within this 14-day period (WAC 197-11-948).
 - 6. The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS. When a DNS is modified, the responsible official shall send the modified DNS to agencies with jurisdiction.

D. Withdrawal of DNS.

- 1. The responsible official shall withdraw a DNS if:
 - a. There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
 - b. There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
 - c. The DNS was procured by misrepresentation or lack of material disclosure; if the DNS resulted from such actions by an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the responsible official or his or her consultants at the expense of the applicant.
- 2. Subsection (D)(1)(b) of this section shall not apply when a nonexempt license has been issued on a private project.
- 3. If the responsible official withdraws a DNS, a new threshold determination shall be made and other agencies with jurisdiction shall be notified of the withdrawal and new threshold deter-

mination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred.

17.40.075 Mitigated DNS.

- A. As provided in this section, the responsible official may issue a determination of non-significance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- B. If an applicant requests early notice of whether a DS is likely, the request must:
 - 1. Be written;
 - 2. Follow submission of an environmental checklist for a nonexempt proposal for which the department is lead agency; and
 - 3. Precede the department's actual threshold determination for the proposal.
- C. The responsible official shall respond to the request in writing; the response shall:
 - State whether the responsible official is considering issuance of a determination of significance (DS) and, if so, indicate the general or specific area(s) of concern that are leading to consideration of DS; and
 - State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.
- D. As much as possible, the responsible official should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the responsible official will make a threshold determination based on the changed or clarified proposal:
 - 1. If the responsible official indicated specific mitigation measures in a response to the request for early notice that would allow him or her to issue a DNS, and the applicant changed or clarified the proposal to include those specific mitigation measures, the responsible official shall issue a determination of non-significance.
 - 2. If the responsible official indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow a DNS to be issued, the responsible official shall make the threshold determination, issuing a DNS or DS as appropriate.
 - 3. The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.
 - 4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS requires a 14-day comment period.
- G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit, unless revised or changed by the decision-maker. The conditions shall be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.
- H. The responsible official's written response under subsection (C) of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the responsible official to a mitigated DNS.

17.40.080 Scoping.

A. The responsible official shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts or reasonable alternatives, the EIS shall be focused on those.

- B. To ensure that every EIS is concise and addresses the significant environmental issues, the responsible official shall:
 - Invite agencies with jurisdiction, if any, affected tribes, and the public to comment on the DS (WAC 197-11-360). The responsible official shall require comments in writing. Agencies with jurisdiction, affected tribes, and the public shall be allowed 21 days from the date of issuance of the DS in which to comment, unless expanded scoping is used. The date of issuance for a DS is the date it is sent to the Department of Ecology and other agencies with jurisdiction, and is publicly available;
 - 2. Identify reasonable alternatives and probable significant adverse environmental impacts;
 - 3. Eliminate from detailed study those impacts that are not significant;
 - 4. Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.
- C. Meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The responsible official shall integrate the scoping process with the existing planning and decision-making process in order to avoid duplication and delay.
- D. The responsible official shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise that bear on the proposal and its significant impacts.
- E. DEISs shall be prepared according to the scope decided upon by the responsible official in the scoping process.
- F. EIS preparation may begin during scoping.

17.40.085 Expanded scoping (optional).

The responsible official may expand the scoping process to include any or all of the provisions found in WAC 197-11-410, which may be applied on a proposal-by-proposal basis.

17.40.090 Determination of significance.

In the event the responsible official determines that a proposal is likely to have a significant adverse effect on the quality of the environment, the responsible official shall prepare a determination of significance using the form in WAC 197-11-980. The responsible official shall also list the proposal in the "EIS in Preparation Register" maintained by the planning division. Thereafter, the EIS and scoping and preparation procedures specified by WAC 197-11-408 through and including 197-11-460 shall be followed.

17.40.095 Withdrawal of threshold determination.

In some cases, as specified by WAC 197-11-340, 197-11-360 and 197-11-600, the city may withdraw its threshold determination.

17.40.100 Environmental impact statement.

- A. The city adopts by reference WAC 197-11-400 through 197-11-460, as now or hereafter amended. The contents and preparation procedures for draft environmental impact statements shall be governed by the SEPA rules herein or as hereafter amended.
- B. Preparation of the draft and final EIS (DEIS and FEIS) and draft and final supplementation EISs (SEIS) shall be under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.
 - 1. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant, as determined by the responsible official. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant within five calendar days after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

2. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information not required under this chapter or information requested from another agency pursuant to this chapter.

17.40.105 Public notice.

- A. Whenever the City of University Place issues a DNS under WAC 197-11-340(2), a DS under WAC 197-11-360(3), a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice shall be given as follows:
 - 1. The project applicant shall insure notice is given by publishing notice in a newspaper of general circulation in the city or general area where the proposal is located as determined by the responsible official.
 - 2. The responsible official may require notice by alternative methods or additional notice such as posting the property if deemed necessary to provide adequate public notice of a pending action.
 - 3. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- B. The applicant is required to complete the public notice requirements for his/her proposal and provide affidavits of publishing to the city planning department. The applicant will be required to pay the cost of any notice required pursuant to subsections (A)(2) and (A)(3) of this section.

17.40.110 Administrative appeals of SEPA determination.

The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680. These administrative appeal procedures supercede procedures for administrative appeals described in The University Place Municipal Code, Chapter 22:

- A. An aggrieved person, as defined by UPMC 17.40.020(A), may appeal the following determinations under SEPA:
 - 1. Determination of non-significance;
 - 2. Mitigated determination of non-significance;
 - 3. Determination of significance;
 - 4. Issuance of an FEIS.
- B. The appeal of a determination under SEPA shall be consolidated with the decision on the underlying governmental action in the following manner:
 - If the initial decision on the underlying governmental action is made by the hearings examiner, the SEPA appeal shall be heard by the examiner at the same time as the hearing on the underlying action. The examiner shall render a decision on both the SEPA appeal and the underlying action.
 - 2. If the initial decision on the underlying governmental action is made by a city employee or official with a right of appeal to the hearings examiner, the SEPA appeal shall be heard by the examiner at the same time as the hearing on the appeal of the underlying action. The examiner shall render a decision on both appeals.
 - 3. If the initial decision on the underlying governmental action is a recommendation by an advisory body such as the planning commission, the SEPA appeal shall be heard and decided by the city council or other body to which the recommendation is made at the same time as the hearing on the underlying action.
 - 4. If the initial decision on the underlying governmental action is made by the city council after a public hearing, the SEPA appeal shall be heard and decided by the city council at the same time.
 - 5. In all other cases, the SEPA appeal shall be heard and decided by the official or body holding the initial public hearing on the underlying governmental action. If no hearing on the underlying action is otherwise afforded by law and a SEPA determination accompanying such determination is appealed, the hearings examiner shall hold a consolidated hearing on both the underlying action and the SEPA appeal and render a decision.

- C. An appeal of a determination under SEPA is commenced by filing a notice of appeal with the planning division. The notice of appeal must be accompanied by any fee established by separate resolution. The notice of appeal and appeal fee shall be jointly filed within 14 days from the date of the environmental determination computed according to Civil Rule 6(a).
- D. The notice of appeal shall contain:
 - 1. Name and mailing address of the appellant and his/her agent or representative, if any;
 - 2. A copy of the environmental determination which is appealed;
 - 3. A concise statement of the factual and legal basis for the appeal citing specifically the alleged errors in the determination on appeal; and
 - 4. The specific relief sought.
- E. As provided in RCW 43.21C.075(3)(d), the environmental determination of the responsible official shall be entitled to substantial weight.
- F. The appellant shall have the burden of going forward with evidence necessary to prove to the hearings examiner that the environmental determination is erroneous.
- G. Only one appeal of an environmental determination made by the responsible official shall be allowed on a proposal. If more than one person files an appeal of an environmental determination on a proposal, such appeals shall be consolidated.

17.40.115 Public notice of appeal.

Whenever the city receives a timely notice of appeal under this chapter, properly perfected, the city shall give public notice by:

- Publishing notice in a newspaper of general circulation in the county or general area where the proposal is located; and
- B. Mailing notice to the appellant, project sponsor, and any individuals requesting notice.

17.40.120 Dismissal of appeal.

The hearings examiner, or other hearing body, may summarily dismiss an appeal without hearing when such appeal is determined to be without merit on its face, frivolous, or brought merely to secure a delay, or that the appellant lacks standing to appeal.

17.40.125 Public hearing on appeal.

All public hearings on SEPA appeals shall be conducted in accordance with University Place Municipal Code, Chapter 22.

17.40.130 Judicial appeals.

- A. If there is a time period for appealing the underlying governmental action, any judicial action appealing or otherwise challenging such governmental action on grounds of noncompliance with SEPA or the SEPA rules shall be commenced within such time period.
- B. If there is no time period for appealing the underlying governmental action, a notice of action under RCW 43.21C.080 may be used to fix a time period within which judicial appeals or challenges based on noncompliance with SEPA or the SEPA rules must be brought.

17.40.135 Hearings examiner - Decision.

Within 20 days of the conclusion of the hearing, the examiner should render a decision or recommendation, together with findings of fact and conclusions, and shall transmit a copy thereof to all parties of record.

17.40.140 Violation - Civil infraction.

In addition to any other sanction or penalty, or any remedial, judicial or administrative procedure available under separate city codes or state law, violation of any provision of this chapter or failure to comply with a decision of the responsible official or hearings examiner issued pursuant to this chapter constitutes a civil violation as defined in Chapter 1.20 of the University Place Municipal Code.