

Appendix D

SHORELINE ENVIRONMENTALLY SENSITIVE AND CRITICAL AREA LANDS

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Article I. Environmentally Sensitive and Critical Area Lands

15.65.010 Purpose.

The environmentally sensitive area overlay district is a mechanism by which the town of La Conner recognizes the existence of natural conditions, which affect the use, and development of property. It imposes special regulations on that property in order to protect and preclude development on the lands classified as critical areas. The regulations are to protect environmentally sensitive areas as well as the public health, safety and welfare; to prevent any net loss of individual wetlands by requiring those activities not dependent upon a wetland location to be located on upland sites; and to prevent any threat to public health and safety associated with unstable and steep slopes and to prevent encroachment on any adjacent agricultural lands of long-term significance.

15.65.020 Applicability.

This code applies to activities on all lands which have been identified and classified as critical areas pursuant to the comprehensive plan and designated on the Environmentally Sensitive Areas Map (see Appendix B)* as follows:

- (1) Non-tidal Wetlands. Known non-tidal wetlands are designated on the Environmentally Sensitive Areas Map adopted by the town of La Conner on June 14, 1994. Provisions of this chapter apply to all wetlands which have been determined by a wetland delineation and rating per current Department of Ecology guidelines, regardless of whether or not they are mapped.
- (2) Geologically Hazardous Areas. All lands where slopes that average 15 percent or greater over a vertical interval of 10 feet and unstable slopes.
- (3) Lands Adjacent to Agricultural Lands. All lands inside town boundaries that are within 25 feet of agricultural resource lands. There are no agricultural lands within the town of La Conner.

*Code Reviser's Note: Appendix B to Ord. 671 is on file in the clerk's office.

15.65.030 Allowed Uses – Non-tidal wetland areas.

The following uses shall be allowed as a right within a non-tidal wetland and its buffer to the extent that they are not prohibited by any other ordinance or law and provided they do not require permits for structures, grading, fill, draining, or dredging:

- (1) Outdoor recreational activities; and
- (2) Education, scientific research, and nature trails;

15.65.040 Permit required.

- (1) Non-tidal Wetlands. Regulated activities in or within the required buffer of a non-tidal wetland.
- (2) Geologically Hazardous Areas. Construction activities, including clearing or grading, in or within 100 feet of a regulated slope.

15.65.050 General requirements.

Applications for land uses or developments proposed within critical or environmentally sensitive areas shall meet the following requirements:

- (1) Application for a permit to conduct a regulated activity shall be made to the planning department on forms furnished by the town. Permits shall be valid for a period not to exceed three years from the date of issue unless a time period is specified by the planning director. A permit may be renewed for one year.
- (2) Site, Adjacent Site, Surrounding Area and Drainage Basin. Detailed analysis of impacts of development upon nontidal wetlands, native vegetation and wildlife habitat, water quality, slope and soil conditions, and surface water drainage may be required at the request of the planning director when site area conditions as shown on the environmentally sensitive area overlay warrant such analysis. Supplemental technical reports may be required by the planning director to specify measures to preserve, protect, and maintain site, adjacent site, surrounding areas and drainage basin and ensure safe, stable, and compatible development.

15.65.060 Prohibited activities.

All activities that are not permitted as a right or by permit shall be prohibited. All projects shall be fully bonded against any claim of damage against adjacent properties, including the town, prior to any wetland or slope work being undertaken if bonding is a condition of the permit.

15.65.070 Specific requirements – Non-tidal wetlands.

- (1) The applicant shall submit a wetland delineation, rating report, survey report, and a scaled drawing of the area as part of the permit application. Non-tidal wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. The rating shall be done in accordance with Ecology's 2014 Washington State Rating System for Western Washington (Ecology publication #14-06-029, or as revised and approved by Ecology). Evidence documenting the results of the boundary survey and wetland rating shall be submitted to the planning director.
- (2) The planning department may undertake the wetland delineation if requested by the applicant and at applicant cost. Authorized manuals and methods, such as remote sensing, hydrology, soils, plant species, and other data, consultations with biologists, hydrologists, soil scientists, or other experts may be used as needed to perform the delineation. The applicant will be charged direct costs of all work and consultants.
- (3) Where the planning department performs a wetland area delineation at the request of the applicant, it shall be considered a final determination.
- (4) Where the applicant has provided a wetland determination the planning department shall verify the accuracy of, and may require adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the planning department shall, at the applicant's expense obtain competent expert services to render a final delineation.
- (5) Buffer Requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology publication #14-

06-029, or as revised an approved by Ecology). The adjacent land use intensity is assumed to be high.

- a. For wetlands that score 6 or more for habitat function, the buffers in Table 1 can be used if both the following criteria are met:
 - i. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife (WDFW). The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>.

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

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 1 may be used with the required measures in Table 2 alone.
 - ii. All of the measures in Table 2 are implemented, where applicable, to minimize the impacts of adjacent land uses.
- b. For wetlands that score 3-5 habitat points, only the measures in Table 2 are required for the use of Table 1.
- c. If an applicant chooses not to apply the mitigation measures in Table 2, or is unable to provide a protected corridor where available, then Table 3 must be used.
- d. The buffer widths in Table 1 and 3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 1. Wetland Buffer Width Requirements if Table 2 is Implemented and Corridor Provided

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	75	110	225
Category I: Bogs and Wetlands of High Conservation Value	190		225
Category I: Interdunal	225 (buffer width not based on habitat scores)		
Category I: Forested	75	110	225
Category I: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
Category II: Based on score	75	110	225
Category II: Interdunal Wetlands	110 (buffer width not based on habitat scores)		
Category II: Estuarine and Coastal Lagoons	110 (buffer width not based on habitat scores)		
Category III (all)	60	110	225
Category IV (all)	40		

Table 2. Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

Table 3. Wetland Buffer Requirements if Table 2 is NOT Implemented or Corridor NOT Provided

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	100	150	300
Category I: Bogs and Wetlands of High Conservation Value	250		300
Category I: Interdunal	300 (buffer width not based on habitat scores)		
Category I: Forested	100	150	300
Category I: Estuarine and Coastal Lagoons	200 (buffer width not based on habitat scores)		
Category II: Based on score	100	150	300
Category II: Interdunal Wetlands	150 (buffer width not based on habitat scores)		
Category II: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
Category III (all)	80	150	300
Category IV (all)	50		

15.65.080 Specific requirements - Geologically hazardous areas.

- (1) Development shall be prohibited, restricted, or otherwise controlled in areas designated or adjacent to "known or potential risk". The applicant shall provide evidence that the proposal would be structurally safe and out of the potential danger of any other surrounding development which may pose such risk to public health and safety in the designated hazardous area. The minimum requirement shall be a report submitted by a licensed engineer of the town's choice. The applicant shall submit any other information deemed necessary to allow the planning director, with the aid of the director of public works and director of wastewater management, to make an informed recommendation to the town council as to whether the proposed project should be granted.
- (2) The planning director may require a buffer from the top or toe of a slope based on (a) geological and hydrological site constraints, and (b) the impacts of proposed construction methods on the stability of the slope, increased erosion potential, and disruption of existing topography and vegetation. No removal of native vegetation or wildlife habitat shall be permitted within the protected slope and buffer without prior approval of the planning director and approved replacement vegetation.
- (3) Disturbed areas due to development activities shall be revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, the planning director may require a revegetation. Revegetation shall consist of trees, shrubs, and ground cover suitable for the location and which does not require permanent irrigation systems for long-term survival.
- (4) When development is proposed on known and potential slide areas or slopes 40 percent or greater, the planning director may restrict development coverage and construction activity areas to the most level, environmentally suitable and naturally stable portion of the site. Grading shall be strictly limited to areas as determined by the planning director. The planning director may consult with other engineering consultants, the cost of which shall be borne by the applicant.
- (5) All drainage associated with the development shall be connected to town approved drainage control systems. The on-site drainage system shall be designed for a 25-year storm occurrence (2.7 inches in 24 hours).
- (6) The planning director may require additional construction practices and methods including, but not limited to, best management practices and limitations on construction equipment permitted on the site to protect critical areas on-site, on adjacent sites, and within the drainage basin.

15.65.090 Specific requirements - Adjacent agricultural lands.

All activities or uses adjacent to lands classified as agricultural lands of long-term significance shall be regulated in accordance with this code.

Article II. Permit Application Requirements

15.65.100 Fees.

At the time of an application or request for determination, the applicant shall pay a filing fee sufficient to cover the costs of evaluation of the application as specified by the town council. These fees may be used to retain expert consultants to provide services pertaining to wetland boundary determinations, slope stability functional assessments, and evaluation of mitigation measures for either wetlands or potentially unstable slopes, when the planning department

deems that the information provided by the applicant is insufficient or needs further evaluation or analysis. Further, the applicant shall, before any permit is issued, reimburse the town for its expenses to evaluate or analyze the application or its supporting documentation. The town council may assess additional fees as needed to monitor and evaluate permit compliance and mitigation measures.

15.65.110 Administration.

The planning director shall be responsible for the administration of this code as follows:

- (1) Reviewing all permit applications for compliance with this code. If the planning director, with the concurrence of the town council, finds the proposed activity is so minor that no environmentally sensitive area is affected, a permit may be issued without a public hearing.
- (2) Coordinating the permitting process with other programs or agencies having jurisdiction over the proposed activity to provide concurrent and minimal processing time.
- (3) Publishing notices of public hearing on applications for development having a significant effect on environmentally sensitive areas. Notice of public hearing shall be published at least twice for two consecutive weeks in the legal newspaper of the town of La Conner. A copy of the notice shall be mailed to all property owners within 300 feet of the proposal.
- (4) The hearing examiner or planning director will review the application and/or schedule a public hearing for the permit request no earlier than 10 days following publication and notices to property owners and at least 60 days after receipt of the permit application.
- (5) The hearing examiner decision shall be final and may only be appealed to the superior court of Skagit County within 21 days of the date of the mailing of the decision. A planning director decision may be appealed to the hearing examiner per procedures in §15.12.130 Appeal of Administrative Decisions.

15.65.120 Non-tidal wetland application.

- (1) Application for a special permit for a regulated non-tidal wetland activity shall include, but not be limited to, the following, unless waived with written justification by the planning department:
 - (a) The purpose of the project and an explanation of why the proposed activity requires a wetland location or access to wetlands, or cannot be located at other sites.
 - (b) A site plan drawn to an appropriate scale showing the wetland area boundary and the non-tidal wetland boundary under consideration as determined by field survey; the width, depth, and length of all existing and proposed structures, roads, watercourses, and drainageways; water, wastewater, and storm water facilities; utility installations within 200 feet of a non-tidal wetland; and the relationship of the proposed activity and any potentially affected non-tidal wetland to the entire parcel of land owned by the applicant.
 - (c) A description of the wetland or wetlands that will be affected by the regulated activity, including a sketch of the entire wetland drawn to a scale appropriate to delineate all significant or affected features, the area that may be filled or impacted; vegetation type; wetland water sources; and a general characterization of the habitat, wildlife, and common plants.
 - (d) Soil types on the site and the exact locations and specifications for all proposed

draining, filling, grading, dredging, and vegetation removal, including the amounts and methods.

- (e) Adjacent land use.
 - (f) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
 - (g) The planning director may require additional information, including, but not limited to, documentation and evidence of a wetland boundary determination by field survey; an assessment of wetland functional characteristics; documentation of the ecological, aesthetic, economic, or other values of a wetland, a study of flood, erosion, or other hazards at the site; evidence of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this code or to evaluate the proposed use in terms of the purposes of this code.
- (2) Any person who wants to know whether a proposed activity or an area is subject to this code may request in writing a determination from the planning department. Such a request for determination shall contain plans, data, and other information as may be specified by the planning department.
- (3) Upon receipt of the completed application, the planning department shall notify the individuals and agencies, including federal and state agencies having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment.
- (4) The town, after according consideration to the comments of the general public, other affected municipalities and counties, and federal and state agencies with jurisdiction over the area in question, shall issue a non-tidal wetland permit only if it is found that the regulated activity is determined to be in the public interest in accordance with those standards listed below and that the applicant has demonstrated by a preponderance of evidence that the regulated activity:
- (a.) Is water-dependent or requires access to the non-tidal wetland as a central element of its basic function, or is not water-dependent but has no practical alternative.
 - (b.) Will result in minimum feasible alteration or impairment to the non-tidal wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, and hydrological conditions.
 - (c.) Will not jeopardize the continued existence of species that appear on federal or state endangered or threatened species lists.
 - (d.) Will not cause significant degradation of ground water or surface water quality.
 - (e.) Complies with all applicable state, local, and federal laws, including those related to sediment control, pollution control, floodplain zoning, and on-site wastewater and storm water disposal.
 - (f.) Complies with the wetland buffer requirements provided in Section 15.65.070(5).
 - (g.) Complies with other standards contained in this code, including those pertaining to non-tidal wetland creation and restoration as required for mitigation

15.65.130 Geologically hazardous areas.

- (1) A description of how the proposed development and its associated grading plan will or

will not impact each of the following on the subject property and adjoining properties:

- (a) Slope stability, erosion, and landslide hazard;
- (b) Drainage surface and subsurface hydrology, and water quality;
- (c) Existing vegetation as it relates to wetlands, regulated slopes and soil stability.

- (1) A geotechnical report by a certified engineer.
- (2) Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties shall be required.

- (2) The town may retain consultants at the applicant's expense to assist the town's review of applications and studies outside the range of the staff expertise.

15.65.140 Permit conditions.

The hearing examiner or planning director shall attach such conditions to the granting of a special use permit as deemed necessary to carry out the purposes of this code. Such conditions may include but are not limited to:

- (1) Limitations on minimum lot size for any regulated activity;
- (2) Requirements that structures be elevated on piles and otherwise protected against natural hazards;
- (3) Modification of waste disposal and water supply facilities;
- (4) Imposition of operational control, sureties, and deed restrictions concerning future use and subdivision of lands, such as flood warnings, preservation of undeveloped areas in open space use, and limitation of vegetation removal;
- (5) Dedication of easements to protect wetlands;
- (6) Establishment of vegetated buffer zones separating and protecting the non-tidal wetland from proposed activities in accordance with the wetland buffer requirements provided in Section 15.65.070(5).
- (7) Erosion control and storm water management measures;
- (8) Setbacks for structures and restrictions on fill, deposit of soil, and other activities in the non-tidal wetland;
- (9) Modification in project design to ensure continued water supply to the non-tidal wetland and circulation of water;
- (10) Creation or restoration of an area of non-tidal wetland;
- (11) Development of a plan to guide actions involving the creation of a new wetland or the restoration of a damaged or degraded wetland.
- (12) Other mitigation actions as determined to be needed.

Article III. Mitigation

15.65.150 Non-tidal wetland restoration and creation.

As a condition of a permit issued or as an enforcement action under this code, the town may require that the applicant engage in the restoration or creation of non-tidal wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In making

a determination of whether such a requirement will be imposed, and, if so, the degree to which it would be required, the planning director will consider the following:

- (1) The long and short-term effects of the action upon the non-tidal wetland and associated aquatic ecosystem, and the reversible or irreversible nature of the impairment or loss.
- (2) The type and benefit of the wetland functions and associated resources lost.
- (3) The type, size, and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part. Mitigation ratios may be established in accordance with Department of Ecology's, *Wetlands in Washington State-- Volume 2: Guidance for Protecting and Managing Wetlands* (2005) or subsequent versions.
- (4) Observed or predicted trends with regard to the gains or losses of this type of wetland in the watershed, in light of natural and human processes.
- (5) The cost and likely success of the possible compensation measures in relation to the magnitude of the proposed project or violation.
- (6) The degree to which the applicant has demonstrated a good faith effort to incorporate measures to minimize and avoid wetland impacts within the proposed project.
- (7) If wetland restoration or creation is required by the town, the applicant or violator shall develop a non-tidal wetland restoration or creation plan for review and approval of the planning director with the aid of consultants if deemed necessary. The creation or restoration of wetlands shall not be an alternative to the requirements set forth in Article II of this chapter but shall be used only to compensate for unavoidable losses.
- (8) The plan should state the location, by metes and bounds description, of the proposed site; ownership; size, type, and complete ecological assessment (flora, fauna, hydrology, wetland functions, etc.) of the wetland being restored or the area where a new wetland will be created; and the natural suitability of the proposed site for establishing the replacement wetland (i.e., water source and drainage patterns, topographic position, wildlife habitat opportunities, value of the existing area to be converted, etc.). In addition, plan view and cross-sectional, scaled drawings; topographic survey data, including slope percentage and final grade elevations; and other technical information are required in sufficient detail to explain, illustrate, and provide for:
 - (a) Soil and substrate conditions; topographic elevations; grading and excavation; erosion and sediment control needed for wetland construction and long-term survival.
 - (b) Planting plans specifying plant species types, quantities, locations, size, spacing, or density; source of plant materials, propagules, or seeds; timing, season, water, and nutrient requirements for planting; and, where appropriate, measures to protect plants from predation.
 - (c) Water quality parameters, water source, water depths, water control structures, and water level maintenance practices needed to achieve the necessary ambient water conditions and hydrocycle/hydroperiod characteristics.
 - (d) Midcourse corrections and a three-year monitoring and replacement plan establishing responsibility for removal of exotic and nuisance vegetation and permanent establishment of the wetland system and all its component parts.
 - (e) A demonstration of fiscal, administrative, and technical competence of sufficient standing to successfully execute the overall project.

- (f) Conduct a minimum five-year monitoring period for wetland compensatory mitigation projects and ten years when woody vegetation (trees or shrubs) are part of the plan.

15.65.160 Geologically hazardous areas.

The town shall require the implementation of recommendations in the hydro-geotechnical reports received for the proposal to mitigate identified impacts. Additionally, the town may require:

- (1) That the applicant provide an environmentally sensitive area protection easement.
- (2) The applicant's professional engineer be present on site during all clearing, grading, and filling activities.
- (3) Trees and ground cover be retained and additional vegetation be added.
- (4) All structures be set back an appropriate distance from the top of a regulated slope.
- (5) All structures and excavations be set back from the toe of a slope the distance necessary to protect such structure from landslide hazard based upon hydro-geotechnical analysis.

Article IV. Bonding and Enforcement

15.65.180 Bonding.

The planning department shall require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond shall be consistent with the purposes of this code. In the event of a breach of any condition of any such bond, the planning department may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution.

15.65.210 Enforcement.

Enforcement procedures as set forth in LCMC 15.135.280 through 15.135.480 shall apply.