

7. Shoreline variance;
8. Short plat;
9. Site plan review;
10. Long plat;
11. Zoning variance;
12. Binding site plan;
13. Planned unit development; or
14. Any other permit or approval required by the Ferndale Municipal Code, as amended, not expressly exempted by this chapter. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006)

**16.08.080 Administrative procedures.**

The administrative procedures followed during the critical area review process shall conform to the standards and requirements of the City of Ferndale development regulations. This shall include, but not be limited to, timing, appeals, and fees associated with applications covered by this chapter. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006)

**16.08.090 Exemption from critical area review requirements.**

The Critical Areas Administrator has the authority to determine whether any development activity is exempt from the provisions outlined below.

A. Subject to the limitations established in subsections (B), (C), (D) and (E) of this section, the following developments, associated uses and activities shall be exempt from the critical area review procedures established in this chapter:

1. Emergency activities necessary to reduce or prevent an immediate threat to public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment that requires immediate action within a period of time too short to allow full compliance with this chapter. The person or agency undertaking such emergency action shall notify the Critical Areas Administrator within one working day or as soon as practical following commencement of the emergency activity.

Following such notification, the Critical Areas Administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the Critical Areas Administrator determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of FMC [16.08.160](#) shall apply. The exemption for emergencies should not eliminate the need for later mitigation to offset the impacts of emergency activity. 1nce the immediate threat has been addressed, any adverse impacts on critical areas shall be mitigated, as determined by the Critical Areas Administrator.:-


2. Ongoing agriculture activities, 2cluding related development and activities that do not result in expansion into a critical area or its standard buffer.:-

# Summary of Comments on ECYComments\_Chapter 16.08 Critical Areas - Revisions.pdf


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 Number: 1 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 9:22:24 AM

You might consider including a "due date" within which mitigation activities should begin from the emergency activities. This is recommended to reduce the risk of temporal loss of wetland functions. This can be anywhere from 1 to 2 years with flexibility for any unforeseen delays in mitigation.

 Number: 2 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 9:13:39 AM

Are things like ditching covered by the exposing of soils provision? Ditching is not something we would recommend being covered by ongoing agricultural activities as a related development.

B. Exemption from critical areas review shall not constitute exemption from any other applicable provision of the Ferndale Municipal Code or those other regulations described in FMC [16.08.040](#).

C. Exempt activities shall use reasonable methods or accepted best management practices to reduce potential impacts to critical areas and/or to restore impacted critical areas to the extent feasible following completion of exempt activities as determined by the Critical Areas Administrator. Exemption does not give permission to destroy a critical area or buffer or to ignore risk from a natural hazard.

D. The Critical Areas Administrator is hereby authorized to grant or deny requests for statements of exemption from the critical areas review for activities within critical areas which are specifically listed in subsection (A) of this section. The statement by an applicant shall be in writing and shall indicate the specific exemption from this section that is being applied to the development. The statement shall also provide a summary of the Critical Areas Administrator's analysis of the consistency of an activity with the critical areas ordinance. A denial by the Critical Areas Administrator of an exemption shall be in writing and shall identify the reason(s) for the denial. The Critical Areas Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to FMC [14.11.070](#).

E. The Critical Areas Administrator shall make written findings of fact setting forth the exact parameters of the exempted development, any conditions attached in conjunction with subsection (C) of this section, and supporting the exemption determination citing the criteria used and conclusions reached.

F. If a nondevelopment activity (not otherwise requiring a development permit or approval) is determined to be exempt under subsection (A) of this section and adheres to the requirements established under subsection (C) of this section, then critical area review shall not be required and the activity may proceed. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006)

**16.08.100 Waiver for subsequent approvals.**

Critical area review requirements may be waived by the Critical Areas Administrator in conjunction with review of a building permit application when all of the following conditions are met:

A. The provisions of this chapter have been addressed fully through previous critical areas review of a development approval (such as a subdivision, conditional use or other permit identified under FMC [16.08.070\(B\)](#));

B. The subsequent construction activity complies fully with the conditions established as part of the initial land use approval; and

C. No substantial changes in the nature or extent of the approved activity have been made. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006)

**16.08.110 Reasonable use.**

**1** Permit applicants with a property so encumbered by critical areas and/or buffers, where avoidance of direct or indirect impacts by a proposed project is impossible or impractical, and that application of this chapter, including buffer averaging, buffer reduction, or other mechanism, would

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Number: 1 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 9:23:50 AM

Highly recommend somewhere in your wetlands section language regarding the subdivision of land/parcels where wetlands and their buffers are present. This prevents creation of encumbered lots by dividing up an existing parcel but still allowing the division of parcels with wetlands so long as the below criteria are followed.

Example language from our guidance:

"Subdivisions. The subdivision and/or short subdivision of land where wetlands and/or associated buffers are present are subject to the following:

1. Land that is located wholly within a wetland and/or wetland buffer may not be subdivided
2. Land that is located partially within a wetland and/or wetland buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
  - a. Located outside of the wetland and buffer; and
  - b. Meets the minimum lot size requirements of [the zoning code]"

deny all reasonable use, may seek approval pursuant to the reasonable use standards and procedures provided in this section.

**B. Reasonable Use Standards.**

1. To qualify as a reasonable use, the Critical Areas Administrator or Hearings Examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

- a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;
- b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since the effective date of the ordinance codified in this chapter, change in use, reduction in size, change in timing of activity, and/or revision of project design;
- c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;
- d. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;
- e. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;
- f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
- g. The proposed activities will not cause damage to other properties;
- h. The proposed activities will not increase risk to the health or safety of people on or off the site;
- 1** The inability to derive reasonable economic use of the property is not a result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of the ordinance codified in this chapter;
- j. For single-family residences, the maximum impact area shall be no larger than 3,500 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. The appurtenant developments include garages, decks, driveways, parking, utilities, and all landscaping, with the following exceptions:
  - i. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions

Would that be the date of the adoption of the ordinance originally? Is that stated somewhere in the code? That could be useful to include.

process is the date a permit is issued, the date a final approval is granted plus the appeals period, or unless otherwise approved by the Critical Areas Administrator. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.200)

#### **Article IV. Critical Area Mitigation Requirements**

##### **16.08.230 Critical area mitigation.**

A. All proposed critical area alterations shall include mitigation sufficient to maintain the functions and values of the critical area, compensate for the lost functions and values of the critical area, or to prevent or reduce risk from a hazard posed by a critical area.

The mitigation process shall include the following steps:

1. Avoiding the impact altogether by not taking a certain action;
2. Minimizing the impacts by limiting the degree or magnitude of a development proposal or by otherwise adjusting the action so as to reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area to the conditions in existence prior to the start of the project;
4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action;
5. Compensating for the impact by replacing impacted areas, by creating or enhancing substitute resources, purchasing credits from a mitigation bank, or in-lieu fees;

**1** Compensatory mitigation shall occur prior to, or concurrently with, the construction of a proposed project. It is understood that monitoring and maintenance will continue post completion of a proposed project for the period and requirements stated in this chapter or within an accepted compensatory mitigation plan; and

7. Monitoring the impact and taking appropriate corrective measures.


B. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection or compensatory mitigation for critical area functions.

C. A mitigation plan shall be completed by a qualified consultant. A mitigation plan shall describe the existing conditions of the parcel (and surrounding area) and the proposed project. The goal of the mitigation plan is to determine how a project will affect a critical area, inclusive of the buffer and provide compensation for the impact or ways to reduce the impact. A mitigation plan, as described in Appendix A, shall be prepared by a qualified consultant.

D. Compensatory mitigation as creation, including the buffer, shall not encumber a neighboring parcel without approval from the affected party. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.210)

##### **16.08.240 Performance and maintenance securities.**

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 Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 9:36:59 AM  
This reads like a clarification of step 5 and is not typically part of the mitigation process. Could this be better as a sub bullet of 5?



Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update, Ecology Publication No. 14-06-029, Hruby 2014) or as revised by Ecology. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.240)

**16.08.270 Wetland technical report requirements.**

The Critical Areas Administrator shall use the following as indicators of the need for a wetland technical report:

- A. The site is within or adjacent to an area listed as a wetland in the City critical areas maps;
- B. Documentation through any public resource information source that a wetland exists on or adjacent to the site;
- C. A finding by a qualified consultant based on site-specific soils, vegetation or hydrology that the presence of a wetland is likely;
- D. A reasonable belief by the Critical Areas Administrator, based on local information, that a wetland may exist on or adjacent to the site. Such a belief shall be supported through consultation with a qualified consultant;
- E. Upon identification that a wetland is present or likely to be present the Critical Areas Administrator shall require that a technical report be completed; [and](#)
- F. A wetland technical report shall be prepared by a qualified consultant as described in Appendix A.


\* In order to determine if a wetland is present on an adjacent parcel, the City shall make observations from the property line, use topographic maps, aerial photographs, and/or soils maps, and use best professional judgment to make a determination. If necessary to make a further determination, the City shall first contact the adjacent landowner for permission to access their land.

(Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.250)

**16.08.280 Signs and fencing.**

- A. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the Critical Areas Administrator may require the applicant to install permanent signs along the

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 Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/25/2024 4:06:30 PM

Ecology has updated the publication number with the 2.0 version. *Washington State Wetland Rating System For Western Washington: 2014 Update, Version 2.0* (Ecology Publication #23-06-009)

2. The buffer widths in Table 1 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 1. Wetland Buffer Requirements for Western Washington**

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 II (all)	75	105	165	225
Category III (all)	60	105	165	225
Category IV (all)	40			

**Table 2. Required Measures To Minimize Impacts To Wetlands**

Disturbance	Required Measures to Minimize Impacts (If Applicable)
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>

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Number: 1 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 9:39:01 AM

In 2018 we updated the habitat scores for our buffer width tables. We now group a low habitat score as 3-5 rather than breaking 5 out into it's own column. Highly recommend that Ferndale update their table to the one found in our 2022 Wetland CAO Guidance in Appendix C. It could also be worth checking out the minimization measures table in Appendix C for any updates. You don't have to use every measure in the table but apply what is practical.

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Number: 2 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 8:42:58 AM

To use the buffer widths in this table our guidance also recommends the use of a habitat corridor for wetlands that score a 6 or higher in combination with the minimization measures as below. Various things can meet the definition of a habitat corridor of which examples can be found in our CAO wetland guidance. If not using a habitat corridor for wetlands with a habitat score over 6 the buffer would need to be increased. Highly recommend that you check Appendix C (Page C-1 to C-4) of the Wetland CAO Guidance for example of what we recommend the tables to look like.

2. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

3. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

D. **Decreased Wetland Buffer Width and Buffer Averaging.** A decreased buffer width and buffer averaging may be approved on a case-by-case basis as determined by the Critical Areas Administrator when site conditions are such that the wetland functions and values may be protected equally or better than prescriptive requirements by a lesser or averaged buffer. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

1. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area; ~~and-~~

2. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion as demonstrated by a critical areas report from a qualified consultant.

E. Averaging to allow use of a parcel may be permitted when all of the following are met:

1. There are no feasible alternatives to the site design that could be accomplished without buffer averaging; ~~-~~

2. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland consultant; ~~and-~~

3. The total buffer area after averaging is equal to the area required without averaging and that no portion of the buffer is reduced by greater than **10 percent**.


F. **Buffer Variation.** The standard buffer widths listed in Table 1 may be modified (increased, **2**increased or averaged) by the Critical Areas Administrator if the applicant can demonstrate the buffer reduction will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified consultant based on best available science. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.260)

#### **16.08.310 Wetland mitigation requirements.**

A. Wetland mitigation is intended to compensate for the lost functions, values, and acreage of wetlands and buffers only when all reasonable methods for avoidance, minimization, rectifying, and reducing impacts have been explored and implemented.


B. A wetland technical report shall be prepared by a qualified consultant. Wetland mitigation is intended to compensate for the lost functions, values, and **3**real extent of the wetlands and buffers disturbed. Wetland mitigation shall be the mitigation ratios set forth in the table below, or as described in subsection (D) of this section. All projects that result in permanent or temporary loss or degradation of wetland functions and values or infringe within the regulated buffers shall provide compensatory mitigation based on best available science to offset the losses that will result from the proposed action(s).

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 Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 8:43:50 AM


Highly recommend that the width of the buffer at any given point after averaging should be no narrower than 75% of the required widths (no portion of buffer is reduced by greater than 25%). This is help prevent degradation of buffer and wetlands

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 Number: 2      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 9:45:28 AM

What are the standards for the admin approving decreases of buffer width? We generally don't recommend any other reduction methods outside of averaging. If you do keep other methods of reduction it would be good to note somewhere that buffer averaging should not be combined with other reduction methods (including Table 1 which already includes reduced buffers).

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 Number: 3      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 8:46:46 AM

Is this a typo? Should this be aerial?

A wetland mitigation plan shall be prepared by a qualified consultant that compensates for the impacts to the wetland or buffers by the proposed action/project. The wetland mitigation plan shall be written as per the criteria set forth within the most recent edition of the “Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1” (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006).

C. The wetland mitigation plan shall include an adequate description of the existing conditions as listed in the wetland detailed report (Appendix A).

D. The following ratios shall be used as guidance to determine the ratio of wetland or habitat to be created, restored, or enhanced in relation to the square footage of wetland impacted. Alternative ratios may be used if a qualified consultant can demonstrate there will be no net loss in wetland functions and values. One possible approach to modify the ratios in the table below is to use the credits and debits methodology.

**Table 3**

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement
Category I: Bog, natural heritage site	Not considered possible	Case by case	Case by case
Category I: Mature forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

E. A deed restriction shall be placed on the remaining on-site wetlands, wetland buffer, and mitigation area that protect the critical area from future development. If at any time the landowner believes that the critical area is no longer present, the landowner shall retain a qualified consultant to reassess the site. If the qualified consultant determines that the wetland is no longer present, the Administrator shall cause notification to be made to the relevant agencies such as the Department of Ecology or the Corps of Engineers to confirm the determination. (Ord. 1987 § 1 (Exh. 1), 2017; Ord. 1398 § 2, 2006. Formerly 16.08.270)


**16.08.320 Alternative or innovative mitigation plans.**

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 Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 9:46:45 AM

In our most recent guidance we have included preservation as an option in the ratio table. It has the same ratios as enhancement but the additional mitigation option can allow more flexibility for applicants when proposing mitigation. Please look at Appendix E in our guidance for an example of this table.

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 Number: 2      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 9:47:03 AM

Bogs can be eligible for preservation however we are unaware of any science that supports successful rehabilitation of bogs. Does the city have any cases of this being done on the case by case allowance? If so we would be curious to see it. Otherwise we don't recommend including bogs for rehabilitation or enhancement.



A. The City shall consider and may approve alternative or innovative mitigation plans for developments over 10 acres, planned unit developments (pursuant to Chapter [18.69 FMC](#)), binding site plans (pursuant to Chapter [17.36 FMC](#)) and/or development agreements (pursuant to RCW [36.70B.170](#) through [36.70B.210](#)). If approved said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements there-of; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of following circumstances exist:

1. The proponent(s) demonstrates the organizational and fiscal capability to carry out the purpose and intent of the plan;
2. The proponent(s) demonstrates that long-term maintenance and monitoring will be adequately funded and effectively implemented;

**1** There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;

4. In terms of functional value, the proposed mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
5. The plan is consistent with the general purpose and intent of this chapter and the Comprehensive Plan;
6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and the plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how standards will be monitored and measure over the life plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance; [and](#)
7. The plan will not commit the City to additional direct expenditures or to a conceptual mitigation program for which the City is responsible for in full or in part, but which has not been formally approved by the City.

Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process.

The plan shall be reviewed by the Critical Areas Administrator to ensure compliance with the general purpose and intent of this chapter and ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the Critical Areas Administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

If the Critical Areas Administrator finds the plan to be complete, accurate and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comment pursuant

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Number: 1 Author: eatk461 Subject: Comment on Text Date: 7/26/2024 8:52:05 AM

Highly recommend you change "supporting scientific information" to "best available science. Best available science (BAS) is defined as "current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process" (best available science) as defined by WAC 365-195-900 through 925."

If you are going to be using innovative design to deviate from the methods in this chapter you should still base it in best available science and make that clear in the language as GMA requires for protecting critical areas. Recommend the wording change to make that clear.

- f. Description of the proposed protective mechanism such as a conservation easement; and
- g. Demonstration of adequate financial resources to plan, implement, maintain, and administer the project.

2. The Critical Areas Administrator shall review the bank prospectus either by participating in the state's Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party expertise to assist in the review.:-

3. If the Critical Areas Administrator determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, he/she shall forward the prospectus to the Hearings Examiner for initial review and shall be decided upon by City Council.:-

4. City Council considers Hearings Examiner recommendation at a closed record public meeting. Based on the initial review, that the prospectus is valid, it shall issue a notice to proceed to the bank sponsor. The notice to proceed shall not be construed as final approval of the bank proposal, but shall indicate approval to proceed with the development of the mitigation bank instrument, which details all of the legal requirements for the bank.:-

5. Upon receipt of a draft mitigation banking instrument from the bank sponsor, the Critical Areas Administrator shall review the banking instrument and mitigation bank permit in consultation with the MBRT and/or other third-party expert. Following review of the mitigation banking instrument and preliminary mitigation bank permit, the Critical Areas Administrator shall make a recommendation to Council to certify and approve, conditionally certify and approve, or deny the bank proposal and mitigation bank permit.:-

6. Following receipt of the recommendation, the City Council shall proceed with review in accordance with the procedures outlined in FMC [14.09.060](#) for a final decision approval. ~~and~~:-

7. The bank sponsor shall be responsible for the cost of any third-party review.

C. The award of bank credits for an approved bank may be negotiated based on habitat acreage, habitat quality, and contribution to a regional conservation strategy that has been approved by the City and other appropriate regulatory agency(ies). Credit availability may vary in accordance with agreed upon performance criteria for the development of the resource value in question. Awarded bank credits, subject to the approval of the City and regulatory agency(s), may be made transferable. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-specific inquiry on a case-by-case basis for the project creating the impacts. (Ord. 1987 § 1 (Exh. 1), 2017)

#### **16.08.340 Use of bank credits.**

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

- 1. The bank is certified under state rules;
- 2. The Critical Areas Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

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Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 8:54:04 AM

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Bank site locations and service areas for a proposed impact should also be chosen using a watershed approach. The wetland proposed to be impacted should be mitigated at a bank within the same watershed. Highly recommend including the watershed approach criteria here in this section somewhere. Ecology recommends including a stepwise watershed approach for choosing the location of a compensatory mitigation site in your wetlands chapter. An example approach can be found in Chapter 6A of [Wetland Mitigation in Washington State, Part 1 - Agency Policies and Guidance](#)<sup>65</sup> (Ecology et al., 2021).

A. The City may consider watershed-based management plans sponsored by a watershed improvement district, other special purpose districts, or other government agency. The review of this proposal shall follow process 3B pursuant to FMC [14.09.070](#).

B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

**1** There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;

4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the Comprehensive Plan, and an approved watershed plan prepared pursuant to Chapter [90.82](#) RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter [90.82](#) RCW;

6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and


7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

C. Watershed-based management plans shall be approved by the City Council by ordinance and appended to this chapter.

The process for approval shall be as follows:

1. The plan shall be reviewed by the Critical Areas Administrator to ensure compliance with the purposes of this chapter, the City of Ferndale shoreline master program and with the Comprehensive Plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the Critical Areas Administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts:-

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 Number: 1      Author: eatk461      Subject: Comment on Text      Date: 7/26/2024 8:54:31 AM

Same recommended wording change reason as mentioned in comment about best available science in **16.08.320 Alternative or innovative mitigation plans**. Highly recommend changing to use of best available science consistently in these cases.

“Low impact trails” means exempted, low impact pedestrian trails in wetlands or buffers that are limited to permeable surfaces no more than five feet in width. These trails are generally not to be permitted in wetlands except for minor crossings that minimize impact. These trails are typically located in the outer 25 percent of a wetland buffer, and are designed to avoid removal of significant trees.

“Mature forest” is a coniferous forest that has a mean age stand greater than 75 years old or a deciduous forest that has a mean age stand greater than 50 years old. A stand is considered an area greater than five acres in size.

“Mitigation” means avoiding, minimizing, reducing, rectifying, eliminating or compensating, and monitoring the impact for project-induced, adverse impacts to critical areas.

“Mitigation bank” means a properly developed collection of existing, created, restored or enhanced wetlands and their protective buffers that are created or established using best available science to provide mitigation credits to offset future adverse impacts to wetlands from approved projects elsewhere.

“Mitigation plan” means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

“Modified natural watercourse” means that segment of a natural watercourse that has been modified and is maintained by diking and drainage districts, and where such modification was not the result of an illegal action.

“National wetland inventory” means an inventory that was developed by the U.S. Fish and Wildlife Service, which used aerial photography to map wetlands across the United States.

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

“Natural watercourse” means any stream in existence prior to settlement that originated from a natural source. An example of a natural watercourse is a stream that originates in a wetland or upland area, flows through agricultural, rural and/or urban land, and ultimately empties into a saltwater bay or another watercourse. A natural watercourse may have been ditched or piped.

“Off-site” means an action away from the site or not on the site at which a critical area has been or will likely be adversely impacted by a regulated activity.

“On-site” means action on or immediately adjacent to the site at which a critical area has been or will likely be adversely impacted by a regulated activity.

**1** “Ongoing agriculture” means the continuation of any existing agricultural activity including crop rotations as designated by the Natural Resources Conservation Service over the previous 10 years.

“Ordinary high water mark (OHWM)” means the mark on all lakes, streams, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department; provided, that in any

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Ongoing agriculture is defined but is there a location where when an operation ceases to be ongoing? Conversion of wetlands that are not currently in agricultural use should be subject to the requirements of this chapter. It might be useful to define when it is not ongoing which is usually defined as below:

"An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program. Forest practices are not included in this definition.

The City should also consider (if not already) encouraging the use of BMPs, farm conservation plans, and incentive-based programs to improve agricultural practices in and near wetlands."



area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water (RCW [90.58.030.C](#)).

“Out-of-kind compensation” is to replace critical areas, such as wetlands, with substitute critical areas whose characteristics do not closely approximate those affected by a regulated activity.

“Passive recreation” means use of the land that does not involve any land disturbance such as cutting vegetation, disturbing soil, or recreation vehicle use. Passive recreation includes but is not limited to bird watching, fishing, hiking, trails or boardwalks consistent with the Parks, Recreation and Trails Master Plan, provided such improvements seek to minimize impact to sensitive areas through their placement, construction, by including educational components, establishing trash and animal waste receptacles, and similar.

“Performance requirements” means specific, measurable criteria that a proposed development activity must conform to and that may be used to determine the degree to which said activity complies with the provisions of this chapter.

“Potable water” means water that meets the quality standards for drinking purposes as established by the state of Washington.

“Primary association” means habitat that is used by a plant or animal species that is necessary for survival, but does not include incidental areas used by faunal species.

“Qualified consultant (aquifer recharge)” means a hydrogeologist licensed in the State of Washington; or professional engineer, licensed in the State of Washington, who is also trained to analyze geologic, hydrologic, and groundwater flow systems.

“Qualified consultant (fish and wildlife habitat areas)” means a person with a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of two years of experience related to the subject species/habitat type.

“Qualified consultant (geohazards)” means a professional geologist or geotechnical engineer, licensed by the state of Washington.

**1** “Qualified consultant (wetlands)” means a wetland scientist certified by the Society of Wetland Scientists Professional Certification Program (SWS PCP).

“Reasonable use” means any one of the uses allowed within a given zone that has the least impact on the critical areas found on the subject property. For zones that allow single-family residential uses, this typically would mean a house that has a development footprint and landscaping of 3,500 square feet or less.

“Restoration” means the return of a critical area or buffer to a state in which its functions and values approach its unaltered state as closely as possible.

“Riparian area” means the portion of habitat extending from the ordinary high water mark (OHWM) of a stream to that part of the upland influenced by elevated water tables or flooding. It includes the area that directly influences the aquatic ecosystem, provided riparian areas associated with an

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Ecology defines a qualified wetland professional as: "A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans."

You might consider requiring this as well in your definition to ensure quality reports and work is done.