

CITY OF MONROE
ORDINANCE NO. 0XX/2017

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, UPDATING CRITICAL AREAS REGULATIONS BY AMENDING SECTIONS 20.05.030, 20.05.050, 20.05.060, 20.05.070, AND 20.05.080 OF THE MONROE MUNICIPAL CODE TITLE 20 RELATED TO WETLAND DELINEATION, EVALUATION, PROTECTION, AND MITIGATION; OTHER MINOR AMENDMENTS TO PROVIDE CLARIFICATION AND CORRECT ERRORS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, pursuant to RCW 36.70A.130(1)(a), the City is required to periodically review and, if needed, revise its development regulations, including its critical areas regulations, to ensure its regulations comply with the goals and requirements of the Growth Management Act; and

WHEREAS, Chapter 20.05 of the Monroe Municipal Code (MMC) contains the City's development regulations pertaining to the protection of critical areas; and

WHEREAS, the proposed amendments are supported by best available science and the Department of Ecology's guidance found in publication #10-06-002, titled "Wetlands and CAO Updates: Guidance for Small Cities"; and

WHEREAS, the environmental impacts of the amendments to MMC Chapter 20.05, Critical Areas, resulted in the issuance of a Determination of Non-Significance (DNS) on August 23, 2016, with no appeals filed; and

WHEREAS, on August 22, 2016, September 12, 2016, and November 14, 2016, the Planning Commission held study sessions to discuss the proposed amendments to MMC Chapter 20.05, Critical Areas; and

WHEREAS, the City issued a Notice of Public Hearing on January 3, 2017, which was at least 15 days prior to the date of the public hearing pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 21.20.040(B) requires that amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20) require Planning Commission review and recommendation; and

WHEREAS, the City of Monroe Planning Commission held a duly noticed public hearing on January 23, 2017, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the January 23, 2017 public hearing, the Planning Commission voted **unanimously to recommend approval of the proposed amendment**; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on [REDACTED], 2017 and second reading on [REDACTED], 2017 to discuss the proposed critical areas regulations amendments at duly noticed public meetings; and

WHEREAS, pursuant to RCW 36.70A.106, the City has provided the Washington State Department of Commerce with a 60-day notice of intent to adopt the amendments to its development regulations; and

WHEREAS, the City Council has considered the entire public record, the Best Available Science, and the Planning Commission's recommendation, modifying the recommendation as needed; and

WHEREAS, the City Council has determined that the proposed amendments are necessary to ensure compliance with the goals and requirements of the Growth Management Act (RCW 36.70A);

WHEREAS, the City Council has determined that the proposed amendments are in accord with the Comprehensive Plan; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE DO ORDAIN AS FOLLOWS:

Section 1. Amendment of MMC 20.05.020, Purpose. Section 20.05.020 of the Monroe Municipal Code is hereby amended as follows:

20.05.020 Purpose.

- A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- B. Preserve and protect critical areas as identified by the Washington State Growth Management Act by regulating development within and adjacent to them;
- C. Mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;
- D. Prevent adverse cumulative impacts to wetlands, streams, shoreline environments, and fish and wildlife habitat;
- E. Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soils subsidence or steep slope failure;
- F. Implement the goals, policies, guidelines and requirements of the city of Monroe comprehensive plan and the Washington State Growth Management Act. (Ord. 019/2003);
- G. Establish review procedures for development proposals in and adjacent to wetlands.
 - 1. Compliance with the provisions of the Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

Section 2. Amendment of MMC 20.05.030, Definitions. Section 20.05.030 of the Monroe Municipal Code is hereby amended as follows:

20.05.030 Definitions.

“Active fault” means a fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last ten thousand years.

“Adjacent” means immediately adjoining (in contact with the boundary of the influence area) or within a distance less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

1. On site immediately adjoining a critical area; or
2. A distance equal to or less than the required critical area buffer width and building setback.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, dredging, channelizing, clearing (vegetation), applying pesticides, discharging waste, construction, compaction, excavation, modifying for storm water management, relocating, or other activities that change the existing landform, vegetation, hydrology, wildlife or wildlife habitat value of critical areas.

“Anadromous fish” means fish that spawn in fresh water and mature in the marine environment.

“Applicant” means a person who files an application for a permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

“Aquifer recharge area” means an area that, due to the presence of certain soils, geology, and surface water, acts to recharge groundwater by percolation.

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V. The term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard.”

“Base flood” means a flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “one-hundred-year flood.”

“Base flood elevation” means the water surface elevation of the base flood. It shall be referenced to the National Geodetic Vertical Datum of 1929 (NGVD).

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#).

“Best management practices” means conservation practices or systems of practice and management measures that:

1. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxins, and sediment;
2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and the chemical, physical, and biological characteristics of wetlands;
3. Protect trees and vegetation designated to be retained during and following site construction; and
4. Provide standards for proper use of chemical herbicides within critical areas.

“Buffer” means the zone contiguous with a critical area that is required for the continued maintenance, function, and structural stability of the critical area.

“Building setback line (BSBL)” means a line beyond which the foundation of a building shall not extend.

“Channel migration zone (CMZ)” means the lateral extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel migration movement over the past one hundred years.

“City” means the city of Monroe.

“Clearing” means the destruction and removal of vegetation by any means and includes grubbing vegetation.

“Compensation project” means actions specifically designed to replace project-induced critical area and buffer losses. Compensation project design elements may include, but are not limited to, land acquisition, planning, construction plans, monitoring, and contingency actions.

“Compensatory mitigation” means types of mitigation used to replace project-induced critical area and buffer losses or impacts. Compensatory mitigation includes, but is not limited to, the following:

1. Restoration. Actions performed to reestablish functional characteristics that are lost or degraded due to unauthorized alteration, past management activities, or catastrophic events within an area that no longer meets the definition of a critical area.
2. Creation. Actions performed to intentionally establish a critical area at a site where it did not formerly exist.
3. Enhancement. Actions performed to improve the condition of an existing critical area so that the functions it provides are of a higher quality.

“Critical aquifer recharge area” means areas designated by WAC [365-190-080\(2\)](#) that are determined to have critical recharging effect on aquifers used for potable water as defined by WAC [365-190-030\(2\)](#).

“Critical areas” means any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands as defined by the Growth Management Act (Chapter [36.70A](#) RCW) and this chapter.

“Developable area” means areas outside of any critical areas and their required setbacks or buffers.

“Development” means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. “Development” also means subdivision of a parcel or parcels into one or more lots.

“Development permit” means any permit issued by the city of Monroe, or other authorized agency, for construction, land use, or the alteration of land.

“Director” refers to the community development director for the city of Monroe.

“Engineering geologist” means a practicing professional engineering geologist licensed with the state of Washington.

“Erosion” means the process by which soil particles are mobilized and transported by natural agents such as wind, rain, frost action, or stream flow.

“Erosion hazard area” means those areas of Monroe containing soils which, according to the USDA Soil Conservation Service, Snohomish County Soil Survey dated 1983, may experience severe to very severe erosion hazard.

“Fish and wildlife habitat conservation areas” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC [365-190-080](#)(5). These areas include:

1. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
2. Habitats of local importance, including, but not limited to, areas designated as priority habitat by the Department of Fish and Wildlife;
3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;
4. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface water and watercourses within the jurisdiction of the state of Washington;
5. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
6. State natural area preserves and natural resources conservation areas; and
7. Land essential for preserving connections between habitat blocks and open spaces.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff or surface waters from any source.

“Flood fringe” means that portion of the floodplain outside of the floodway which is covered by floodwaters during the base flood; it is generally associated with standing water rather than rapidly flowing water.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Insurance Administration has delineated many areas of flood hazard, floodways, and the risk premium zones.

“Floodplain” means the total area subject to inundation by the base flood including the flood fringe and floodway.

“Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one foot.

“Floodway-dependent structure” means structures that are floodway-dependent including, but not limited to, dams, levees and pump stations, stream bank stabilization, boat launches and related recreational structures, bridge piers and abutments, and fisheries enhancement or stream restoration projects.

“Formation” means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

“Formation, confining” means the relatively impermeable formation immediately overlaying a confined aquifer.

“Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the director, in accordance with [WAC 365-190-080\(3\)](#).

“Functions and values” means the beneficial roles served by critical areas, including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, and recreation.

“Geologically hazardous areas” means areas that may not be suited to development consistent with public health, safety or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by [WAC 365-190-080\(4\)](#). Types of geologically hazardous areas include erosion, landslide, seismic, mine, and volcanic hazards.

“Geologist” means a practicing professional geologist licensed with the state of Washington.

“Geotechnical engineer” means a practicing professional geotechnical/civil engineer licensed with the state of Washington.

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

“Hazard areas” means areas designated as frequently flooded or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geologically hazardous conditions.

“Heavy equipment” means such construction machinery as backhoes, treaded tractor, dump trucks, and front-end loaders.

“Hydraulic project approval (HPA)” means a permit issued by the state Department of Fish and Wildlife for modification to waters of the state in accordance with Chapter [75.20](#) RCW.

“Hydrologist” means a practicing professional hydrologist licensed with the state of Washington.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water.

“Isolated wetland” means those wetlands that are outside of and not contiguous to any one-hundred-year floodplain, lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

“Joint aquatic resources permit application (JARPA)” means a single application form that may be used to apply for hydraulic project approvals, shoreline management projects, approval of exceedance of water quality standards, water quality certifications, Coast Guard bridge permits, Department of Natural Resources use authorization, and Army Corps of Engineer permits.

“Lake” means an area permanently inundated by water in excess of two meters deep and greater than twenty acres in size measured at the ordinary high water mark.

“Landslide” means episodic down-slope movement of a mass of soil or rock that includes, but is not limited to, rock falls, slumps, mudflows, and earthflows.

“Landslide hazard areas” means areas that are potentially subject to risk of mass movement due to a combination of geologic landslides resulting from a combination of geologic, topographic, and hydrologic factors.

“Minor utility project” means the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility, where the disturbance of an area is less than seventy-five square feet.

“Mitigation” means avoiding, minimizing, or compensating for adverse impacts on critical areas. Mitigation shall use any of the actions that are listed below in descending order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action; or
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts; or

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected critical areas; or
4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal; or
5. Compensating for the impact by replacing, enhancing, or providing substitute critical areas; and
6. Monitoring the impacts and compensation project, and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above.

“Monitoring” means the collection of data by various methods for the purpose of understanding natural systems and features, evaluating the impact of development proposals on such systems, and assessing the performance of mitigation measures imposed as conditions of development.

“Native vegetation” means plant species that are indigenous to the area in question.

“Native growth protection easement (NGPE)” means an easement granted to the city of Monroe for the protection of native vegetation within a critical area or its associated buffer. The NGPE shall be recorded on the appropriate documents of title and filed with the Snohomish County recordings division.

“Ordinary high water mark” means the mark that will be found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, that the soil has a character distinct from that of the abutting upland, in respect to vegetation. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

“Potable water” means water that is safe and palatable for human use.

“Practical alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to critical areas.

“Project area” means all areas within fifty feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures.

“Priority habitat” means habitat types or elements with unique or significant value to one or more species as classified by the state Department of Fish and Wildlife.

“Qualified professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified expert with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905](#)(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental sciences, fisheries, geomorphology or related field, and two years of related work experience.

1. A qualified professional for habitats or wetlands must have a degree in biology or a related environmental science and professional experience related to the subject.

2. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

3. A qualified professional for critical aquifer recharge areas must be a hydrologist, geologist, engineer, or other scientist with experience in preparing hydrological assessments.

“Reasonable use” means the minimum to which a property owner is entitled under applicable state and federal constitutional provisions, including takings and substantive due process.

“Riparian habitat” means areas adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that mutually influence each other.

“Salmonid” means a member of the fish family Salmonidae. In Snohomish County, chinook, coho, chum, sockeye, and pink salmon; cutthroat, brook, brown, rainbow, and steelhead trout; kokanee; and native char (bull trout and Dolly Varden).

“Section 404 permit” means a permit issued by the Army Corp of Engineers for the placement of dredge or fill material waterward of the ordinary high water mark or clearing in waters of the United States, including wetlands, in accordance with 33 United State Code (USC) Section 1344.

“Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

“Species, endangered” means a fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

“Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

“Steep slopes” means those slopes forty percent or steeper within a vertical elevation change of at least ten feet. A slope is defined by establishing its toe and top and is measured by averaging the inclination over at least ten feet of vertical relief. For the purpose of this definition:

1. The toe of slope is a distinct topographical break in slope that separates slopes inclined at less than forty percent from slopes forty percent or steeper. When no distinct break exists, the toe of slope of a steep slope is the lowermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet; and

2. The top of slope is a distinct, topographical break in slope that separates slopes inclined at less than forty percent from slopes forty percent or steeper. When no distinct break exists, the top of slope is the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

“Stream” means water contained within a channel, either perennial or intermittent, and classified according to WAC [222-16-030](#) or [222-16-031](#) and as listed under “water typing system.” Streams also include natural watercourses modified by man. Streams do not include irrigation ditches, waste ways, drains, outfalls, operational spillways, channels, storm water runoff facilities, or other

wholly artificial watercourses, except those that directly result from the modification to a natural watercourse.

“Topping” means the severing of main trunks or stems of vegetation at any place above twenty-five percent of the vegetation height.

“Unavoidable” means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

“Understory” means the vegetation layer of a forest that includes shrubs, herbs, grasses, and grass-like plants, but excludes trees.

“Utility” means a service and/or facility that produces, transmits, carries, stores, processes, or disposes of electrical power, gas, potable water, storm water, communications (including, but not limited to, telephone and cable), sewage, oil and the like.

“Vegetation” means any and all organic plant life growing below, at, and above the soil surface.

“Vegetation alteration” means any clearing, grading, cutting, topping, limbing, or pruning of vegetation.

“Water resources inventory area (WRIA)” means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter [173-500](#) WAC as it existed on January 1, 1997. The city of Monroe is within WRIA 7 (Snohomish Basin).

“Water typing system” means waters are classified according to WAC [222-16-031](#):

1. Type 1 Water. All waters, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter [90.58](#) RCW and the rules adopted by Chapter [90.58](#) RCW, but not including those waters’ associated wetlands.
2. Type 2 Water. Segments of natural waters that are not classified as Type 1 waters and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands that:
 - a. Are diverted for domestic use by more than one hundred residential or camping units or by a public accommodation facility licensed to serve more than ten persons, when such diversion is determined by the state Department of Natural Resources to be a valid appropriation of water and only considered Type 2 water upstream from the point of such diversion for one thousand five hundred feet or until the drainage area is reduced by fifty percent, or whichever is less;
 - b. Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 water upstream from the point of diversion for one thousand five hundred feet, including tributaries if highly significant for protection of downstream water quality;
 - c. Are within a federal, state, local, or private campground having more than thirty camping units; provided, that the water shall not be considered to enter a campground

until it reaches the boundary of the park lands available for public use and comes within one hundred feet of a camping unit;

d. Are used for fish spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

i. Stream segments having a defined channel twenty feet or greater within the bankfull width and having a gradient of less than four percent;

ii. Lakes, ponds, or impoundments having a surface area of one acre or greater at seasonal low water; or

e. Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

i. The site must be connected to a fish-bearing stream and accessible during some period of the year; and

ii. The off-channel water must be accessible to fish through a drainage with less than a five percent gradient.

3. Type 3 Water. Segments of natural waters that are not classified as Type 1 or 2 waters and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands that:

a. Are diverted for domestic use by more than ten residential or camping units or by a public accommodation facility licensed to serve more than ten persons, where such diversion is determined by the state Department of Natural Resources to be a valid appropriation of water and the only practical water source for such use. Such waters shall be considered to be Type 3 water upstream from the point of such diversion for one thousand five hundred feet or until the drainage area is reduced by fifty percent, whichever is less;

b. Are used by fish for spawning, rearing, or migration. The requirements for determining fish use are described in the State Forest Practices Board Manual, Section 13. If fish use has not been determined:

i. Stream segments having a defined channel of two feet or greater within the bankfull width in Western Washington and having a gradient of sixteen percent or less;

ii. Stream segments having a defined channel of two feet or greater within the bankfull width, and having a gradient greater than sixteen percent and less than or equal to twenty percent and having an area greater than fifty acres in contributing basin size based on hydrographic boundaries;

iii. Ponds or impoundments having a surface area greater than one-half acre at seasonal low water and having an outlet to a fish stream;

iv. Ponds or impoundments having a surface area greater than one-half acre at seasonal low water.

4. Type 4 Water. All segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 23), the Type 4 waters begin at a point along the channel where the contributing basin area is at least thirteen acres.

5. Type 5 Water. All segments of natural waters within the bankfull width of defined channels that are not Type 1, 2, 3, or 4 waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 water. Type 5 waters must be physically connected by an above-ground channel system to Type 1, 2, 3, or 4 waters.

“Wetland” means those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate conversion of wetlands.

Wetland Classifications. There are three general types of wetlands as classified by the U.S. Fish and Wildlife Service (Cowardin, et al., 1979):

1. Emergent. A wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetation strata;
2. Forested. A wetland with at least twenty percent of the surface area covered by woody vegetation greater than twenty feet in height; and
3. Scrub-shrub. A wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet as the uppermost strata.

Wetland Edge. Delineation of the wetland edge shall be based on the approved federal wetland delineation manual and applicable regional supplements or as revised.

Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington, Department of Ecology 2014 *Update*, Publication #14-06-029 or as revised.

1. **Category I.** Category I wetlands are:

- a. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;
- b. Bogs;
- c. Mature and old-growth forested wetlands larger than 1 acre; or
- d. Wetlands that perform many functions well (scoring 23 points or more).

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.

2. **Category II.** Category II wetlands have a moderately high level of functions (scoring between 20 and 22 points).

3. **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.

4. **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.

Section 3. Amendment of MMC 20.05.050, Applicability, exemptions, and exceptions. Section 20.05.050 of the Monroe Municipal Code is hereby amended as follows:

20.05.050 Applicability, exemptions, exceptions and allowed uses.

A. Applicability.

1. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is

required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns or leases land within the city of Monroe. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purpose and requirements of this chapter.

2. The city of Monroe shall not approve any development proposal or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first assuring compliance with the requirements of this chapter.

- a. Development proposals include proposals that require any of the following:
- b. Building permit;
- c. Grading permit;
- d. Shoreline substantial development permit;
- e. Shoreline conditional use permit;
- f. Shoreline variance;
- g. Right-of-way disturbance permit;
- h. Conditional use permit;
- i. Variance permit;
- j. Special use permit;
- k. Planned residential development;
- l. Subdivision;
- m. Short subdivision;
- n. Binding site plan;
- o. Accessory dwelling unit;

or any subsequently adopted permits or required approvals not expressly exempted from these regulations.

3. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

B. Exemptions. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are consistent with the provisions of other local, state, and federal laws and requirements:

1. All isolated Category IV wetlands less than 4,000 square feet that:

- a. Are not associated with riparian areas or their buffers;
- b. Are not associated with shorelines of the state or their associated buffers;
- c. Are not part of a wetland mosaic;
- d. Do not score 5 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology); and
- e. Do not contain a Priority Habitat or a Priority Area¹ for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

3. Emergency activities that threaten public health, safety, welfare, or risk of damage to private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the approved critical area report and mitigation plan.

4. Single-family residential building permits are exempt from the requirements of this chapter when the development proposal involves:

- a. Structural modifications of addition to or replacement of an existing residential structure or construction of a new residential structure where construction and associated disturbance is clearly equal to or greater than two hundred ten feet from the nearest critical area; or
- 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 is located away from the critical area and does not increase the existing footprint within the critical area buffer or building setback by more than one thousand square feet.

5. Utilities.

- a. Operation, maintenance or repair of existing structures, infrastructure improvements, existing utilities, public or private roads, dikes, levees, or drainage systems, including

routine vegetation management activities when performed in accordance with approved best management practices, if the activity does not increase risk to life or property as a result of the proposed operation, maintenance or repair.

b. Activities Within the Improved Right-of-Way. Replacement, modification, installation or construction of utility facilities, lines, pipes, mains, equipment or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased storm water, subject to the following:

- i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
- ii. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

c. Minor Utility Projects. Utility projects which have minor or short-term impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the functions and values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water runoff. Such allowed minor utility projects shall meet the following criteria:

- i. There is no practical alternative to the proposed activity with less impacts on critical areas and all attempts have been made to first avoid impacts, minimize impacts, and lastly mitigate unavoidable impacts;
- ii. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility;
- iii. The activity involves disturbance of an area less than seventy-five square feet;
- iv. The activity will not reduce the existing functions and values of the affected critical areas; and
- v. Unavoidable impacts will be mitigated pursuant to an approved mitigation plan.

6. Activities and uses that do not require construction permits, in continuous existence since at least November 27, 1990, with no expansion of these activities within the critical area or associated buffer. For the purpose of this subsection, "continuous existence" includes cyclical operations normally associated with horticulture and agricultural activities.

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) shall review the exception requested to verify that it complies with this chapter and approve or deny the exception.

1. Public Agency or Utility Exception. 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 [21.50.030](#), the hearing examiner may approve the exception if the hearing examiner finds that:

a. There is no other feasible alternative to the proposed development with less impact on the critical areas, based on the demonstration by the applicant of the following factors:

i. The applicant has considered all possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and

ii. The applicant has considered all available alignments within the range of potential alignments that meet the project purpose and for which operating rights are available.

b. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical areas buffers. Any decision by the hearing examiner is final unless appealed.

2. Reasonable Use Exception. 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:

a. This chapter would otherwise deny all reasonable use of the property;

b. There is no other reasonable use consistent with the underlying zoning of the property that has less impact on the critical area and/or associated buffer;

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;

d. Any alteration is the minimal necessary to allow for reasonable use of the property;

e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor; and

f. The applicant may only apply for a reasonable use exception under this subsection if the applicant has also applied for a variance pursuant to Chapter [18.96](#) MMC. (Ord. 019/2003)

3. Innovative Development Design. An applicant may request approval of an innovative design that addresses buffer treatment in a manner that deviates from the standards for wetland, stream, fish and wildlife habitat conservation area buffers contained in MMC Chapter 20.05 under the following circumstances:

a. Where the applicant is proposing to redevelop a previously developed site on which existing structures or impervious surface encroach into the buffers otherwise required by MMC Chapter 20.05 for wetlands, streams, or fish and wildlife habitat conservation areas, the Director may reduce the required buffer to the boundary or boundaries of the existing

structures or impervious surface on the project property provided that the Director finds that:

- i. Within the reduced buffer area, the applicant will use innovative design to improve the condition of the buffer consistent with the standards for the applicable critical area(s) set forth in this Chapter 20.05 MMC;
 - ii. In addition, the applicant will provide compensatory mitigation (on-site, off-site, or through mitigation banks) that provides functions and values equivalent to those that would have been provided had the project conformed to the standard buffer set forth in MMC Ch. 20.05; and
 - iii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.
- b. Where the applicant is proposing to develop a site that does not include existing structures or impervious surface that encroach into buffers required by MMC Chapter 20.05 for wetlands, streams, or fish and wildlife habitat conservation areas, the Director may approve a reduction in the required buffer provided that the Director finds that:
- i. The proposed innovative design will provide functions and values that meet or exceed the functions and values of the critical area(s) that would be obtained by applying the standard prescriptive measures contained in this chapter; and
 - ii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.
- c. The applicant shall prepare a critical areas study consistent with MMC 20.05.060 demonstrating the innovative development design complies with the standards in this subsection. All applicants for innovative designs are encouraged to consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies that address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this section.
- d. Where an applicant proposes to reduce the standard wetland, stream, fish and wildlife habitat conservation area buffers set forth in MCC Chapter 20.05 using innovative development design under this section, the other provisions of MCC Chapter 20.05, including provisions regarding buffer reductions or modifications, shall not apply.

D. Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

1. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.

2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
4. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
5. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
6. Educational and scientific research activities.
7. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.
8. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if ALL of the following criteria are met:
 - a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-4 points, and
 - b. There will be “no net loss” of functions and values of the wetland, and
 - c. The wetland does not contain a breeding population of any native amphibian species, and
 - d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan, and
 - e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and

f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and

g. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.

9. Sites Subject to Development Agreement. Any proposed fill or alteration of a wetland on a site subject to a development agreement may be approved through a conditional use permit process if:

a. Mitigation is provided that locates and/or restores a compensatory wetland area on the same site, and the compensatory wetland area provides a higher level of wetland function than existed prior to the fill or alteration; and

b. Mitigation establishes buffers with dense, native vegetation to protect the wetland functions and values; and

c. Assessment is provided demonstrating hydrology will support the created or reestablished wetland; and

d. Alterations adhere to applicable city, state, and federal requirements and permitting including, but not limited to, US Army Corps of Engineers and the Department of Ecology.

e. A 10 year monitoring period is established in accordance with MMC 19.12.070, to ensure mitigation meets the design performance standards established in the approved mitigation plan.

Section 4. Amendment of MMC 20.05.060, Critical areas studies. Section 20.05.060(D) of the Monroe Municipal Code is hereby amended as follows:

D. Additional Wetland Report Requirements. In addition, for wetlands, reports shall include the following:

1. On the map:

a. The edge of the wetland as flagged and surveyed in the field using the approved federal wetland delineation manual and applicable regional supplements, as required by RCW [36.70A. 175](#);

b. The edge of the one-hundred-year floodplain, if appropriate;

c. The location of any existing or proposed utility easements, rights-of-way, and trail corridors;

d. The location of any proposed wetland area(s) to be created through mitigation measures; and

- e. The location of any proposed wetland alteration or fill.
2. In the report:
- a. Description of the wetland by classification and general condition of wetland;
 - b. Description of vegetation species and community types present in the wetland and surrounding buffer;
 - c. Description of soil types within the wetland and the surrounding buffer using the USDA Soil Conservation Service soil classification system;
 - d. Description of hydrologic regime and findings;
 - e. Description of habitat features present and determination of actual use of the wetland by any endangered, threatened, rare, sensitive, or unique species of plants or wildlife as listed by the federal government or state of Washington;
 - f. Description of existing wetland and buffer functions and values;
 - g. Description of any proposed alteration to the wetland or its buffer including, but not limited to, filling, dredging, modification for storm water detention, clearing, grading, restoring, enhancing, grazing or other physical activities that change the existing vegetation, hydrology, soils or habitat;
 - h. If applicable, description of potential impacts to wetland functions and values and description of any proposed mitigation measures; and
 - i. Description of local, state, and federal regulations and permit requirements.

Section 5. Amendment of MMC 20.05.070, Protection and mitigation measures.

Section 20.05.070(I) of the Monroe Municipal Code is hereby amended as follows:

- I. Limited Density Transfer – Density Credit of Critical Areas.
 - 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) or its buffer portion of the same site or property, subject to the limitations of this section.
 - 2. Up to one hundred percent of the density that could be achieved on the critical area and buffer portion of the site can be transferred to a portion of the site not containing a critical area, subject to:
 - a. The density limitation of the underlying zoning classification;
 - b. The minimum lot size of the underlying zoning classification may be reduced by thirty percent (or as revised by the planned residential development standards, but not both) in order to accommodate the transfer in densities;

- c. All other applicable standards established in Chapter [18.10](#) MMC including but not limited to zoning lot area, lot coverage, and setback requirements shall be met; and
- d. The area to which density is transferred shall not be constrained by other critical areas regulation. (Ord. 026/2011 § 2 (Exh. 1); Ord. 019/2003)

Section 6. Amendment of MMC 20.05.080, Wetland development standards. Section 20.05.080 of the Monroe Municipal Code is hereby amended as follows:

20.05.080 Wetland development standards.

A. General Standards. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided by this chapter. The following activities may only be permitted in a wetland or wetland buffer if the applicant can demonstrate that the activity will in no net loss of the functions and values of the wetland and other critical areas.

1. Category I Wetlands. Activities and uses shall be prohibited from Category I wetlands, except as provided in the public agency and utility exception, reasonable use exception, and variance sections of this chapter.
2. Category II and III Wetlands. The following standards shall apply to Category II and III wetlands:
 - a. Water-dependent activities as provided for under the City's Shoreline Master Program may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland and other critical areas.
 - b. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:
 - i. The basic project purpose cannot reasonably be accommodated on another site in the general region and successfully avoid, or result in less adverse impacts on, a wetland or its buffer;
 - ii. There are no feasible alternative designs of the project as proposed that would avoid, or result in less of an adverse impact on, a wetlands or its buffer, such as a reduction in the size, scope, configuration, or density of the project.
3. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical areas report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objective.
4. Property Access. Any wetland may be altered with the least possible impact and to the minimum extent necessary to gain access to developable property when no other alternative access exists. Alteration proposals shall be subject to city review and shall require compensation pursuant to a mitigation plan (see MMC 20.05.050).

5. Storm Water Management. Storm water management facilities are not allowed in wetlands. Storm water management facilities, limited to storm water dispersion outfall and bioswales, may be allowed within the outer twenty-five percent of the buffer of Category III and IV wetlands only; provided, that:

- a. No other location is feasible; and
- b. The location of such facilities will not degrade the functions and values of the wetland.

6. Trails. Public and private trails may be allowed within all buffers where it can be demonstrated in a critical areas report that the wetland and wetland buffer functions and values will not be degraded by trail construction or use. Trail planning, construction, and maintenance shall adhere to the following criteria:

- a. Trail alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width except as needed to access viewing platforms. Trails may be placed on existing levees or railroad grades within these limits;
- 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, 2012 or as revised;
- 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. Unavoidable impacts to trees shall be mitigated at a 3:1 replacement ratio;
- d. Trail construction and maintenance shall follow the U.S. Forest Service Trails Management Handbook (FSH 2309.18, June 1987) and Standard Specifications for Construction of Trails (EM-7720-102, June 1984 or as revised);
- e. Access trails to viewing platforms within the wetland may be provided. Trail access and platforms shall be aligned and constructed to minimize disturbance to valuable functions of the wetland or its buffer and still provide enjoyment of the resource;
- f. Buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
- g. Equestrian trails shall provide measures to assure that runoff from the trail does not directly discharge to the wetland.

7. Utilities. Public and private utility corridors may be allowed within wetland buffers for Category II, III, and IV wetlands when no lesser impacting alternative alignment is feasible, and wetland and wetland buffer functions and values will not be degraded. Utilities, whenever possible, shall be constructed in existing, improved roads, drivable surface or shoulder, subject to compliance with road and maintenance BMPs, or within an existing utility corridor. Otherwise, corridor alignment, construction, restoration and maintenance shall adhere to the following criteria:

- a. Corridor alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width, except when crossing a Category IV wetland and its buffer;
- b. Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of the wetland and the buffer;
- c. Corridors shall be fully revegetated with appropriate native vegetation upon completion of construction; and
- d. Utilities requiring maintenance roads shall be prohibited in wetland buffers unless the following criteria are met:
 - i. There are no lesser impacting alternatives;
 - ii. Any required maintenance roads shall be no greater than fifteen feet wide. Roads shall closely approximate the location of the utility to minimize disturbances; and
 - iii. The maintenance road shall be constructed of pervious materials and designed to maintain and protect the hydrologic functions of the wetland and its buffer.

B. Best Available Science. Any approval of alterations of impacts to a wetland or its buffer shall be supported by the best available science.

C. Native Growth Protection Easement/Critical Area Tract. As part of the implementation of approved development applications and alterations, wetlands and their buffers that remain undeveloped pursuant to the critical areas regulations, in accordance with MMC [20.05.070](#), Protection and mitigation measures, shall be designated as native growth protection easements (NGPE). Any wetland and its associated buffer created as compensation for approved alterations shall also be designated as an NGPE.

When the subject development is a formal subdivision, short subdivision (short plat), or planned residential development (PRD), wetlands and their buffers shall be placed in a critical areas tract instead of an NGPE, as described in MMC [20.05.070](#), Protection and mitigation measures.

D. Buffer requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

1. For wetlands that score 5 points or more for habitat function, the buffers in Table 20.05.080.1 can be used if both of the following criteria are met:

- a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>)

The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 20.05.080.1 may be used with the required measures in Table 20.05.080.2 alone.

b. The measures in Table 20.05.080.2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score 3-4 habitat points, only the measures in Table 20.05.080.2 are required for the use of Table 20.05.080.1

3. If an applicant chooses not to apply the mitigation measures in Table XX.2, or is unable to provide a protected corridor where available, then Table XX.3 must be used.

4. The buffer widths in Table 20.05.080.1 and 20.05.080.3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 20.05.080.1 Wetland Buffer Requirements for Western Washington if Table 20.05.080.2 is Implemented and Corridor Provided

Wetland Category	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
Category I: Based on total score	75	105	165	225
Category I: Bogs and Wetlands of High Conservation Value	190			225
Category I: Forested	75	105	165	225

Category II: Based on score	75	105	165	225
Category III (all)	60	105	165	225
Category IV (all)	40			

Table 20.05.080.2 Required measures to minimize impacts to wetlands
(Measures are required if applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management

Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

Table 20.05.080.3 Wetland Buffer Requirements for Western Washington if Table 20.05.080.2 is NOT Implemented or Corridor NOT provided

Wetland Category	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
Category I: Based on total score	100	140	220	300
Category I: Bogs and Wetlands of High Conservation Value	250			300
Category I:	100	140	220	300

Forested				
Category II: Based on score	100	140	220	300
Category III (all)	80	140	220	300
Category IV (all)	50			

E. Additional Buffers. The city may require increased buffer sizes as necessary to protect wetlands when either the wetland is particularly sensitive to disturbance or the development poses unusual impacts. Examples of circumstances that may require buffers beyond minimum requirements include, but are not limited to:

1. Unclassified uses;
2. The wetland is in a critical drainage basin;
3. The wetland is a critical fish habitat for spawning or rearing as determined by the Washington Department of Fish and Wildlife;
4. The wetland serves an important groundwater recharge area as determined by a groundwater management plan;
5. The wetland acts as habitat for endangered, threatened, rare, sensitive, or monitor species;
6. The land adjacent to the wetland and its associated buffer and included in the development proposal is classified as an erosion hazard area; or
7. A trail or utility corridor in excess of ten percent of the buffer width is proposed for inclusion in the buffer.

F. Buffer Averaging. The city will consider the allowance of wetland buffer averaging only when the buffer area width after averaging will not adversely impact the critical area and/or buffer functions and values. At a minimum, any proposed buffer averaging must also meet the following criteria:

1. The buffer area after averaging is no less than that which would be contained within the standard buffer; and
2. The buffer width shall not be reduced by more than twenty-five percent at any one point as a result of the buffer averaging.

G. Additional Wetland Mitigation Requirements. No net loss of wetland functions and values shall occur as a result of the overall project. If a wetland alteration is allowed, then the associated impacts will be considered unavoidable and the following mitigation measures to minimize and reduce wetland impacts shall be required, in addition to the requirements in MMC [20.05.070](#), Protection and mitigation measures.

1. Restoration/rehabilitation is required when a wetland (or stream) or its buffers has been altered on the site in violation of city regulations prior to development approval and as a consequence its functions and values have been degraded. Restoration is also required when the alteration occurs in violation of city regulations during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

2. Restoration/rehabilitation is required when a wetland (or stream) or its buffers will be temporarily altered during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

3. Compensation. The overall aim of compensation is no net loss of wetland and/or buffer functions on a development site. Compensation includes replacement or enhancement of wetlands and/or buffer (stream) depending on the scope of the approved alteration and what is needed to maintain or improve wetland and/or buffer functions. Compensation for approved wetland and/or buffer alterations shall meet the following minimum performance standards and shall occur pursuant to an approved mitigation plan.

4. a. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the state Department of Ecology *Wetland Mitigation in Washington State, Parts 1 and 2* (Publications #06-06-011a & b, 2006), as revised.

b. Preference of Mitigation Actions. Mitigation actions that require compensation shall occur in the following order of preference:

i. Restoring wetlands on upland sites that were formerly wetlands.

ii. Creating wetlands on disturbed upland sites such as those with vegetation cover consisting primarily of exotic introduced species.

iii. Enhancing significantly degraded wetlands only after a minimum one-to-one replacement ratio has been met.

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.

Wetland Mitigation Replacement Ratios

Category and	Creation or	Rehabilitation	Enhancement
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Type of Wetland	Re-establishment		
I (Bog and Wetlands of High Conservation Value)	Not considered possible	Case by case	Case by case
I (Mature Forested)	6:1	12:1	24:1
I (Based on functions)	4:1	8:1	16:1
II	3:1	6:1	12:1
III	2:1	4:1	8:1
IV	1.5:1	3:1	6:1

d. Off-Site and In-Kind. The city may consider and approve off-site compensation where the applicant can demonstrate that equivalent or greater biological and hydrological functions and values will be achieved. The compensation may include restoration, creation, or enhancement of wetland or streams so long as the project is within the same subdrainage basin. The compensation formulas required in subsection (H)(4)(c) of this section shall apply for off-site compensation as well.

e. Increased Replacement Ratios. The director may increase the ratios under the following circumstances:

- i. Uncertainty exists as to the probable success of the proposed restoration or creation due to an unproven methodology or proponent; or
- ii. A significant period will elapse between impact and replication of wetland functions; or
- iii. The impact was unauthorized.

f. Decreased Replacement Ratios. The city may decrease the ratios required in subsection (H)(4)(c) of this section when all the following criteria are met:

- i. A minimum replacement ratio of one to one will be maintained;
- ii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high rate of success;
- iii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; and

- iv. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.
- 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).
- h. Wetland Enhancement as Mitigation.
- i. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands only after a one-to-one minimum acreage replacement ratio has been satisfied. Applicants proposing to enhance wetlands must produce a critical areas report that identifies how enhancement will increase the functions and values of the degraded wetland and how this increase will adequately mitigate for the loss of wetland function at the impact site.
- ii. At a minimum, enhancement acreage shall be four times the acreage required for creation acreage under subsection (H)(4)(c) of this section. The ratios shall be greater than four times the required acreage when the enhancement proposal would result in minimal gain in the performance of wetland functions currently provided in the wetland.
- iii. Mitigation Plans for Alterations to Wetlands and Wetland Buffers. Mitigation plans shall be consistent with the state Department of Ecology *Wetland Mitigation in Washington State, Parts 1 and 2* (Publications #06-06-011a & b, 2006),, or as revised. At a minimum, the following components shall be included in a complete mitigation plan:
- (A) Baseline Information. Provide existing conditions information for both the impacted critical area and the proposed mitigation site as described in MMC [20.05.060\(C\)](#), General Critical Area Report Requirements and [20.05.060\(D\)](#), Additional Wetland Report Requirements.
- (B) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and include:
- (1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria, identification of compensation goals, identification of resource functions, and dates for beginning and completing site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area; and
- (2) A review of the best available science supporting the proposed mitigation.

(C) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met. They may include water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.

(D) Detailed Construction Plan. These are the written specifications and descriptions of mitigation techniques. This plan should include the proposed construction sequencing, grading and excavation details, erosion and sedimentation control features, a native planting plan, and detailed site diagrams and any other drawings appropriate to show construction techniques or anticipated final outcome.

(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 a minimum of five years, ten years when establishing woody vegetation or a period necessary to establish that performance standards have been met.

(F) Contingency Plan. This section identifies potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates projected performance standards have not been met.

i. Wetland Mitigation Banks. An alternative to on-site permittee-responsible mitigation involves use of wetland mitigation banks.

i. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

(A) The bank is certified under state rules;

(B) The City determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

(C) The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

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.

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:

- i. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
- ii. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
- iii. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
- iv. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
- 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.
- 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.

Section 7. Transmittal to the Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

Section 8. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 9. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this ____ day of _____, 2017.

First Reading:
Final Reading/Adoption:
Published:
Effective:

CITY OF MONROE, WASHINGTON:

(SEAL)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:

Elizabeth M. Smoot, MMC, City Clerk

J. Zachary Lell, City Attorney

DRAFT