

# BELLINGHAM MUNICIPAL CODE Title 16 - Environment

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# BELLINGHAM MUNICIPAL CODE - 16.50 Wetland and Stream Regulatory Chapter

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## **16.50.010 - Title**

A new chapter is added to the Bellingham Municipal Code, Chapter 16.50. This chapter shall be known as the Wetland and Stream Regulatory Chapter. [Ord. 10267 §1(part), 1991.]

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## **16.50.020 - Authority**

This chapter is adopted pursuant to the provisions of Article 11 of the Washington State Constitution. [Ord. 10267 §1(part), 1991.]

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## **16.50.030 - Purpose**

(07/93) ENVIRONMENT

A. The purposes of this chapter are to:

- (1) Protect, preserve, restore, enhance and maintain the overall functions of regulated wetlands and streams within the City.
- (2) Adhere to a policy of "no net loss of regulated wetland and stream functions."
- (3) Require appropriate planning, prior to site disturbance, to avoid further net losses of regulated wetland and stream functions.
- (4) Establish a fair and consistent permit process that will prevent further net loss of regulated wetland and stream functions.

[Ord. 10267 §1(part), 1991.]

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## **16.50.040 - Definitions**

(07/93) WETLANDS AND STREAMS REGULATORY CHAPTER

Words and phrases used in this chapter shall be interpreted as defined below, and, where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in

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carrying out its regulatory purpose.

**Averaging:** Establishing the required buffer setback from a wetland or stream, within the permitted parcel of land only, so that areas within the parcel determined to be more environmentally sensitive than others will have a larger buffer than the less sensitive areas. For every increase in setback for one area of the parcel, there will be an equal corresponding decrease in another area of the parcel. The total land area within the buffer shall remain the same as if the buffer were a uniform width.

**Buffer:** A vegetated area, of a specified width, bordering a regulated wetland, lake or stream that provides physical separation from the adjacent land use to reduce impacts from land disturbance activities.

**Contiguous Wetlands:** Wetlands which are connected to lakes or regulated streams by any of the following criteria:

- (1) All or part of the wetland lies within the 100 year floodplain of the lake or regulated stream.
- (2) Hydric soil and hydrophytic vegetation extend continuously to the lake or regulated stream shoreline.
- (3) Sufficient evidence exists to conclude the wetland is hydrologically connected and is immediately adjacent to the lake or regulated stream.

**Delineation:** The precise determination of wetland boundaries in the field and the mapping thereof.

**Director:** Director of the Planning and Community Development Department.

**Functions:** Wetland and/or stream functions include, but are not limited to:

- (1) Erosion control and soil conservation, especially along shorelines where wetland vegetation reduces water energy;
- (2) Surface and groundwater storage and recharge, stormwater management and stream base-flow contribution;
- (3) Water quality improvement via sediment filtration and settling, turbidity reduction, re-oxygenation, chemical and biological nutrient cycling, contaminant reduction and water temperature moderation;
- (4) Micro-climatic influence on temperature and moisture;
- (5) Flora and fauna habitat for numerous species, many of which are directly dependent on wetlands and streams during at least part of their life cycle for survival;
- (6) Recreational opportunities such as swimming, boating, fishing, nature-watching and walking along interpretive trails or enjoying view overlooks;
- (7) Open space, backdrops and natural borders which help separate various land uses and provide buffers from incompatible uses. Open space relieves overcrowding and often is aesthetically pleasing.

**Lake:** A body of standing open water over 5000 sq. ft. in area that exists throughout the year.

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**Mitigation:** The restoration, enhancement or creation of wetland/stream functions to compensate for anticipated wetland/stream impacts resultant from land disturbance activities.

**Ordinary high water mark:** The mark on lake and stream shorelines which will be found by examining the beds and bank 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.

**PCDD:** Planning and Community Development Department.

**Regulated activity:** Any of the following within regulated wetlands and streams or their buffers:

- (1) The excavation, dredging, grading or removal of soil, sand, gravel, minerals, organic matter or materials of any kind;
- (2) The filling, dumping, discharging or placement of materials of any kind;
- (3) Alteration of the water supply, water level, flow or drainage characteristics;
- (4) Alteration or destruction of existing vegetation, fish or wildlife habitat;
- (5) The conduct of any activity that results in a detrimental change of the physical or chemical characteristics of a regulated wetland or stream due to the introduction of pollutants.

**Regulated Stream:** Those streams as indicated on the Regulated Streams Map, found in Section .180, including the main stem and tributaries of: Whatcom, Lincoln, Cemetery, Fever, Squalicum, Baker, Spring, Padden, Connelly, Chuckanut, Silver Beach and several unnamed creeks.

**Regulated Wetland:** Those wetlands specified in Section .070-A.

**Significant:** Measurable, detectable or likely to have noticeable influence or effect.

**Wetlands:** Those areas that are inundated or saturated by surface or ground water as 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.

**Wetland Creation:** A human activity to bring a wetland or portion of a wetland into existence where one previously did not exist.

**Wetland Enhancement:** A human activity which increases the functions of a wetland.

**Wetland Restoration:** A human activity which restores the functions of a wetland to the extent that existed prior to disturbance or degradation.  
[Ord. 10267 §1(part), 1991.]

### **16.50.050 - Wetland Categories**

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- A. **Category I Wetland:** Wetlands which have a high resource value based on ecological diversity, the presence of rare wetland communities and are sensitive to disturbance. These wetlands have one or more of the following features:
- (1) Contain documented habitat for endangered, threatened or rare plant, fish or animal species recognized by state or federal agencies.
  - (2) Contain irreplaceable or rare wetland types in the Puget Sound Basin. These types are sphagnum bogs, marine influenced wetlands and mature, forested wetlands.
  - (3) Are comprised of three or more wetland classes, as defined by the Classification of Wetlands and Deep Water Habitats of the United States published by the U.S. Fish and Wildlife Service, Washington, D.C., 1979, one of which may be persistent open water, and are undeveloped.
- B. **Category II Wetland:** Wetlands not included in Category I, but still have a moderate resource value based on their functions. These wetlands have one or more of the following features:
- (1) They are contiguous with any regulated stream or lake.
  - (2) Contain documented habitat for sensitive plant, fish or animal species recognized by state or federal agencies.
  - (3) Contain three or more wetland classes, but do not meet Category I criteria.
  - (4) Are abutting designated public open space, park or greenways corridors and are over 10,000 sq. ft. in area.
  - (5) Provide a significant and necessary storm water management function, such as retention/detention, without alteration, thus avoiding the need to construct artificial facilities.
- C. **Category III Wetland:** All wetlands not included in Category I or II wetlands. Category III wetlands include, but are not limited to, wetlands not contiguous with a regulated stream, lake or designated open space, park or greenway corridor with no endangered, threatened, rare or sensitive plant, fish or animal species or rare wetland types. These wetlands have only one or two wetland class types and do not serve a necessary storm water management function. Generally they provide only low value habitat functions.
- [Ord. 10267 §1(part), 1991.]

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### **16.50.060 - Determination Of Wetland Boundaries And Category**

(7/93)

- A. Rules for the determination of wetland boundaries and category:

Collection of information necessary for the determination of wetland boundaries (delineation) and category

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will ultimately be the responsibility of the property owner. Normally this will be done via a field survey by a wetland specialist applying the wetland delineation method and category types. The City-wide wetland inventory maps and data sheets will assist in this process. When, in the opinion of the Director, sufficient information exists in the City's wetland inventory, the requirement for a full or partial delineation and category determination may be waived.

The Director shall determine when a permit application is required and what additional information may be necessary. Wetland delineations shall be performed in accordance with the procedures and methodology described in the following publication:

Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative Technical Publication.

A determination of the wetland boundary provided by the applicant shall be subject to the approval of the Director who may require adjustments to the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Director and the applicant shall jointly select a wetland specialist who will delineate the disputed boundary as the final determination at the property owners' expense.

[Ord. 10167 §1(part), 1991.]

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### **16.50.070 - Regulated Wetlands And Streams**

#### A. Regulated Wetlands and Streams.

(1) This ordinance shall apply to:

- (a) All wetlands, except as specified in Section .070-B below.
- (b) All uplands (buffers) within:

100 feet of a Category I wetland.  
50 feet of a Category II wetland.  
25 feet of a Category III wetland.

- (c) All regulated streams indicated on the City of Bellingham Regulated Streams Map, Section .180, and uplands within 50 feet of their ordinary high water mark.

(2) This ordinance shall not apply to:

- (a) Category I wetlands less than 5,000 square feet in size that do not contain documented habitat for threatened, endangered or rare plant, fish or animal species recognized by the state or federal agencies.
- (b) Category II wetlands less than 10,000 square feet in size that are not contiguous with any regulated stream, and do not contain documented habitat for sensitive plant, fish or animal species recognized by state or federal agencies.

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- (c) Category III wetlands less than 1 acre in size classified as "wet meadow" or "wet pasture" only, and all other Category III wetland classifications less than 10,000 square feet in size, unless they function in association with a group or series of wetlands which together comprise 10,000 square feet or more in area.
- (d) Wetlands which were both artificially and intentionally created and are not required to be constructed as previous development permit mitigation. These may include, but are not limited to: irrigation and drainage ditches, grass lines swales, canals, detention facilities, reservoirs, wastewater treatment ponds, farm ponds and landscape amenities.

[Ord. 10267 §1(part), 1991.]

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### **16.50.080 - Buffers**

Buffers are upland areas adjacent to wetlands, lakes and streams that provide separation between the aquatic feature and the surrounding land use. Buffers are necessary to protect wetlands, lakes and streams from habitat disturbance, pollution impacts and change in character due to land use activities. Ideally, buffers should be naturally vegetated with native species. In some instances, vegetation management may be necessary to reduce the presence of noxious weeds or invasive species which would otherwise be detrimental to the buffer system. In addition, it may be desirable to increase the diversity within the buffer by planting additional species.

- A. **Buffer criteria.** Buffer width and type should be established based on the individual wetland/stream features, functions and site characteristics in relation to the adjacent land use. In some instances, buffers will be required for development projects even though existing adjacent uses have no buffer at all. The buffer requirement must be applied to provide the most effective protection of the wetland/stream system based on actual site circumstances. When a wetland/stream system does not provide a significant habitat function, all or part of the buffer may include managed landscaping as opposed to strictly natural vegetation.
- B. **Buffer standards.** All buffers shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate.

The following are minimum buffer requirements for wetlands/streams, however, the buffer requirement may be increased and/or averaged (see definition of averaging) by the PCDD where it is demonstrated that certain areas of the wetland/stream are more sensitive to disturbance than others. Buffer increases may be necessary to protect identified functions.

Category I wetlands shall have a 100 foot minimum buffer.

Category II wetlands shall have a 50 foot minimum buffer.

Category III wetlands shall have a 25 foot minimum structure or impervious surface setback.

Regulated streams shall have a minimum 10 foot and maximum 50 foot buffer.

- C. **Reduction from minimum buffer standards.** The Director may reduce the standard buffer zone

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widths on a case-by-case basis when either of the following can be demonstrated:

- (1) The adjacent land is extensively vegetated and has less than 15% slopes and that no direct or indirect, short term or long term adverse impacts to regulated wetlands/streams, as determined by the PCDD, will result from the regulated activity.
- (2) An enhanced buffer plan will be implemented which will increase the effectiveness of the buffer even after reducing width.

No reduction in minimum buffer requirements or averaging may be considered when the net result would increase the likelihood of negative impacts to the wetland/stream system.

- D. Permitted uses within the buffer. Low impact uses which are consistent with the purpose and function of the buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the wetland/stream. Examples of uses which may be permitted include pedestrian trails, interpretive signs, fishing access, conservation and educational activities, gathering berries, bird watching blinds and swimming access.

[Ord. 10267 §1(part), 1991.]

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### **16.50.090 - Permit Requirements, Exemptions, Enforcement**

#### (07/93) WETLANDS AND STREAMS REGULATORY CHAPTER

- A. Permit requirements, compliance. No regulated activity may be conducted within a regulated wetland, stream or buffer area without a permit from the Planning and Community Development Department (PCDD) unless specifically listed as an exempt activity under Section 9.02 below.
- B. Permit exemptions. The following uses are permitted by right within regulated wetland, stream and buffer areas and do not require an individual permit. When there is reasonable doubt whether an activity may be exempt, request for determination should be made to the PCDD. The PCDD will then confirm whether the project is exempt.
- (1) Normal maintenance, repair and routine replacement of lawfully located existing facilities, structures or landscaping such as fences, buildings, driveways, roads, lawns, drainage facilities and utilities including water and sewer lines, power, gas and telephone lines, provided that such activities do not significantly disrupt the associated wetland or stream functions and the ground surface is restored as near as possible to its previous condition after service.
  - (2) Park, trail, educational and interpretive projects, including restoration and enhancement projects, directly related to wetland understanding, enjoyment and improved function provided that they do not significantly disrupt the associated wetland or stream functions.
- C. Temporary Emergency Permit. Notwithstanding the provisions of this chapter or any other law to the contrary, the Director may issue a temporary wetlands permit through oral or written authorization, provided a written permit is accomplished within five days, if the Director deems



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that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted, such as emergency repair in case of flooding or for bank stabilization. The emergency permit may be terminated at any time without process upon a determination by the Director that the action was not or is no longer necessary to protect human health or the environment. The Director may, within 90 days of the emergency permit, require that the action be reconsidered as an after-the-fact permit, subject to any or all of the terms and provisions of this chapter.

- D. **Enforcement.** The City, its agents, officers and employees shall have authority to enter upon the privately owned land for the purpose of performing their duties under this chapter and may take or cause to be made such examinations, surveys, or sampling as the City deems necessary.

The Director shall have authority to enforce this chapter and permits issued thereunder. All costs, fees, and expenses in connection with such enforcement actions may be recovered as damages against the violator.

Law enforcement officials or other enforcement officials having police powers shall have concurrent authority to enforce this chapter and permits issued thereunder.

Any person who commits, takes part in, or assists in any violation of any provision of this chapter is guilty of a misdemeanor and may be fined not more than \$1,500.00 for each offense. Each violation of this act shall be a separate offense, and in the case of a continuing violation each day's continuance shall be deemed to be a separate and distinct offense.

Should a regulated activity occur or a building permit be issued and it is later discovered that the activity is occurring within a regulated wetland, stream or buffer, or in violation of this chapter the Director shall have the authority to issue a stop work order and all activity shall cease until such time as the applicant or violator can meet the requirements of this chapter.

In the event of a violation, the Director shall have the authority to order wetland, stream or buffer restoration and creation measures for the damaged or destroyed area by the person or agent responsible for the violation. If the responsible person or agent does not complete such measures within a reasonable time following the order, the City of Bellingham may restore the affected wetland/stream/buffer to its prior condition and create or restore other wetlands/streams/buffers for the purpose of offsetting losses sustained as a result of the violation. The person or agent responsible for the original violation shall be liable to the City of Bellingham for the cost of such actions.

- E. **Abrogation and Greater Restrictions.** It is not intended that this chapter repeal, abrogate, or impair any existing regulation, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- F. **Interpretation.** The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

[Ord. 10267 §1(part), 1991.]

**16.50.100 - Permit Standards And Procedures**

- A. Wetland/stream permits. Wetland permit applications shall follow the procedures in BMC 21.10.
- B. Request for determination. Any person who wants to know whether a proposed activity or an area is subject to this chapter may request in writing a determination from the PCDD. The PCDD may request additional information as necessary in order to make the determination. The PCDD shall ordinarily respond within 15 days of the date that the request or additional information was received.
- C. Permit applications. An application for a permit for a regulated activity shall include:
  - (1) The purpose of the project and an explanation of why the proposed activity requires the wetland/stream location and/or cannot be located at other sites or at other location on-site;
  - (2) A vicinity map showing the parcel in relation to the surrounding properties.
  - (3) Site plan(s) depicting the entire parcel, drawn to scale, showing the following:
    - (a) Existing surface topography, drainage patterns, vegetative communities such as forested areas, pasture, scrub shrub etc. and the wetland boundary as determined by field survey;
    - (b) The location and dimensions on-site of all existing and proposed buildings, roads, utilities, drainage courses and other constructed features;
  - (4) A description of the wetland(s)/-stream that will be affected by the regulated activity including:
    - (a) A sketch of an appropriate scale for study showing the entire wetland/stream feature that may be impacted as a result of the proposal. At minimum, this must show the entire feature within the owners' property.
    - (b) A description of the water source(s) feeding the wetland/-stream.
    - (c) A map showing soil types on site surrounding the wetland/-stream.
    - (d) A description of the predominant vegetative, wildlife and fisheries communities that utilize or occupy the wetland/-stream.
    - (e) The relative location and number of wetland classes, found within the wetland/stream utilizing as a guide the Classification of Wetlands and Deep Water Habitats of the United States published by the U.S. Fish and Wildlife Service, Washington

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D.C., 1979.

- (f) Relevant information on the presence of endangered, threatened, rare or sensitive species.
  - (g) A description of the functions and values of the wetland/stream and a determination of the wetland category based on the above information.
- (5) The location and extent (specific quantities) of all clearing, grading, cut and fill, dredging or draining and appropriate methods for such activities on site include:
- (a) Before and after topographic contours.
  - (b) Erosion and sedimentation controls to be implemented during construction.
  - (c) Drainage improvements or alterations.
  - (d) Final revegetation/-landscape plans.
- (6) A mailing list of all property owners, according to the Whatcom County Assessor's records, within 300 ft. of the property in question when the proposed activity will negatively impact a Category I or II wetland or a stream.
- (7) The Director may require additional information, including, but not limited to:
- (a) Documentation and evidence of a wetland boundary determination by field survey.
  - (b) Documentation of the ecological, aesthetic, economic, or other values of the wetland.
  - (c) A study of flood, erosion, or other natural hazards at the site and examples of any protective measures that might be taken to reduce such hazards.
  - (d) Any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of the chapter.
- D. Procedures. Upon receipt of the completed application, the PCDD shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over, or an interest expressed in writing to the PCDD in the matter, to provide such individuals and agencies an opportunity to comment.
- After review of all pertinent information, the Director shall determine if the proposal is in conformance with the intent and regulations of this chapter and if it is in the public interest to issue a wetland permit. Said permit may be conditioned as identified in Section .110 of this chapter.
- E. Standards for wetland/stream permits. The Director shall issue wetland/stream permits in accordance with the standards outlined in this section and all other provisions of this chapter.

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Permitted uses. The following uses may be permitted within each wetland category to the extent that the intent and provisions of this chapter are met and approved mitigation for anticipated impacts is employed:

**Category I wetlands:** Location of essential public transportation corridors, utilities and facilities. Permitted projects must meet the public interest and practicable alternative tests.

**Category II wetlands:** Those uses permitted in Category I above in addition to private projects that meet the public interest test and where no practicable alternative exists. Permitted projects must meet the practicable alternative test.

**Category III wetlands and streams:** Any use where anticipated impacts will be fully mitigated according to the requirements of this chapter.

- F. **Practicable alternative test.** The purpose of this section is to specify the alternatives that must be considered prior to locating a project on a Category I or II wetland/stream site that will have an adverse impact on the wetland/stream. Applicants for permits must demonstrate that no reasonable alternatives are available and/or feasible.

There is no practicable alternative when all of the following are demonstrated:

- (1) The basic purpose of the project cannot be accomplished using one or more available alternative sites in the City that would avoid, or result in less adverse impacts on, a wetland/stream;
- (2) The basic purpose of the project cannot be accomplished by a change in the design, size, configuration, construction technique, seasonal timing or density of the project as proposed in a way that would avoid or result in less adverse effects on a wetland/stream;
- (3) In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints.

- G. **Public interest test.** The public interest test is based upon 33 Code of Federal Regulations 320.4A as it exists at the date of adoption of this chapter which is hereby incorporated by reference and paraphrased below.

To perform the public interest test, the PCDD shall balance the benefits against its reasonably foreseeable adverse wetland/stream impacts. For a proposed activity to be found contrary to the public interest, the outcome of this balancing process must show the adverse impacts of the proposal to significantly outweigh its benefits.

Factors which shall be taken into account in the balancing process include, but are not necessarily limited to, the following: general environmental concerns; wetlands/streams; fish and wildlife values; flood hazards; floodplain values; conservation of resources; water quality; energy needs; food and fibre production; mineral needs; land use; private property values; economics; historic and aesthetic values, and the general safety and welfare of the residents of the City.

The following general criteria shall be used to evaluate the factors used in the balancing process:

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- (1) The extent of the public and private need for the proposed activity;
- (2) The extent and permanence of the beneficial and/or adverse impacts that the proposed regulated activity may have on the public and private uses to which the area is suited.
- (3) The quality of the functions of the affected wetland/stream and the extent of wetland/stream disturbance;
- (4) The economic value of the proposed regulated activity to the public;
- (5) The probable impact of the proposed regulated activity on the health and welfare of plants, fish, wildlife and people.

PCDD shall issue a public written summary of its findings of fact and the results of the balancing process used to evaluate each proposed activity.

- H. Other permits. The issuance of a City wetland/stream permit in no way authorizes activity prohibited by other applicable federal or state regulations. Whenever a project may involve work in a wetland or stream, proponents should consult with the U.S. Army Corps of Engineers, State Department of Ecology, Department of Fisheries or Wildlife, Department of Natural Resources or other appropriate agencies regarding their permit requirements.

[Ord. 2004-09-065; Ord. 100267 §1(part), 1991.]

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### **16.50.110 - Permit Conditions**

- A. The Director may attach such conditions to the granting of a wetland/stream permit as deemed necessary to carry out the purposes of this chapter. Such conditions may include but are not limited to:
- (1) Requirements that structures be elevated on piles and otherwise protected against natural hazards;
  - (2) Imposition of operational control, sureties, and deed restrictions concerning future use and subdivision of lands, such as flood warnings, preservation of undeveloped areas in open space use, and limitation of vegetation removal;
  - (3) Dedication of easements to protect wetlands;
  - (4) Establishment of vegetated buffer zones separating and protecting the wetland/stream from proposed activities;
  - (5) Erosion control and stormwater management measures;
  - (6) Setbacks for structures and restrictions on fill, deposit of soil, and other activities in the wetland;

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- (7) Modification in project design to ensure continued water supply to the wetland and circulation of water;
  - (8) Restoration, enhancement or creation of a wetland; and
  - (9) Development of a plan to guide actions involving the restoration, enhancement or creation of a wetland.
- B. The Director may require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitation set forth in the permit. The particular amount and conditions of the bond shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such bond, the Director may initiate an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution.
- [Ord. 10267 §1(part), 1991.]

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### **16.50.120 - Wetlands/Stream Restoration, Enhancement And Creation**

#### WETLANDS AND STREAMS REGULATORY CHAPTER (07/93) ENVIRONMENT

- A. As a condition of a permit issued or as an enforcement action under this chapter, the Director may require that the property owner engage in "mitigation" or the restoration, enhancement, creation of a wetland/stream or contribution to a mitigation banking system to offset, in whole or in part, the losses resulting from an owner's or violator's actions. In making a determination of whether such a requirement will be imposed, and if so, the degree to which it would be required, the Director will consider the following:
- (1) The short and long range impacts of the action upon the wetland/stream and associated ecosystem, and the reversible potential of the impairment or loss;
  - (2) The isolated and cumulative benefit of the wetland/stream functions and associated resources lost;
  - (3) The type, size, and location of the wetland/stream altered, and the effect it may have upon the remaining system or watershed of which the wetland/stream is a part;
  - (4) Observed or predicted trends with regard to the gains or losses of this type of wetland/stream in the watershed, in light of natural and human processes;
  - (5) The cost and likely success of the possible mitigation measures in relation to the magnitude of the proposed project or violation.
- B. The applicant or violator may be required by the Director to develop a wetland/stream restoration, enhancement, creation project or contribute to a mitigation bank.

The plan should describe the location of the proposed project site; ownership; size, type, and complete ecological assessment (flora, fauna, hydrology, functions, etc.) of the wetland/stream being restored, enhanced or the area where a new wetland will be created; and the natural suitability of the proposed site for establishing the replacement wetland (i.e., water source and

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drainage patterns, topographic position, wildlife habitat opportunities, value of the existing area to be converted, etc.) and estimation of likely success based on comparable mitigation efforts. In addition, plane view and cross-sectional scaled drawings; topographic survey data, including slope percentage and final grade elevations; and other technical information as required in sufficient detail to describe and provide for:

- (1) Soil and substrate conditions; topographic elevation; grading and excavation; erosion and sediment control needed for wetland/stream construction and long-term survival;
- (2) Planting plans specifying plant species types, quantities, locations, size, spacing, or density; source of plant materials, starts or seeds; timing, water needs, nutrient requirements for planting; and, where appropriate, measures to protect plants from predation;
- (3) Water quality parameters, water source, water depths, water control structures, and water level maintenance practices needed to achieve the necessary water conditions and hydrocycle/hydroperiod characteristics;
- (4) Project maintenance, monitoring and a replacement plan establishing responsibility in the event of initial failure or interference from undesirable or nuisance vegetation and permanent establishment of the wetland/stream system and all its component parts; and
- (5) A demonstration of fiscal, administrative, and technical competence of sufficient standing to successfully execute the overall project.

Wetland/stream restoration and creation alternatives. Ordinarily, the applicant or violator shall undertake restoration, enhancement or creation efforts on or adjacent to the site where permanent losses have been or may be sustained or where restoration of a former wetland is possible. Replacement of the impacted wetland will be the preferred alternative for mitigation efforts. Where the applicant has demonstrated to the satisfaction of the Director that this approach is not feasible due to technical constraints, such as parcel or wetland size or wetland type, or that a wetland of different type or location is strongly justified based on regional or local needs or the functional value of the impacted wetland, the Director may accept an alternative proposal. Such proposal may involve participation in a mitigation banking system or the restoration, enhancement or creation of a wetland off-site.

The Director may suspend or revoke a permit if he/she finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit.

[Ord. 10267 §1(part), 1991.]

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### **16.50.130 - Mitigation Banking**

#### WETLANDS AND STREAMS REGULATORY CHAPTER

- A. Mitigation "banking" may be considered only when alternatives for mitigation on-site or nearby are limited or non-existent, or if it serves a public purpose, as established by the City Council. A mitigation bank is a mechanism to provide compensation for wetland losses from more than one development project. A mitigation bank is established prior to the impacts that will occur from

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various projects.

Appropriate sites for wetland enhancement or restoration are selected. A project is designed and implemented, and a system of "credits" is established which is based on the nature of the wetland (function, value, acreage) and the cost of developing and implementing the project. A developer could earn credits by contributing to a mitigation banking project or may purchase credits from another credit holder.

"Credits" are allocated to the participants of the mitigation bank based on the total acreage, category and functions created or upgraded. Each credit holder may then apply earned credits to development projects where mitigation is not possible on-site. The credits must be commensurate with the impact of the project on existing Wetlands.

Mitigation banking projects shall be based on the following guidelines:

- (1) Provide equal or greater compensation for anticipated negative wetland/stream impacts from development projects prior to destruction of wetland/stream functions and values.
- (2) Maintain or increase wetland/stream functions and values within individual watersheds.
- (3) Provide sites for wetland/stream mitigation that are most likely to succeed based on their technical suitability for restoration, enhancement or creation as well as community acceptance and desirability.
- (4) Provide a detailed construction and administration plan for the mitigation project including; preliminary site assessment, feasibility analysis, budget and funding requirements, list of participants, construction materials, methods and schedule, post construction monitoring, performance security and project evaluation.
- (5) Encourage creative, innovative wetland/stream mitigation with substantial public, private and environmental benefits.

B. **Siting Considerations.** Areas appropriate as mitigation banking sites should have the following features:

- (1) The site already has wetland characteristics and can likely be restored or enhanced.
- (2) The site is located where there is a need for additional wetland/stream resources and/or open space.
- (3) Substantial community support and interest in participating in the restoration/enhancement process at this site is demonstrated.
- (4) The site is located in a watershed which is likely to have significant pressure for wetland mitigation based on observable development trends.

C. **Structure.** An approved mitigation banking system project shall include at a minimum:

- (1) A technical advisory committee that can assist in the site feasibility determination process and proposed work plan for a given mitigation banking project. The technical committee may be comprised of various specialists in fields such as wetland ecology, botany, hydrology, wildlife management, geology, soils and landscape design in addition to natural resource agency representatives from the State Department of Wildlife, Fisheries,



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Ecology, Federal Army Corp of Engineers or others as may be appropriate.

- (2) A citizen advisory committee to assist in determining which of the possible sites identified by the technical advisory committee would be most desirable for wetland restoration, enhancement or creation from a neighborhood perspective.
  - (3) A professional, administrative ability to oversee the day to day completion of required tasks within the work plan to see that the project is carried out successfully.
  - (4) A well defined and concise method for allocating mitigation credits to participants upon successful completion of the mitigation project.
- D. Adoption/Process. Public, private or non-profit entities may develop mitigation banking proposals. All proposals should comply with the purposes and intent of this chapter. Development of such proposals should proceed with regular communication with the PCDD. Proposals that are approved by the Director shall be presented to the City Council for review and adoption. The City Council shall hold a public hearing prior to the adoption of the proposal for implementation.
- [Ord. 10267 §1(part), 1991.]

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### **16.50.140 - Variances**

A. General provisions. A variance is a modification of the terms of this chapter. The Hearing Examiner may grant a variance only if the applicant proves to the Hearing Examiner's satisfaction that because of the unusual shape, exceptional topographic conditions, or other extraordinary situation or condition in connection with a specific piece of property the literal enforcement of the chapter would involve practical difficulties and cause undue hardship unnecessary to carry out the spirit and intent of this chapter.

An application for a variance may be submitted for modification of any term or requirement of this chapter except for those provisions requiring an application and a permit prior to the conduct of a regulated activity, and definitions.

B. Variance criteria. A variance may be granted by the Hearing Examiner if the applicant proves to the Hearing Examiner that the following criteria are satisfied:

- (1) Because of special circumstances, not the result of the owner's action, applicable to the subject property, (including size, shape, topography, location, surroundings or other unique characteristics of the property or the wetland/stream) the strict application of the provisions of this chapter is found to deprive the property owners of rights and privileges enjoyed by other property owners subject to the restrictions of this chapter; and
- (2) That the granting of the variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity of the subject property; and
- (3) (a) That the subject property, including all contiguous property under the same ownership, cannot be reasonably used under the regulations as written, taking into account the land use designation of the property, the parcel size, shoreline designation, existence of utilities and other infrastructure, surrounding uses, LID obligations and other

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publicly imposed assessments, the economic feasibility of permitted uses, and other relevant factors; or,

(b) Less restrictive regulation of the particular property will satisfy the public health and safety purposes of the chapter, not substantially interfere with the functions (1) through (5) of the subject wetland/stream, and avoid undue hardship to the applicant which would have resulted from the strict enforcement of the chapter.

C. Variance Procedure. Applications for variances from this Chapter shall follow the procedures in BMC 21.10.

[Ord. 2004-09-065; Ord. 10267 §1(part), 1991.]

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### **16.50.160 - Fees**

Fees for permits, variances and appeals shall be established by resolution of the City Council. [Ord. 10267 §1 (part), 1991.]

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### **16.50.170 - Severability**

Should any section, clause, designation or provision of this chapter be declared by the Courts to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof, other than the part so declared to be invalid. [Ord. 10267 §1(part), 1991.]

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### **16.50.180 - Regulated Streams Map And End Points**

The map attached as Exhibit A and incorporated herein shows the location of regulated streams. The end points for regulated streams are described in the attached Exhibit B, which is incorporated herein. [Ord. 10267 §1(part), 1991.]