

## MEMORANDUM

TO: Planning Commission  
FROM: Justin Horn, Associate Planner  
DATE: May 12, 2022  
SUBJECT: May 19, 2022 Planning Commission Meeting

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The Planning Commission will hold its regularly scheduled meeting at 7:00 p.m. on Thursday, May 19, 2022. The meeting will consist of a public hearing on the proposed updates to Mill Creek Municipal Code (MCMC) 18.06 Article IX – Wetlands, discussion of future Planning Commission agendas, and a Planning Department update.

Due to the ongoing COVID-19 pandemic, the City of Mill Creek Planning Commission meeting will be held remotely via Zoom. Instructions for participating in the meeting will be emailed to you and have been posted on the City's website. If you have any questions regarding participating in the meeting, please contact me at 425-921-5727 or via email at [justinh@cityofmillcreek.com](mailto:justinh@cityofmillcreek.com).

### Background Information

As has been discussed in previous work sessions, several amendments to the City's wetland regulations have been proposed in order to keep the MCMC up-to-date with the best available science and Department of Ecology recommendations. The proposed amendments include basing buffers on the habitat score and the intensity of the adjacent land use, allowing buffer averaging but reducing the allowance to 25% of the standard buffer, and reducing buffer widths in exchange for specific mitigation measures that reduce impacts. The exemption for isolated wetlands will also be increased from 1,000 square feet to 4,000 square feet as long as they meet certain requirements.

At the public hearing the City's on-call wetland consultant, Margaret Clancy – ESA, will give a presentation reviewing the proposed amendments and staff will present the draft code updates to MCMC 18.06 Article IX – Wetlands. It is hoped that the Planning Commission will be able to make a recommendation to the City Council at the conclusion of the public hearing and any deliberations.

### Steps in the Code Amendment Process

1. Planning Commission Public Hearing (May 19, 2022)
2. City Council Review and Adoption (June 2022)

Following the public hearing, Interim Planning Manager Clay White will give an update on the Planning Department and discuss items that are likely to be on the Planning Commission's agenda in the near future.

If you are unable to attend the meeting, please contact me at (425) 921-5727 or at [justinh@cityofmillcreek.com](mailto:justinh@cityofmillcreek.com). We look forward to meeting with you virtually next Thursday evening.



# PLANNING COMMISSION AGENDA

15728 Main Street, Mill Creek, Washington 98012 - (425) 745-1891

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**May 19, 2022**

**Regular Meeting  
7:00 p.m.**

**(Zoom Meeting)**

	TIME
I. CALL TO ORDER	7:00 p.m.
II. ROLL CALL	7:01 p.m.
III. APPROVAL OF MINUTES	7:03 p.m.
A. Planning Commission Meeting of March 17, 2022	
IV. WORK SESSION	7:05 p.m.
A. Public Hearing on Proposed Amendments to MCMC 18.06 Article IX – Wetlands	
B. Planning Department Update	
C. Planning Commission Upcoming Agendas	
V. FOR THE GOOD OF THE ORDER	8:30 p.m.
VI. ADJOURNMENT	8:40 p.m.

## ATTACHMENTS:

1. March 17, 2022 Draft Planning Commission Minutes
2. Planning Commission Resolution 2022-170
3. Public Comments

*We are trying to make our public meetings accessible to all members of the public. If you need special accommodations, please call City Hall three days prior to this meeting (425) 745-1891.*

**CITY OF MILL CREEK  
PLANNING COMMISSION MEETING MINUTES  
March 17, 2022**

Draft

I. CALL TO ORDER:

Chair Nolan called the virtual meeting to order at 7:04 p.m.

II. ROLL CALL:

Commissioner Sean Paddock  
Commissioner Brian Hyatt  
Commissioner Stan Eisner  
Commissioner Jose Borunda  
Commissioner Pietra Gaebel  
Vice-Chair David Hambelton  
Chair Matthew Nolan

Staff Present: Tom Rogers, Planning Manager  
Justin Horn, Associate Planner  
Sybil Tetteh, Senior Planner

Chris Collier, Alliance for Housing Affordability (AHA) Program Manager

III. APPROVAL OF MINUTES

Planning Commission Meeting of February 17, 2022

**MOTION: Commissioner Gaebel moved, seconded by Commissioner Borunda, to approve the February 17, 2022, minutes with a correction to Commissioner Hambelton's last name. The motion was approved unanimously.**

IV. WORK SESSION

*Presentation on Housing Affordability by Chris Collier, Program Manager of Alliance for Housing Affordability (AHA)*

Planning Manager Rogers introduced Chris Collier to give a presentation on Housing Affordability in Snohomish County in general, and Mill Creek specifically, in preparation for the upcoming Comprehensive Plan update. Followed by questions from the Commissioners.

VI. FOR THE GOOD OF THE OF THE ORDER

Planning Manager Rogers introduced Sybil Tetteh, Senior Planner as a new staff member.

Planning Manager Rogers updated the Commissioners on the proposed Comprehensive Plan Amendment that has been revisited by the Planning Commission at their January meeting. City Council has decided not to move forward on reviewing the amendments as part of this year's update.

Comments have been received from the Department of Ecology regarding the wetland buffer update covering proposed changes to MCMC Chapter 18.06 – Environmentally Critical Areas. Staff is evaluating the comments. Some revisions may be made. A public hearing could take place as soon as the May meeting.

The Commissioners thanked Planning Manager Rogers for his help over the years, as this is his last meeting.

Commissioner Hyatt commented on the upcoming Planning Commission term expirations in April 2022. Planning Manager Rogers explained that notices to apply or reapply for the Planning Commission position will be announced on the city's website.

VII. ADJOURNMENT

**MOTION: Commissioner Eisner moved, seconded by Commissioner Paddock, to adjourn the meeting at 8:14 p.m. The motion was approved unanimously.**

Submitted by:

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Sybil Tetteh, Senior Planner

**PLANNING COMMISSION RESOLUTION NO. 2022-170**

A RESOLUTION OF THE CITY OF MILL CREEK )  
PLANNING COMMISSION, RECOMMENDING )  
APPROVAL TO THE MILL CREEK CITY COUNCIL OF )  
AMENDMENTS TO THE MILL CREEK MUNICIPAL ) FINDINGS,  
CODE, SECTION 18.06.910 – DESIGNATION, MAPPING, ) REASONS AND  
AND RATING, SECTION 18.06.930 – PERFORMANCE ) RECOMMENDATIONS  
STANDARDS – WETLAND BUFFER WIDTHS, SECTION )  
18.06.980 – WETLAND MITIGATION – TYPES AND )  
RATIOS. )

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WHEREAS, the Planning Commission is charged with the responsibility for conducting public hearings on proposed regulations concerning the use of land in the City of Mill Creek or amendments to existing regulations and for making recommendations to the City Council for appropriate action on such proposed land use regulations, as set forth in RCW chapter 35A.63 and Mill Creek Municipal Code (MCMC) Chapters 4.10 and 14.03; and

WHEREAS, RCW 36.70A.040 and 36.70A.120, portions of the Growth Management Act, require the City to adopt development regulations, including zoning regulations, to implement the City's Comprehensive Plan; and

WHEREAS, staff has prepared amendments (“Amendments”) to MCMC Chapter 18.06 that would update wetland regulations including basing buffers on the habitat score and the intensity of the adjacent land use, allowing buffer averaging but reducing the allowance to 25% of the standard buffer, and reducing buffer widths in exchange for specific mitigation measures that reduce impacts. The exemption for isolated wetlands will also be increased from 1,000 square feet to 4,000 square feet as long as they meet certain requirements; and

WHEREAS, the benefits of the amendments would be to ensure that the MCMC is consistent with best available science and the Department of Ecology’s most recent wetland guidance; and

WHEREAS, on May 12, 2022, the City issued a SEPA threshold Determination of Non-Significance for the proposed Amendments to the development code; and

WHEREAS, notice of the public hearing before the Planning Commission on the proposed Amendments was duly advertised in the Everett Herald on May 6, 2022, in accordance with MCMC 14.07.030; and

WHEREAS, on February 28, 2022, the proposed amendments were submitted to the Washington State Department of Commerce for review, as required by RCW 36.70A.106; and

WHEREAS, a staff report to the Planning Commission was prepared to present, analyze, and recommend to the Planning Commission adoption of the proposed Amendments to the development code; and

WHEREAS, on May 19, 2022, the Planning Commission held a public hearing on the proposed Amendments to the development code and solicited public testimony; and

WHEREAS, on May 19, 2022 the Planning Commission considered the comments received in response to the SEPA determination, the staff report, attached hereto as **Exhibit A** and incorporated in full by this reference, and the proposed Amendments to the MCMC and found that the proposed Amendments are consistent with the City's Comprehensive Plan, the Growth Management Act, MCMC Chapter 17.38, and other applicable state and federal law, will implement the Comprehensive Plan, and will benefit the public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MILL CREEK AS FOLLOWS:

Section 1: The Planning Commission finds the proposed Amendments as described within the Planning Commission staff report, attached and incorporated in full by this reference as **Exhibit A**, are consistent with and implement the policies of the Comprehensive Plan, the Growth Management Act, and other applicable state and federal law, and further finds that the proposed Amendments make appropriate provisions for and further the public health, safety and general welfare.

Section 2: The Planning Commission adopts the findings, conclusions, and recommendations contained in the staff report, attached as **Exhibit A**, except as may be expressly modified herein by **Exhibit B**, attached and incorporated in full by this reference.

Section 3: The Planning Commission therefore recommends to the City Council adoption of the proposed Amendments as set forth in **Exhibit A** and as may be further modified by specific action of the Planning Commission as set forth in **Exhibit B**.

Passed in open meeting this 19<sup>th</sup> day of May 2022, by a vote of \_\_\_\_\_ for, \_\_\_\_\_ against and \_\_\_\_\_ abstaining.

CITY OF MILL CREEK PLANNING COMMISSION

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MATTHEW NOLAN, PLANNING COMMISSION CHAIR

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SYBIL TETTEH, PLANNING COMMISSION SECRETARY

ATTACHMENT:     Exhibit A – Staff Report  
                      Exhibit B – Planning Commission Motion

**EXHIBIT A**  
**DEPARTMENT OF PUBLIC WORKS AND DEVELOPMENT SERVICES**  
**STAFF REPORT**  
**TO THE MILL CREEK PLANNING COMMISSION**

**PART I - SUMMARY INFORMATION**

**PUBLIC HEARING:** May 19<sup>th</sup>, 2022

**REQUESTED ACTION:** Review of Mill Creek Municipal Code (MCMC) amendments that have been proposed to modify the MCMC 18.06 Article IX - Wetlands. Proposed amendments include basing buffers on the habitat score and the intensity of the adjacent land use, allowing buffer averaging but reducing the allowance to 25% of the standard buffer, and reducing buffer widths in exchange for specific mitigation measures that reduce impacts. The exemption for isolated wetlands will also be increased from 1,000 square feet to 4,000 square feet as long as they meet certain requirements. Proposed changes are based upon Best Available Science (BAS).

**SITE LOCATION:** City of Mill Creek

**PROPONENT:** City of Mill Creek  
15728 Main Street  
Mill Creek, Washington 98012

**COMPREHENSIVE  
PLAN DESIGNATION:** Not applicable.

**ZONING DISTRICT:** Not applicable.

**PART II - STATUTORY REQUIREMENTS**

**SEPA COMPLIANCE:**

The proposed amendments to MCMC 18.06 Article IX are subject to the provisions of the State Environmental Policy Act (SEPA). The City's SEPA Official has determined that the proposed code amendments will not have a probable significant adverse impact on the environment. Thus, an Environmental Impact Statement (EIS) was not required.

On May 12, 2022, a Determination of Non-significance (DNS) was issued on the proposed code amendments. The comment period has been extended and will end on May 26, 2022.



**PUBLIC NOTICE:**

Pursuant to Section 14.07.030 Mill Creek Municipal Code (MCMC), a notice of the public hearing was published in the Everett Herald on May 6, 2022. All legal requirements for public notice have been satisfied.

Public comments received as of the day of this staff report have been proved to the Planning Commission. Any additional written comments will be provided to the Planning Commission on the day of the hearing.

**PART III - DESCRIPTION OF PROPOSED AMENDMENTS  
TO THE MILL CREEK MUNICIPAL CODE**

**ZONING ORDINANCE AMENDMENT:**

The provisions governing amendments to the text of the Development Code are found in Section 17.38.020, MCMC. This section states that text amendments may be initiated by the City Council, the Planning Commission, or City staff. The proposed code amendments have been initiated by staff and are provided in strikeout format in **Attachment 1**.

The proposed amendments have been initiated by City staff in order to ensure that the MCMC critical areas regulations are based on the best available science and Washington State Department of Ecology’s (Ecology’s) most recent wetland guidance. The City’s wetlands and buffers regulations were last substantially updated in 2015. This update will serve as the critical update necessary to fulfill the Growth Management Act (GMA) requirements contained within RCW 36.70A.130. The GMA requires review and evaluation of critical areas regulations, if necessary, as part of updating the City of Mill Creek Comprehensive Plan. The Comprehensive Plan update is due in December 2024. This update fulfills the requirement to review and evaluate said regulations

**PART IV – FINDINGS, CONCLUSIONS, AND RECOMMENDATION**

The proposed amendments to the City’s Municipal Code have been prepared to be consistent with the Growth Management Act, applicable state and federal regulations, the City’s Comprehensive Plan, and the City’s development code amendment process contained in Chapter 17.38. As reflected below, the proposed amendments have been reviewed for consistency with these requirements and are found to be consistent with applicable local, state and federal regulations.

**FINDINGS AND CONCLUSIONS:**

1. In accordance with the Mill Creek Municipal Code (MCMC) Chapter 17.38, the City staff has the authority to initiate amendments to the code.

2. In accordance with Chapter 35A.63 RCW and MCMC Chapters 2.04 and 14.03, the City Council is charged with the responsibility of making decisions on amendments to the existing Mill Creek Municipal Code (MCMC) regulations.
3. The firm Shannon & Wilson was contracted by the City to identify potential changes to wetland buffers and associated regulations in the MCMC based on best available science and Ecology's most recent wetland guidance. Shannon & Wilson released a report on March 31, 2021 identifying potential changes including wetland buffer widths, width modifications, and limited exemptions.
4. Following the release of Shannon & Wilson's report, the City contracted Environmental Science Associates (ESA) to review the report's findings and assist the City in preparing a code amendment. On May 11, 2021 ESA produced a memo with recommendations to the City and subsequently assisted in the drafting of specific code amendments.
5. On February 28, 2022, the proposed amendments were submitted to the Washington State Department of Commerce for review, as required by RCW 36.70A.106.
6. On March 7, 2022 the Department of Ecology provided comments on the proposed amendments and suggested four minor changes. On March 17, ESA returned a draft of the revised code to the City which incorporated Ecology's comments.
7. In accordance to MCMC Chapter 18.04, the proposed code amendments are subject to the provisions of the State Environmental Policy Act (SEPA). The City's SEPA Official has determined that the proposed code amendments will not have a probable significant adverse impact on the environment. Therefore, an Environmental Impact Statement (EIS) was not required.
8. Pursuant to Section 14.07.030 Mill Creek Municipal Code (MCMC), notice of public hearing was published in the Everett Herald on May 6, 2022. All legal requirements for public notice have been satisfied.
9. On May 12, 2022, a Determination of Non-significance (DNS) was issued on the proposed code amendments. The comment period will end on May 26, 2022.

**STAFF RECOMMENDATION:**

Notwithstanding citizen testimony and any revisions made by the Planning Commission, staff recommends that the Mill Creek Planning Commission adopt the preceding findings and conclusions and adopt Resolution 2022-170 recommending to the Mill Creek City Council adoption of the proposed code amendments as set forth in Attachment 1.

**ATTACHMENTS:**

Attachment 1 – Proposed Amendments to MCMC 18.06 Article IX

*Note: The text below depicts a portion of Mill Creek Municipal Code, Title 18, **Chapter 18.06-Environmentally Critical Areas** with suggested line-in and line-out changes. The rationale for these proposed changes was presented to the Planning Commission at the January 20, 2022 meeting. Following further review and consideration by the Commissioners, the proposed revisions were sent to the Department of Commerce for review. Ecology returned comments on their behalf that have been integrated into the changes shown below. A complete version of Chapter 18.06 is provided as Attachment A. The full text of the Mill Creek Code is available on line at <https://www.codepublishing.com/WA/MillCreek/>*

**18.06.910 Designation, mapping, and rating.**

A. Wetlands shall be identified in accordance with the 1987 Corps of Engineers Wetland Delineation Manual (Publication No. Y-87-1) and the Western Mountains, Valleys, and Coast Regional Supplement (Publication No. ERDC/EL TR-10-3). All areas within the city meeting the criteria in the approved federal wetland delineation manual and regional supplement, regardless of any formal identification, are hereby designated critical areas and shall be subject to the provisions of this chapter.

B. The approximate location and extent of known or suspected wetlands are shown on the city’s adopted critical area maps as contained within the environmental element of the comprehensive plan. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified. The exact location of a wetland boundary shall be determined through field investigation by a qualified professional applying the approved federal wetland delineation manual and regional supplement methods and procedures.

C. Wetlands shall be rated and regulated according to the categories defined by the Washington State Wetland Rating System for Western Washington 2014 Update (Publication No. 14-06-029). Publication No. 14-06-029 contains the methods for determining the wetland category which are generally described below:

1. Category I. Category I wetlands are rare and irreplaceable in terms of their function and value to Mill Creek’s natural aquatic systems. All wetlands with one or more of the following criteria shall be considered a Category I wetland:
  - a. Wetlands that are designated as natural heritage wetlands by the Washington State Department of Natural Resources.
  - b. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, and mature forested wetlands as defined in MCMC 18.06.210.
2. Category II. Category II wetlands are ecologically important and provide high levels of function. A wetland is considered a Category II wetland if it meets the following criteria:
  - a. Wetlands that do not meet the criteria of Category I wetlands; and
  - b. Wetlands performing significant wildlife habitat and/or hydrologic functions, which cannot be replicated through creation or restoration as determined by a critical area report.
3. Category III. Category III wetlands provide a moderate level of functions. They are typically more disturbed, smaller, and/or more isolated in the landscape than Category I or II wetlands.
4. Category IV. Category IV wetlands provide the lowest level of function, but still provide important functions.

The above descriptions are meant to provide a general overview. Refer to Publication No. 14-06-029 for the actual methods.

**D. Wetlands that meet the following criteria are not subject to the avoidance or minimization requirements of the mitigation sequence (consistent with MCMC 18.06.210) in accordance with the following provisions, and they may be filled if the impacts are fully mitigated based on the actions in MCMC 18.06.610. Impacts should be mitigated**

through the purchase of credits from an in-lieu fee program or mitigation bank, if available, consistent with the terms and conditions of the program or bank. In order to verify whether the following criteria are met, it is essential that a critical area report for wetlands meeting the requirements in MCMC 18.06.950 be submitted.

1. All Category IV wetlands less than 4,000 square feet that:
  - a. Are located in the areas covered by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region;
  - b. Are not associated with riparian areas or their buffers;
  - c. Are not associated with shorelines of the state or their associated buffers;
  - d. Are not part of a wetland mosaic;
  - e. Do not score 6 or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029), or as revised and approved by Ecology; and
  - f. Do not contain a Priority Habitat or a Priority Area<sup>1</sup> for a Priority Species identified by the Washington Department of Fish and Wildlife and do not contain state or federally listed species or their critical habitat or species of local importance.
2. Wetlands less than 1,000 square feet that meet the above criteria are exempt from the buffer provisions contained in this Chapter.

~~D. All wetlands shall be regulated and subject to the provisions of this chapter regardless of size, except that Category IV wetlands less than 1,000 square feet shall be exempt from this chapter if a critical area report prepared pursuant to this chapter demonstrates all of the following:~~

- ~~1. The wetland does not provide suitable habitat for amphibian species; and~~
- ~~2. The wetland does not possess unique characteristics that would be difficult to replicate through standard mitigation practices. (Ord. 2015 796 § 3; Ord. 2009 702 § 2 (Exh. C); Ord. 2004 603 § 2)~~

#### **18.06.920 Performance standards – Alteration of wetlands.**

A. All activities and uses shall be prohibited in wetlands and wetland buffers except as expressly provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of wetlands shall be permitted only in accordance with an approved critical area report and mitigation plan. The burden of proof shall be on the applicant.

B. All significant adverse impacts to wetland functions and values and to associated buffers shall be avoided. Where such impacts cannot be avoided, the applicant shall implement appropriate compensatory mitigation according to the provisions of MCMC 18.06.610 and 18.06.960.

C. Alteration of Category I wetlands is prohibited.

D. Alteration of Category II, III, and IV wetlands may be permitted in accordance with an approved critical area report and mitigation plan, and only when the applicant demonstrates that:

1. The basic project purpose cannot reasonably be accomplished without the wetland alteration; and

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<sup>1</sup>See page 8 of Priority Habitat and Species List, Washington Department of Fish and Wildlife, 2008 (updated 2021), Olympia, Washington. <https://wdfw.wa.gov/publications/00165>

2. There are no reasonable or practical alternatives to the alteration, including without limitation on-site design or acquisition of additional area. (Ord. 2004-603 § 2)

**18.06.930 Performance standards – Wetland buffer widths.**

A. Wetland buffer areas shall be established for all development proposals and activities adjacent to wetlands to protect the integrity, function and value of the wetland **in accordance with Table IX.1**. The department shall determine appropriate buffer widths based upon the approved critical area report. Wetland buffers shall be measured perpendicular to the wetland edge as marked in the field and shall not include wetlands. Except as otherwise permitted by this chapter, buffers shall consist of an undisturbed area of native vegetation.

B. The **buffer widths in Table IX.1** ~~standard buffer widths required by this chapter~~ shall presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the existing vegetation is inadequate, then the buffer width shall be increased or the buffer planted or enhanced to maintain or improve the buffer functions. **Developments that meet the definition of a High Intensity Land Use shall take appropriate measures to mitigate impacts on the adjacent wetlands. The director shall require any and all applicable mitigation measures noted in Table IX.2 to be implemented prior to approving a proposal that uses the lesser buffer widths noted in Column C of Table IX.1.** ~~The following standard buffer width requirements are established as the minimum buffer width:~~

	<b>High Impact Land Use</b>	<b>Low Impact Land Use</b>
1. Category I Wetland	300 feet	200 feet
2. Category II Wetland	200 feet	100 feet
3. Category III Wetland	100 feet	50 feet
4. Category IV Wetland	50 feet	25 feet

**Table IX.1 Wetland Buffer Width Standards (Feet)**

Wetland Category	Description	Proposed Buffer Widths		Low Intensity Land Use
		High Intensity Land Use		
		Buffer w/out mitigation measures	Buffer w/ mitigation measures	
I <sup>1</sup>	Wetlands with High Conservation Value, or special characteristics	250	190	125
I <sup>2</sup> and II	High habitat function (habitat score is 8-9)	300	225	150
	Moderate habitat function (habitat score is 6-7)	150	110	75
	Low habitat function (habitat score less than 6)	100	75	50
III	Moderate habitat function (habitat score is 6-7)	150	110	40
	Total wetland rating score of 16-19, but not meeting above criteria	80	60	25
IV	Total wetland rating score less than 16	50	40	25

<sup>1</sup>Some wetlands such as bogs, and wetlands identified as “Wetlands of High Conservation Value” by the Washington Natural Heritage Program have special characteristics and are categorized by their sensitivity to disturbance, their significance, rarity, our ability to replace them, and the functions they provide. These wetlands require larger buffer widths regardless of their habitat score. There are currently no mapped Wetlands of High Conservation Value within the City of Mill Creek but bogs are known to occur.

<sup>2</sup>Category I wetlands not having special characteristics.

**Table IX.2 Required Measure to Minimize Impacts to Wetlands (Measures are required if applicable to a specific proposal)**

Disturbance	Activities and uses that cause disturbances	Examples of measures to minimize impacts.
Lights	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Commercial/Industrial</li> <li>• Residential</li> <li>• Recreation (e.g., athletic fields)</li> <li>• Agricultural buildings</li> </ul>	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> <li>• Only use lighting where necessary for public safety and keep lights off when not needed</li> <li>• Use motion-activated lights</li> <li>• Use full cut-off filters to cover light bulbs and direct light only where needed</li> <li>• Limit use of blue-white colored lights in favor of red-amber hues</li> <li>• Use lower-intensity LED lighting</li> <li>• Dim light to the lowest acceptable intensity</li> </ul>

Noise	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Industrial</li> <li>• Recreation (e.g., athletic fields, bleachers, etc.)</li> <li>• Residential</li> <li>• Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• Construct a fence to reduce noise impacts on adjacent wetland and buffer</li> <li>• Plant a strip of dense shrub vegetation adjacent to wetland buffer</li> </ul>
Toxic Runoff	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Commercial/industrial</li> <li>• Residential areas</li> <li>• Application of agricultural pesticides</li> <li>• Landscaping</li> <li>• Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft. of wetland</li> <li>• Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)</li> </ul>
Stormwater Runoff	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Residential areas</li> <li>• Commercial/industrial</li> <li>• Recreation</li> <li>• Landscaping/lawns</li> <li>• Other impermeable surfaces, compacted soil, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized or sheet flow from lawns that directly enters the buffer</li> <li>• Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Residential areas</li> <li>• Recreation</li> </ul>	<ul style="list-style-type: none"> <li>• Use privacy fencing</li> <li>• Plant dense native vegetation to delineate buffer edge and to discourage disturbance</li> <li>• Place wetland and its buffer in a separate tract</li> <li>• Place signs around the wetland buffer every 50-200 ft., and for subdivisions place signs at the back of each residential lot</li> <li>• When platting new subdivisions, locate greenbelts, stormwater facilities, and other lower-intensity land uses adjacent to wetland buffers</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Tilled fields</li> <li>• Roads</li> </ul>	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>

C. The director shall have the authority to “average” buffer widths on a case-by-case basis where a qualified professional demonstrates to the director’s satisfaction that all the following criteria are met:

1. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
2. The buffer averaging does not reduce the functions or values of the wetland;
3. The portion of the buffer reduced through buffer averaging is less than 25 percent of the total buffer length on a project site;
4. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and
5. The buffer width shall is not be reduced to less than 50 75 percent of the standard width, and in no case shall the except that no buffer dimension shall be less than 25 feet reduced portion of the buffer be less than the width indicated in Table IX.3.

**Table IX.3 Minimum Buffer Width Allowed with Buffer Averaging**

A	B	C		D
		With Mitigation	Without Mitigation	
Wetland Category	Description	Minimum Buffer Width (Feet) Allowed through Averaging – High Intensity Use		Minimum Buffer Width (feet) Allowed through Averaging – Low Intensity Use
I <sup>1</sup>	High Conservation Value, or special characteristics	188	143	94
I <sup>2</sup> and II	Habitat score is 8-9	225	169	113
	Habitat score is 6-7	113	83	56
	Habitat score less than 5	75	56	38
III	Habitat score is 6-7	113	83	30
	Total wetland rating score of 16-19, not meeting above criteria	60	45	25
IV	Total wetland rating score less than 16	38	30	25
<p><sup>1</sup> Applies to wetlands identified by the Washington Natural Heritage Program as “Wetlands of High Conservation Value” and other wetlands, such as bogs, that have special characteristics and are categorized by their sensitivity to disturbance, their significance, rarity, our ability to replace them.</p> <p><sup>2</sup> Category I wetlands not having special characteristics.</p>				

D. The director shall have the authority to increase the minimum width of the standard buffer on a case-by-case basis when such increase is necessary to:

1. Protect the function and value of that wetland; or
2. To protect significant habitat; or
3. To protect lands adjacent to wetlands from erosion or other hazards.



E. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and final approval has been granted by the city.

F. Structures shall be set back in accordance with MCMC 18.06.840 such that construction activities and outdoor living areas do not infringe upon the required buffer edge.

G. Impervious surfaces shall not be constructed in wetland buffers except as expressly provided for in this chapter.

H. The director shall have the authority to reduce the width of the standard buffer on a case-by-case basis if all of the following criteria are met:

1. The buffer is adjacent to a critical area that is being significantly restored through a city-approved mitigation plan that has regional benefit to critical area functions as determined by the director.
2. A critical area report has been submitted to the city that demonstrates the reduced buffer will protect the functions and value of the critical area being restored.
3. The reduced buffer shall be clearly described in any applicable SEPA, MDNS or EIS document and shall be subject to review and comment by the public agencies with jurisdiction. (Ord. 2004-603 § 2)

**18.06.940 Performance standards – Wetland buffer uses.**

Wetland buffers shall be retained in an undisturbed condition except that the following uses may be permitted within a wetland buffer when the applicant demonstrates to the satisfaction of the director that no adverse impact to the wetland functions and values will occur:

A. Public and private roadway crossings, including bridge construction and culvert installation in or across wetland buffers may be allowed, if the director determines that such construction is necessary and cannot be accomplished in another location.

B. Stormwater management facilities, limited to outfall facilities (level spreaders, infiltration trenches) may be allowed within the outer 50 percent of the standard buffer of a wetland; provided, that all of the following criteria are met:

1. Construction of the stormwater facility does not impact mature forest vegetation;
2. There is no other feasible location for the stormwater facility;
3. The stormwater facility is designed according to city standards and the discharge water meets state water quality standards;
4. Construction of stormwater management facilities in the buffer of a Category I wetland is prohibited;
5. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may encroach into the inner 50 percent of a Category II, III or IV wetland buffer on a case-by-case basis when the director and city engineer determine that due to topographic or other physical constraints there are no feasible locations for these facilities in the outer buffer area; and
6. Altered areas are mitigated per MCMC 18.06.610 and 18.06.960.

C. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife may be allowed.

D. Passive recreation facilities, including walkways, wildlife viewing structures, and trails, that are part of an interpretive trail system or environmental education program, may be allowed if they are designed in accordance with an approved critical area report; and provided, that they are located in the outer 50 percent of the buffer area

where possible and practical and are constructed in such a manner to avoid disturbance of sensitive wildlife, feeding, roosting, breeding, or rearing sites, and meet the requirements of MCMC 18.06.410(A)(4). (Ord. 2004-603 § 2)

**18.06.950 Critical area report requirements for wetlands.**

A. A critical area report for wetlands shall contain site- and proposal-specific information consistent with MCMC 18.06.530 and shall at a minimum contain the following additional information:

1. A written assessment and accompanying maps of the wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each wetland;
2. A detailed description of the effects of the proposed development on wetland and buffer area, values and function, including quantification of the area of wetland disturbance;
3. Vegetation, soil, hydrologic, and topographic characteristics of all on-site wetlands and buffers. This includes the dominant species; soil type, color and texture; sources of hydrology (surface inflow, hyporheic flows, precipitation, etc.).

B. The director shall have the authority to require the critical area report to include an evaluation by the Department of Ecology. (Ord. 2004-603 § 2)

**18.06.960 Wetland mitigation – General requirements.**

A. All significant adverse impacts to wetlands and buffers as determined by the director shall be fully mitigated in accordance with the standards set forth in MCMC 18.06.610 and this section. All mitigation shall be specified in a mitigation plan consistent with MCMC 18.06.620 and this section. Mitigation measures to be addressed in the mitigation plan shall include, in order of preference, avoidance, minimization, restoration, rehabilitation, and compensation.

B. Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions, and shall provide similar wetland functions as those lost except when:

1. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a watershed assessment plan or protocol; or
2. Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

C. Compensation in the form of wetland creation, restoration or enhancement is required when a wetland is altered permanently as a result of an approved project. Alterations shall not result in net loss of wetland area except when the following criteria are met:

1. The lost wetland area provides minimal functions as determined by a function assessment and the mitigation action(s) results in a net gain in wetland functions as determined by a site-specific function assessment; or
2. The lost wetland area provides minimal functions as determined by a function assessment and other replacement habitats provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.

D. Compensation for wetland alterations shall occur in the following order of preference:

1. Creation, reestablishment, or a mixture of the two on upland sites that were formerly wetlands.
2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.
3. Enhancing significantly degraded wetlands in accordance with MCMC 18.06.980.
4. Preserving Category I or II wetlands that are under imminent threat in accordance with MCMC 18.06.980.

E. Mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except when all of the following apply:

1. There are no reasonable on-site or in-drainage basin opportunities or on-site and in-drainage basin opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland; and
3. Off-site locations shall be in the same subdrainage basin unless the action qualifies as innovative mitigation under MCMC 18.06.640.

F. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and vegetation.

G. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter. The director may permit reduced buffers on mitigation sites on a case-by-case basis if site conditions would preclude application of the standard buffers but the mitigation design is otherwise acceptable.

H. The applicant shall develop a mitigation plan that provides for construction, maintenance, monitoring, contingencies and adaptive management of the wetland compensation projects as required by conditions of approval and consistent with the requirements of this chapter. The mitigation plan shall be consistent with MCMC 18.06.620. (Ord. 2015-803 § 5 (Exh. A); Ord. 2004-603 § 2)

**18.06.970 Wetland mitigation – Replacement ratios.**

A. When an applicant proposes to alter or eliminate a regulated wetland, the functions and values of the affected wetland and buffer shall be replaced through wetland creation or restoration according to the minimum ratios established in MCMC 18.06.980(A). The ratios shall apply to wetland creation or restoration that is in-kind, on-site, of the same category, timed prior to or concurrent with alteration, and has a high probability of success. Ratios for out-of-kind or off-site mitigation at certified mitigation banks shall be in accordance with the bank's mitigation banking instrument; otherwise replacement ratios for permittee-responsible off-site or out-of-kind mitigation may be greater than the minimum if the director determines that additional mitigation is warranted to mitigate impacts. Ratios for remedial actions resulting from unauthorized alterations shall be greater. The wetland creation and restoration ratios contained in MCMC 18.06.980(A) are given as replacement area to impact area.

B. Replacement ratios may be decreased by up to 25 percent by the director if the applicant demonstrates to the satisfaction of the director that all of the following criteria are met:

1. Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success;
2. Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being altered; and
3. The proposed mitigation actions are conducted in advance of the impact and shown to be successful through post-construction monitoring and function assessment.

C. The director shall increase replacement ratios under the following circumstances:

1. Uncertainty exists as to the probable success of the proposed restoration or creation; or
2. A significant period of time will elapse between impact and replication of wetland functions; or
3. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

4. The impact was an unauthorized impact.

D. At the director’s discretion, applicants may be allowed to use an alternative to the mitigation ratios contained in MCMC 18.06.980 based on the credit/debit method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication No. 10-06-011). (Ord. 2015-796 § 4; Ord. 2004-603 § 2)

**18.06.980 Wetlands mitigation – Types and ratios.**

A. Minimum Ratios for Compensatory Mitigation. The minimum replacement ratio for wetland impact mitigation shall be as shown in **Table IX.4** on the following table:

**Table IX.4 Wetland Mitigation Ratios**

Affected Wetland	Wetland Mitigation Type and Ratio*				
Category	Creation	Re-establishment	Rehabilitation	Re-establishment (R) or Creation (R) and Enhancement (E)	Enhancement
Category IV	1.5:1	1.5:1	3:1	1:1 (R:C) and 2:1 (E)	6:1
Category III	2:1	2:1	4:1	1:1 (R:C) and 2:1 (E)	8:1
Category II	3:1	3:1	6:1	1:1 (R:C) and 4:1 (E)	12:1
Category I	As determined by the director – ratios will be greater than required for Category II wetlands				
*Ratio is the replacement area: impact area. See MCMC 18.06.210 for definitions					

B. Applicants proposing to enhance or rehabilitate wetlands shall produce a critical area report that identifies how the mitigation will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement or rehabilitation proposal shall also show whether existing wetland functions will be reduced by the mitigation actions.

C. Preservation. Impacts to wetlands may be mitigated by preservation of wetland areas in a separate tract in accordance with MCMC 18.06.830. Preservation shall be used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied. Mitigation ratios for preservation shall range from 10-to-one to 20-to-one, as determined by the director, depending on the quality of the wetlands being impacted, mitigated and preserved. The following criteria shall apply to mitigation by preservation:

1. Preservation as mitigation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of one-to-one acreage replacement is provided by restoration or creation.
2. Preservation of at-risk, high-quality wetlands may be used as the sole means of mitigation for wetland impacts to Category III or IV wetlands when the impact area is less than one-half acre and the preservation occurs in the same drainage basin as the wetland impact.
3. Preservation sites may include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.
4. Wetland creation, restoration, and enhancement opportunities shall have been considered, and preservation is the best mitigation option.
5. The preservation site has the potential to experience a high rate of undesirable ecological change due to on- or off-site activities.
6. The area proposed for preservation is critical for the health of the watershed or basin.

D. Mitigation Banks. Credits from an approved wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

1. The bank is certified by the director and by state resource agencies with wetland jurisdiction;
2. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
3. The proposed use of credits is consistent with the terms and conditions of the bank's certification. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification. Bank credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. (Ord. 2015-803 § 5 (Exh. A); Ord. 2015-796 § 5; Ord. 2006-633 § 2; Ord. 2004-603 § 2)

## Attachment: Public Comments

**From:** Zachary Woodward <Zachary.Woodward@habitatbank.com>  
**Sent:** Tuesday, May 10, 2022 11:46 AM  
**To:** Justin Horn  
**Subject:** Comments on SEPA #202202115 - Mill Creek Critical Areas Code Update-Wetland Buffers

**CAUTION:** This email originated from outside the City of Mill Creek. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE: Comments on SEPA #202202115 - Mill Creek Critical Areas Code Update-Wetland Buffers

Hello,

The City of Mill Creek is within the Service Area of a State and Federally approved “wetland mitigation bank project” called the Keller Farm Mitigation Bank (KFMB). The KFMB is approved to transfer both wetland and critical area buffer credits for unavoidable impacts to these resources within the Lake Washington-Sammamish Watershed (WRIA-8). The KFMB has “re-established” both wetland area and wetland and riparian buffers, which meet a “no net-loss” of these habitat types when the project is utilized for these impacts. We support the City’s proposed amendments to its Critical Areas Code, when development projects with unavoidable critical areas impacts mitigate within the watershed and meet the State’s standard of no net loss of wetland area.

Sincerely,

Zach Woodward  
Manager  
Habitat Bank



Natural Resources Department  
Environmental Division  
6406 Marine DR NW  
Tulalip, WA 98271  
.....

Justin Horn | Project Contact  
City of Mill Creek

May 12, 2022

Re: Mill Creek Critical Areas Code Update – Wetland Buffers  
SEPA# 202202115

The Tulalip Tribes appreciates the opportunity to review and comment on these proposed code amendments. We do have some concerns, outlined below:

1. -Increasing the exemption for isolated wetlands from 1,000 square feet to 4,000 square feet as long as they are not associated with riparian areas, are not associated with a shoreline of the state, and are not part of a wetland mosaic.

This proposed amendment will likely degrade or eliminate important wetland processes without compensating for their damage or loss. Even small geographically isolated wetlands with low habitat value provide ecosystem services such as reducing the amount of water reaching streams during storms (flood control), reducing baseflow variation, moderating microclimates, and providing biogeochemical reactions that improve water quality in the landscape (including other waterbodies through groundwater connections).

2. -Base buffers on the habitat score and the intensity of the adjacent land use.
3. -Reduce buffer widths in exchange for specific mitigation measures that reduce impacts.

More information may be required to address these amendments. Our initial concern is that these amendments may result in critical areas receiving too narrow a buffer for reasons that are not based on their ecological needs.

Thank you for considering our concerns. We look forward to further involvement in this conversation, and arriving at a set of amendments that benefit our natural ecosystems.

Todd Gray  
Environmental Protection Ecologist  
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