

ORDINANCE NO. 2212

CITY OF SUMNER, WASHINGTON

AN ORDINANCE amending the Wetlands Protection Ordinance and Ordinance No. 2071, section 3, approved December 15, 2003 and amending Sumner Municipal Code section 16.40.100; Ordinance No. 1695, sections 27 and 29, approved July 10, 1995 and amending Sumner Municipal Code sections 16.46.100 and 16.46.135; Ordinance No. 1542, section 1 (part), approved March 16, 1992; and amending the Sumner Municipal Code sections 16.46.020, 16.46.030, 16.46.060, 16.46.070, 16.46.080, 16.46.090, 16.46.140, 16.46.150, 16.46.160, 16.46.170, 16.46.180, and 16.46.190.

WHEREAS, the City of Sumner is required to plan under RCW 36.70A.040 and every seven years the City of Sumner must take legislative action to review and, if needed, revise its comprehensive plan and development regulations, including its policies and regulations designating and conserving natural resource lands and designating and protecting critical areas to comply with the requirements in Chapter 36.70A RCW; and

WHEREAS, under the schedule established in RCW 36.70A.130(4), the deadline for the City of Sumner to comply with the update required by RCW 36.70A.130(1) is December 1, 2004; and

WHEREAS, on October 20, 2003, the City of Sumner adopted a 2004 Comprehensive Plan Work Program establishing a timeline and outlining opportunities for public participation in accordance with RCW 36.70A.130(2) and that identified procedures and schedules for reviewing and revising the comprehensive plan and development regulations; and

WHEREAS, the City of Sumner proceeded on the adopted work program that included many opportunities for public participation. The city provided information to the public through public hearings, meetings, workshops, notices in the newspaper, articles in the community bi-monthly newsletter, mailed notice and posting information on the City's website. There were a total of 9 location-specific Comprehensive Plan map amendment requests, as well as amendments to the East Sumner Neighborhood Plan area map designations and creation of a Town Center Plan. Separate mailings and notices were provided for each of these areas. The 2004 Comprehensive Plan update involved the public in several ways and on two different "tracks". The most significant was the development of the Town Center Plan as part of this update. Public outreach for the TCP included: two public workshops, one in July 2003 and one in September 2004; a preliminary focus group of consultants, business owners, residents and City representatives met to discuss potential for downtown development in December 2002; a housing charette was conducted in January 2004 of local stakeholders and developers; and several public workshops with the community to finalized the recommendations in the Town Center Plan. The Economic Development element was also updated after a business survey, individual interviews with businesses, and a workshop in May 2004 asking for recommendations on how the City could assist businesses. Both the Planning Commission and the City Council held Public Hearings.

WHEREAS, The amendments were adopted on June 20, 2005 via Ordinance No. 2133 for the Comprehensive Plan in general, and Substitute Ordinance No. 2133A was adopted on December 5, 2005 to include the Town Center Plan; and

WHEREAS, the public participation process for updating the natural resource and critical areas regulations included a total of three public hearings held by the Planning Commission and the City Council. The first two hearings were on updating the natural resource lands and critical areas regulations for all but the Wetlands Protection Ordinance and was conducted on March 6 and July 10, 2003 and again before the City Council on December 15, 2003; and

WHEREAS, the analysis for updating and amending the critical areas ordinance, including the Wetlands Protection Ordinance are required to consider “best available science” (RCW 36.70A.172); and

WHEREAS, comments received during the update to the critical areas regulations included a letter dated August 15, 2003 from the Department of Ecology asking the City to wait until the Department of Ecology had completed their best available science review of wetlands; and

WHEREAS, the City Council adopted Ordinance No. 2071 amending the critical areas ordinance, except for the wetlands regulations, on December 15, 2003; and

WHEREAS, ESA Adolfson reviewed and evaluated the City’s Wetlands Protection Ordinance for consistency with the requirements of RCW 36.70A.172. Based on the best available science analysis, Adolfson Associates, prepared proposed revisions they concluded are needed to comply with RCW 36.70A.172, and in their professional opinion, provided protection standards for wetlands that are within the range allowed for in the science; and

WHEREAS, one of four priority goals adopted by the City Council for 2007 is to focus on the: “Protection of water, open space and natural resources” and adoption of the updated Wetland Protection Ordinance furthers this goal; and

WHEREAS, the City of Sumner is in the process of providing both stream and wetland improvements to 8th Street Stream which provides cool clean water, spawning and refuge habitat and other functions along the White River system; and

WHEREAS, the City of Sumner has adopted a Six-Year Capital Facilities Plan that identifies program improvements to promote environmental quality including but not limited to culvert removal/replacement on Salmon Creek and storm drainage regulatory improvements to address comprehensive planning or regulatory responses to water resource protection program to implement programs to protect city water resources and vulnerability assessment recommendations for city water resources; and

WHEREAS, the City of Sumner has a longstanding history of successful wetland mitigation including the Bryan Stowe/Rainier Park of Industry wetland mitigation plan; Salmon

Creek wetland mitigation site; and planting and restoring sections of the White River riparian buffer; and

WHEREAS, the Washington State Department of Transportation has completed a successful wetland mitigation project in relation to the installation/construction of a freeway interchange at 24th Street East on SR167; and

WHEREAS, sites within the City of Sumner are being sought for wetland mitigation by public agencies; and

WHEREAS, the City of Sumner's successful record of wetland mitigation is due to factors such as the presence on the valley floor of alluvial soils that have been previously disturbed as farm land and easily revert to hydric soil conditions; the presence of hydrology capable of sustaining wetlands due to the local influence of rivers floodplains and relatively high groundwater such that areas can be minimally excavated to achieve groundwater influence; and the prevalence of wetland adapted native plant species in nearby sites and as a natural seed bank within area soils; and

WHEREAS, consideration of said successful record of wetland mitigation and local natural features and conditions has been considered in the development of the critical areas ordinance particularly the replacement ratios for disturbed wetlands and buffer areas; and

WHEREAS, on January 5, 2006, the analysis and proposed revisions to the Wetlands Protection Ordinance were forwarded to the Planning Commission for review. On February 2, 2006 the Planning Commission held a duly advertised public hearing that included notice in the newspaper and mailed notice to all property owners where properties contain wetlands based on the 2001 and 2007 Wetland Inventory and the Planning Commission continued the Public Hearing until April 6, 2006 to allow for comments to be received; and

WHEREAS, a Determination of Non-significance was issued on this proposal on July 21, 2006; and

WHEREAS, the proposed Wetlands Protection Ordinance was forwarded to the Washington State Department of Community Trade and Economic Development for the mandatory 60-day state review per the Growth Management Act (RCW 36.70A.130) on January 30, 2006; and

WHEREAS, on October 5, 2006 the Planning Commission voted in a 4-2 decision to recommend approval of the amendments to the Wetlands Protection Ordinance and forwarded to the City Council for action; and

WHEREAS, the City Council discussed the amendments at a Study Session on March 12, 2007 and April 30, 2007; and

WHEREAS, The City Council held a public hearing on May 21, 2007 to receive public comments on the proposed revisions. Based on its review of the requirements of Chapter 36.70A

RCW, the analysis and proposed revisions prepared by staff and ESA Adolfson, proposed amendments forwarded by the Planning Commission, and the public comments received, the City Council finds and declares that the review and needed revisions have been prepared in conformance with applicable state law, including Chapter 36.70A RCW and Chapter 43.21C RCW; and

WHEREAS, the proposed changes are consistent with the City of Sumner Comprehensive Plan and comply with the Growth Management Act; and

WHEREAS, Ordinance No. 2212 shall not apply to “agricultural activities” as defined in Substitute Senate Bill 5248 that was enacted to allow time for further study of critical areas regulations such that the long term viability of agricultural lands are preserved; and

WHEREAS, upon adoption of this ordinance the City of Sumner will have completed the 2004 Comprehensive Plan update as required by the Growth Management Act.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON

DO ORDAIN AS FOLLOWS:

Section 1. That Section 3, Ordinance No. 2071, approved December 15, 2003 and section 16.40.100 “Exemptions” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.40.100 Exemptions.

The following activities shall be exempt from the provisions of this division unless specifically modified in other sections of this division. All activities in critical areas must comply with SMC 16.40.110, Best management practices, regardless of exemption status. These exemptions apply specifically to activities regulated by the city of Sumner. Other state and federal permits and approvals may still apply.

A. Agricultural activities on existing agricultural properties when such activities directly relate to the operation of the property for agricultural purposes;

B. Forest practices regulated and conducted in accordance with the provisions of chapter 76.09 RCW and forest practices regulations, WAC Title 222, and which are exempt from Sumner’s jurisdiction;

C. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;

D. Outdoor recreational activities, including but not limited to fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;

E. Education, scientific research, and use of nature trails;

F. Maintenance or reconstruction of existing roads, bridges, and associated storm drainage facilities; provided, that reconstruction does not involve expansion of facilities;

G. The following utility line activities:

1. Normal and routine maintenance or repair of existing utility structures or right-of-way;

2. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less only when required by a local governmental agency;

3. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local government agency which approves the new location of the facilities;

4. Installation or construction in improved rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;

5. Installation or construction in improved road rights-of-way and replacement, operation, repair, or alteration of all utilities, equipment, or appurtenances;

H. Reconstruction, remodeling, or maintenance of existing single-family residential structures and accessory structures; provided, that a cumulative expansion of the building footprint does not increase by more than 25 percent; and provided further, that the new construction or related activity does not further intrude into the critical area;

I. Reconstruction, remodeling, or maintenance of structures, other than single-family structures and accessory structures, provided that such reconstruction, remodeling, or maintenance does not increase the footprint or extend beyond the existing ground coverage;

J. Minor site investigative work necessary for land use and building application submittals such as surveys, soil logs, percolation tests and other related activities where such activities do not require construction of new roads or significant amounts of excavation in a critical area or its buffer. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored;

K. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The director shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken;

L. Any change of use entirely within an existing structure, provided no grading or paving will occur which increases the amount of impervious surface on the site;

M. The construction of fences accessory to single-family residences; provided, that such fences do not bisect streams or wetlands, and do not substantially impede the movement of threatened, endangered, or sensitive species of wildlife;

N. Projects with the primary purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas; provided, that:

1. Such projects are part of an approved local, state, or federal restoration or enhancement plan; and

2. That the project would not result in adverse impacts to any critical area; and

O. Navigation aids and boundary markers; and

P. Boat mooring buoys.”

Section 2. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.020 “Purpose” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.020 Purpose.

The purpose of this chapter is to regulate the use of land on and around wetlands; to protect wetlands from new nearby activities; to comply with the Washington State Growth Management Act and other city and state regulations and policies; and to protect the public health, safety and welfare by preventing the adverse environmental impacts of development, and by:

A. Preserving, protecting and restoring wetlands by regulating development within them and their buffers and thereby protecting surface water quality, providing flood storage and protecting and preserving fish and wildlife habitat;

B. Protecting the public against losses from:

1. Unnecessary maintenance and replacement of public facilities;
2. Publicly funded mitigation of avoidable impacts;
3. Expenditures for public emergency rescue and relief operations; and
4. Potential litigation from improper construction practices authorized for wetland areas;

C. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands; and

D. Providing the city with information to evaluate, approve, condition, or deny public or private development proposals.”

Section 3. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.030 “Definitions” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.030 Definitions.

For the purposes of this chapter, the following definitions shall supplement the definitions of SMC 16.40.060, Definitions, and shall apply to this chapter except that the definition of “activity” shall not apply to this chapter:

1. “Building setback” means a distance where no structures may be built. A fence may be allowed in the building setback, provided it does not exceed six feet in height, and does not bisect wetlands or streams or impede the movement of native wildlife.

2. “Replacement project” means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.

3. “Replacement mitigation” means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

a. “Restoration” – Actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within a former wetland area which no longer meets the definition of a wetland.

b. “Creation” – Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

c. “Enhancement” – Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

4. “Developable area” means an area of land outside of wetlands and wetland buffers.

5. "Ecology Department" means the Washington State Department of Ecology.
6. "Emergent wetland" means a regulated wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.
7. "Exotic" means any species of plants or animals that are not native to the planning area.
8. "Ongoing agriculture" includes agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining agricultural lands under production or cultivation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.
9. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the city council would prevent all reasonable economic use of the parcel.
10. "Forested wetland" means a regulated wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height.
11. "Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper soil horizon(s). The presence of hydric soil shall be determined following the methods described in the *Washington State Wetland Identification and Delineation Manual*.
12. "Hydrologically distinct wetlands" means those regulated wetlands which:
 - a. Are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and
 - b. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.
13. "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the *Washington State Wetland Identification and Delineation Manual*.
14. "In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."
15. "Native vegetation" means plant species which are indigenous to the area in question.
15. "Off-site replacement" means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.
16. "On-site replacement" means to replace wetlands *on* the site on which a wetland has been impacted by a regulated activity.

17. “Out-of-kind replacement ” means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement “out-of-category.”

18. “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 regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

19. “Qualified wetlands professional” means an individual or team that has both the academic qualifications and field experience to provide the technical expertise for making competent wetland delineations and recommendations necessary to implement the requirements of this chapter.

20. “Regulated wetlands” means ponds 20 acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the Federal Clean Water Act, 33 USC 1251 et seq., and rules promulgated pursuant thereto and shall be those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. All Category I wetlands shall be considered regulated wetlands. Regulated wetlands do not include Category II wetlands less than 1,000 square feet in size and Category III and IV wetlands less than 2,500 square feet in size. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Where an applicant has converted a wetland to a non-wetland, in violation of requirements of the city or Section 404 of the Federal Clean Water Act the applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, local government shall use the most current edition of the *Washington State Wetland Identification and Delineation Manual* published by the Washington State Department of Ecology.

21. “Repair or maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.

22. “Scrub-shrub wetland” means a regulated wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

23. “Serviceable” means presently usable.

24. “Unavoidable and necessary impacts” are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practical alternative exists.

25. “Water-dependent” means a use that requires direct contact with the water and cannot exist at a non-water location due to the nature of the use.

26. “Wetlands”: See “Regulated wetlands.”

27. “Wetland buffer” or “wetland buffer zone” is an area that surrounds and protects a regulated wetland from adverse impacts to the wetland’s functions and values.

28. “Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.”

Section 4. That Section 1 (part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.060 “Mapping” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.060 Mapping.

A. The approximate location and extent of wetlands in the city is displayed on the map titled: “Wetland Inventory Map, 2007”. This inventory is general and not designed to support permit applications, and does not establish jurisdictional boundaries. Furthermore, as site conditions change (due to natural and human processes), wetland areas and characteristics may change as well.

B. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation by a qualified wetland professional applying the wetland definition provided for in this chapter.”

Section 5. That Section 1 (part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.070 “Wetlands Rating” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.070 Wetlands rating.

Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system (Washington State Wetland Rating System for Western Washington (revised), Department of Ecology Document #04-06-025) or as further revised by Ecology. This document contains the definitions and methods for determining if the criteria below are met.

A. Category I. Category I wetlands are those wetlands of exceptional resource value based on their functional value and diversity. Category I wetlands in the City of Sumner are:

1. Wetlands designated by Washington Natural Heritage Program as high quality,
2. Bogs,
3. Mature and old-growth forested wetlands larger than one acre, or
4. Wetlands that perform high functions (wetlands scoring 70 points or more on the Ecology wetland rating form).

B. Category II. Category II wetlands are those wetlands of significant resource value based on their functional value and diversity. Category II wetlands in the City of Sumner are wetlands scoring between 51 and 69 points on the Ecology wetland rating form.

C. Category III. Category III wetlands are those wetlands of important resource value based on their functional value and diversity. Category III wetlands in the City of Sumner are wetlands with a moderate to low level of functions (wetlands scoring 30 to 50 points on the wetland rating form).

D. Category IV. Category IV wetlands are those wetlands with the lowest level of functions, scoring less than 30 points on the Ecology wetland rating form.

E. Wetland rating categories shall be applied as the regulated wetland exists on the date of adoption of the rating system by the local government; as the regulated wetland may naturally

change thereafter; or as the regulated wetland may change in accordance with permitted activities. Wetland rating categories shall not be altered to recognize illegal modifications.

F. Procedures for applying the wetlands rating system shall be based on adopted procedures from the Ecology Department.”

Section 6. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.080 “Regulated Activities” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.080 Regulated activities.

A Resource, Wildlife, and Hazard Area (RWHA) approval shall be obtained prior to undertaking the following in a regulated wetland or its buffer unless authorized by SMC 16.46.090 below:

- A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- B. The dumping, discharging, or filling with any material;
- C. The draining, flooding, or disturbing of the water level or water table;
- D. The driving of pilings;
- E. The placing of obstructions;
- F. The construction, reconstruction, demolition, or expansion of any structure;
- G. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation within a regulated wetland or its buffer that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
- H. Activities adjacent to a regulated wetland or its buffer that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.”

Section 7. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.090 “Exemptions” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.090 Exemptions.

In addition to those activities listed in SMC 16.40.100, the following activities shall be allowed within a wetland or wetland buffer provided they are conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected.:

- A. 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, or alteration of the wetland by changing existing topography, water conditions or water sources;
- B. Ongoing agricultural activities
- C. The maintenance of drainage facilities and new drainage facilities provided they are an integral part of an ongoing agricultural activity and approved by the director;
- D. The following uses are allowed within wetlands and/or wetland buffers provided that written notice at least 10 days prior to the commencement of such work has been given to the community development director and provided that wetland impacts are minimized and that disturbed areas are immediately restored:

1. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and

2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions or increase the size of the structure's footprint;

3. Utility line activities listed under SMC 16.40.100(G).

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

1. Prevent an imminent threat to public health or safety; or

2. Prevent imminent danger to public or private property; or

3. Prevent an imminent threat of serious environmental degradation.

Prior to engaging in the action, the director shall provide a written determination on a case-by-case basis that the emergency action satisfies the general requirements of this subsection.

In the event a person or emergency agency determines that the need to take emergency action is so urgent that there is insufficient time for review by the director, such emergency action may be taken immediately. The person or agency undertaking such action shall notify the director within two working days following the commencement of the emergency action. Following such notification the director shall determine if the action taken was within the scope of the emergency actions allowed by this subsection. If the director determines that the action taken or part of the action taken is beyond the scope of allowed emergency actions, enforcement action is warranted. The director may require payment of fees to recover the costs associated with reviewing the emergency action.”

Section 8. That Section 27, Ordinance No. 1695, approved July 10, 1995 and section 16.46.100 “Permit Applications” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.100 Permit applications.

The following provisions are supplemental to the provisions of SMC 16.40.135:

A. Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination of applicability from the director. Such a request for determination shall be processed as a Type I decision according to chapter 18.56 SMC, Procedures for Land Use Permits, and shall contain plans, data and other information as may be specified by the director.

B. If it is determined that this chapter is applicable, an RWHA permit shall be requested. Unless the director waives one or more of the following information requirements, applications for a RWHA approval subject to this chapter shall include the items listed below. These items may be required following the initial RWHA submittal and must be completed in consultation with a qualified wetlands professional.

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the applicant, the exact boundary of the wetland on the parcel pursuant to SMC 16.46.060, and the required wetland buffer;

2. Documentation of any fieldwork performed on the site including field data sheets for wetland delineations, wetland rating forms, etc.;

3. A description of the methods used to conduct the wetland delineation, function assessment, and impact analysis;
4. A description of the vegetative cover of the wetland and adjacent area including dominant species;
5. The wetland rating and required buffer widths for the subject property, and the rating and buffers for wetlands on any adjacent properties whose buffers extend onto the subject property;
6. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations;
7. The exact sites and specifications for all regulated activities including areas of impacts to wetlands and buffers based on a professional survey;
8. Elevations of the site and adjacent lands within the wetland and its buffer at contour intervals of no greater than five feet;
9. Top view and typical cross-section views of the wetland and its buffer to scale;
10. The purposes of the project and an explanation why the proposed activity cannot be located at other sites including an explanation of how the proposed activity is dependent upon wetlands or water-related resources;
11. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal.

C. The director may require additional information including, but not limited to, an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a wetland; a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter.”

Section 9. That Section 29, Ordinance No. 1695, approved July 10, 1995 and section 16.46.135 “Review Process” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.135 Review process.

A. Following the submittal of a complete application for RWHA approval subject to this chapter, the director shall provide public notice according to the procedures for Type II permits in chapter 18.56 SMC, Procedures for Land Use Permits.

B. Applications involving activity in Category I wetlands or buffers shall be sent to the Washington State Department of Ecology for review and comment. The Ecology Department shall have 30 days to review the application and comment to the director. An extension of up to 30 days for comment may be approved upon request by the Ecology Department and approval by the director.”

Section 10. That Section 1 (part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.140 “Standard of Review” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.140 Standard of review.

A. A permit shall only be granted if the permit, on its face or as conditioned, is consistent with the provisions of this chapter and the following criteria:

1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;

2. The proposed activity results in no net loss of wetland area and function; or

3. Denial of a permit would cause an extraordinary hardship on the applicant.

B. The proposal has been shown by the applicant to satisfy the mitigation preferences provided below in the following order of preference:

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

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

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

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

5. Addressing the impact by replacing, enhancing, or providing substitute resources or environments;

6. Monitoring the impact and the replacement project and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

C. Wetlands permits shall not be effective and no activity shall be allowed during the time provided to file a permit appeal.

D. In approving a RWHA application subject to this chapter, the director may impose any conditions necessary to ensure compliance with the goals of this chapter, including but not limited to SMC 16.50.100, 16.56.090, or the comprehensive plan.”

Section 11. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.150 “Buffers” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.150 Buffers.

A. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include a buffer equivalent to or greater than that required for the category of the created, restored, or enhanced wetland to be replaced. The width of the wetland buffer shall be based on the wetland category according to the following table:

Wetland Category	Habitat Score¹	Standard Buffer Width
I		150 feet
II	20 or greater	125 feet
	Less than 20	100 feet
III		75 feet
IV		35 feet
¹ Based on Washington State Wetland Rating System for Western Washington (revised), Department of Ecology Document #04-06-025 or as further revised by Ecology.		

B. The director may require an additional 25-foot buffer width around a wetland on a case-by-case basis when it can be demonstrated that the increase is necessary to:

1. Protect the function and value of the wetland; or
2. To protect habitat for federally or state listed fish and wildlife species, or federally listed plant species, or priority habitats and species documented by the Washington State Department of Wildlife Priority Habitat and Species Program; or
3. To protect lands adjacent to wetlands from erosion; or
4. If the adjacent land has minimal vegetative cover or slopes greater than 15 percent.

C. The director may reduce the standard wetland buffer zone widths on a case-by-case basis where it can be demonstrated that:

1. The wetland is not a Category I or II with a habitat score of 20 or greater and is not a Category IV wetland;
2. The adjacent land is extensively vegetated and has less than 15 percent slopes and that no direct or indirect, short-term or long-term, adverse impacts to regulated wetlands, as determined by the director, will result from a regulated activity; or
3. The project includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the overall vegetative quality and habitat function of the buffer to provide a net increase in protection for wetlands functions and values.
4. The applicant has demonstrated that the project impacts to wetlands have been avoided and minimized to the degree possible on site; and
5. Buffer reduction shall not result in greater than a 35 percent reduction in the standard buffer width, and the reduced buffer shall not be less than 25 feet.

D. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation shall be required.

E., Regulated activities as specified in SMC 16.46.080 shall not be allowed in a buffer zone except for the following:

1. Activities directly related to the cultural, recreational, scientific and education aspects of the wetland and which have a minimal adverse impact on the buffer and wetland area. These may include passive recreational facilities, trails, view points, short-term scientific or educational activities, and sports fishing or hunting;
2. In all but Category I wetlands, public utility corridors may be allowed in buffer areas provided the proposal is subject to review under the State Environmental Policy Act and measures are provided to restore, replace and enhance the buffers and protect the wetland;

3. In Category III and IV wetland buffers, stormwater management facilities having no reasonable alternative on-site location; or

4. In Category III and IV wetland buffers, development accessory to the site's primary use and having no feasible alternative location.

5. In all but Category I wetland buffers, a portion of the buffer area may be planted with non-native naturalized nut and fruit trees when installed as part of an approved buffer enhancement or restoration plan and the following criteria are met:

a. Nut and fruit trees installed in a wetland buffer shall be native to North America or be recognized by the U.S. Department of Agriculture as a fully naturalized species or variety; and shall be a locally-grown nursery stock;

b. Non-native naturalized nut and fruit trees shall show demonstrated benefits to urban wildlife;

c. Non-native naturalized nut and fruit trees shall not be maintained, except as provided for through the implementation of a maintenance plan;

d. In no instance shall clearing of native vegetation be permitted in any part of the regulated wetland buffer to facilitate the installation of nut and fruit trees;

e. Non-native naturalized nut and fruit trees shall only be installed in the outer 20 feet of the required buffer area for Category II and III wetlands and the outer 10 feet for Category IV wetlands and shall not exceed a maximum of 10 percent coverage in the wetland buffer areas;

f. In no instance shall a species identified as "invasive" by any local, state, or federal agency be permitted for installation in any buffer; and

g. The applicant shall verify and affirm that the use of non-native naturalized nut and fruit trees is consistent with state and federal regulations."

F. A building setback line of 15 feet is required from the edge of any wetland buffer. Structural intrusions into the area of the building setback may be allowed if the director determines that such intrusions will not negatively impact the wetland.

G. Use of a wetland buffer for a surface water management activity or facility, other than a flow control or water quality treatment facility, such as an energy dissipater and associated pipes, may be allowed only if the applicant demonstrates to the satisfaction of the director that:

1. No practical alternative exists; and

2. The functions of the buffer or the wetland are not adversely affected.

H. The outer edge of the wetland buffer shall be marked with sensitive area signs. One sign shall be installed every 100 linear feet or a minimum of one sign per lot, whichever is greater. Separated-rail fencing shall be installed along the outer edge of the buffer. The fencing may not exceed six feet in height, bisect wetlands or streams, or impede the movement of native wildlife."

Section 12. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.160 "Avoiding Wetland Impacts" of the Sumner Municipal Code, are hereby amended to read as follows:

"16.46.160 Avoiding wetland impacts.

A. Regulated activities shall not be authorized in a regulated wetland except where either of the following conditions exist:

1. The impact is both unavoidable and necessary due to site-specific constraints not caused by the applicant.

2. All reasonable economic use of the property would be denied.

B. With respect to Category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

C. With respect to Category II and III wetlands, the following provisions shall apply:

1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practical alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.

2. Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:

a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and

b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

D. With respect to Category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

E. Surface water discharge to a wetland from a flow control or water quality treatment facility, sediment pond or other surface water management activity or facility may be allowed if the discharge does not increase the rate of flow, does not adversely impact the plant composition in the wetland or decrease the water quality of the wetland.”

Section 13. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.170 “Minimizing Wetland Impacts” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.170 Minimizing and replacing wetlands impacts.

A. After it has been determined that losses of wetland are unavoidable and necessary, or that all reasonable economic use would be denied, the applicant shall take deliberate measures to minimize wetland impacts.

B. Steps to minimize impacts to wetlands shall include, but are not limited to reduced project scope, sensitive site design, best management practices, off-site construction staging, limiting the season of construction, and consultation with resource agencies in site design.

C. As a condition of any permit allowing alteration of wetlands and/or wetland buffers, or as an enforcement action an applicant may be required to provide restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the

applicant's or violator's actions and recreate as nearly as possible the original wetlands in terms of function, geographic location and setting, and that are larger than the original wetlands.

D. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to replace wetland losses.

E. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.

F. Replacement areas shall be determined according to function, acreage, type, location, time factors, ability to be self sustaining and projected success. Wetland functions and values shall be calculated by a qualified wetland professional using the best available techniques. Multiple replacement projects may be proposed for one project in order to best achieve the goal of no net loss.

G. The following ratios apply to creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

Category I	6:1
Category II or III	
Forested	2:1
Scrub-shrub	1.5:1
Emergent	1.5:1
Category IV	1.25:1

H. The director may increase the replacement ratios to account for uncertainties as to the success of the restoration or creation, the time required for replacement wetlands to be effective, projected losses in functional value, or in the case of off-site compensation:

I. The director may decrease the replacement ratios upon findings reviewed by agencies with expertise that no net loss of wetland function or value is attained under a reduced replacement ratio. In no case shall the ratio be less than 1:1.

J. Any applicant proposing to alter wetlands may propose to enhance existing wetlands, other than Category I wetlands, in order to replace wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the goals of the comprehensive plan and requirements of this chapter. The replacement ratio for enhancement shall be double that listed in section G for creation or restoration.

K. In-kind replacement shall be provided where feasible. The applicant can provide out-of-kind replacement when:

1. Out-of-kind replacement will result in a wetland with greater functional value; or
2. Scientific problems such as non-vegetation and changes in watershed hydrology make implementation of in-kind replacement impractical; or
3. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

L. On-site replacement shall be provided where feasible. The applicant shall provide off-site replacement when:

1. On-site replacement is not feasible due to problems with hydrology, soils, waves, or other factors; or
2. Replacement is not practical due to potentially adverse impact from surrounding land uses or proposed on-site land uses; or

3. Functional values at the site of the proposed restoration will be greater than lost wetland functional values; or

4. Established regional goals for flood storage, flood conveyance, habitat or other wetland functions, or other land use goals and policies have been established and strongly justify location of replacement measures at another site.

M. Off-site replacement shall occur within the same watershed as the wetland loss occurred, provided that replacement shall occur in the City of Sumner, and further provided that Category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative. Off-site replacement may occur at a City-identified and approved regional mitigation site, or at a site selected by the applicant and approved by the director.

N. In selecting replacement sites, applicants must consider siting in the following order of preference:

1. Upland sites which were formerly wetlands;
2. Idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation;
3. Other disturbed upland sites.

O. Replacement projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands unless otherwise agreed to via permit application. In all other cases, except for Category I wetlands, replacement projects should be completed prior to use or occupancy of the activity or development which was conditioned upon such replacement. Construction of replacement projects shall be timed to reduce impacts to existing wildlife and flora.”

Section 14. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.180 “Mitigation Plans” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.180 Mitigation plans.

All wetland and buffer restoration, creation, and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals approved by the director and shall contain the following:

- A. A description of the proposal and summary of impacts to wetlands and buffers;
- B. Baseline information for the impacted and any compensation site including written assessment and accompanying maps of the existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership;
- C. Establish specific criteria (including water quality standards, survival rates of planted vegetation, species abundance and diversity targets, or other ecological, geological or hydrological criteria) for evaluating the mitigation proposal relative to the objectives of this chapter and the goals and objectives of the city’s comprehensive plan;
- D. Specify and describe the existing functions of the wetland and buffer to be impacted and how lost functions will be replaced;
- E. Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;

F. Detailed construction plans which establish the appropriate methods of construction, sequencing, and times of construction;

G. Planting plan and list of plant species to be installed;

H. Include provisions for monitoring the mitigation area to determine whether the mitigation plan is successful. Monitoring of the area shall include:

1. Selection and appointment by the director of a qualified wetlands professional, at the expense of the applicant, and independent of the development, for purposes of monitoring the progress of the mitigated wetland;

2. Monitoring shall begin by the designated consultant with a wetland analysis of the wetland being altered. Consultants will use the same data sheets within this analysis as will be used in the monitoring procedure; and

3. Five years of monitoring and maintenance shall be required for mitigation of impacts. Monitoring reports shall be submitted by the qualified wetland professional to the City during the following years 1, 3, and 5 for a five-year monitoring period.”

Section 15. That Section 1(part) , Ordinance No. 1542, approved March 16, 1992 and section 16.46.190 “Security and Bonding” of the Sumner Municipal Code, are hereby amended to read as follows:

“16.46.190 Security and bonding.

A. An applicant or other holder of a permit shall be required to create a separate sensitive area tract or tracts containing the wetland and wetland buffer(s) or provide a permanent conservation easement, covenant or other instrument acceptable to the director to ensure the long-term protection of the wetland and buffers.

B. The following note shall appear on the face of all plats, short plats, PRDs, PMUDs, or other approved site plans containing separate sensitive area tracts, and shall be recorded on the title of record for all affected lots:

NOTE: All lots adjoining separate sensitive area tracts identified as Native Vegetation Protection Easements or protected by deed restriction are responsible for maintenance and protection of the tracts. Maintenance includes insuring that no alterations occur within the separate tract and that all vegetation remains undisturbed unless the express written authorization of the city has been received.

C. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be approved prior to the commencement of permitted activities. Such field markings shall be maintained by the applicant throughout the duration of the permit.

D. The director shall require the applicant to post a cash performance bond, assignment of funds or other security acceptable to the director in an amount and with surety and conditions sufficient to fulfill the requirements of this chapter and any applicable conditions of approval. Provisions for monetary security shall be in an amount equal to 120 percent of the estimated funds necessary to complete work and monitoring in accordance with the mitigation plan, including restoration or rehabilitation to be performed if planned mitigation fails within the designated period of implementation.

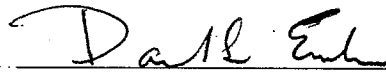
E. The director shall require the holder of an approval issued pursuant to this chapter to post a cash performance bond, assignment of funds for structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for a minimum of five years after they have been completed. The director shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. The maintenance bond applicable to a compensation project shall not be released until the director determines that performance standards established for evaluating the effect and success of the project have been met.”

Section 16. That Exhibit A titled “Wetland Inventory Map, 2007” is attached and hereby adopted and incorporated herein as part of this ordinance.

Section 17. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 18. Effective Date. This ordinance shall become effective five (5) days after its passage, approval and publication as provided by law.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 21st day of May, 2007.



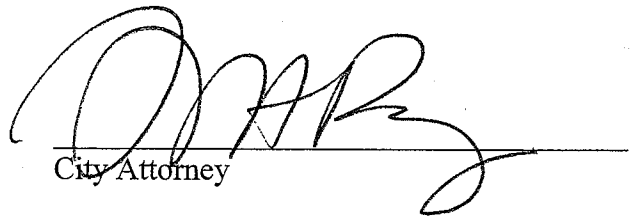
Mayor

Attest:

Approved as to form:



City Clerk



City Attorney

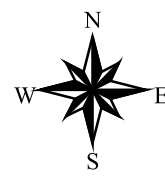
First Reading: May 21, 2007
Date Adopted: May 21, 2007
Date of Publication: May 23, 2007
Effective Date: May 28, 2007



City of Sumner
Wetland Inventory
Map, 2007

Scale:

0 1000 2000 3000 Feet



LEGEND:

- Sumner City Limits
- Sumner UGA
- Parcels
- Wetlands
- Wetlands, March 2007

EXHIBIT A

