

ATTACHMENT 2

Project #(s): CA2016-03 and SEPA2016-012  
 Title: Critical Areas Ordinance Amendments  
 Date: 9/12/16

**PROPOSED CRITICAL AREAS ORDINANCE AMENDMENTS**

	MONROE CITY CODE (MCC) CITATION	EXISTING LANGUAGE	PROPOSED LANGUAGE
1	20.05.030	Wetland Edge. Delineation of the wetland edge shall be based on the Washington State Wetland Identification and Delineation Manual, Department of Ecology, 1997, and Publication 96-94 or as revised.	Wetland Edge. Delineation of the wetland edge shall be based on the <del>Washington State Wetland Identification and Delineation Manual, Department of Ecology, 1997, and Publication 96-94</del> <a href="#">approved federal wetland delineation manual and applicable regional supplements</a> or as revised.
2	20.05.030	<p>Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington, Department of Ecology, 1997, Publication 3-74 or as revised.</p> <p>1. Category I. Category I wetlands are those that meet the following criteria:</p> <ul style="list-style-type: none"> <li>a. Documented habitat for federal- or state-listed endangered or threatened fish, animal or plant species; or</li> <li>b. High quality native wetland communities, including documented Category I or II quality natural heritage wetland sites and sites which qualify as Category I or II quality natural heritage wetlands; or</li> <li>c. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or</li> <li>d. Wetlands of exceptional local significance.</li> </ul> <p>2. Category II. Category II wetlands are those not defined as Category I wetlands and that meet the following criteria:</p> <ul style="list-style-type: none"> <li>a. Documented habitats for state-listed sensitive plant, fish, or animal species; or</li> <li>b. Wetlands that contain plant, fish, or animal species listed as a priority species by the state Department of Fish and Wildlife; or</li> <li>c. Wetland types with significant functions that may not be adequately replicated through creation or restoration; or</li> <li>d. Wetlands possessing significant habitat value based on a score of twenty-two or more points in the habitat rating system; or</li> </ul>	<p>Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington, Department of Ecology, <del>1997, Publication 3-74</del> <a href="#">2014 Update, Publication #14-06-029</a> or as revised.</p> <p><del>1. Category I. Category I wetlands are those that meet the following criteria:</del></p> <ul style="list-style-type: none"> <li><del>a. Documented habitat for federal- or state-listed endangered or threatened fish, animal or plant species; or</del></li> <li><del>b. High quality native wetland communities, including documented Category I or II quality natural heritage wetland sites and sites which qualify as Category I or II quality natural heritage wetlands; or</del></li> <li><del>c. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or</del></li> <li><del>d. Wetlands of exceptional local significance.</del></li> </ul> <p><del>2. Category II. Category II wetlands are those not defined as Category I wetlands and that meet the following criteria:</del></p> <ul style="list-style-type: none"> <li><del>a. Documented habitats for state-listed sensitive plant, fish, or animal species; or</del></li> <li><del>b. Wetlands that contain plant, fish, or animal species listed as a priority species by the state Department of Fish and Wildlife; or</del></li> <li><del>c. Wetland types with significant functions that may not be adequately replicated through creation or restoration; or</del></li> <li><del>d. Wetlands possessing significant habitat value based on a score of twenty-two or more points in the habitat rating system; or</del></li> <li><del>e. Documented wetlands of local significance.</del></li> </ul> <p><del>3. Category III. Category III wetlands are those that do not satisfy Category I, II, or IV criteria, and with a habitat rating of twenty-one points or less.</del></p> <p><del>4. Category IV. Category IV wetlands are those that meet the following criteria:</del></p> <ul style="list-style-type: none"> <li><del>a. Hydrologically isolated wetlands that are less than or equal to one acre in size, have only one wetland class, and are dominated (greater than</del></li> </ul>

		<p>e. Documented wetlands of local significance.</p> <p>3. Category III. Category III wetlands are those that do not satisfy Category I, II, or IV criteria, and with a habitat rating of twenty-one points or less.</p> <p>4. Category IV. Category IV wetlands are those that meet the following criteria:</p> <p>a. Hydrologically isolated wetlands that are less than or equal to one acre in size, have only one wetland class, and are dominated (greater than eighty percent areal cover) by a single non- native plant species (monotypic vegetation); or</p> <p>b. Hydrologically isolated wetlands that are less than two acres in size, and have only one wetland class and greater than ninety percent areal cover of nonnative plant species.</p>	<p><del>eighty percent areal cover) by a single non- native plant species (monotypic vegetation); or</del></p> <p><del>b. Hydrologically isolated wetlands that are less than two acres in size, and have only one wetland class and greater than ninety percent areal cover of nonnative plant species.</del></p> <p>1. <u>Category I. Category I wetlands are:</u></p> <p>a. <u>Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;</u></p> <p>b. <u>Bogs;</u></p> <p>c. <u>Mature and old-growth forested wetlands larger than 1 acre; and</u></p> <p>d. <u>Wetlands that perform many functions well (scoring 23 points or more).</u></p> <p><u>These wetlands represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, and provide a high level of functions.</u></p> <p>2. <u>Category II. Category II wetlands have a moderately high level of functions (scoring between 20 and 22 points).</u></p> <p>3. <u>Category III. Category III wetlands have a moderate level of functions (scoring between 16 and 19 points) and can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.</u></p> <p>4. <u>Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.</u></p>
3	20.05.050(B)(2)(b)	b. Structural modification of, addition to, or replacement of an existing residential structure lawfully established prior to the effective date of the ordinance codified in this title that does not meet the building setback or critical area buffer requirements may be approved only if the modification, addition, replacement or related activity does not increase the existing footprint within the critical area buffer or building setback by more than one thousand square feet.	b. Structural modification of, addition to, or replacement of an existing residential structure lawfully established prior to the effective date of the ordinance codified in this title that does not meet the building setback or critical area buffer requirements may be approved only if the modification, addition, replacement or related activity <u>is located away from the critical area and</u> does not increase the existing footprint within the critical area buffer or building setback by more than one thousand square feet.
4	20.05.050(C)	C. Exceptions. The proponent of the activity shall submit a written request for exception from the director that describes the proposed activity and exception that applies. Depending on the exemption requested, the director (for	C. Exceptions. The proponent of the activity shall submit a written request for exception from the director that describes the proposed activity and exception that applies. Depending on the exemption requested, the director (for administrative decisions) or hearing examiner (for reasonable use exceptions)

		administrative decisions) or hearing examiner (for reasonable use exceptions) shall review the exception requested to verify that it complies with this chapter and approve or deny the exception. All decisions made by either the hearing examiner or director shall be published in the official paper. If the exception is approved, it shall be placed on file with the community development department.	shall review the exception requested to verify that it complies with this chapter and approve or deny the exception. <del>All decisions made by either the hearing examiner or director shall be published in the official paper. If the exception is approved, it shall be placed on file with the community development department.</del>
5	20.05.050(C)(1)	1. Public Agency or Utility. If the application if this chapter would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing pursuant to MMC <u>21.50.030</u> , Hearing examiner review and recommendation, the hearing examiner may approve the exception if the hearing examiner finds that:	1. Public Agency or Utility <u>Exception</u> . If the application if this chapter would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing pursuant to MMC <u>21.50.030</u> , <del>Hearing examiner review and recommendation</del> , the hearing examiner may approve the exception if the hearing examiner finds that:
6	20.05.050(C)(2)	2. Reasonable Use. If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of this chapter and the public interest; provided, that the hearing examiner, after a public hearing, finds to the extent consistent with the constitutional rights of the applicant:	2. Reasonable Use <u>Exception</u> . If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of this chapter and the public interest; provided, that the hearing examiner, after a public hearing, finds to the extent consistent with the constitutional rights of the applicant:
7	20.05.060(D)(1)(a)	a. The edge of the wetland as flagged and surveyed in the field using the Washington State Wetland Identification and Delineation Manual as required by RCW <u>36.70A.157</u> ;	a. The edge of the wetland as flagged and surveyed in the field using the <del>Washington State Wetland Identification and Delineation Manual</del> <u>approved federal wetland delineation manual and applicable regional supplements</u> , as required by RCW <u>36.70A.157 175</u> ;
8	20.05.070(I)(1)	1. An owner of property containing a critical area may be permitted to transfer the density attributed to the critical area to another, not containing a critical area(s) portion of the same site or property, subject to the limitations of this section.	1. An owner of property containing a critical area may be permitted to transfer the density attributed to the critical area to another, not containing a critical area(s) <u>or its buffer</u> portion of the same site or property, subject to the limitations of this section.
9	20.05.080(A)(2)(a)	a. Water-dependent activities may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland and other critical areas.	a. Water-dependent activities <u>as provided for under the City's Shoreline Master Program</u> may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland and other critical areas.
10	20.05.080(A)(6)(b)	b. Trails shall be constructed of pervious materials. The trail surface shall meet all other requirements, including water quality standards set forth in the Washington State Department of Ecology Storm Water Management Manual for Western Washington, August 2001 or as revised;	b. Trails shall be constructed of pervious materials. The trail surface shall meet all other requirements, including water quality standards set forth in the Washington State Department of Ecology Storm Water Management Manual for Western Washington, <del>August 2001</del> <u>2012</u> or as revised;
11	20.05.080(A)(6)(c)	c. Trail alignment shall avoid trees in excess of six inches in diameter of any tree trunk at a height of four and one-half feet above the ground on the upslope side of the tree.	c. Trail alignment shall avoid trees in excess of six inches in diameter of any tree trunk at a height of four and one-half feet above the ground on the upslope side of the tree. <u>Unavoidable impacts to trees shall be mitigated at a 3:1</u>

			<a href="#">replacement ratio:</a>																
12	20.05.080(D)	D. Minimum Buffers. The following buffers are minimum requirements. All buffers are measured from the wetland's edge as surveyed in the field: 1. Category I wetlands shall have a two-hundred-foot undisturbed buffer. 2. Category II wetlands shall have a one-hundred foot undisturbed buffer. 3. Category III wetlands shall have a seventy-five foot undisturbed buffer. 4. Category IV wetlands shall have a fifty-foot undisturbed buffer.	D. Minimum Buffers. The following buffers are minimum requirements. All buffers are measured from the wetland's edge as surveyed in the field: 1. Category I wetlands shall have a two-hundred-foot <u>(200')</u> undisturbed buffer. 2. Category II wetlands shall have a one-hundred <u>and fifty</u> foot <u>(150')</u> undisturbed buffer. 3. Category III wetlands shall have a <del>seventy-five</del> <u>one-hundred</u> foot <u>(100')</u> undisturbed buffer. 4. Category IV wetlands shall have a fifty-foot <u>(50')</u> undisturbed buffer.																
13	20.05.080(H)(4)(a)	4. a. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the state Department of Ecology Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 1994, as revised.	4. a. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the state Department of <del>Ecology</del> <u>Ecology Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 1994</u> <u>Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a &amp; b, 2006)</u> , as revised.																
14	20.05.080(H)(4)(c)	c. On-Site and In-Kind. Unless otherwise approved, all wetland impacts shall be compensated for through restoration or creation of replacement wetlands that are in-kind, on-site, and of similar or better wetland category. Mitigation shall be timed prior to or concurrent with the approved alteration and shall have a high probability of success. The following ratios shall apply to wetland restoration and creation for mitigation: i. Category I on a six-to-one area basis with equal or greater functions and values. ii. Category II on a three-to-one area basis with equal or greater functions and values. iii. Category III on a two-to-one area basis with equal or greater functions and values. iv. Category IV on a one-and-one-half-to-one area basis with equal or greater functions and values.	c. On-Site and In-Kind. Unless otherwise approved, all wetland impacts shall be compensated for through restoration or creation of replacement wetlands that are in-kind, on-site, and of similar or better wetland category. Mitigation shall be timed prior to or concurrent with the approved alteration and shall have a high probability of success. <del>The following ratios shall apply to wetland restoration and creation for mitigation:</del> <del>i. Category I on a six-to-one area basis with equal or greater functions and values.</del> <del>ii. Category II on a three-to-one area basis with equal or greater functions and values.</del> <del>iii. Category III on a two-to-one area basis with equal or greater functions and values.</del> <del>iv. Category IV on a one-and-one-half-to-one area basis with equal or greater functions and values.</del> <b>Wetland Mitigation Replacement Ratios</b>																
			<table border="1"> <thead> <tr> <th><u>Category and Type of Wetland</u></th> <th><u>Creation or Re-establishment</u></th> <th><u>Rehabilitation</u></th> <th><u>Enhancement</u></th> </tr> </thead> <tbody> <tr> <td><u>I (Bog and Wetlands of High Conservation Value)</u></td> <td><u>Not considered possible</u></td> <td><u>Case by case</u></td> <td><u>Case by case</u></td> </tr> <tr> <td><u>I (Mature Forested)</u></td> <td><u>6:1</u></td> <td><u>12:1</u></td> <td><u>24:1</u></td> </tr> <tr> <td><u>I (Based on functions)</u></td> <td><u>4:1</u></td> <td><u>8:1</u></td> <td><u>16:1</u></td> </tr> </tbody> </table>	<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>	<u>I (Bog and Wetlands of High Conservation Value)</u>	<u>Not considered possible</u>	<u>Case by case</u>	<u>Case by case</u>	<u>I (Mature Forested)</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>I (Based on functions)</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
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			<a href="#">IV</a>	<a href="#">1.5:1</a>	<a href="#">3:1</a>	<a href="#">6:1</a>
15	20.05.080(H)(4)(g)	N/A	<a href="#">g. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance “Wetland Mitigation in Washington State Parts I and II” (Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the administrator may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report,” (Ecology Publication #10-06-011, Olympia, WA, March 2012), or as revised).</a>			
16	20.05.080(H)(4)(h)(ii) – <i>previously</i> 20.05.080(H)(4)(g)(ii)	ii. At a minimum, enhancement acreage shall be double the acreage required for creation acreage under subsection (H)(4)(c) of this section. The ratios shall be greater than double the required acreage when the enhancement proposal would result in minimal gain in the performance of wetland functions currently provided in the wetland.	ii. At a minimum, enhancement acreage shall be <del>double four times</del> the acreage required for creation acreage under subsection (H)(4)(c) of this section. The ratios shall be greater than <del>double four times</del> the required acreage when the enhancement proposal would result in minimal gain in the performance of wetland functions currently provided in the wetland.			
17	20.05.080(H)(4)(h)(iii) – <i>previously</i> 20.05.080(H)(4)(g)(iii)	iii. Mitigation Plans for Alterations to Wetlands and Wetland Buffers. Mitigation plans shall be consistent with the state Department of Ecology Guidelines for Developing Freshwater Wetland Mitigation Plan and Proposals, 1994 or as revised. At a minimum, the following components shall be included in a complete mitigation plan:	iii. Mitigation Plans for Alterations to Wetlands and Wetland Buffers. Mitigation plans shall be consistent with the state Department of Ecology <del>Guidelines for Developing Freshwater Wetland Mitigation Plan and Proposals, 1994</del> <a href="#">Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a &amp; b, 2006)</a> , or as revised. At a minimum, the following components shall be included in a complete mitigation plan:			
18	20.05.080(H)(4)(h)(iii)(E) – <i>previously</i> 20.05.080(H)(4)(g)(iii)(E)	(E) Monitoring and/or Evaluation Program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for minimum five years or a period necessary to establish that performance standards have been met.	(E) Monitoring and/or Evaluation Program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for <u>a minimum of five years, ten years when establishing woody vegetation</u> or a period necessary to establish that performance standards have been met.			
19	20.05.080(H)(4)(i)	N/A	<a href="#">i. Wetland Mitigation Banks. An alternative to on-site permittee-responsible mitigation involves use of wetland mitigation banks.</a> <a href="#">i. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:</a> <a href="#">(A) The bank is certified under state rules;</a> <a href="#">(B) The City determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and</a>			

			<p><u>(C) The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.</u></p> <p><u>ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.</u></p> <p><u>iii. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.</u></p>
20	20.05.080(H)(4)(j)	N/A	<p><u>j. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when the conditions below apply:</u></p> <p><u>i. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.</u></p> <p><u>ii. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.</u></p> <p><u>iii. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.</u></p> <p><u>iv. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.</u></p> <p><u>v. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.</u></p> <p><u>vi. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.</u></p>