PLANNING COMMISSION AGENDA

January 13, 2025 – 6:30 PM

Stanwood Fire Station (8117 267th Pl NW)

1. Call to Order

2. Roll Call

3. Public Requests and Comments

4. Approval of Minutes
   - Approval of the November 18, 2024, Planning Commission Minutes

5. New Business
   - Election of New Chair and Vice Chair
   - Public Hearing: Critical Areas Code Amendment

6. Old Business
   - Unified Development Code: Housing and Flexibility Discussion

7. Miscellaneous Business
   - Year in Review

8. Recent Council Action on Commission Items
   - Procedures Code

9. Upcoming Items
   - Continued Discussion on Housing and Subdivision Codes

10. Adjourn

Zoom Meeting Information

Please click the link below to join the webinar:
https://us02web.zoom.us/j/82891360016
Passcode: 502157
Telephone: 253-215-8782
Webinar ID: 830 9911 3579

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Planning Commission Meeting Minutes
Monday, November 18, 2024 – 6:30 pm

Call to Order: 6:30 p.m.

Roll Call

Commissioners Present:
Eric Warnat, Commissioner
Melissa Toner, Commissioner
Patrick Hosterman, Commission Chair
Cody Davis, Commission Vice-Chair
Gabrielle Braley, Commissioner
Jeff Wheatley, Commissioner

Staff Present:
Patricia Love, Community Development Director
Tansy Schroeder, City Planner

Absent: Kathy Moe, Commissioner

Also known to be present: Nate Jones (Transpo Group – online)

Public Requests and Comments: None

Approval of Minutes:
The minutes from the October 14, 2024, Planning Commission meeting were unanimously approved.

Special Presentation:
Transpo Group -Land Use Economic Analysis (Supplement to Permitted Use Discussion)
As part of the permitted use code amendments discussion, the City needs to plan for missing middle housing which includes cottages, duplexes, townhouses, small apartments, and mixed-use developments. Missing middle housing can help address housing shortages, create more affordable housing options, and provide options for people wanting to downsize from traditional larger detached single-family homes.

One of the common complaints that the City hears about mixing housing types in traditional single-family neighborhoods is the negative impact on property values. To evaluate how missing middle housing affects property values and city tax revenue, the City is working with TranspoGroup to analyze the differences in land values for various uses such as residential, mixed-use, multifamily, or commercial developments. Using existing Snohomish County data, we can compare property valuations to land use types as a prediction of how zoning changes could affect property values.

Nate Jones from Transpo Group gave a presentation on determining how the taxation values of parcels change based on their zoning code.

Commissioner Questions & Comments

- This maps in the presentation analyze individual property value. Is there a correlation to adding mixed use or multi-family zoning areas next to single family homes, and do the values of the SFR's increase or decrease? If so by what percentage? This is something that staff and Transpo will look into as they continue to analyze the data.
- Is there a way to project (every 5 years) on how this data relates to the Comprehensive Plan in 25 years? Once the permitted use matrix is done, we can run another analysis to look at this topic as well.

Planning Commission
Meeting Minutes
Monday, November 18, 2024 – 6:30 pm

Old Business:

Approval of Findings of Facts and Conclusions for the Unified Development Code Structure and Permitting Procedures

At the October 14, 2024 Planning Commission meeting, the Commission held a public hearing on the draft of the new Unified Development Code outline and permit procedures code. This code amendment merges Title 17, Zoning with Title 16, Subdivisions into a new Title 18 to be referred as the Unified Development Code (UDC). A UDC combines traditional zoning codes with subdivisions, design standards, utility and engineering regulations into a single document to provide a comprehensive set of development standards and to avoid overlapping regulations. Staff discussed a few minor changes from the previous version the Planning Commissioners have seen.

Commissioner Questions & Comments

- Is there an expedited process for reviews for an additional fee? That was not written into this draft. The City does have a process to send out reviews to a consultant if staff has a high workload. This allows staff to stay within the specified review timelines.
- Who verifies that the RCW's listed are accurate? Our consultants and staff both verify that the citations are correct.
- Did the City receive any comments from the Department of Commerce and their 60-day review period? No, but the City did receive comments on Critical Areas that are reflected in the staff report.
- Commissioner Warnat motioned and Commissioner Warnat seconded Motion 1: Findings of Fact; to Approve the Findings of Fact and Conclusions for the Unified Development Code Ordinance 1543 as Presented on November 18, 2024. All Commissioners were in favor.
- Commissioner Warnat motioned and Commissioner Warnat seconded Motion 2: City Council Recommendation; to Recommend Approval of the Unified Development and Procedures Code Ordinance 1543 to the Stanwood City Council as Presented on November 18, 2024. All Commissioners were in favor.

New Business:

Conceptual Approach for the Updated permitted Use Zoning Matrix

Work continues on the Municipal Code Update project by merging Title 16, Subdivisions and Title 17, Zoning into a new Title 18 titled Unified Development Code. A major component of a UDC includes evaluating what uses should be allowed in each zone and the building site dimensional standards. Prior to preparing the first draft of permitted use matrix and site dimensional standards, it is important to identify key issues of importance to the community and state mandates that need to be addressed. Responses to the following topics will set the foundation for the first draft. Staff discussed how the permitted use matrix was restructured for ease of use.

Commissioner Questions & Comments

- The Commissioners would like to see examples what other Cities who have different adjacent uses that are less savory (e.g., airports, prisons, etc.) and what they're zoning rules require.

- The Commissioners would like to learn more about homeless housing since it will be allowed in all zones.
- Commissioners approve of the approach for the Updated Permitted Use Zoning Matrix.
- Staff asked Commissioners to look over the matrix and let staff know what hot topics they would like to have more information on.

Draft Subdivision Code Approach

Staff and the consultants are in the process of preparing the outline and approach for the land division portion of Title 18, Unified Development Code. The land division portion of the UDC covers the different ways land can be subdivided and alteration of lot lines can occur.

Commissioner Questions & Comments

- Commissioners would like to learn more on the new Accessory Dwelling Unit (ADU) legislation, and how the rules will be applied to individual lots.
- Adult entertainment zones are required by the State. The City can't disallow this use.
- If the City is meeting the Comprehensive Plan, some Commissioners would like to see the lot sizes become larger not smaller than what they currently are. The City will be able to meet the standard, so it is unlikely that the lot sizes will be mandated to be smaller.
- The majority of the remaining developable residential land is in the 9.6 zone, which the minimum lot size is 9,600 square feet.
- Open space is a hot topic. Make open spaces more usable/interactive. Use detention ponds with added urban trails, benches, and wildlife viewing for open space instead of vaults. Or, if vaults are considered open space, require additional open space beyond just the vault.
- Staff asked Commissioners to look over the Subdivision Code Approach and let staff know what hot topics they would like to have more information on or add to the list.

Miscellaneous Business:
December Meeting Canceled

Recent Council Action on Commission Items:

- None

Upcoming Items:

- Staff is preparing the Critical Areas Code for a Public Hearing in January.

Adjourn: 8:14 p.m.

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CITY OF STANWOOD
PLANNING COMMISSION

AGENDA STAFF REPORT

MEETING DATES:	January 13, 2025
SUBJECT:	January Agenda Items
CONTACT PERSON:	Patricia Love, Community Development Director

Election of Officers:

At the first meeting of the year, the Planning Commission elects a new Chair and Vice Chair. According to the bylaws, election of officers should be the first item of new business and the new officers assume their duties at the close of elections. The roles of the Chair and Vice Chair are as follows:

Chair: The Chair shall preside at all meetings and public hearings and adhere to the duties of the presiding officer prescribed in Robert's Rules of Order Newly Revised. When necessary, the Chair shall call for special meetings. The Chair shall be a full voting member of the Commission. The Chair shall appoint all committees and their respective Chairs, and may act as an ex-officio member of each, but without voting privileges. The Chair may delegate duties to other Commissioners with the consent of the Commission. The Chair shall speak on behalf of the Commission before the City Council, the public and City staff.

Vice Chair: The Vice Chair shall perform the duties of the Chair in the absence of the same. The Vice Chair may also serve as convener of special committees. The Vice Chair shall speak on behalf of the Commission before the City Council, the public and City staff when the Chair is not available to speak. Should the Chair be vacated prior to the completion of the Term, the Vice-Chair shall assume the duties and responsibilities of the Chair for the remainder of the said Term. The Chair shall then conduct elections for a new Vice-Chair.

The following officer election procedures shall be followed:

- No one Commissioner may nominate more than one person for a given office until every member wishing to nominate a candidate has an opportunity to do so.
- Nominations do not require a second.

- When it appears that no one else wishes to make any further nomination, the nominations are closed. A motion to close the nominations is not necessary.
- After nominations have been closed, voting for the Chair takes place in the order nominations were made. Commissioners will be asked to vote on the nomination.
- As soon as one of the nominees receives a majority vote (four votes), the nominee is elected. No votes will be taken on the remaining nominees.
- A tie vote results in a failed nomination. If none of the nominees receives a majority vote, a call for nominations will begin again and the process is repeated until a single candidate receives a majority vote.
- Upon election, the newly elected Chair conducts the election for Vice Chair following the same process.

Critical Area Code Amendment – Public Hearing:

The Growth Management Act (GMA) requires all cities and counties to adopt development regulations that protect critical areas. These regulations help to preserve the natural environment, maintain fish and wildlife habitat, and protect drinking water. Protecting critical areas also helps reduce exposure to risks, such as landslides or flooding, and maintains the natural elements of our landscape.

RCW 36.70a.030(5) defines five types of critical areas:

- Wetlands.
- Fish and wildlife habitat conservation areas.
- Geologically hazardous areas.
- Frequently flooded areas.
- Areas with a critical recharging effect on aquifers used for potable water.

The City has elected to add protection of Cultural Resources as a protected critical area as it is required under Executive Order 05-05. The Executive Order requires agencies to integrate cultural resource reviews into their planning processes. This includes assessing the potential impacts of construction, development, or land use projects on archaeological sites, historic buildings, and other cultural assets.

The attached Exhibits summarize the critical area code elements and regulations, contains the Findings of Fact and Conclusions and the actual critical areas ordinance.

The following changes have been made to the ordinance since the Commission's review on October 14, 2024. These changes were based on comments received from the Department of Ecology, Department of Natural Resources, the Tulalip Tribes and recommendations from the City's municipal code consultant.

General Provisions:

18.800.110(2) – Exceptions
Changed “may” to “shall”.

> The proponent of an activity ***shall*** submit an application for exemption, consistent with SMC Title 18 Part 2, that describes the activity and identifies the applicable exemption from the list in this section. The Director must review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it must be placed on file with the department. If the exemption is denied, the proponent may apply for critical areas review of a non-exempt activity, subject to the requirements of this chapter.

18.800.120(iv) – Allowed Activities
Deleted subsection IV regarding continuation of approved plans. This section limited the approval to 5 years after the permit has lapsed. Since this section required the critical area to be placed in an NGPA or Easement which is recorded against the property, It is not appropriate to reevaluate the approval at a later date.

18.800.120(2)(e) – Allowed Activities
Allows public and private trails within the outer 50% of buffers versus the outer 25%.

18.800.170(6) – Mitigation Plan Requirements
Changed citation reference number to SMC 18.310. This will need to be verified with the amendments to the procedures chapter.

> Financial Guarantees. The mitigation plan must include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures are required in accordance with SMC 18.310.

18.800.180 – Exemption – Reasonable Use
Defines reasonable use as 1,500 square feet for a single-family residence and clarifies that the reasonable use process is not a variance.

18.800.200(4) – Timelines for Variances
Deleted; timeline will default to procedures chapter.

18.800.250 – Bonds
Moved to procedures chapter and re-wrote section to require the applicant to submit a request to defer mitigation and added criteria. The previous language made it sound like the applicant could defer mitigation without city approval and just submit a bond to the city.

18.800.250 Bonds to ensure mitigation construction.

(1) An applicant may submit a request to deter installation of any, or a portion of, their mitigation as required by their permit approval where it is not feasible, practical, or effective prior to the city final permit approval only as follows:

(a) Seasonal or environmental factors affecting site conditions would result in low probability of plant survival;

(b) When project impacts occur in stages, and mitigation is only needed to align with specific phases of the project; or

(c) When compliance with regulatory requirements involves consultations or approvals from other agencies and cannot be finalized at the time of project approval.

(2) If approval is granted by the City, the applicant must post a performance bond or other security in a form and amount deemed acceptable by the city.

(3) Deferral shall only be granted for up to 6 months. One 6-month extension may be permitted under if the applicant provides reasonable justification for the delay.

Wetlands:

18.802.050(3) – Allowed Activities in Wetlands
Changed the width for public and private roads to match city engineering standards.

Public and Private Roadway Crossings, Bridges, and Culverts. Construction of public roadway crossings, culverts and bridges less than or equal to 60 feet wide and private roads, bridges or culverts less than or equal to 20 feet long, are subject to the following standards:

18.802.060 - Buffers
The buffers have been modified to be consistent with the Department of Ecology's best available science for Western Washington using habitat score ranges. Buffer widths for wetlands with habitat scores of 3-5 have remained the same, but the buffer widths for wetlands with higher habitat scores have increased between 40 – 75 feet. The table below shows the new buffers and the change differential in parenthesis.

Table 18.802.060-1 Wetland Buffers

	Buffer Width (in feet) based on habitat score		
Wetland Category	**3-5**	**6-7**	**8-9**
Category I: Based on Total Score	75	150 (+40)	300 (+75)
Category I: Bogs and Wetlands of High Conservation Value	190	190	300 (+75)
Category I: Forested	75	150 (+40)	300 (+75)
Category I: Estuarine and Coastal Lagoons	150	150	150
Category II: Based on Total Score	75	150 (+40)	300 (+75)
Category III: All	60	150 (+40)	300 (+75)
Category IV: All	40	50 (+40)	50 (+75)

In addition to buffer averaging, the following buffer adjustment options are provided in the code to provide some flexibility in site design.

Category IV Wetlands Less Than 4,000 Square Feet: These wetlands are not subject to the avoidance and minimization requirements, and they may be filled if the impacts are fully mitigated through the purchase of credits from a mitigation bank or an in-lieu fee program.

Wetlands Less than 1,000 Square Feet: Most Category IV wetlands are exempt from the buffer provisions.

Functionally Disconnected Buffers: Buffers may exclude areas that are functionally and effectively disconnected from the wetland by an existing public or private road, or other legally established development.

18.802.060(3) – Buffers

Clarified that wetland minimization measures are required, in addition to stated buffers.

The following impact minimization measures are required along with the buffers noted in Table 18.802.060-1:

18.802.090 – Replacement Ratios

If wetlands are impacted, mitigation must be provided in an amount necessary to successfully replace the existing wetland functions and values. The code encourages the use of mitigation banks, but if a bank is not available, the following mitigation ratios are applied. Expanded the types of mitigation ratio options based on Department of Ecology's guidance.

Table 18.802.090-1 Replacement Ratios

Wetland Category	Re-Establishment of Creation	Rehabilitation	Preservation	Enhancement	Other
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consult with WA DNR	As Determined by the Dept. of Ecology or Corp of Engineers
Category 1 – Forested	6:1	12:1	24:1	24:1	
Category 1 – Bogs	N/A	N/A	24:1	N/A	
Category 1 – Estuarine	3:1 (Re-establishment only)	6:1	12:1	Limited Circumstances (case by case)	
Category I – All Others	4:1	8:1	16:1	16:1	
Category II - Estuarine	4:1 (Re-establishment only)	8:1	16:1	Limited Circumstances (case by case)	
Category II – All Others	3:1	6:1	12:1	12:1	
Category III	2:1	4:1	8:1	8:1	
Category IV	1.5:1	3:1	6:1	6:1	

Fish and Wildlife Habitat Conservation Areas:

18.804.040 Mapping – added new language and section for mapping of critical habitat – in addition to fish:

18.804.040 Mapping

The approximate location and extent of fish and wildlife habitat conservation areas are shown on the City's critical area maps contained in the comprehensive plan. These maps shall be used as a general guide only and actual type, extent and boundaries shall be determined by a qualified biologist.

(1) The City and Washington State DNR maintain hydro-watercourse maps which may be used as a guide to identification of stream types, but not as a definitive declaration of stream type. To establish the stream type for the purposes of this chapter, stream typing must generally include on-site reconnaissance by a qualified biologist.

(2) Critical habitat is the specific areas within the geographic area, occupied by the species at the time it was listed, that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that

may need special management or protection. Washington State Department of Fish and Wildlife maintains a Priority Habitats and Species Website which contains on-line maps which can be used as a guide to identify potential development impacts on species.

18.804.060 Buffers

Added new section (2) for buffers associated with wildlife habitat – not fish related.

Buffers for state or federally designated endangered, threatened, and sensitive species per SMC 18.804.020(2) shall be established per an approved habitat management plan as described in SMC 18.804.090.

18.804.080 Critical Areas Report

Added new subsection (2), Mitigation for fish and wildlife habitat conservations area, which was missing in the code. Now subsection 1 refers to streams and section 2 refers to wildlife habitat.

2. Wildlife Habitat:

(a) If a habitat assessment is required, it shall be integrated into the critical area study as described in subsection 1 above;

(b) A map drawn to scale or survey showing the location and description of the primary association area(s) of the species or natural habitats on the property;

(c) Physical and biological features that the species needs for life processes including:

(i) Space for individual and population growth for normal behavior;

(ii) Cover or shelter;

(iii) Food, water, air light minerals, or other nutritional or physiological requirements;

(iv) Site for breeding and rearing offspring, germination, or seed dispersal; and

(v) Habitats that protected from disturbances or are representative of the historical geographical and ecological disturbances of the species;

(d) If the habitat assessment identifies a fish and wildlife habitat conversation area is present or adjacent to a development, then a habitat management plan shall be prepared and integrated into the critical areas report.

18.804.090 Mitigation and Management Requirements

New section regarding mitigation for fish and wildlife habitat conservation areas.

18.804.090 Mitigation and management requirements

If the habitat assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conversation area, the applicant shall provide a habitat management and mitigation plan prepared by a qualified biologist for evaluation by the city, state and federal agencies.

(1) Habitat management and mitigation plan shall be based on the most currently available best available science to minimize impacts associated with development. The following shall be used as guidance documents when preparing the plan:

  (a) Washington State Department of Fish and Wildlife Priority Habitats and Species (PHS) Program;

  (b) Washington State Department of Fish and Wildlife Land Use Planning for Salmon, Steelhead, and Trout guidance paper;

  (c) Governor's Salmon Recovery Office and Recreation and Conservation Office website for ecosystem connectively and riparian vegetation; and

  (d) Statewide Strategy to Recovery Salmon: the Washington Way.

(2) The habitat management and mitigation plan shall contain:

  (a) A description of how the proposal will avoid, minimize or mitigate impacts to fish or critical species and their habitats;

  (b) A mitigation plan that specifies how functions and values lost as a result of the activity will be replaced;

  (c) Specifications when and how mitigation will occur relative to construction;

  (d) Performance standards for monitoring and maintenance of the mitigation area; and

  (e) Calculation of performance and maintenance surety amounts.

Geological Hazardous Areas:

18.806.020(3)(e) Geologic Hazards Areas

Added "including stream channel migration zones" to statement as recommended in State Critical Areas Checklist.

> Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

Cultural Resources:

18.812.030(3)(c) Cultural Resources

Added “if applicable” in case the City adopts a local register in the future.

The property is listed in a local register of historic places, if applicable;

Definitions:

Added new Exhibit B to the ordinance containing the following definitions.

Term	Definition
Fish and Wildlife Habitat Conservation Areas	Means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.
Geologically Hazardous Areas	Means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.
Habitat Assessment	Means a site-specific evaluation to determine the location, extent and function of fish and wildlife habitat on a property. It involves identifying and analyzing physical, biological, and environmental factors to determine the habitat's ability to support specific species, biodiversity, and ecosystem processes.
Habitat Management Plan	Means a mitigation plan that outlines specific actions and practices to conserve, restore, and enhance habitats to support targeted species, biodiversity, or ecosystem functions.
Qualified Professional:	
Wetlands or Fish and Wildlife	A person with a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries,

	Habitat Conservation Areas	geomorphology or related field, and two years of relevant work experience.
	Geologically Hazardous Areas	A geotechnical engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and groundwater flow systems; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with experience analyzing geologic, hydrologic and groundwater flow systems, who has experience preparing reports for the relevant type of hazard.
	Critical Aquifer Recharge Areas	A hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.
	Frequently Flooded Areas	A hydrologist or engineer and who is licensed in the state of Washington with experience in preparing flood hazard assessments.

Public Hearing:

The purpose of the public hearing is to provide a formal opportunity for the community, agencies and stakeholders to comment on and participate in the adoption process. The Planning Commission has the option to continue the public hearing or close the public hearing and deliberate on the ordinance prior to making a recommendation to the City Council.

Public Hearing Procedure:

Below is the recommended procedure for managing the Critical Areas Code Amendment public hearing:

1. Open the Public Hearing;
2. Receive the staff presentation and ask questions;
3. Take public testimony and ask questions (if any);
4. Ask any additional questions of staff;
5. Deliberate on the draft ordinance and suggest edits to the code based on public testimony received; and
6. Public Hearing Options:
    6a. Continue the public hearing to the February 10, 2025, meeting date or
    6b. Close the Public Hearing and forward a recommendation to the City Council

Draft Motions:

Option1 - Continue the Public Hearing

I move to continue the public hearing on the Critical Areas Code Amendment to February 10, 2025.

Option 2 – Forward a Recommendation to the City Council:

- *Motion 1: Findings of Fact and Conclusions*

  I MOVE TO APPROVE THE FINDINGS OF FACT AND CONCLUSIONS FOR THE CRITICAL AREAS CODE AMENDMENT AS *PRESENTED*.

  OR

  I MOVE TO APPROVE THE FINDINGS OF FACT AND CONCLUSIONS FOR THE CRITICAL AREAS CODE AMENDMENT AS *AMENDED*.

- *Motion 2: City Council Recommendation*

  I MOVE TO RECOMMEND APPROVAL OF THE CRITICAL AREAS CODE AMENDMENT TO THE STANWOOD CITY COUNCIL AS *PRESENTED*.

  OR

  I MOVE TO RECOMMEND APPROVAL OF THE CRITICAL AREAS CODE AMENDMENT TO THE STANWOOD CITY COUNCIL AS *AMENDED*.

Unified Development Code: Housing and Flexibility Discussion:

During the 2023 and 2024 Legislative Sessions, Washington State legislators passed several new laws governing housing. These laws were enacted in response to the Washington State housing crisis declared by Governor and are intended to promote housing production and affordability. These laws include:

Law	Topic	Mandatory / Discretionary
HB 1042 (RCW 35A.21)	Allow additional housing units in existing buildings.	Mandatory
HB 1337 (RCW 36.70A.680 / 681 - GMA)	Allow two Accessory Dwelling units per lot.	Mandatory
RCW 36.70A. 130 (GMA)	Directs local governments to plan for and accommodate housing affordable to all economic segments of the population, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.	Mandatory; But Discretionary for Stanwood to Determine Location and Type
HB 1220 (RCW 35A.21.430)	Provide emergency shelters, transitional housing, emergency housing, and permanent supportive housing.	Mandatory
HB 1998 (RCW 36.70A.535 – GMA)	Allow co-living housing units in zones that allow 6 or more units per acre.	Mandatory
HB 5258 (RCW 58.17.060)	Allow unit lot subdivisions to facilitate the sale of missing middle housing or accessory dwelling units on fee simple lots.	Mandatory

In January, the Planning Commission began the discussion on updating the Permitting Use Matrix of the new Unified Development Code. This introductory meeting summarized key issues that need to be addressed, prohibited uses, and lot development flexibility. This month's discussion will focus on the 2023 / 2024 state laws regarding housing and subdivision flexibility.

Much of the information provided below are either direct excerpts from the RCW's or summaries provided by MRSC (Municipal Research and Services Center).

Housing Units in Existing Buildings:

HB 1042 is intended to promote the conversion of existing commercial and mixed-use buildings to multi-family housing. GMA-planning cities must amend their development regulations to remove barriers and promote the conversion no later than six months after their next periodic update. For Stanwood, the deadline is June 30, 2025. If cities do not amend their development regulations, state law will preempt local regulations and the new provisions will apply.

- Allowing a 50% density increase above what is permitted in the underlying zone if the housing is constructed entirely within the envelope of an existing building, provided that generally applicable health and safety standards can be met;

- Prohibiting the imposition of parking standards on the additional dwelling units (however, cities may require retention of existing parking required to satisfy existing residential parking requirements under local law and for any nonresidential uses that remain after new units are added);

- Prohibiting imposing additional permitting requirements on use of existing buildings beyond those applicable to all residential development in the zone, with the exception of emergency and transitional housing;

- Prohibiting the imposition of additional design standards beyond those generally applicable to all residential development in the zone;

- Prohibiting requiring that unchanged portions of an existing building used for residential purposes meet the current energy code (however, if any portion of an existing building is converted to new dwelling units, the new units must meet the current code); and

- Prohibiting denial of a building permit based on certain existing nonconformities unless a city official with decision-making authority makes findings that the nonconformity is causing a significant detriment to the surrounding area.

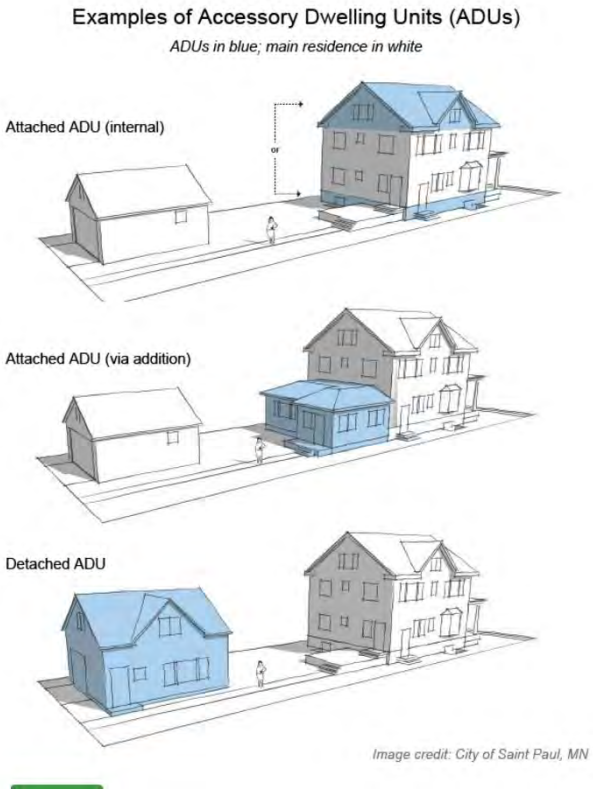
Accessory Dwelling Units:

Since HB 1337 became effective in July 2023, state law (RCW 36.70A.680 and 36.70A.681) requires all local governments planning under the Growth Management Act (GMA), regardless of population and including counties (unincorporated urban growth areas) as well as cities, to revise their regulations as needed to conform, within six months after their periodic update due date, with the following requirements:

- *Minimum number of ADUs per lot*: Two ADUs per lot must be allowed in all GMA urban growth areas, in addition to the principal unit, for lots that meet the minimum lot size required for the principal housing unit. Local regulations must permit ADUs to be attached, detached or a combination of both types. In addition, a conversion of an existing structure, such as a detached garage, must be allowed.

- *Maximum ADU size standard*: Local governments may not require ADUs to be smaller than 1,000 gross square feet in size.

- *Dimensional standards*: A local government may not impose setback requirements, yard coverage limits, tree retention mandates, or restrictions on entry door location that are more restrictive than those required for the principal unit.



- *Street improvements*: A local government may not require street improvements as a condition of permitting accessory dwelling units.

- *Owner occupancy*: A local government may not require owner occupancy for a principal unit or ADUs.

- *Condominium sales*: Local governments may not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an ADU.

- *Design review*: Local governments may not impose aesthetic standards or requirements for design review that are more restrictive for ADUs than those for principal units.

- *Required parking*: There are restrictions on how much on-site parking can be required, with a sliding scale for smaller-sized lots. No on-site parking standards may be applied to ADUs located within a half-mile of a major transit stop.

- *Impact fees*: Impact fees for ADUs are limited to no more than 50% of those assessed to the principal housing unit.

- *Common Interest Communities*: New “Common Interest Communities” (for example, a new subdivision with a homeowner’s association) are prohibited from adopting covenants, conditions, and restrictions (commonly called “CC&Rs”) that would limit the construction of ADUs on any lot. Existing CC&Rs, however, are not impacted by the new law and may remain in effect.

Missing Middle Housing:

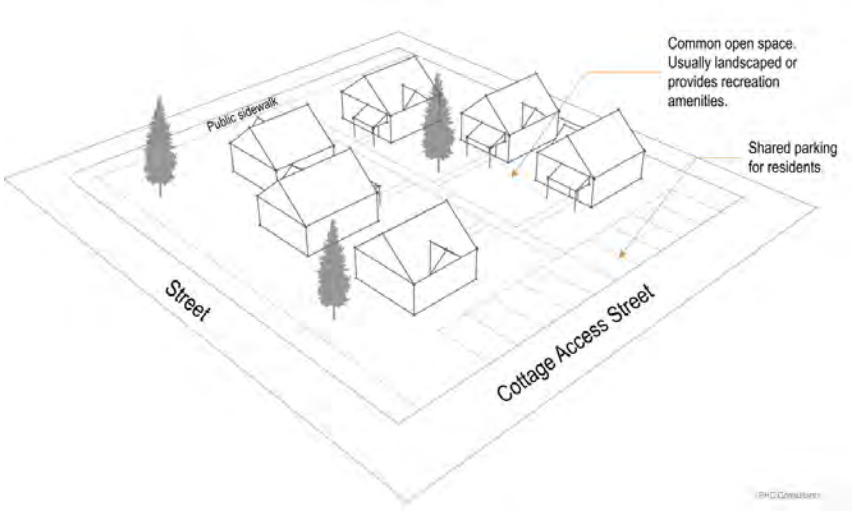
In 2023 the State Legislature passed HB 1110 which requires cities and counties to allow middle housing in their residential zoning districts. While Stanwood is not required to meet the density / requirements of that house bill, the city is required to provide missing middle housing options per the Growth Management Act and the Comprehensive Plan. The difference is we have more flexibility, or local control, on how and where missing middle housing is allowed.

> "Middle housing" is defined as “buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.”

Middle housing is not a new concept to Stanwood. There are several projects in town that include missing middle housing; the Traditional Neighborhood zone actually requires three different housing types. Below are some examples in Stanwood.

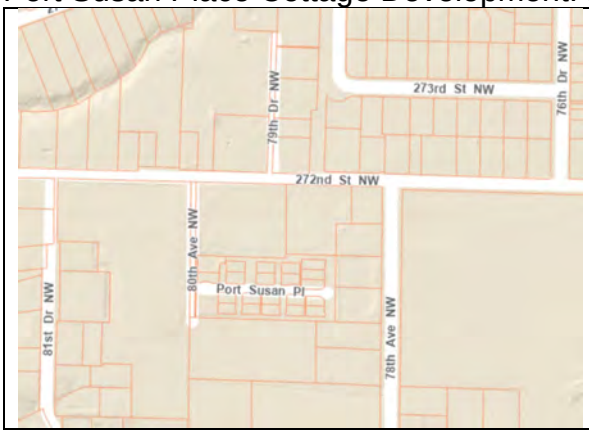
Cottage Housing:

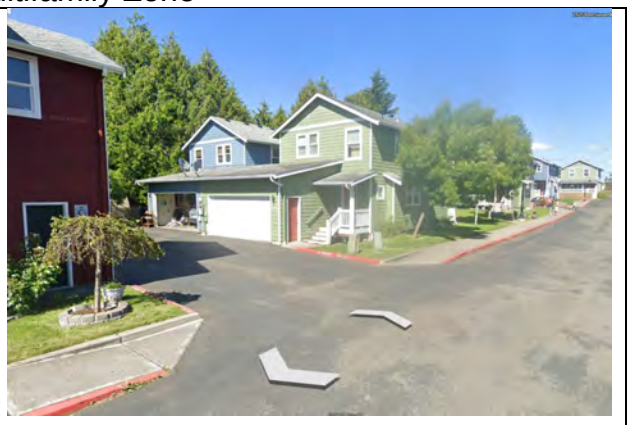
Cottage housing is defined in the Stanwood Municipal Code as: “a minimum of four small detached single-family homes located together in a neighborhood format around common open space and intended to provide higher density alternative housing choices for retirees, singles, or smaller families.” The adjacent diagram shows a sample cottage housing layout concept.



The following are examples of existing cottage style projects in Stanwood.

Port Susan Place Cottage Development: Multifamily Zone





Housing Hope – Lincoln Hill Village on 72nd Avenue: Multifamily Zone next to SFR

Cottages in Cedarhome Square Plat – 68th Avenue and 284th Street: TN Zone

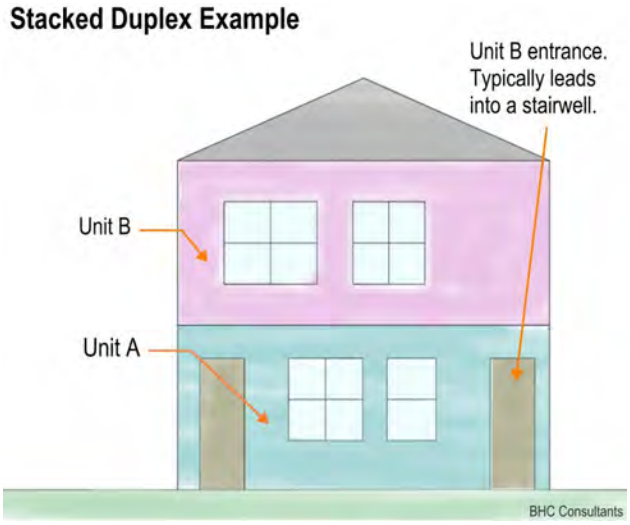
Sample Cost Analysis – 2024 Snohomish County Assessor Data:
Traditional SFR: $482,700
Building Size: 1,906 sf
Value per Square Foot: $253

Cottage Valuation: $390,300
Building Size: 1,140 sf
Value per Square Foot: $342

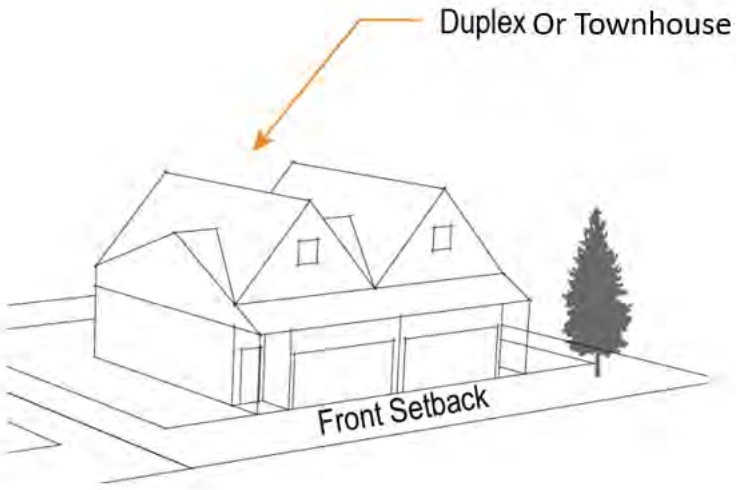
Duplex / Townhome Development:

Duplex and 2-unit townhouses names have been interchangeable, but the main difference is that duplexes can be either side by side or stacked. Townhouses must be side by side with a common wall. They are defined as follows in the Municipal Code:

Duplex means a detached building, designed for or occupied exclusively by two families living independently of each other.

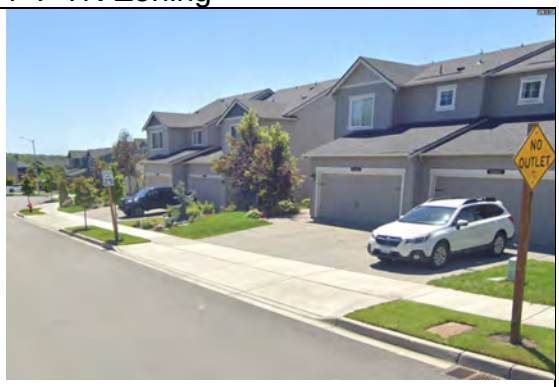


Townhouse or rowhouse means a dwelling unit designed exclusively for occupancy by one family, no portion of which lies vertically under or over any portion of an adjacent unit, and which is attached to one or more other dwelling units by common walls which may be located on side lot lines.



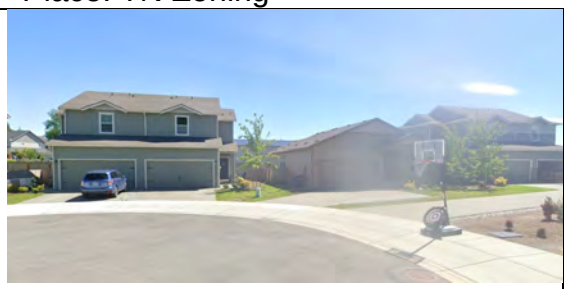
The following are examples of existing duplex / townhouse style projects in Stanwood.

Townhouses in Cedarhome Square Plat off of 284th: TN Zoning



2024 AV: $437,600
Building Size: 1,593 sf

Duplex / Townhouse in Cedar Hill Estates – 285th Place: TN Zoning



Traditional SFR AV: $457,800
Duplex / Townhouse AV: $414400

Townhouse Complex South of YMCA: SFR 5.0 Zoning

Sample Townhouse AV: $445,000

New 3 Unit Townhouse Building in Downtown: 94th Avenue – DMU Zoning (OLD MBI)

Townhouse AV: $450,500

Below is a copy of the existing permitted use matrix. There is very little flexibility to add different housing types in traditional residential zones. Adding some middle housing to traditional single family zones can provide housing diversity, opportunities for downsizing and entry level units. Middle housing offers a range of housing sizes and prices, appealing to various income levels and household types.

Permitted Use Table: Residential Zones

Land Use	Permit Type	SR 12.4	SR 9.6	SR 7.0	SR 5.0	MR	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Congregate Care Facility	P-III					C(6)	A residential facility for the elderly and/or handicapped persons.
Daycare, Home	P-I	AC(7)	AC(7)	AC(7)	AC(7)	AC(7)	Care for children under the age of 12 or seniors located in the family dwelling accommodating 12 or fewer.
Dwelling, Accessory	P-I	AC(8)	AC(8)	AC(8)	AC(8)		A secondary living unit that is located on the same property as the primary dwelling.
Dwelling, Cottage	P-III	P(9)	P(9)	P(9)	P(9)		A minimum of 4 small detached single-family homes located together in a neighborhood format around common open space.
Dwelling, Duplex	P-I				P(10)	P	A detached building, designed for 2 families living independently of each other and divided by a common wall.
Dwelling, Multiple-Family Development Up to 20 Units	P-I					P	A building designed for 3 or more families living independently of each other, including apartment houses but not including hotels, trailers, or mobile/manufactured homes.
Dwelling, Multiple-Family Development 21 Units or Greater	P-II					P	A building designed for 3 or more families living independently of each other, including apartment houses but not including hotels, trailers, or mobile/manufactured homes.

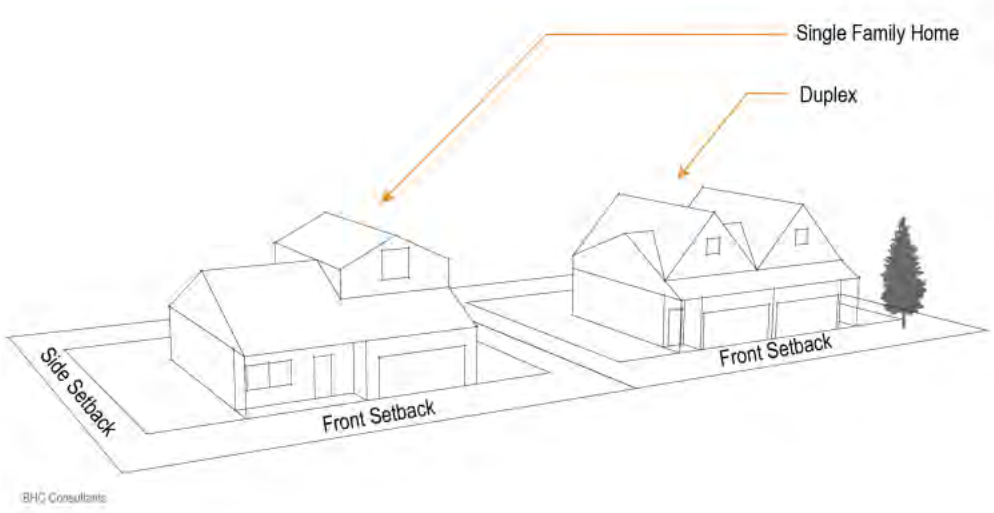
Permitted Use Table: Residential Zones

Land Use	Permit Type	SR 12.4	SR 9.6	SR 7.0	SR 5.0	MR	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Dwelling, Single-Family	P-I	P	P	P	P	P	A detached building designed for or occupied exclusively by 1 family.
Dwelling, Townhouse	P-I				C	P	A dwelling unit that is: occupied by 1 family; has no units above or under it; and is attached to other units by common side walls.

Suggested Amendments could include:

- Adding duplex and 2 attached townhouse to the SR 9.6 and 7.0 zone.
- Limit the number of missing middle units in subdivisions to 30% of the total number of lots in a new development.
- Allow infill units to include duplex or townhouses if lot size is larger.
- Change the townhouse allowance in the SR 5.0 from conditional use to permitted use

The attached graphic shows how a duplex / townhouse would look adjacent to an existing detached single-family residence on a similar sized lot.



Site Specific Example in Stanwood:

Emergency Shelters, Transitional Housing, Emergency Housing & Permanent Supportive Housing:

State law now requires cities and counties to provide various supportive housing options. The following must be allowed in the City of Stanwood.

Emergency Shelters:

RCW 36.70a.030(15), defined emergency shelter as "a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations."

Transitional Housing:

WAC 458-16-320 defines transitional housing as a facility that provides housing and supportive services to homeless individuals or families for up to two years and whose primary purpose is to enable homeless individuals or families to move into independent living and permanent housing.

Emergency Housing:

RCW 36.70a.030(14), definitions define emergency housing as "temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families."

WAC 458-16-320 further defines emergency housing as a facility whose primary purpose is to provide temporary or transitional shelter and supportive services to the homeless in general or to a specific population of the homeless for no more than sixty days.

Permanent Supportive Housing:

RCW 36.70a.030(31) defines permanent supportive housing as subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

State mandates for siting such facilities include:

- A city shall not prohibit transitional housing or permanent supportive housing in any zones in which residential dwelling units or hotels are allowed. RCW 35.21.683

- A city shall not prohibit indoor emergency shelters and indoor emergency housing in any zones in which hotels are allowed. RCW 35.21.683

- A city shall not prohibit transitional housing or permanent supportive housing in any zones in which residential dwelling units or hotels are allowed. RCW 35.21.684

- Reasonable occupancy, spacing, and intensity of use requirements may be imposed by ordinance on permanent supportive housing, transitional housing, indoor emergency housing, and indoor emergency shelters to protect public health and safety. RCW 35.21.684

Residential Code Gap: Existing City code addresses Transitional Housing, Emergency Shelters, and Emergency Housing. However, it does not address Permanent Supportive Housing.

City residential code needs to be updated to add Permanent Supportive Housing in all residential zoning districts.

Permitted Use Table: Residential Zones

Land Use	Permit Type	SR 12.4	SR 9.6	SR 7.0	SR 5.0	MR	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Transitional Housing	P-II	P	P	P	P	P	Temporary housing for individuals and families for periods up to 2 years. Such facilities may also include job and/or self-sufficiency training and other supportive services to help people transition to independent living.

Permitted Use Table: Residential Zones

Land Use	Permit Type	SR 12.4	SR 9.6	SR 7.0	SR 5.0	MR	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Emergency Shelter	P-I	P	P	P	P	P	"Emergency shelter" means an indoor facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.
Emergency Housing	P-I	P	P	P	P	P	"Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that are intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

Commercial & Industrial Code Gaps:
The State requires that all of the above-mentioned housing types be allowed in the same zones as hotels.

Permitted Use Table: Commercial and Mixed-Use Zones

Land Use	Permit Type	TN	DMU	NB	GC	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Hotel	P-I		P/C(7)		P	Any building containing more than 6 guest rooms intended to be used, rented or hired out to be occupied for sleeping purposes.

Permitted Use Table: Commercial and Mixed-Use Zones

Land Use	Permit Type	TN	DMU	NB	GC	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Emergency Housing	P-I		C(7)		C(7)	A facility whose primary purpose is to provide temporary shelter and supportive services to those experiencing homelessness for no more than 60 days.

Emergency Shelters, Transitional Housing and Permanent Supportive Housing need to be added to the commercial and industrial zones.

Permitted Use Table: Industrial Zones

Land Use	Permit Type	PI	GI	Abbreviated Definition (Chapter 17.20 SMC Contains Full Definition)
Hotel	P-I	P(8)		Any building containing more than 6 guest rooms intended to be used, rented or hired out to be occupied for sleeping purposes.
Resort	P-III	P(8)		A hotel that serves as a destination point for visitors; generally provides recreational facilities for paying guests on vacation.
Residential				
Emergency Housing	P-I	C(8)		A facility whose primary purpose is to provide temporary shelter and supportive services to those experiencing homelessness for no more than 60 days.

Co-Living Housing:

Co-housing in another housing type that the state legislature included in their 2024 housing bills. RCW 36.70a.535 mandates that cities planning under the Growth Management Act allow co-housing units as a permitted use on any lots that allows six multifamily residential units or more and in mixed-used zones. For Stanwood, co-housing must be allowed in our Downtown Mixed Use (DMU), Multifamily (MR) and Traditional Neighborhood – Mixed-Use (TN – MU) zones.

State law defines co-housing as:

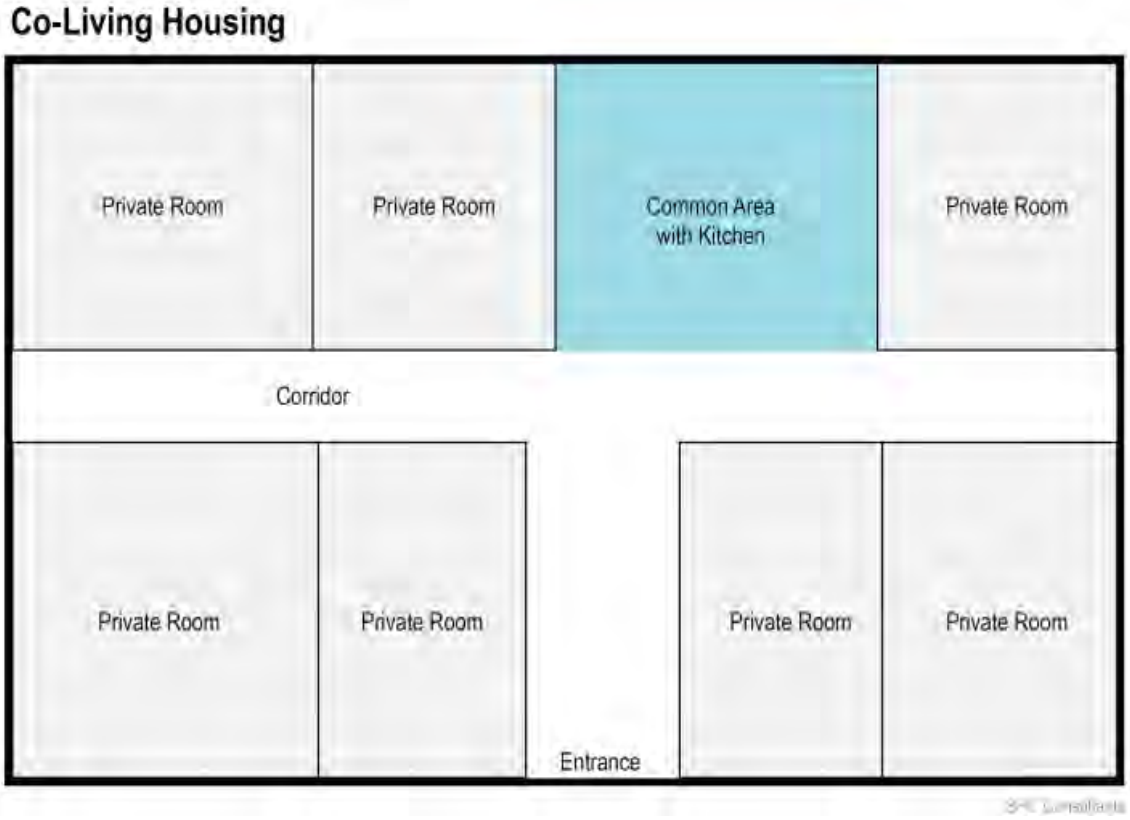
> "Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local

governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.

In the Seattle areas, these types of units are frequently referred to as “micro-units” or “dormitories”. Mandated regulations include:

- Co-living must be allowed on lots zoned for and can accommodate 6 units per acre or greater;
- Jurisdictions cannot require room dimension standards greater that that required by the state building code:
  - 70 square feet for a bedroom or 50 square feet per occupant;
- Jurisdictions can require max unit sizes;
- Share spaces are required: kitchens, lounges, fitness rooms and/or bathrooms. Only kitchens are required by law;
- The number of required off-street parking stalls is limited to 0.25 spaces per sleeping unit and no parking may be required if within a half mile of a major transit stop;
- Jurisdictions may not require any development standards greater than those required of multifamily housing developments: height, setbacks, permitting procedures, open space, design standards, etc.

Example of Co-Living Footprint: Private Rooms with Shared Kitchen / Common Area



Interior Example of Private Living Space from Commerce Guidance Document:

Sleeping unit interiors. Left. Courtesy of Natural and Built Environments, LLC. Right. Courtesy of Neiman Taber Architects.

Example of Common Areas from Commerce Guidance Document:

Examples of common areas. Clockwise from upper left: lounge and common kitchen in the Kärsti, Seattle WA, courtesy of Neiman Taber Architects. Lounge and laundry room in the Yobi in Seatle, WA, courtesy of Neiman Taber Architects. Common kitchen and lounge in Plaza Apartments in Kirkland, WA, courtesy of Natural and Built Environments, LLC.

The Department of Commerce has prepared a draft guidance document on how to implement this law. Below is a sample floor plan showing the co-housing living concept. A copy of the full guidance document is attached.

Unit Lot Subdivisions:

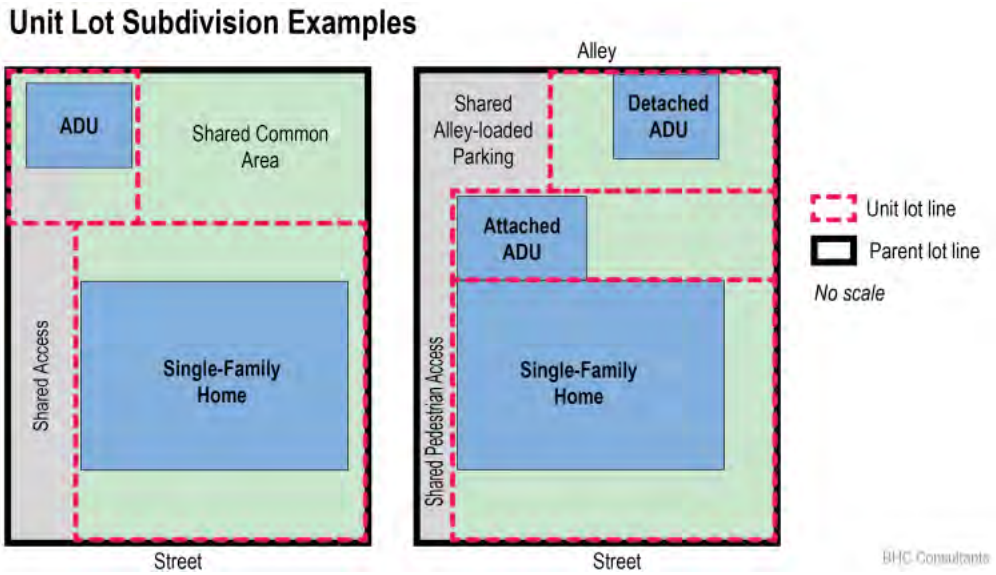
In 2023, the legislature adopted Engrossed Second Substitute Senate Bill (ESSSB) 5258 requiring cities include unit lot subdivisions in their short plat regulations. A unit lot subdivision is a type of land division that allows for the creation of individual lots within a larger development, such as townhouses, condominiums, or other multi-unit residential projects. This approach facilitates the sale of individual units while maintaining shared ownership or responsibility for common areas, utilities, and infrastructure.

The city currently processes land division applications for townhouses through our standard subdivision process, but with the mandate to allow two accessory dwelling units per lot, the unit lot subdivision may become more prevalent.

The unit lot subdivision bill includes an intent statement to "[increase] the supply and affordability of condominium units and townhouses as an option for homeownership." Unit lot subdivisions are one method for dividing multiple housing units on a parcel into individual unit lots for sale to individual owners, providing fee simple homeownership opportunities.

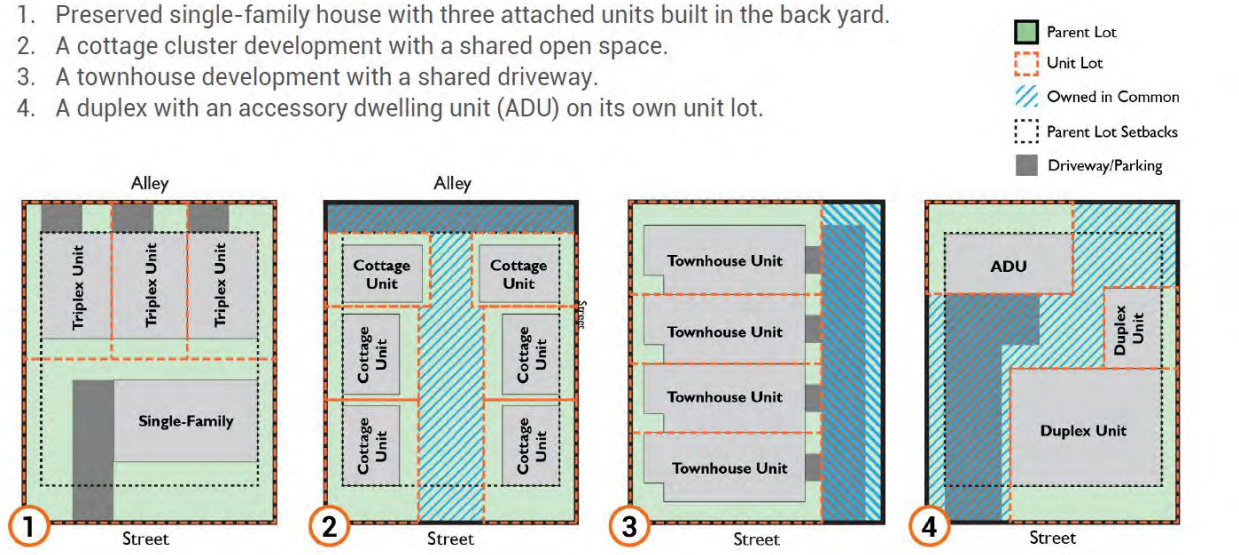
Stanwood's current code allows for the creation of up to nine lots using the short subdivision process; 10 or more lots are subject to the long subdivision process. Short subdivisions are administrative and lot subdivisions require a public hearing.

The adjacent examples show how unit lot subdivisions could work in Stanwood for segregating accessory dwelling units on their own fee simple or condominium lots.



The Department of Commerce has also prepared a guidance document on how to implement the unit lot subdivision rules. Not all of these unit types apply to Stanwood, but the graphic illustrates how unit lot subdivisions work.

1. Preserved single-family house with three attached units built in the back yard.
2. A cottage cluster development with a shared open space.
3. A townhouse development with a shared driveway.
4. A duplex with an accessory dwelling unit (ADU) on its own unit lot.



Split Lot Subdivisions:

The Master Builders Association of King and Snohomish Counties will be submitting a request to their associated legislators to support a split lot subdivision bill in 2025. Split lot subdivisions are similar to short plats in that they divide land into two or more residential lots. The difference between the two is that with split lot subdivisions, many of the infrastructure improvements can be deferred until lot development.

Key differences between subdivision types:

	Split Lot Subdivision	Short Subdivision	Unit Lot Subdivision
Type of Division	Divides Into New Individual Lots	Divides Into New Individual Lots	Divides Units Withing An Existing Lot
Ownership	Fee Simple Independent Lots	Fee Simple Independent Lots	Shared Common Spaces, Utilities And/Or Access
Infrastructure Improvements	Delay If No Roads Or New Utility Lines Or Extensions Are Needed	Full Improvements Required Prior To Final Plat Approval	No Street Improvements May Be Required (ADU's); Utilities Installed With Unit

Examples:

Split Lot Subdivision:

Small – Infill – Subdivisions with Existing Infrastructure

Typically, 1 or 2 lots with no new roads or frontage improvements required.

Driveways or utilities installed with building.

Jurisdiction has authority to limit the number and / or to delay infrastructure improvements such as utility connections with building permits.

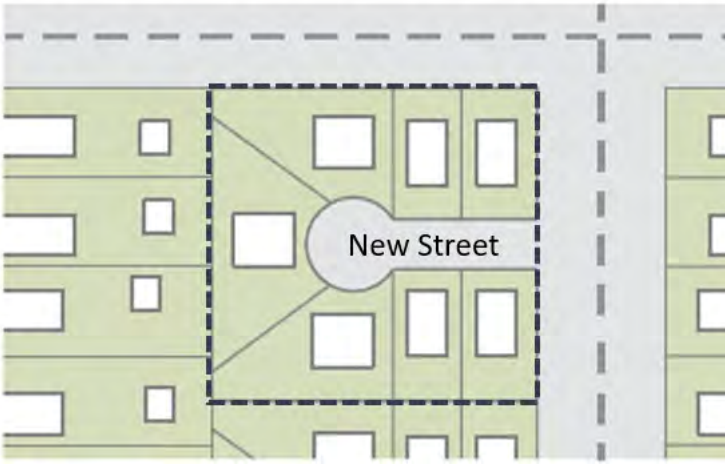
Short Subdivisions:

2-9 lot infill development

New roads or street frontage improvements are needed

New utility lines needed: water, sewer, drainage, power, gas, etc.

Infrastructure needs to be in place prior to final plat approval and selling of the lots.



Lot Flexibility:

Flexibility in lot size and dimensions during the platting process provides numerous benefits for developers, municipalities, and future property owners. Both the Comprehensive Plan and Housing Action Plan support the use of adaptable regulations to support diverse housing needs and sustainable development, all while maintaining the planned density. Lot and dimension flexibility can:

- *Preserve Site Characteristics*: Unique features such as wetlands, mature trees, and challenging topographies can be more easily integrated into designs.
- *Avoid Monotony*: Flexible lot layouts encourage varied housing styles and configurations, mitigating the repetitive appearance often associated with suburban subdivisions.

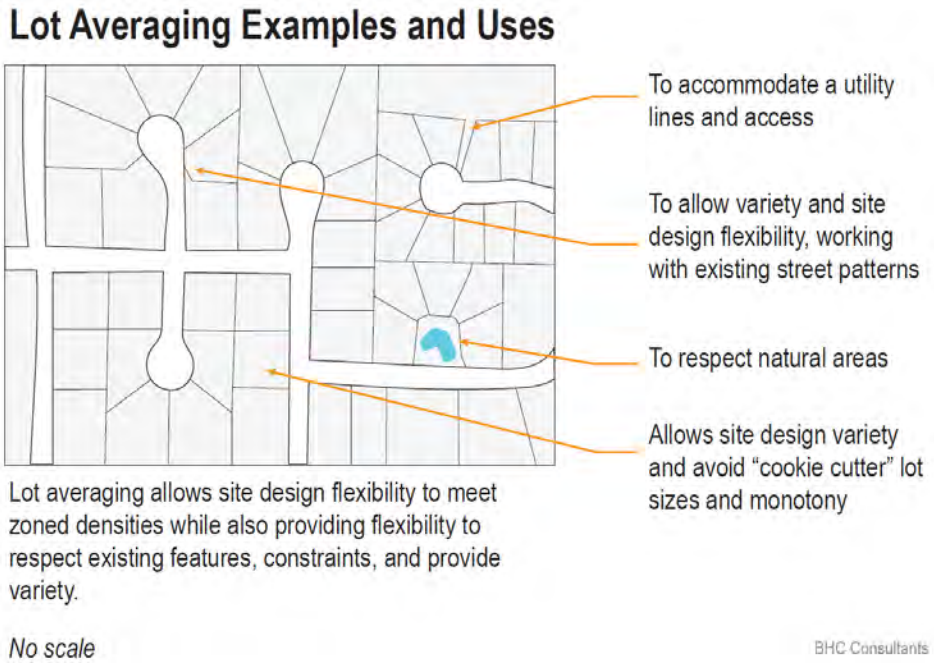
- *Support Housing Diversity*: A mix of lot sizes accommodates a broader range of housing types, making neighborhoods more inclusive and vibrant.

Aligning lot flexibility with existing density goals fosters efficient land use, protects natural resources, and creates communities that reflect both local character and planning vision. The following design approaches can be used to achieve design flexibility while maintaining overall density:

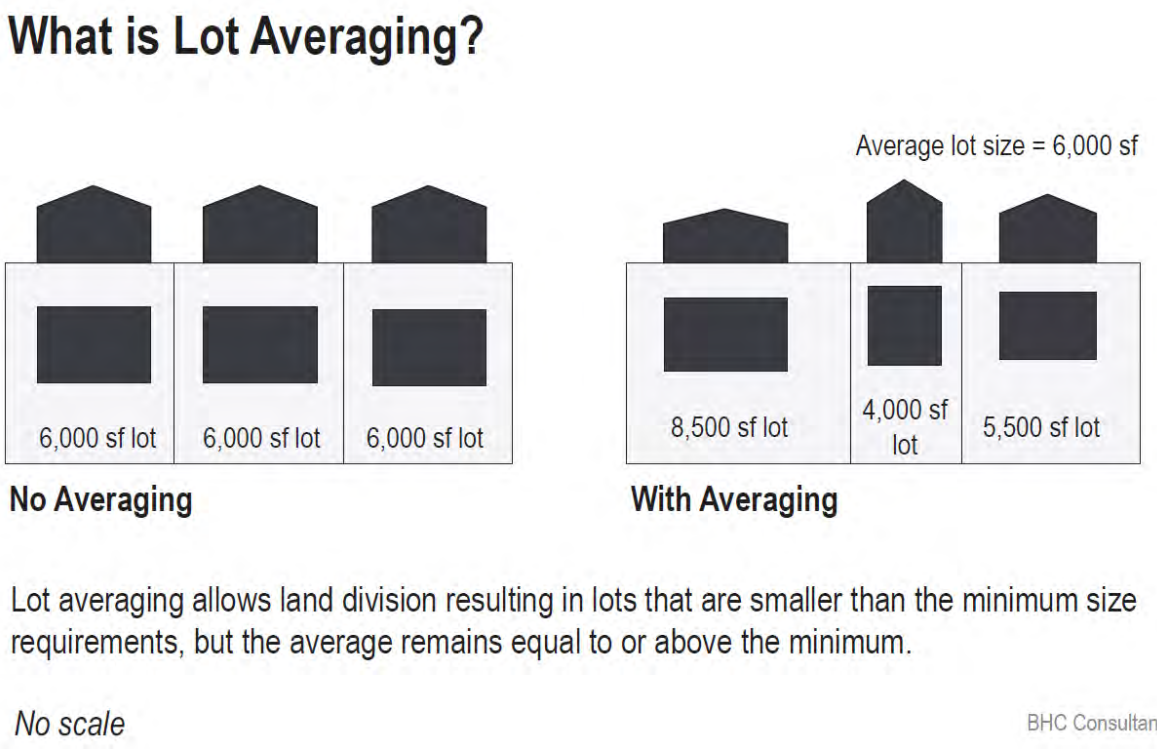
- *Lot Size Averaging*:

  Allows for a mix of smaller and larger lots within a subdivision, provided the average lot size meets the underlying density requirements.

Example: Plat design using lot size averaging, with a mix of lot sizes, while creating a cohesive neighborhood.



Lot size averaging is used for more than just critical areas protection. Averaging lot sizes is useful to accommodate road design, irregular lot shapes, topography and also reduce the monotony of rows of houses.



- *Flexible Setbacks and Frontages*:
  Adjusts traditional setback and frontage requirements to accommodate topography and lot layout; reduces monotony of lot layout.

By leveraging these methods, cities and developers can meet planning goals, maintain desired density, reduce infrastructure costs, protect critical areas and create neighborhoods that are functional, attractive, and resilient.

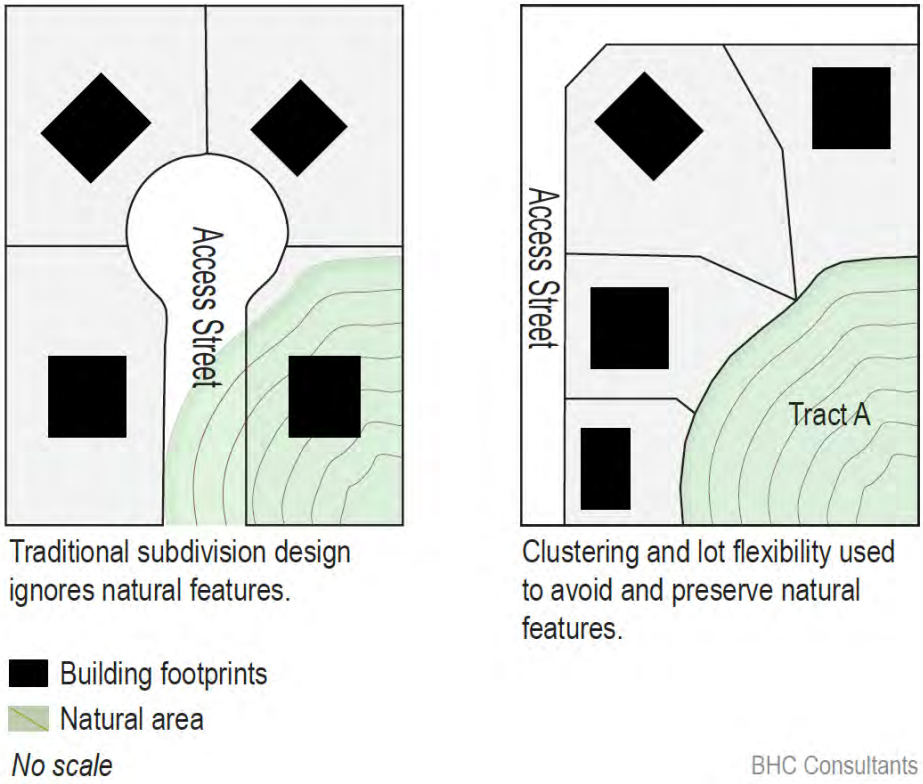
- *Cluster Housing and On-Site Density Transfers*:
  Transfers density rights within the same development to concentrate housing in specific areas while preserving open spaces or critical areas while maintaining existing density levels.

- *Cluster Subdivisions*:

Groups homes on smaller lots to create larger shared open spaces or preserve natural features.

- *On-site Density Transfer*:

Shift density from wetland areas to upland areas, creating clustered housing or other development forms.



Development Code Amendment Suggestions:

The current version of the bulk standards table which includes density, lot sizes and dimension standards is too complex. It contains multiple bulk dimensions for different uses within the same zone.

Existing Bulk Standard	**Proposed:**
Base Standard PRD Review Cottage Accessory Structure Congregate Care	Adopt the PRD review standard as the base standard as the new subdivisions are using PRD standards; this eliminates extra processing and review. Adopt a lot with to depth ratio which allows lot design flexibility while ensuring that newly created lots are not excessively too narrow or deep.

Example:

Lot Creation Standards – Adopting the PRD Standard as the Overall Zoning Standard:

	SR 12.4	**SR 9.6[10, 11, 12]**	**SR 7.0**	**SR 5.0**	**MR**
Density: maximum dwelling unit per gross acre. Density standards are not subject to the variance procedure. ~~Base Standard~~ ~~PRD review~~ ~~Cottage~~	**5** ~~3.5~~ ~~5~~ ~~10~~	**6** ~~5~~ ~~6~~ ~~10~~	**8** ~~6~~ ~~8~~ ~~10~~	**10** ~~10[2]~~ ~~N/A~~ ~~10~~	**20[1]** ~~20[1]~~
Lot Area: minimum square feet for subdivision. ~~Base Standard~~ ~~PRD Review~~ ~~Cottage~~	**10,000** ~~12,400~~ ~~10,000~~ ~~3,000~~	**7,000** ~~9,600~~ ~~7,000~~ ~~3,000~~	**5,000** ~~7,000~~ ~~5,000~~ ~~3,000~~	**5,000** ~~5,000~~ ~~N/A~~ ~~3,000~~	**20,000** ~~20,000~~
Minimum Lot Width to Depth Ratio ~~Base Standard~~ ~~PRD~~	**1:3** ~~100'~~ ~~85'~~	**1:2.5** ~~75'~~ ~~60'~~	**1:2.5** ~~60'~~ ~~50'~~	**1:2** ~~50'~~	**1:1** ~~100'~~

	SR 12.4	SR 9.6[10, 11, 12]	SR 7.0	SR 5.0	MR
~~— Cottage~~	~~50'~~	~~50'~~	~~50'~~	~~N/A~~ ~~50'~~	
~~Minimum Lot Depth~~ ~~Base Standard~~ ~~— PRD~~ ~~— Cottage~~	 ~~100'~~ ~~100'~~ ~~60'~~	 ~~100'~~ ~~80'~~ ~~60'~~	 ~~80'~~ ~~75'~~ ~~60'~~	 ~~75'~~ ~~N/A~~ ~~60'~~	 ~~200'~~

Model Home Development Option:

Developers in Stanwood have requested that the City adopt a model home ordinance which allows the construction of homes in a new subdivision or development before the completion of all infrastructure or final plat approval. It has been requested that the City adopt an ordinance that would allow 4 to 6 homes be built prior to final plat approval. A model home ordinance would allow the developer to build a few houses at the same time as roads and utilities are being installed, giving the developer the opportunity to open a model home, or sell a house as soon as final plat approval is granted.

These homes serve as marketing tools, giving potential buyers an opportunity to preview the houses being built, and it also allows the developer to begin constructing houses sooner and thereby reduce some of the carrying costs on the home. Model home ordinances can be tailored to:

- Single-family subdivisions.
- Townhome or condominium projects.
- Mixed-use developments, integrating commercial and residential spaces.

In Stanwood, developers may build a model home on existing legal lots: if one lot is being subdivided, they may build one house. In considering if the City should adopt a model home ordinance, the following issues should be considered:

- The number of model homes allowed per plat or development;
- When the model home must be converted to standard house;
- Installation of roads, utilities, and safety measures before allowing the public access into the home;
- Model homes must follow the standard permitting process;
- Ensure model homes align with zoning, building codes, and design standards; and
- Adequate bonding is in place in case the development falls through.

Below is a summary of several Cities that have adopted model home ordinances.

Example Provision	Marysville	Snohomish Co.	Monroe	Oak Harbor	Sedro Woolley	Mount Vernon	Poulsbo
Building Permit Required	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Requires all infrastructure to be installed to model homes (roads, fire, sewer, water, stormwater, etc.)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Has max # of Units	9	9	20% of total lots, or a max of 7	20% of total lots, or a max of 9	9	20% of total lots, or a max of 9	4

Occupancy before final plan approval?	No	Yes, with conditions	No	No	Yes, with conditions	For only one home.	No
Allowance or Sales office	No	Yes	Yes	No	Yes	Yes	No
Duration limit?	No	No	Yes, 24 months				
Bond required for removal and restoration	No	No	Yes	Yes	Yes	Yes	Yes

2024 Year in Review:

At the beginning of each year, staff presents to the Planning Commission and Community Development Committee a year in review summary of the work accomplished. During 2024 the Community Development Department workload included:

Parks:

- Prepared a Forest and Trail Management Plan for Church Creek Park
- Adopted the 2024 Parks, Recreation and Open Space Plan

Long Range Planning:

- Staffed the Planning Commission
- Adopted the following amendments to the Stanwood Municipal Code:
  - Title 7 – Health and Sanitation
  - Title 8 – Animals
  - Title 10 – Vehicles and Traffic
  - Title 11 – Streets and Public Rights-of-Way
  - Title 14 – Building Code
  - Fire Works Code Amendment
  - Complete Streets Code Amendment
  - Construction Noise Ordinance
- Adopted the 2024-2044 Comprehensive Plan

Economic Development/City Beautification:

- Staffed the Economic Development Board
- Continued Implementation of the Storefront Improvement Program – 2 New Agreements
- Implemented the 88th Avenue Arch banner art project
- Worked on Concept Plans for the Brick Road
- Designed the 88th Avenue, Mid-Block and 84th Avenue intersection projects in the East End Historic District Area

- Staffed, processed, and / or participated in approximately 23 special events including: summer concerts series, movies in the park, national night out, touch-a-truck, parades, car show, ghouls night out, light up your holidays, glass quest, 5-K runs, the historic site tour and the Camano arts tour.
- Supported business ribbon cutting events
- Published 3 Community Newsletters

Current Planning:

- Subdivisions
    - Issued preliminary plat approval for Faulkner
    - Issued civil construction plans for Meadowhawk
    - Issued final plat approval for Summerset Springs (Summerset Division II)

- Site Development
    - Issued civil construction plans for Cedarside Commons
    - Issued site development approval for a 3-unit townhome infill project
    - Issued civil construction plans for the Wolfkill property
- The City issued 26 new single-family homes, and 3 townhouses this year.

***Permit Activity Review*:**

The number of permits submitted per year reflects the Community Development Departments workload: each permit submitted is processed and reviewed by city planners, the building official and / or the City engineering team. The numbers reflected in the data below is as of December 1, 2024. There is the possibility that one or two of the multifamily buildings in Cedarside Commons project may be issued before the end of the year. If that occurs, updated tables will be provided at the January meeting.

The data reveals a consistent volume of permit activity in Stanwood over the last three years, reflecting steady development trends. Below are key highlights from the analysis:

Permit Volume Trends:

- 2022: 429 permit applications
- 2023: 489 permit applications
- 2024: 475 permit applications

Building Permits:

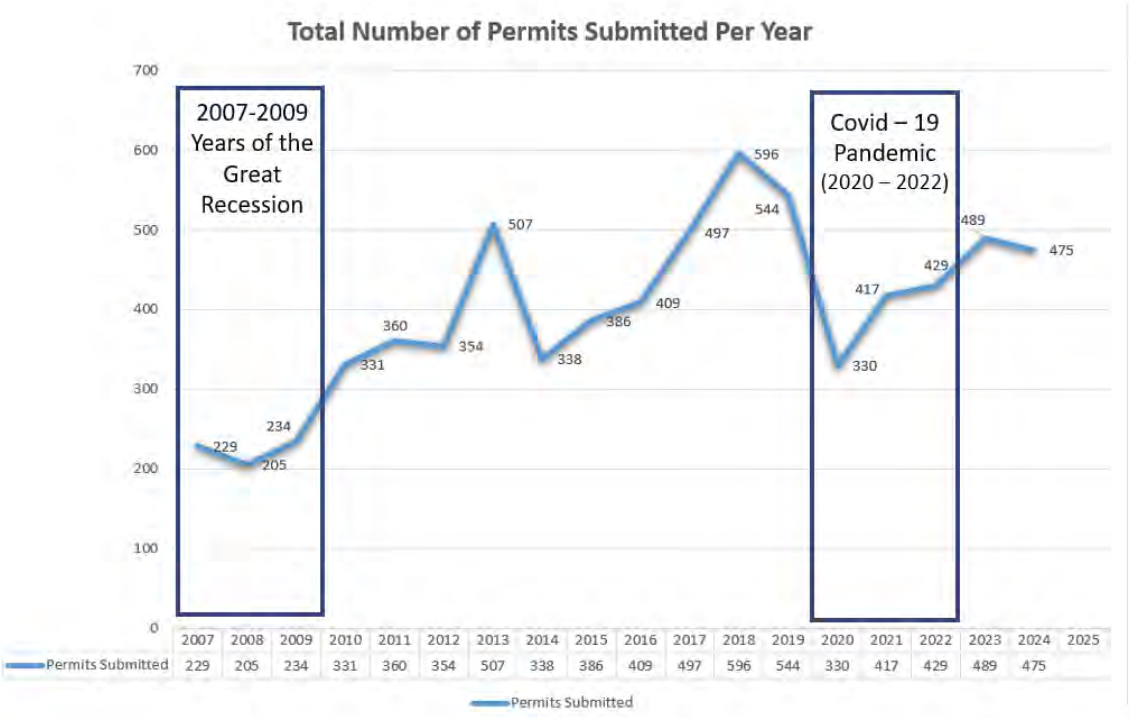
- The majority of building permits submitted include mechanical permits, new single-family/townhouse units, residential remodels, plumbing permits, and fire permits.
- Indicates a focus on residential development and upgrades.

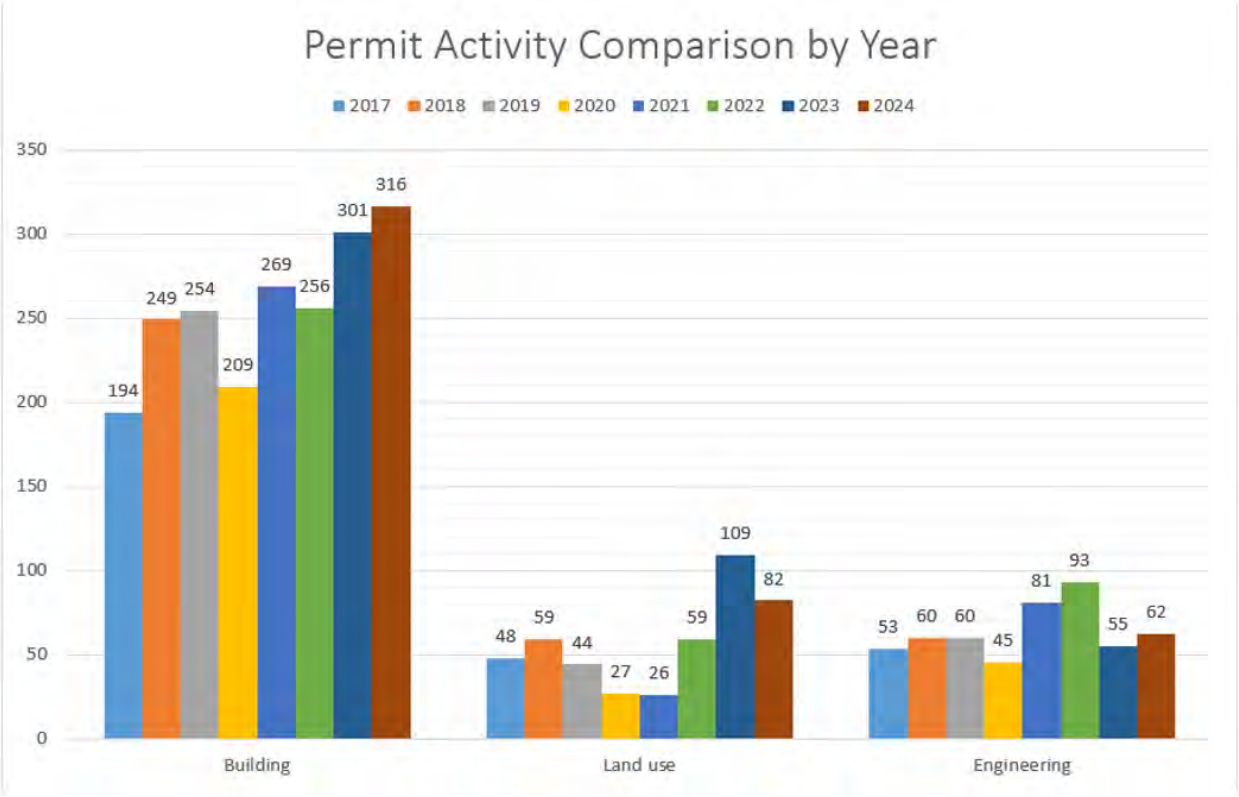
Land Use Applications:

- Act as a precursor to future building permit submissions.
- 2024 saw submissions for two short plats and one long plat, suggesting moderate growth in parcel development over the next year.

Engineering Permits:

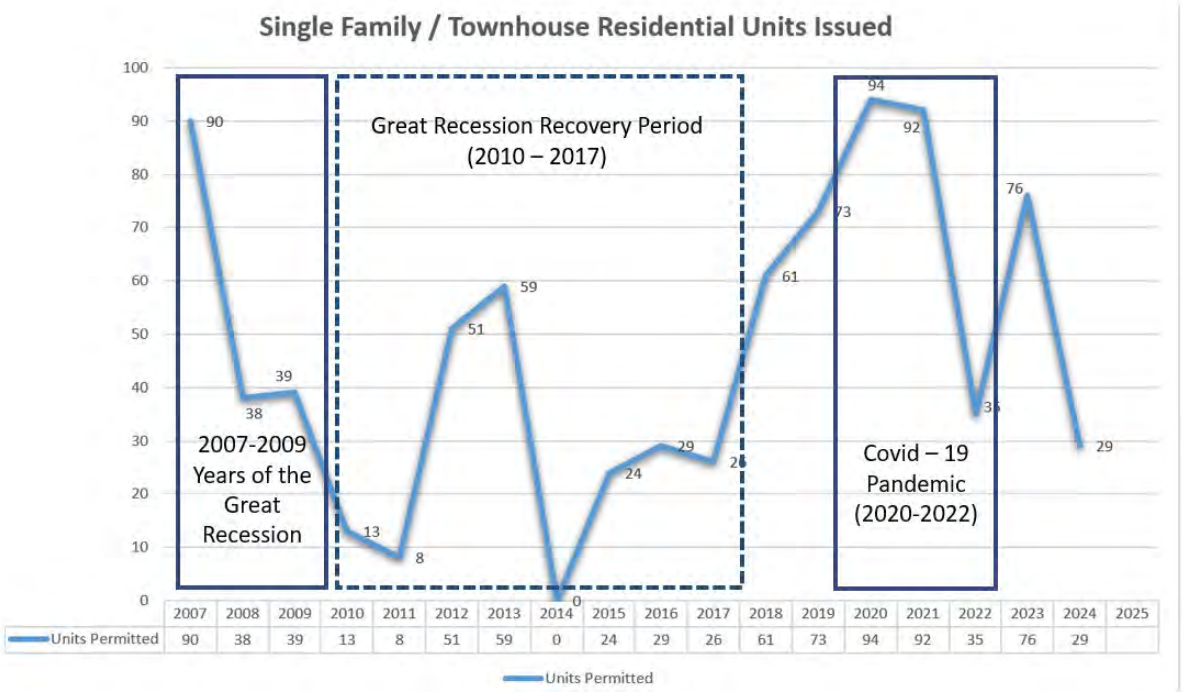
- Right-of-Way (ROW) Permits were the most common, indicating continued infrastructure work and utility-related activities.





The City also tracks the number of residential units issued per year. Submitted and issued permits are not the same number, as several permits cross over years between when they are submitted and when they are issued.

Over the last four years, the permitting data highlights Stanwood's typical development cycle: showing how plat approvals lead to construction phases followed by housing unit development. In 2022 several plats were under construction, then in 2023 the housing units were built. 2024 and 2025 will continue this pattern with approved plats transitioning into active housing construction.



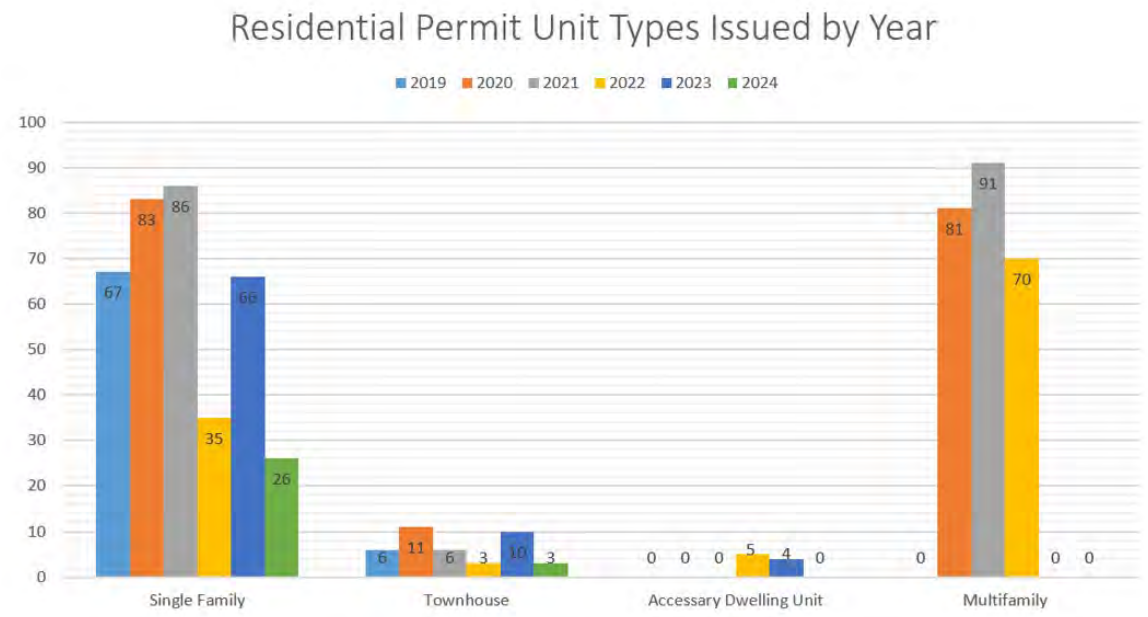
Future growth includes nearly 850 housing units in the pipeline which will be built over the next few years. These include:

- **Multifamily Housing (Cedarside Commons):** Over 500 units planned, addressing growing demand for higher-density housing options.

- **Single-Family/Townhouse Lots:** Approximately 350 lots in various platting stages, contributing to traditional residential growth.

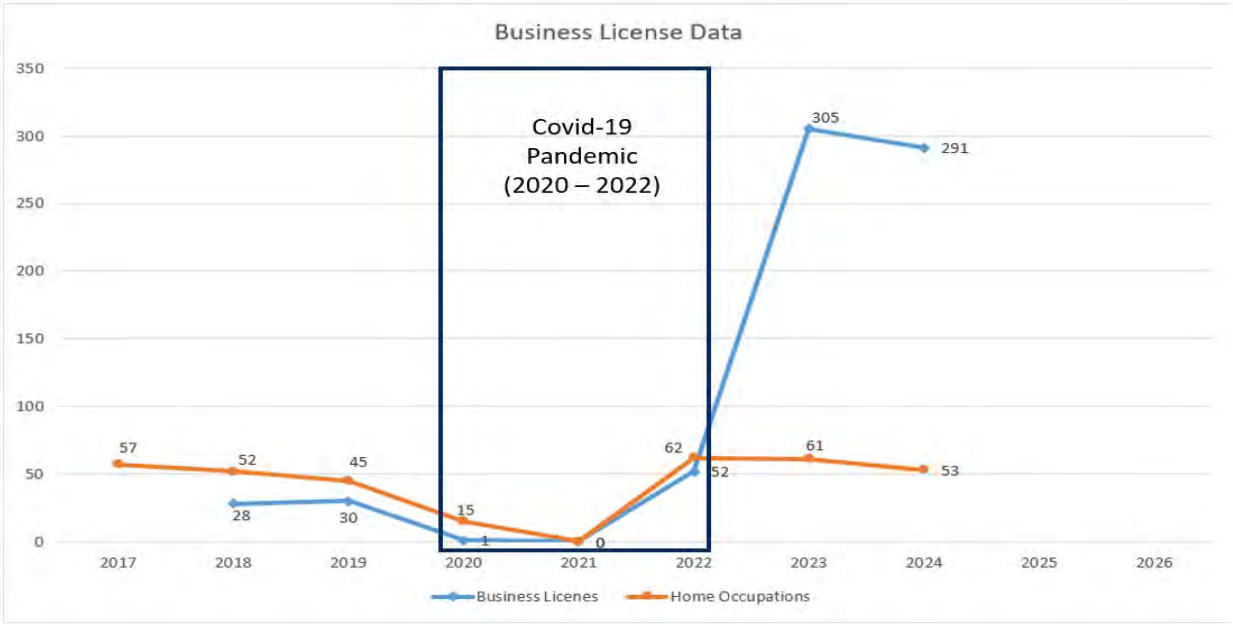
- **Annexations:** Two potential annexations could further expand development opportunities and increase housing capacity.

Tracking the types of residential housing units constructed is crucial to determining whether Stanwood in on pace to meet its housing targets as outlined in the Comprehensive Plan. This is even more important now that state law is requiring cities to plan for missing middle housing. The following chart shows the number of residential units by type issued over the last several years.



The below listed additional data points provide a snapshot of Stanwood's economic activity and community engagement.

- Business Licenses: 291 (the majority of these are construction related businesses or out-of-city companies doing business within city limits)
- Home Occupations Business Licenses: 53
- Special Event Permits: 25



Note: 2021 data is missing

Critical Area Code Amendment

Supporting Documents

Stanwood Municipal Code Update Project

Critical Areas Summary

Overview

The City initiated the Municipal Code Update project in 2022 to modernize the code reflecting best practices with respect to content and administration of the code. The update is intended to be user friendly for staff, property owners and developers by 1) removing legalese and jargon unfamiliar to the lay person, 2) improving clarity and overall functionality, and 3) reflect regulatory best practices. The amendments will also be consistent with current case, state and federal laws.

As part of the Municipal Code Update, the City has elected to create a Unified Development Code (UDC) that merges Title 16, Subdivisions, and Title 17, Zoning, into a single Title. A UDC is a comprehensive set of regulations or standards that govern land use, zoning, and development within a single Municipal Code Title. The Critical Area Regulations will be updated and integrated in the new UDC.

Updates to the Critical Area Regulations include:

- Reorganizing and renumbering the existing critical areas regulations to new chapters and aligning them with state guidance based on Best Available Science.
- Duplicative sections were streamlined, definitions updated, and provisions made more consistent with Best Available Science and state regulations.
- Wetland regulations (SMC 18.802) and stream buffers (SMC 18.804) have been revised to align with Washington State Department of Ecology guidance, including buffer updates based on site-potential tree height (SPTH).
- The geologically hazardous areas chapter (SMC 18.806) incorporates definitions consistent with RCW and WAC.
- Floodplain management is renamed “Frequently Flooded Areas” (SMC 18.810) with added protections for HVAC systems.
- New cultural resources provisions were added based on state recommendations.

Organization

Part 8 of the new UDC contains the City's environmental regulations and will be notated as Stanwood Municipal Code, Chapter 18.800-18.812.

Chapter	Provisions
SMC 18.800	General Provisions - Applies to All Critical Areas
SMC 18.802	Wetlands
SMC 18.804	Fish and Wildlife Habitat Conservation Areas
SMC 18.06	Geologically Hazardous Areas
SMC 18.808	Critical Aquifer Recharge Areas
SMC 18.810	Frequently Flooded Areas
SMC 18.812	Cultural Resources

General Provisions Summary

The General Provisions Chapter serves as the foundational set of baseline regulations addressing critical areas. By including common requirements in one chapter, the aim is to streamline the overall code, ensuring that these provisions apply uniformly across each of the critical area sections without needing to be repeated. This reduces redundancy and improves the readability of the regulations. The General Provisions section includes:

- An explanation of how critical area codes are applied in Stanwood and how to use the chapter.
- Integrates with the procedures chapter in Part 2 of the UDC.
- Requires the application of Best Available Science (BAS) and No Net Loss of ecological functions and values.
- Identifies limitations around exempt activities:
    - Operations, maintenance or repairs of existing facilities and structures
    - Passive outdoor activities such as trails
    - Forest practices per RCW 79.09
    - Minor site investigation work
    - Infill single family residential structures in the floodplain with no impact to wetlands, streams or buffers
- Identifies limitation around allowed activities:
    - Modifications to existing structures
    - Activities within improved right-of-way
    - Minor utility projects

    - Public and private trails within the outer 50% of buffers
    - Invasive vegetation removal and vegetation management
    - Minor site investigation work
    - Navigational aids and boundary markers
- Defines when a critical areas report or reconnaissance letter is required.
- Details the requirements for critical area reports, mitigation reports, and mitigation plans including application of a sequencing analysis to show avoidance and minimization to avoid impacts to critical areas.
- To avoid a "taking" of private property a reasonable use provision is included as well as a public agency / utility exemption. Defines reasonable use as 1,500 square feet for a single-family residence and clarifies that the reasonable use process is not a variance.
- Details variance criteria, bonding requirements, and preservation easement/tract requirements.
- Establishes enforcement processes and references to Chapter 13, Enforcement.
- Moved bonding requirements to the procedures chapter, SMC 18.310.

Wetlands Summary

It is US policy to protect the integrity of the nation's waters, which include lakes, rivers, streams, and wetlands. Protection of wetlands falls under the Clean Water Act and is administered through local governmental critical area regulations, the State Department of Ecology (via authorization from the Environmental Protection Agency) and the Federal Corp of Engineers.

Wetlands are defined as (WAC 173-22-035) those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands must have three characteristics: hydrology, hydric soils and plants adapted to wet conditions.

Critical area regulations provide for the protection of not just the wetland themselves, but what is referred to as wetland "functions and values". Functions refers to what wetlands do, such as water filtration, flood control, water storage, groundwater recharge, erosion control, shoreline stabilization, and wildlife habitat areas. Whereas values refers to the benefits wetlands provide to humans, wildlife and the environment such as ecosystem biodiversity and recreational opportunities.

Wetlands are classified into four categories using the 2014 Washington State Wetland Rating System for Western Washington: Type 1 being the rarest and most difficult to replace to Type 4 having the lowest level of functions and values. Buffer widths are applied to a wetland based on a habitat score associated with site specific characteristics. A 15-foot building setback is then applied to the outer edge of the wetland buffer.

The buffers have been modified to be consistent with the Department of Ecology's best available science for Western Washington using habitat score ranges. Buffer widths for wetlands with habitat scores of 3-5 have remained the same, but the buffer widths for wetlands with higher habitat scores have increased between 40 – 75 feet. The table below shows the new buffers and the change differential in parenthesis.

Table 18.802.060-1 Wetland Buffers

	Buffer Width (in feet) based on habitat score		
Wetland Category	**3-5**	**6-7**	**8-9**
Category I: Based on Total Score	75	150 (+40)	300 (+75)
Category I: Bogs and Wetlands of High Conservation Value	190	190	300 (+75)
Category I: Forested	75	150 (+40)	300 (+75)
Category I: Estuarine and Coastal Lagoons	150	150	150
Category II: Based on Total Score	75	150 (+40)	300 (+75)
Category III: All	60	150 (+40)	300 (+75)
Category IV: All	40	50 (+40)	50 (+75)

Buffer adjustment options are provided in the code to provide some flexibility in site design.

Buffer Averaging: The width of a buffer may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion. However, no part of the buffer width can be less than 65% of the required buffer.

Category IV Wetlands Less Than 4,000 Square Feet: These wetlands are not subject to the avoidance and minimization requirements, and they may be filled if the impacts are fully mitigated through the purchase of credits from a mitigation bank or an in-lieu fee program.

Wetlands Less than 1,000 Square Feet: Most Category IV wetlands are exempt from the buffer provisions.

Functionally Disconnected Buffers: Buffers may exclude areas that are functionally and effectively disconnected from the wetland by an existing public or private road, or other legally established development.

If wetlands are impacted, mitigation must be provided in an amount necessary to successfully replace the existing wetland functions and values. The code encourages the use of mitigation banks, but if a bank is not available, the following mitigation ratios are applied.

Table 18.802.090-1 Replacement Ratios

Wetland Category	Re-Establishment of Creation	Rehabilitation	Preservation	Enhancement	Other
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consult with WA DNR	As Determined by the Dept. of Ecology or Corp of Engineers
Category 1 – Forested	6:1	12:1	24:1	24:1	
Category 1 – Bogs	N/A	N/A	24:1	N/A	
Category 1 – Estuarine	3:1 (Re-establishment only)	6:1	12:1	Limited Circumstances (case by case)	
Category I – All Others	4:1	8:1	16:1	16:1	
Category II - Estuarine	4:1 (Re-establishment only)	8:1	16:1	Limited Circumstances (case by case)	
Category II – All Others	3:1	6:1	12:1	12:1	
Category III	2:1	4:1	8:1	8:1	
Category IV	1.5:1	3:1	6:1	6:1	

Fish and Wildlife Habitat Conservation Areas Summary

As noted above, protection of streams is a US public policy regulated under the Clean Water Act. Wildlife habitat is generally protected under the Endangered Species Act and the US Fish and Wildlife Services Ecological Services Program. The Washington State Department of Fish and Wildlife (WDFW) is part of the federal Ecological Services Program. Local governments are required to adopt critical area regulations consistent with the WDFW to protect fish, wildlife, plants and their habitats throughout Washington for future generations.

The draft code designates fish and wildlife habitat as follows:

Wildlife	Streams
Federally designated endangered and threatened species	Type S Streams – Shorelines of the State
State designated endangered, threatened, and sensitive species	Type F Streams – Rivers and associated systems that have fish or the potential to support fish habitat

<table>
<tr><td>State Priority Habitats and the Habitats of State Priority Species</td><td>Type Np Streams - Perennial non-fish habitat streams (Streams that do not dry up any time during the year)</td></tr>
<tr><td>Habitats and Species of Local Importance</td><td>Type Ns Streams – Seasonal, nonfish habitat streams (streams in which surface flow is not present for at least some portion of a year)</td></tr>
<tr><td>Commercial and Recreational Shellfish Areas</td><td rowspan="5">* The stream classification methodology shown above is different from the current Municipal Code which classifies streams on a numerical scale of Type 1 – Type 5, but have similar definitions. However, the buffer widths are based on the above referenced methodology which causes confusion.

Existing Buffer Widths:
For Type S streams – 150 feet;
For Type F streams – 100 feet;
For Type Np streams – 75 feet; and
For Type Ns streams – 50 feet.</td></tr>
<tr><td>Naturally Occurring Ponds under 20 Acres</td></tr>
<tr><td>Waters of the State (lakes, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses)</td></tr>
<tr><td>State Natural Area Preserves and Natural Resource Conservation Areas</td></tr>
<tr><td>Land essential for preserving connections between habitat blocks and open spaces</td></tr>
</table>

River and stream buffers are based on site-potential tree height (SPTH) and range in width from 100 feet to 235 feet based on existing vegetation. The maps below show the typical buffer widths, but the actual buffer will be determined by applying the WDFW site potential tree height mapping tool.

Site potential tree height (SPTH) refers to the maximum height that trees can reach at a specific site, given the local environmental conditions such as soil, water availability, climate, and other ecological factors. It is used in forestry and ecological studies to assess the growth potential of a forest or a stand of trees. The SPTH is typically determined by the dominant tree species in an area, as different species have different height potentials. The SPTH for the northwest has been calculated by the Washington Department of Fish and Wildlife.

Similar to wetlands, FWHCA buffer averaging and reduction options are provided in the code to provide some flexibility in site design. A 15-foot building setback is also applied to the outer edge of the buffer.

As the buffers overlay many developed lots, the code includes some provisions for existing properties and nonconforming uses.

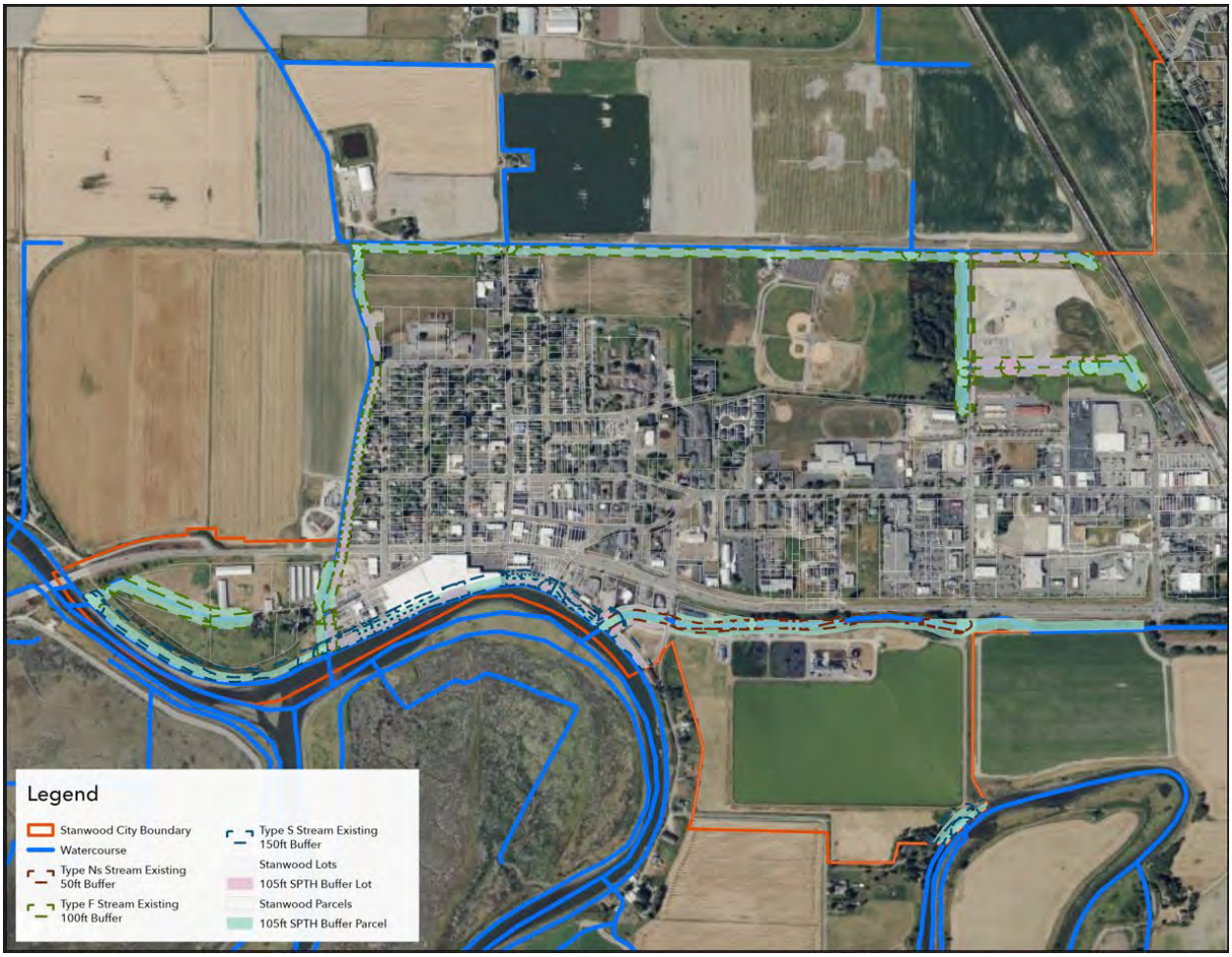
> *Nonconforming Uses in Buffers*: Existing nonconforming development is not required to utilize SPTH buffers if routine maintenance, modifications, renovations, or redevelopment of existing structures do not intensify the nonconformity of the existing structure or use or increase impacts on a stream.
>
> *Existing Properties in Buffers*: If existing properties have a previously approved buffer, the approved buffer will remain in effect.

Buffer requirements for wildlife habitat varies based on species and is determined by applying best available science specified in a habitat management plan prepared by a qualified biologist.

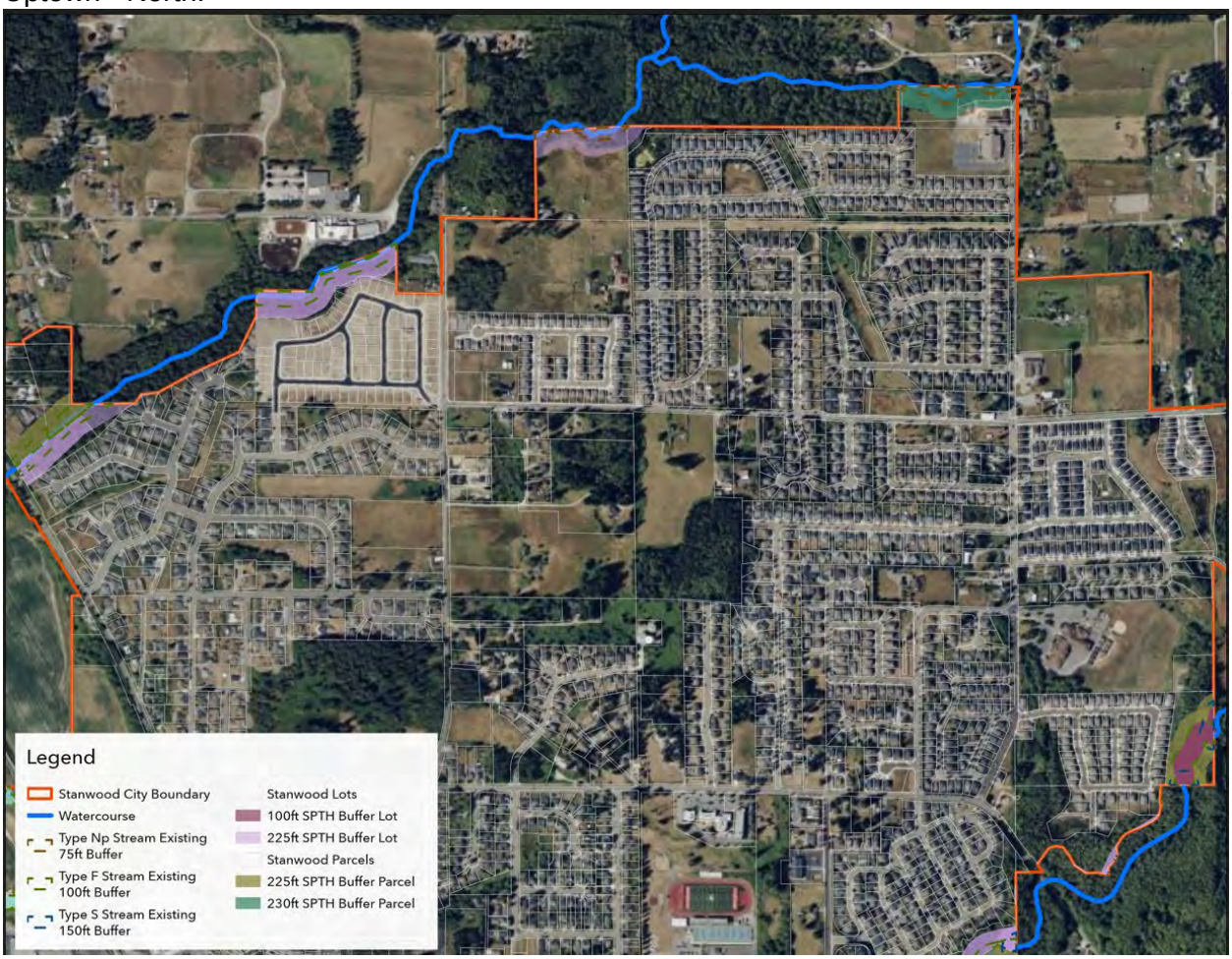
Estimated Stream Buffers Based on WDFW's Site Potential Tree Height

Note: Actual Buffers Will Be Determined On A Case-By-Case Basis Derived From A Critical Areas Report / Habitat Management Plan

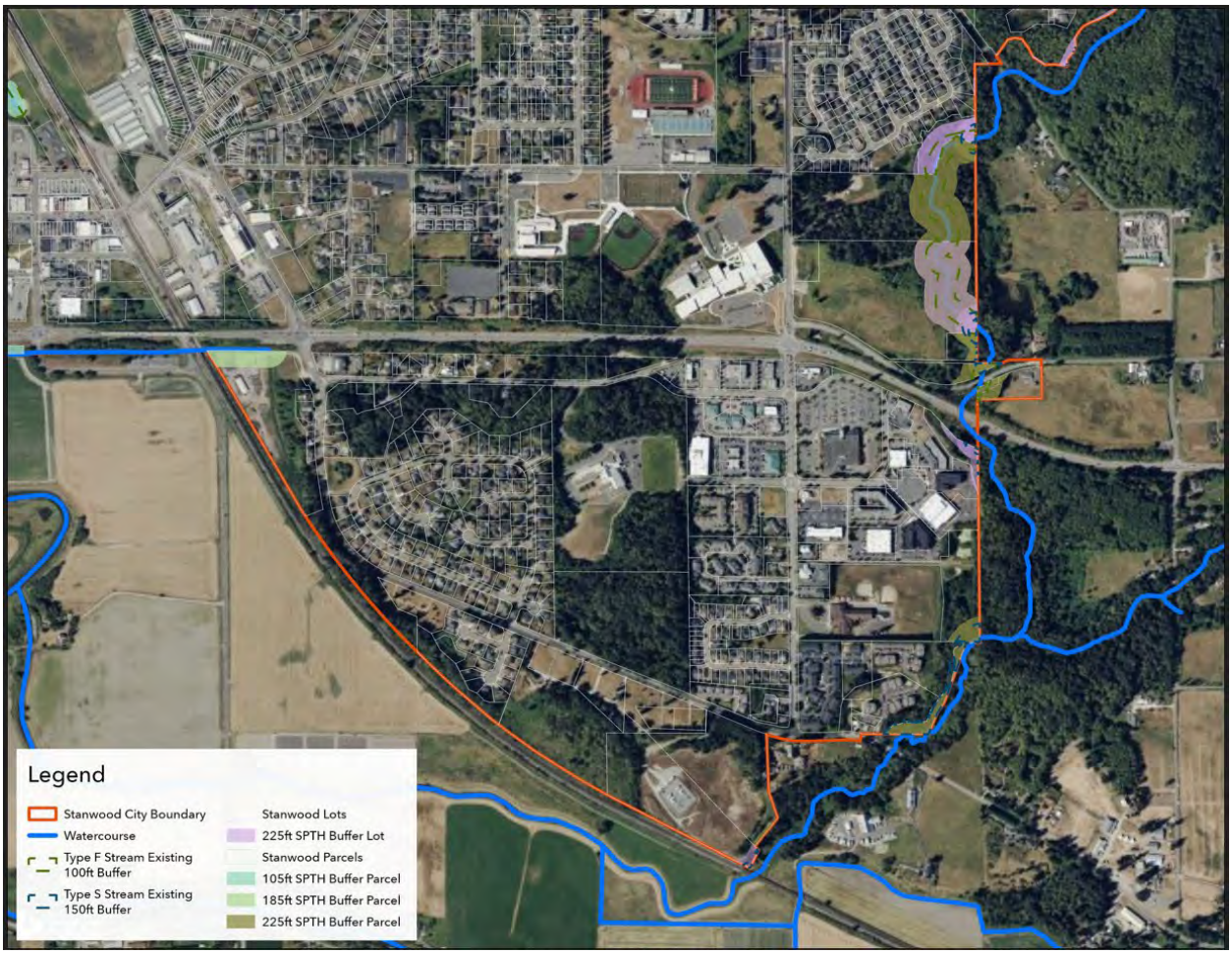
Downtown:



Uptown - North:



Uptown – South:

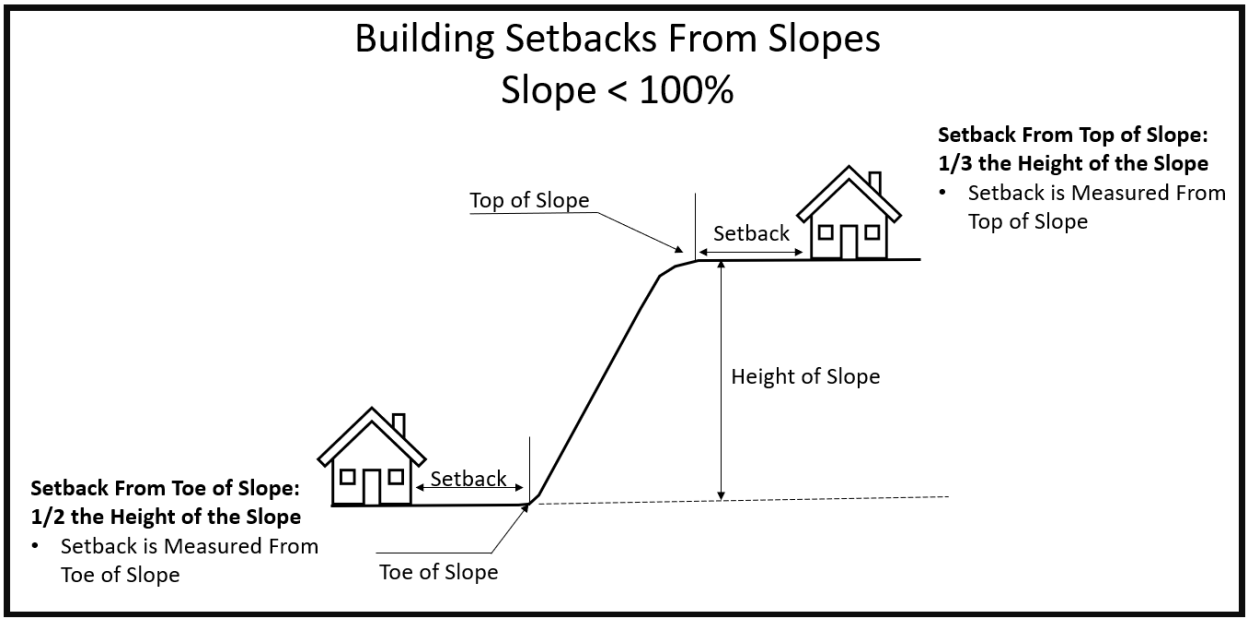


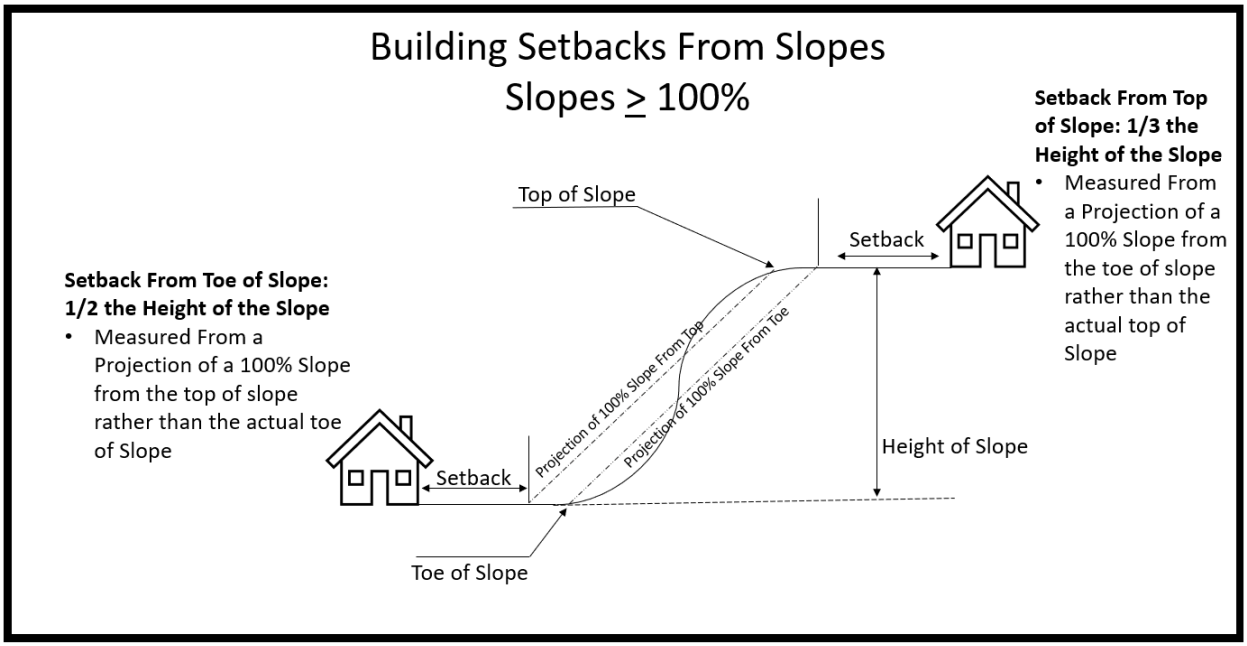
Geologically Hazardous Areas Summary

Geologically hazardous areas include areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose a risk or threat to public health and safety. In Stanwood, the following types of hazards are designated as a geologically hazardous area:

- Erosion hazard;
- Landslide hazard;
- Seismic hazard; and
- Other geological events including tsunamis, volcanic hazards, and differential settlement.

Development in these areas requires the submittal of a geotechnical report and structures must be setback from the top and toe of a steep slope as follows unless otherwise specified in the geotech report.





Other standards for developing in a Geologic Hazardous Area include:

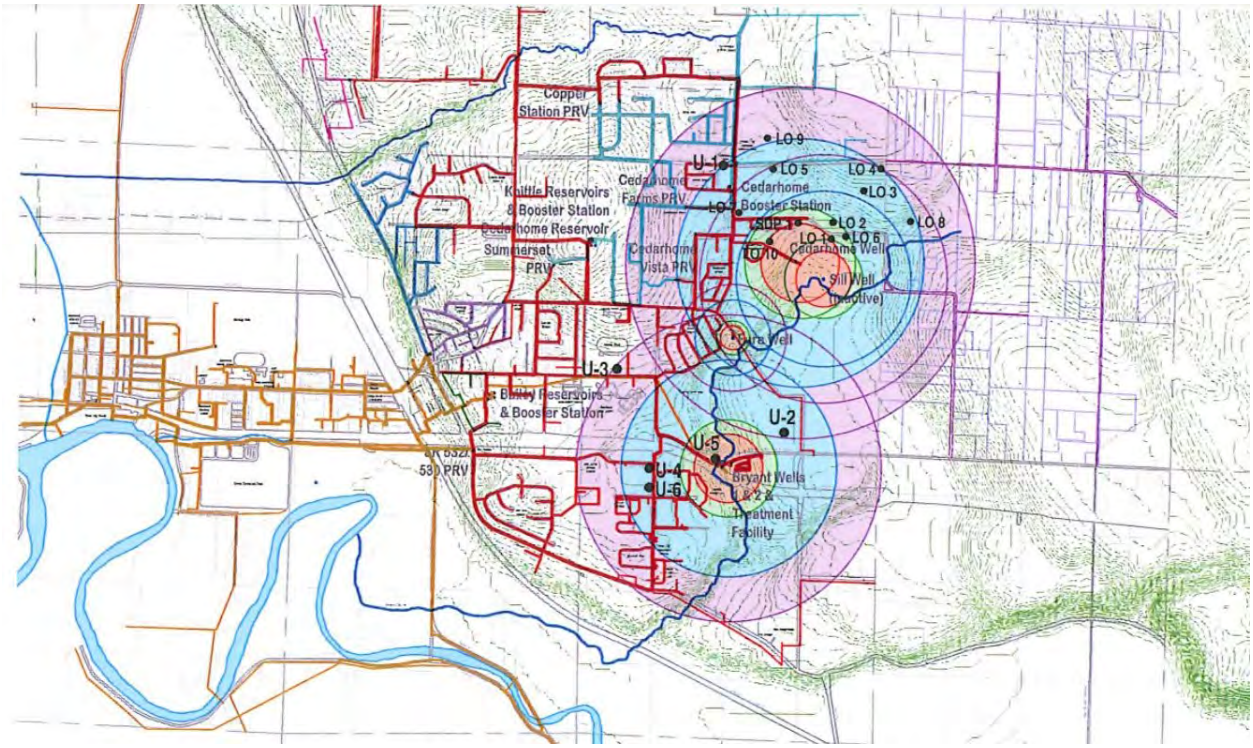
- Maintain vegetation on steep slopes
- Utilities are allowed on steep slopes if above ground and anchored in
- Point discharges are only allowed with energy dissipaters and not directly on a slope
- For subdivisions, landslide hazard and erosion areas must be located in separate tracts
- Tsunami hazard areas require an evacuation plan (none in Stanwood)

Aquifer Recharge Area Summary

An **aquifer recharge area** is a region where water from rain, streams, rivers, or other surface sources infiltrates the ground and replenishes an underground aquifer. Under the Growth Management Act, Cities are required to protect these areas as part of their critical area regulations. In Stanwood, Aquifer Recharge Areas include:

- Wellhead Protection Areas
- Sole Source Aquifers
- Susceptible Groundwater Management Areas per WAC 173-100
- Special Protection Areas per WAC 173-200-090
- Moderately or Highly Vulnerable Aquifer Recharge Areas per the Department of Ecology
- Moderately or Highly Susceptible Aquifer Recharge Areas per the Department of Ecology

Stanwood Wellhead Protection Areas



The following uses are generally prohibited in Aquifer Recharge Areas: landfills, underground injection wells, mining, wood treatment facilities, hard chrome plating operations, chemical lagoons and pits, hazardous material disposal sites, storage/processing/disposal of radioactive substances, new septic systems and other activities that negatively impact ground water sources.

Uses that are allowed in an aquifer resource area may be subject to special regulations referred to as Class I or Class II operations. These include nonresidential uses and operations that present a risk to water resources because of the volume and type of hazardous materials that are used. Restrictions include:

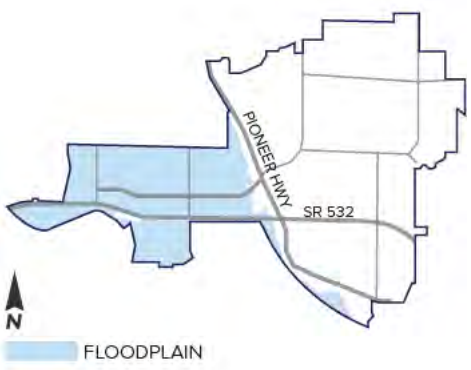
- Potential location restrictions
- Application of current best management practices
- Inclusion of spill and emergency response plan
- An employee training program
- A site closure plan for decommissioning of hazardous materials
- An engineering and operations report detailing how to prevent the release of hazardous materials
- Ongoing maintenance of records and inspection reports

Also included in the code is a halogenated solvent list. This is a list of chemicals that are commonly used in various industrial applications due to their effectiveness in dissolving oils, fats, waxes, and resins, but are hazardous to health and the environment.

Frequently Flooded Areas Summary

(i) The City of Stanwood is impacted by periodic flooding resulting from large storm events combined with high tides. Due to the topographic nature of the City, all of west Stanwood lies in the 100-year floodplain. This area generally includes land to the west of the railroad tracks and a small area west of Pioneer Highway just east of the railroad tracks. A 100-year flood area is defined as those lands that are subject to a one percent or greater chance of flooding in any one year.

(iii)



(ii)

The city's floodplain regulations are included as part of its critical area regulations. The draft includes all of the 2020 FEMA (Federal Emergency Management Agency) model ordinance requirements with two small changes: 1) allowing building modifications up to 50% of the buildings valuation every 12 months versus every 24 months and 2) includes increased protections for HVAC systems by requiring new and replacement HVAC systems to be located above the base flood elevation and elevated off the floor to minimize damage from flooding.

In summary, the proposed ordinance includes the following floodplain requirements:

- Readopts the 2020 FIRM maps
- Defines substantial development as work and costs incurred within a 12-month period
- Requires a floodplain permit that raises a building 1-foot above floodplain elevations or floodproofs the building

General building and construction provisions includes:

- Buildings must be anchored to the ground to avoid the potential to float
- Construction materials need to be resistant to flood damage
- Water supply systems and other utilities need to be designed to minimize or eliminate infiltration of flood waters
- Building design standards for residential, non-residential and manufactured homes
- Limitations on storage of recreational vehicles
- Detached structures used solely for parking or storage don't need to be raised above flood elevation with conditions
- Includes variance and appeal provisions

Cultural Resources Summary

Protection of cultural resources is a new section added to the critical areas code. Typically, cultural resource protection is implemented through SEPA (State Environmental Policy Act), which results in permit delays if local tribes or the State Department of Archaeology and Historic Preservation asks for an analysis during the comment period or after the SEPA determination has been issued. The Growth Management Act gives local governments the flexibility to expand their critical areas ordinances to include protections for cultural resources. By adding cultural resource protection to critical area codes, it requires an evaluation early in the permit review process and helps avoid costly redesigns or project delays if cultural resources are discovered later in a project.

The draft code is based on Ecology's model language, Pierce County Code, and La Center, WA Municipal Code and includes the following provisions:

- Establishes clear procedures and specific standards for preservation of cultural resources
- Requires submittal of a cultural resource report when a project is within 500 feet of a known historic site
- A Cultural Resource Management Plan must be prepared when a Cultural Resource Site Assessment identifies the presence of significant cultural resources
- Requires an Inadvertent Discovery Plan if requested by DAHP or local Tribes or if discoveries are found during project construction

CITY OF STANWOOD
WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, ADOPTING REVISIONS TO SMC TITLE 18 FOR CRITICAL AREAS AND ENVIRONMENTAL REGULATIONS, ESTABLISHING SEVERABILITY, AND AN AFFECTIVE DATE

WHEREAS, the Growth Management Act requires cities and counties update their comprehensive plans and regulations every ten years, including critical areas regulations; and

WHEREAS, the GMA defines critical areas as wetlands, fish and wildlife habitat conservation areas, geological hazard areas, aquifer recharge areas, and floodplains; and

WHEREAS, the City Council has opted to include cultural resources as a regulated critical area; and

WHEREAS, cities in Snohomish County must review and update their critical areas by December 31, 2025; and

WHEREAS, cities must include best available science in developing policies and development regulations to protect the function and values of critical areas; and

WHEREAS, cities must also give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish; and

WHEREAS, the City has comprehensively reviewed its critical areas regulations applying best available science practices provided by the Department of Fish and Wildlife, Department of Ecology, and Department of Natural Resources; and

WHEREAS, the critical area amendments proposed implement the goals and policies of the Comprehensive Plan for protection and preservation of critical areas; and

WHEREAS, the City of Stanwood is in the process of consolidating Title 16, Subdivisions and Title 17, Zoning into a new Unified Development Code codified as Title 18; and

WHEREAS, the critical area regulations are being deleted from Title 17, Zoning and readopted with changes in Title 18, Unified Development Code; and

WHEREAS, pursuant to RCW 36.70A.106, the City submitted the proposed critical area code amendment for the 60-day review to the Washington State Department of Commerce on September 26, 2024. The 60-day review period was completed on November 25, 2024; and

WHEREAS, the code amendment was circulated for public review on October 22 through November 5, 2024; and

WHEREAS, the City received comments on the draft amendments from the Department of Ecology and Department of Natural Resources; and

WHEREAS, their comments have been incorporated into the amendments; and

WHEREAS, a SEPA determination of non-significance for the draft ordinance was issued on October 22, 2024, and the comment / appeal period ended on November 5, 2024; and

WHEREAS, the Stanwood Advisory Group reviewed the draft ordinance at their October 16, 2024, meeting and has recommended that the City Council adopt the ordinance; and

WHEREAS, the Stanwood Community Development Committee reviewed the draft ordinance at their November 7, 2024, meeting and has recommended that the City Council adopt the ordinance; and

WHEREAS, the Stanwood Planning Commission held their first reading of the ordinance on October 14, 2024, held a public hearing on ordinance on January 13, 2025 and forwarded their findings of fact and conclusions recommending to approve the ordinance on _____; and

WHEREAS, all persons desiring to either provide written testimony or speak for or against the ordinance were given the opportunity to do so before both the Planning Commission and City Council; and

WHEREAS, the City Council held a public hearing and first reading of the draft code amendment on ____, a second reading on ____, and accepted public comment; and

WHEREAS, the City Council of Stanwood has authority under RCW 36.70A to adopt plans and regulations related to development and operations within the City of Stanwood; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Stanwood Municipal Code Title 18, Part 8 – Environment, is adopted as shown in Exhibit “A” attached to this ordinance and incorporated herein by reference as if set forth in full.

Section 2. Stanwood Municipal Code Title 18, Chapter 18.102, Definitions and Rules of Interpretation, is amended as shown in Exhibit B.

Section 3. Severability. The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 4. Authority to Make Necessary Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbers, section/subsection numbers and any references thereto.

Section 5. Effective Date. This Ordinance shall take effect five days after its passage and publication as required by law.

PASSED and APPROVED this ____ day of _____, 2025.

CITY OF STANWOOD:

_____
Sid Roberts, Mayor

Attest:

_____
Lisa Sokolik, City Clerk

Approved as to Form:

_____
Nikki Thompson, City Attorney

Date of Publication: _____

Effective Date: _____

Title 18 Unified Development Code

Part 8 Environment

Contents of this Part

Chapter 18.800 Critical Areas – General Provisions

ℹ The existing SMC section 17.114 has been moved to this new section, SMC 18.800. Many of the subsections remain the same but have been renumbered. All of the SMP sections have been taken out and moved under Title 18 Part 9 SMP.

18.800.010 Purpose.

(1) The purpose of SMC chapters 18.800-18.810 is to:

(a) designate and classify ecologically sensitive and hazardous areas and to protect these areas and ensure no net loss of functions and values, while also allowing for reasonable use of private property;

(b) implement the goals, policies, guidelines, and requirements of the Stanwood Comprehensive Plan and the Growth Management Act.

(2) By limiting development and alteration of critical areas, this chapter seeks to:

(a) Protect the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, volcanic hazards, or flooding;

(b) Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species, and to protect and enhance anadromous fisheries;

(c) Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;

(d) Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas; and

(e) Increase the quantity and quality of Stanwood's wetland resource base over the long term.

(3) The City finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit Stanwood and its residents, or that may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

(4) This chapter is intended to protect critical areas in accordance with the Growth Management Act and through the application of Best Available Science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

(5) This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

18.800.020 Applicability.

ℹ This is a new section that incorporates the content of existing SMC 17.114.070 and 17.114.100(1).

(1) This Chapter applies:

(a) to the regulations in SMC Chapters 18.802-18.810; and

(b) to all uses, activities, and developments within, adjacent to, or likely to affect any critical area.

(2) For the purpose of this section, "adjacent to" means located:

(a) on a site immediately adjoining a critical area; and

(b) a distance equal to or less than the required critical area buffer width and building setback.

(3) Exception. Where a use, activity, or development is regulated by the Shoreline Master Plan, SMC Part 9, those regulations apply instead.

(4) All areas within the City meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter as well as compliance with all state and federal regulations and permits.

18.800.030 How to use the Critical Areas Code.

ℹ This is a new section to explain how the various components and chapters of the critical areas code is applied.

ℹ This section incorporates the content of existing SMC 17.114.030, Relationship to Other Regulations.

(1) Critical areas exist throughout the City. An activity, land use, or development must comply with the City's critical areas code to protect those critical areas, and in some cases, to protect the proposed activity from the critical area.

(2) The City's critical areas code is found in SMC Chapters 18.800-18.810. This chapter contains general provisions for all critical areas, while additional standards specific to each of the five types of critical area may be found in the following chapters:

(a) Chapter 18.802 Wetlands

(b) Chapter 18.804 Fish and Wildlife Habitat Conservation Areas

(c) Chapter 18.806 Geologically Hazardous Areas

(d) Chapter 18.808 Critical Aquifer Recharge Areas

(e) Chapter 18.810 Frequently Flooded Areas

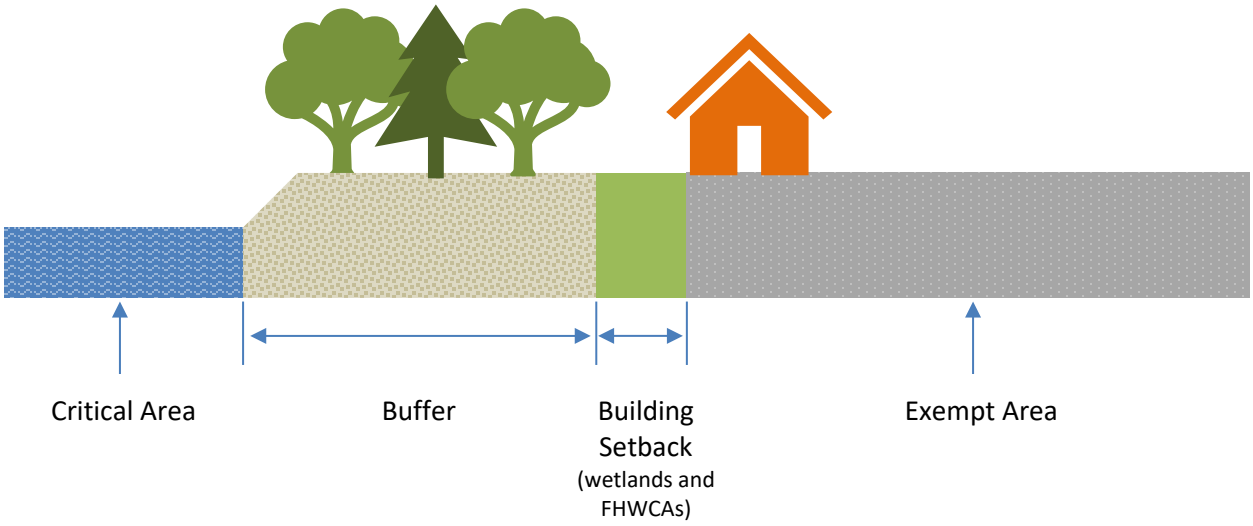
(3) The City's critical areas code regulates activities (including land uses and development) in and near critical areas. To determine the regulations that must be applied to an activity, land use, or development:

(a) Determine if the activity is within shoreline jurisdiction, as defined in the City's Shoreline Master Plan (SMC Title 18 Part 9). If it is, the SMP regulations apply instead of the City's critical areas code.

(b) Determine if the activity is exempt from critical areas regulation (SMC 18.800.110).

(c) If the activity is not exempt, determine whether the activity is proposed within the buffer or building setback for the relevant type(s) of critical area.

Figure 18.800.040-1 Buffer and Setback Areas



(d) If the activity is proposed within the buffer or building setback, determine whether the activity is allowed (SMC 18.800.120) and if so, comply with the standards applicable to that activity in that section and in the chapter applicable to the relevant type(s) of critical area.

(e) If the activity is neither exempt nor allowed, obtain a Critical Areas Report (SMC 18.800.150) to determine whether and how the activity can mitigate for its impacts on the critical area or its buffer. The first step in the required sequence of mitigation is to avoid impacts; see SMC 18.800.160 for the remainder of the sequence.

(f) If the activity's effects cannot be mitigated, you might be eligible to seek an exception from the City's critical areas code:

(i) For situations where no reasonable economic use of the property would otherwise be allowed, per SMC 18.800.180;

(ii) For public agencies or utilities, per SMC 18.800.190.

(g) If special conditions peculiar to your property exist, you may be eligible for a variance from the City's critical areas code per SMC 18.800.200.

(4) Where regulations for multiple types of critical areas overlap, each set of regulations applies to provide the most protection to the critical areas.

(5) Compliance with the City's critical areas code does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (e.g., other permits required by SMC Title 18, shoreline permits, Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 permits, Department of Ecology's implementation of section 401 of the federal Clean Water Act, National Pollution Discharge Elimination System permits). The applicant is responsible for separately complying with those requirements.

18.800.040 Administration.

ℹ Based on existing SMC 17.114.020 Authority.

(1) The Director has the authority to interpret and apply, and the responsibility to enforce, this chapter.

(2) The City may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this chapter.

ℹ Next sentence based on existing SMC 17.114.050.

(3) The Director is authorized to adopt such administrative rules and regulations as necessary and appropriate to implement this chapter and to prepare and require the use of such forms as necessary for its administration.

ℹ Next section moved from 18.800.260 in prior drafts.

(4) Reasonable access to the site must be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

18.800.050 Interpretation.

In the interpretation and application of this title, the provisions of this chapter are the minimum requirements necessary, must be liberally construed to serve the purpose of this title, and must be deemed to neither limit nor repeal any other provisions under state statute.

18.800.100 Protection requirements.

ℹ This section is based on existing SMC 17.114.080, Protection of critical areas, but has been retitled. It also integrates existing SMC 17.114.100(2) et seq, formerly named Applicability, but deleting the list of example permits; and existing SMC 17.114.090, Best available science. The definition of Best Available Science in 17.114.090 has been deleted, because it duplicated the definition in the definitions chapter.

(1) The Director may not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical

area or associated buffer, without first ensuring compliance with the requirements of SMC Chapters 18.800-18.810.

(2) No activity or use is allowed if it results in a net loss of critical area functions and values. Any action taken pursuant to this chapter and Chapters 18.802 through 18.810 SMC must result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by Best Available Science.

(3) Per SMC 18.800.160, all actions and developments must be designed and constructed to mitigate adverse impacts and an applicant must first demonstrate an inability to avoid or reduce impacts before restoration and compensation of impacts may be allowed.

(4) Critical area reports and decisions to alter critical areas must:

(a) rely on Best Available Science to protect the functions and values of critical areas; and

(b) give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat.

ℹ The following two sections were moved from 18.802.050 in prior drafts.

(5) Legal Nonconforming Uses. Existing legal pre-existing development that would not conform to current buffer requirements is not required to comply with the buffer widths in this chapter and Chapters 18.802 through 18.810 SMC if routine maintenance, modification, renovations, or redevelopment of existing structures do not intensify the nonconformity of the existing structure or use or increase impacts on the critical area from activities in the buffer. If activities in the buffer intensify the nonconformity of the existing structure or use or increase impacts on the buffer the development is subject to current buffer requirements.

(6) Existing Properties. If a parcel has a previous critical area buffer that was approved by the city and included in a native growth protection area tract or easement, proposed redevelopment or other modifications to the existing footprint are subject to the previously approved buffer if changes in use or activities on the property do not result in increased impacts to the critical area. If the existing buffer has become degraded or is not functioning or the buffer may be negatively impacted by the proposed modification or activities, the buffer must be enhanced.

18.800.110 Exempt activities.

ℹ This section is based on existing SMC 17.114.110.

(1) Exempt activities are exempt from the substantive requirements of this chapter and Chapters 18.802 through 18.810 SMC.

(a) Exempt activities do not require submittal of a critical areas reconnaissance or report.

(b) Exempt activities must use best available science to avoid direct and indirect impacts to critical areas.

(c) Exempt activities do not have permission to degrade a critical area or ignore risk from natural hazards.

(d) Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempt activity must be restored, rehabilitated, or replaced at the responsible party's expense.

(e) Exempt activities must still comply with other local, state, and federal laws and requirements.

(2) The proponent of an activity shall submit an application for exemption, consistent with SMC Title 18 Part 2, that describes the activity and identifies the applicable exemption from the list in this section. The Director must review the exemption request to verify that it complies with this chapter and approve or deny the

exemption. If the exemption is approved, it must be placed on file with the department. If the exemption is denied, the proponent may apply for critical areas review of a non-exempt activity, subject to the requirements of this chapter.

(3) Exempt activities defined:

(a) Emergencies.

(i) Emergencies are defined as those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter and Chapters 18.802 through 18.810 SMC.

(ii) Emergency actions that create an impact to a critical area or its buffer must:

(A) use reasonable methods to address the emergency; and

(B) have the least possible impact to the critical area or its buffer.

(iii) The person or agency undertaking such action must notify the city within one working day following commencement of the emergency activity. Within 30 days, the Director must determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of SMC 18.800.210, Unauthorized critical area alterations and enforcement, apply.

(iv) After the emergency, the person or agency undertaking the action must fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action must apply for review, and the alteration, critical area report, and mitigation plan must be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner;

(b) Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

(c) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to SMC 18.800.120(2)(e);

(d) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222, and those that are exempt from the city's jurisdiction, except that forest practice conversions are not exempt;

(e) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to critical areas and buffers must be minimized and disturbed areas must be immediately restored;

(f) Existing Structures. Existing structures may be maintained, repaired, and remodeled provided there is no further intrusion into a critical area or its buffer. New construction or reconstruction must conform to the requirements of this chapter and Chapters 18.802 through 18.810 SMC; and

18.800.120 Allowed activities.

ℹ This section is based on existing SMC 17.114.140.

ℹ The first paragraph attempts to parallel the first paragraph of .110 Exempt Activities.

(1) Allowed activities are subject to the substantive requirements of this chapter and Chapters 18.802 through 18.810 SMC.

(a) Allowed activities must be reviewed and approved by the City, but do not require submittal of a critical areas report.

(b) The Director may apply conditions to the underlying or associated project permit, such as a building permit, to ensure protection of critical areas and compliance with the City's critical areas code.

(c) Allowed activities must be conducted, and the Director must require, using the best management practices that result in the least amount of impact to the critical areas. Best management practices are required for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications.

(d) Any incidental damage to, or alteration of, a critical area as the result of an allowed activity must be restored, rehabilitated, or replaced at the responsible party's expense.

(2) Allowed activities defined:

(a) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both land use approvals (e.g., subdivisions, rezones, or conditional use permits), and construction approvals (e.g., building permits) if all the following conditions have been met:

(i) The provisions of this chapter have been previously addressed as part of another approval;

(ii) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(iii) There is no new information available that is applicable to any critical area review of the site or particular critical area;

(iv) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured; and

(v) The critical area has been placed in a native growth protection area, open space tract, or protective easement.

(b) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;

(c) Activities Within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private

roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater;

(d) Minor Utility Projects. Utility projects that have minor or short duration impacts to critical areas, as determined by the Director in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities may not result in the transport of sediment or increased stormwater. Such allowed minor utility projects must meet the following criteria:

(i) There is no practical alternative to the proposed activity with less impact on critical areas;

(ii) The activity involves the placement of a utility pole, street sign, anchor, or vault or other small component of a utility facility; and

(iii) The activity involves disturbance of an area less than 75 square feet;

(e) Public and Private Pedestrian Trails. Public and private pedestrian trails subject to the following:

(i) The trail surface must meet all other requirements including water quality standards set forth in the city's adopted stormwater manual; and

(ii) Buffer widths, if applicable, must be increased, where possible, equal to the width of the trail corridor, including disturbed areas;

(iii) In wetlands and fish and wildlife habitat conservation areas, public and private pedestrian trails must be constructed of pervious materials and are restricted to the outer 50% of the buffer area except where necessary.

(f) Select Vegetation Removal Activities. The following vegetation removal activities are allowed, with approval from the Director:

(i) The removal of the following vegetation with hand labor and light equipment:

(A) Invasive and noxious weeds;

(B) Ivy (Hedera sp.);

(C) Himalayan blackberry (Rubus discolor, R. procerus); and

(D) Evergreen blackberry (Rubus laciniatus);

(ii) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:

(A) The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;

(B) Tree cutting is limited to limbing and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees may be cut to remove the hazard (first choice) or removed or converted to wildlife snags (second choice);

(C) All vegetation cut (tree trunks, stems, branches, etc.) must be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;

(D) The landowner must replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different, nearby location if it can be

determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees must be species that are native and indigenous to the site and a minimum caliper of two inches in diameter at breast height (dbh) must be used;

(E) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist must be consulted to determine timing and methods or removal that minimize impacts; and

(F) Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner must submit a restoration plan that demonstrates compliance with the provisions of this chapter;

(iii) Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW, recognized wildfire protection measures, and local forest practices regulations if adopted; provided, that the removed vegetation is replaced in kind or with similar native species within one year in accordance with an approved restoration plan;

(g) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use is restricted in accordance with State Department of Fish and Wildlife Management Recommendations and the regulations of the State Department of Agriculture and the U.S. Environmental Protection Agency;

(h) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area must be minimized and disturbed areas immediately restored; and

(i) Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers.

18.800.130 Critical area review process.

ℹ This section is based on existing SMC 17.114.150 Critical area report – Review process.

(1) Requirement. For any proposed activity not (a) exempt under SMC 18.800.110, or (b) allowed pursuant to SMC 18.800.120, the proponent must submit the activity to critical area review as described in this section.

(2) To initiate critical areas review, an applicant must submit to the Director a completed critical area review request form.

(3) Site Inspection. Upon receipt of a critical area review request form, the Director must conduct a site inspection to identify critical area conditions on-site. The Director must notify the property owner of the inspection prior to the site visit. Reasonable access to the site must be provided by the property owner for the purpose of inspections during proposal review, restoration, emergency action, or monitoring.

(4) Determination. The Director must determine whether any critical areas may be affected by the proposal.

(a) Determination Criteria. The Director must use the following indicators to assist in determining the need for a critical area report:

(i) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;

(ii) Information and scientific opinions from appropriate agencies, including but not limited to the Departments of Fish and Wildlife, Natural Resources, and Ecology;

(iii) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or

(iv) A finding by a qualified professional or a reasonable belief by the Director that a critical area may exist on or adjacent to the site of the proposed activity.

(b) Decision on Review.

(i) No critical areas present. If, after a site visit, the Director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the Director may determine that the critical area review is complete and note in writing the reasons that no further review is required.

(ii) Critical areas present, but no impact. If the Director determines that there are critical areas within or adjacent to the project area, but that Best Available Science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the Director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all the following requirements are met:

(A) No alteration of the critical area or buffer is proposed;

(B) The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter and Chapters 18.802 through 18.810 SMC; and

(C) The proposal is consistent with other applicable regulations and standards.

(iii) Critical areas may be affected by proposal. If the Director determines that a critical area or areas are present and may be affected by the proposal, then the Director may require the applicant to submit either or both of the following prior to further review of the project:

(A) A critical areas reconnaissance consistent with SMC 18.800.140. If the reconnaissance identifies the presence of critical areas, the Director may require a critical areas report.

(B) A critical areas report consistent with SMC 18.800.150. The Director may indicate which of the critical area types that must be addressed in the report.

(5) Determination Subject to Reconsideration.

(a) A determination regarding the apparent absence of one or more critical areas by the Director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received.

(b) If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances or consult with relevant state agencies.

(6) The Director must condition any subsequent project permit approvals upon compliance with relevant critical areas reports and their proposed mitigation strategies and other methods to achieve protection of critical areas and compliance with Chapters 18.802 through 18.810 SMC.

18.800.140 Critical area reconnaissance.

ℹ This is a new section.

(1) When required per SMC 18.800.130, the applicant must submit a critical areas reconnaissance consistent with this section.

(2) Preparation by Qualified Professional. A critical area reconnaissance must be performed by one or more qualified professionals for the types of critical areas subject to the report.

(3) Objective. The objective of a critical areas reconnaissance is to professionally determine, based on Best Available Science and consistent with the standards in Chapters 18.802 through 18.810 SMC, whether critical areas are present on or adjacent to a project site.

(4) Minimum documentation. At a minimum, the critical area reconnaissance must result in a letter that:

(a) identifies the presence or absence of critical areas, and which types, on or adjacent to the site of the proposed project;

(b) describes the means and methods the qualified professional used in making determinations.

18.800.150 Critical area report.

(1) Preparation by Qualified Professional. A critical area report must be prepared by one or more qualified professionals for the types of critical areas subject to the report.

(2) Incorporate Best Available Science. The critical area report must use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report must evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.

(3) Minimum Report Contents. At a minimum, the report must contain the following:

(a) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

(b) A copy of the site plan for the development proposal including:

(i) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and

(ii) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

(c) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

(d) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

(e) A statement specifying the accuracy of the report, and all assumptions made and relied upon;

(f) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

(g) An analysis of site development alternatives including a no development alternative;

(h) A description of reasonable efforts made to apply mitigation sequencing pursuant to SMC 18.800.180(4), Mitigation Sequencing, to avoid, minimize, and mitigate impacts to critical areas;

(i) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with SMC 18.800.190, Mitigation plan requirements, including, but not limited to:

(i) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

(ii) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

(j) A discussion of the performance standards applicable to the critical area and proposed activity;

(k) Additional information for the relevant critical area type as required by:

(i) SMC 18.802.080 for wetlands;

(ii) SMC 18.804.080 for fish and wildlife habitat conservation areas;

(iii) SMC 18.806.070 for geologically hazardous areas;

(iv) SMC 18.808.070 for critical aquifer recharge areas; and

(v) SMC 18.810.060 for frequently flooded areas.

(4) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Director.

(5) Limitations to Study Area. The Director may limit the required geographic area of the critical area report if:

(a) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or

(b) The proposed activity affects only a limited part of the subject site.

(6) Modifications to Required Contents. The applicant may consult with the Director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, either more or less information is required to adequately address the potential critical area impacts and required mitigation.

(7) Additional Information. The Director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required includes, but is not limited to:

(a) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;

(b) Grading and drainage plans; and

(c) Information specific to the type, location, and nature of the critical area.

18.800.160 Mitigation requirements.

(1) The applicant must endeavor to avoid all impacts that degrade the functions and values of critical areas. If alteration to the critical area is unavoidable, all adverse impacts to critical areas and buffers resulting from a development proposal or alteration are required to be mitigated using Best Available Science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

(2) Mitigation must be in-kind and on-site, when possible, or utilizing a wetland mitigation bank, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(3) Mitigation may not be implemented until after city permit issuance, and must be in accordance with the provisions of the mitigation plan in the approved critical area report.

(4) Mitigation Sequencing. An applicant must demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration must be avoided, minimized, or compensated for in the following sequential order of preference:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating the hazard by restoring or stabilizing the area through engineered or other methods;

(e) Reducing or eliminating the impact by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

(g) Monitoring the impact or other required mitigation and taking remedial action when necessary; and

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

(5) The city may encourage, facilitate, and approve innovative mitigation projects that are based on Best Available Science. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all the following circumstances exist:

(a) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;

(b) The group demonstrates the organizational and fiscal capability to act cooperatively;

(c) The group demonstrates that long-term management of the habitat area will be provided; and

(d) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(6) Timing. Any approved mitigation must be completed concurrently with project impacts. The Director may choose to accept a performance bond when seasonal restrictions occur, when availability of the mitigation site is limited, or when on-site construction may impact the critical area.

(7) Mitigation is required for all unauthorized impacts.

18.800.170 Mitigation plan requirements.

When mitigation is required, the applicant must submit a mitigation plan as part of the critical area report for approval by the city. The mitigation plan must include:

(1) Environmental Goals and Objectives. The mitigation plan must include a written report identifying environmental goals and objectives of the compensation proposed and including:

(a) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives must be related to the functions and values of the impacted critical area;

(b) A review of Best Available Science supporting the proposed mitigation and a description of the report author’s experience to date in restoring or creating the type of critical area proposed; and

(c) An analysis of the likelihood of success of the compensation project.

(2) Performance Standards. The mitigation plan must include measurable specific criteria for evaluating whether the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met.

(3) Detailed Construction Plans. The mitigation plan must include written specifications and descriptions of the mitigation proposed, such as:

(a) The proposed construction sequence, timing, and duration;

(b) Grading and excavation details;

(c) Erosion and sediment control features;

(d) A planting plan specifying native plant species, quantities, locations, size, spacing, and density; and

(e) Measures to protect and maintain plants until established;

(f) These written specifications must be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated outcome.

(4) Monitoring Program. The mitigation plan must include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol must be included outlining the schedule for site monitoring (for example, monitoring occurring in years one, three, five, and seven after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report must be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project must be monitored for a period necessary to establish that performance standards have been met, but not for a period less than 10 years.

(5) Contingency Plan. The mitigation plan must include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(6) Financial Guarantees. The mitigation plan must include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures are required in accordance with SMC 18.310.

18.800.180 Exception – Reasonable use.

(1) If the application of this chapter or SMC Chapters 18.802 through 18.810 would deny all reasonable economic use of the subject property, the city is responsible for determining if compensation is an appropriate action, or the property owner may apply for a reasonable use permit pursuant to this section. Note that a reasonable use exception is distinguished from a variance by the fact that a reasonable use exception is available *only* when the application of the critical areas code would deny *all* reasonable economic use of the subject property.

ℹ Limitation on reasonable use based on Mukilteo Municipal Code 17.52.025.

(2) Reasonable use. On existing legal lots 9,600 square feet or less, a maximum building footprint of 1500 square feet is allowed. Additional impervious area for the driveway access that provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer may be permitted. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts are considered minimal impact. Yard areas may be permitted only if they do not encroach into the critical area or buffer.

(3) Exception Request and Review Process. An application for a reasonable use permit must be made to the Director and must include:

(a) a Reasonable Use Permit application form;

(b) a critical area report, including mitigation plan, if necessary; and

(c) any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents).

(4) The application is reviewed per SMC Title 18 Part 2. The Director must prepare a recommendation based on review of the submitted information, a site inspection, and the proposal's ability to comply with the reasonable use permit criteria in subsection (5) of this section.

(5) Review Criteria. An application for a reasonable use exception may be granted if consistent with all of the following criteria:

(a) The application of this chapter or Chapters 18.802 through 18.810 SMC would deny all reasonable economic use of the property;

(b) No other reasonable economic use of the property has less impact on the critical area;

(c) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

(d) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant, or their predecessor;

(e) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(f) The proposed mitigation plan will result in no net loss of critical area functions and values consistent with Best Available Science; and

(g) The proposal is consistent with other applicable regulations and standards.

(6) Burden of Proof. The burden of proof is on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

18.800.190 Exception – Public agency and utility.

(1) If the application of this chapter or Chapters 18.802 through 18.810 SMC would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a reasonable use permit must be made to the Director and must include:

(a) A reasonable use permit application form;

(b) critical area report, including mitigation plan, if necessary; and

(c) any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW).

(3) The Director must prepare a recommendation based on review of the submitted information, a site inspection, and the proposal's ability to comply with the public agency and utility exception review criteria in subsection (4) of this section.

(4) Review Criteria. An application for a public agency and utility exception may be granted if all of the following criteria apply:

(a) The mitigation plan sequencing analysis shows there is no other practical alternative to the proposed development with less impact on the critical areas;

(b) The application of this chapter or Chapters 18.802 through 18.810 SMC would unreasonably restrict the ability to provide utility services to the public;

(c) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(d) The proposal protects and mitigates impacts to the critical area functions and values consistent with Best Available Science; and

(e) The proposal is consistent with other applicable regulations and standards.

(5) Burden of Proof. The burden of proof is on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

ℹ The following is a new subsection to allow for special treatment for temporary construction impacts.

(6) The Director may provide expedited approval of temporary construction impacts, and may condition such approval to require best practices to minimize those impacts.

18.800.200 Variances.

(1) Variances from the standards of this chapter or Chapters 18.802 through 18.808 SMC may be authorized by the city in accordance with the criteria in this section and the procedures in SMC Chapter 18.330. For variances from SMC Chapter 18.810, see the variance procedures and criteria in that chapter. Note that if application of this critical areas code would deny all reasonable economic use of the property, a reasonable use exception (SMC 18.800.180) may be appropriate.

(2) Variance Criteria. For deviations from critical areas regulations, a variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria in this section. The decisionmaker must review the request and make a written finding that the request meets or fails to meet the variance criteria.

(a) Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;

(b) The special conditions and circumstances do not result from the actions of the applicant;

(c) A literal interpretation of the provisions of this chapter or Chapters 18.802 through 18.810 SMC would deprive the applicant of privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

(d) Granting the variance requested does not confer on the applicant any special privilege that is denied by this chapter or Chapters 18.802 through 18.810 SMC to other lands, structures, or buildings under similar circumstances;

(e) The granting of the variance is consistent with the general purpose and intent of this chapter and Chapters 18.802 through 18.810 SMC, and does not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;

(f) The decision to grant the variance includes Best Available Science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish-habitat; and

(g) The granting of the variance is consistent with the general purpose and intent of the Stanwood Comprehensive Plan and adopted development regulations.

(3) Conditions May Be Required. In granting any variance, the decisionmaker may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(4) Burden of Proof. The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision must be made on the application.

18.800.210 Unauthorized critical area alterations and enforcement.

(1) When a critical area or its buffer has been altered in violation of this chapter or Chapters 18.802 through 18.810 SMC, all ongoing development work must stop and the critical area must be restored. The city has the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of the provisions of this chapter using the provisions of SMC Title 13.

(2) Site Investigations. The Director is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The Director is required to present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(3) Requirement for Restoration Plan. All development work must remain stopped until a restoration plan is approved by the city. Such a plan is required to be prepared by a qualified professional using Best Available Science and must describe how the actions proposed meet the minimum requirements described in subsection (3) of this section. The Director, at the violator's expense, is required to seek expert advice in determining the adequacy of the plan. Inadequate plans must be returned to the applicant or violator for revision and resubmittal.

(4) Minimum Performance Standards for Restoration.

(a) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards must be met for the restoration of a critical area; if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified.

(i) The historic structural and functions and values must be restored, including water quality and habitat functions;

(ii) The historic soil types and configuration must be replicated;

(iii) The critical area and buffers must remove invasive species and be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values must be replicated at the location of the alteration; and

(iv) Information demonstrating compliance with the mitigation requirements in SMC 18.800.160 must be submitted to the Director.

(b) For alterations to flood and geological hazards, the following minimum performance standards must be met for the restoration of a critical area; if the violator can demonstrate that greater safety can be obtained, these standards may be modified.

(i) The hazard must be reduced to a level equal to, or less than, the pre-development hazard;

(ii) Any risk of personal injury resulting from the alteration must be eliminated or minimized; and

(iii) The hazard area and buffers must be replanted with native vegetation sufficient to minimize the hazard.

(5) Penalties. This chapter may be enforced pursuant to SMC Title 13 Civil Enforcement.

18.800.220 Critical area markers and signs.

(1) The boundary at the outer edge of critical area tracts and easements must be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.

(2) The boundary at the outer edge of the critical area or buffer must be identified with temporary signs prior to any site alteration. Such temporary signs must be replaced with permanent signs prior to occupancy or use of the site. Sign design must be approved by the Director.

(3) These provisions may be modified by the Director as necessary to ensure protection of sensitive features or wildlife needs.

18.800.230 Notice on title.

(1) In order to inform subsequent purchasers of real property of the existence of critical areas, an applicant for a land division including any property containing a critical area or buffer on which a development proposal is submitted is required to file a title notice with the county records and elections division against the subject property, per the direction of the city.

(2) The notice must state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist.

(3) This notice on title is not required for a development proposal by a public agency or public or private utility.

(4) The applicant is required to submit proof that the notice has been filed for public record before the city approves any site project permit for the property or, in the case of land divisions, at or before recording.

18.800.240 Native growth protection areas or tracts.

(1) Unless otherwise required in this chapter, an application for a land division must use native growth protection areas, placed in easements or tracts, to delineate and protect those contiguous critical areas and buffers listed below:

(a) All landslide hazard areas and buffers;

(b) All wetlands, streams, and their buffers;

(c) All habitat conservation areas; and

(d) All other lands to be protected from alterations as conditioned by project approval.

(2) Native growth protection areas must be recorded on all documents of title of record for all affected lots.

(3) Native growth protection areas must be designated on the face of the plat or recorded drawing in a format approved by the city attorney. The designation must include the following restrictions:

(a) An assurance that native vegetation is to be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and

(b) The right of the city to enforce the terms of the restriction.

(4) Larger areas that are accepted by the city for dedication may be placed in a critical area tract.

18.800.250 Bonds to ensure mitigation construction.

(1) An applicant may submit a request to deter installation of any, or a portion of, their mitigation as required by their permit approval where it is not feasible, practical, or effective prior to the city final permit approval only as follows:

  (a) Seasonal or environmental factors affecting site conditions would result in low probability of plant survival;

  (b) When project impacts occur in stages, and mitigation is only needed to align with specific phases of the project; or

  (c) When compliance with regulatory requirements involves consultations or approvals from other agencies and cannot be finalized at the time of project approval.

(2) If approval is granted by the City, the applicant must post a performance bond or other security in a form and amount deemed acceptable by the city.

(3) Deferral shall only be granted for up to 6 months. One 6-month extension may be permitted under if the applicant provides reasonable justification for the delay.

Chapter 18.802 Critical Areas – Wetlands

ℹ The existing SMC Chapter 17.125 has been moved to this new chapter SMC 18.802. Major edits to this chapter include revising wetland regulations to align with Ecology guidance.

18.802.010 Applicability.

ℹ This draft replaces the purpose, objectives, and "relationship to general standards" sections in each critical area chapter, which were largely duplicative of each other, with this new applicability section that makes reference to the general critical areas chapter.

This chapter provides standards for the "wetland" type of critical area and is applied pursuant to the general critical area regulations and processes in SMC Chapter 18.800.

18.802.020 Designation.

(1) Per WAC 173-22-035, wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.

(2) All areas within the City of Stanwood that meet the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this chapter, whether or not they have been previously formally identified.

18.802.030 Classification.

(1) Wetlands are classified using the Washington State Wetland Rating System for Western Washington, Publication Number 23-06-009, or as hereafter amended:

  (a) Category I wetlands are wetlands that (a) represent a unique or rare wetland type; or (b) are more sensitive to disturbance than most wetlands; or (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions. Category I wetlands include the following:

(i) Estuarine wetlands greater than one acre;

(ii) Natural heritage wetlands that are identified by the Natural Heritage Program as supporting state-listed threatened or endangered plants;

(iii) Bogs;

(iv) Mature and old-growth forested wetlands;

(v) Wetlands in coastal lagoons; and

(vi) Wetlands scoring 23 to 27 based on functions in the Wetland Rating System.

(b) Category II wetlands are those that are difficult, though not impossible, to replace and provide high levels of some functions, including:

(i) Estuarine wetlands smaller than an acre or disturbed estuarine wetlands larger than an acre;

(ii) Interdunal wetlands larger than one acre; and

(iii) Wetlands scoring 20 to 22 based on functions in the Wetland Rating System.

(c) Category III wetlands include:

(i) Interdunal wetlands between one-tenth acre and one acre in size; and

(ii) Wetlands scoring 16 to 19 based on functions in the Wetland Rating System.

(d) Category IV wetlands are those that have the lowest level of functions in the Wetland Rating System, scoring 9 to 15 based on functions in the Wetland Rating System.

(2) All determinations of wetlands ratings and a wetlands delineation must be made based on the entire extent of the wetlands, unrelated to property lines or ownership patterns.

ℹ The existing SMC section 17.125.060 Standard buffer width requirements has been moved to this section. Wetland buffer tables and the mitigation table were updated based on current Ecology guidance and the Administrative Interpretation 2018-0520. Additional allowances for existing development and acceptable activities in buffers have been added.

18.802.040 Mapping.

ℹ This is a new section, added to maintain parallel organization with the other CA chapters.

The City maintains wetland survey maps which may be used as a guide to the presence or absence of wetlands but are not a substitute for the critical areas reconnaissance or reports required by Chapter 18.800 SMC.

18.802.050 Allowed activities.

In addition to the activities allowed in SMC 18.800.120, the following activities are allowed in wetlands and their buffers. In the event of a conflict between this section and SMC 18.800.120, this section controls.

(1) Conservation, Preservation, Restoration, and Enhancement. Restoration and enhancement of the critical area or its buffers if that action:

(a) does not alter the location, dimensions, or size of the critical area and buffer;

(b) does not alter or disturb existing native vegetation or wildlife habitat attributes (except as required for restoration or enhancement);

(c) improves and does not reduce the existing functions of the critical area or buffer; and

(d) is implemented according to a restoration or enhancement plan that has been approved by the city of Stanwood.

(2) Disturbance of Soils. When disturbance of soils is allowed in the critical area or its buffers as part of an authorized, permitted activity or as otherwise allowed in these standards, the following rules apply:

(a) Disturbance of soils is allowed only during the dry season, which is typically regarded as beginning on May 1 and ending on October 1 of each year; the Director may extend or shorten the dry season on a case-by-case basis, based on actual weather conditions.

(b) The soil duff layer in ungraded areas must remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed must be redistributed to other areas of the project site outside the critical area.

(c) The moisture-holding capacity of the topsoil layer must be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

(d) Erosion and sediment control that meets or exceeds the standards set forth in the city of Stanwood's stormwater regulations (Chapter 17.140 SMC) must be provided.

(3) Public and Private Roadway Crossings, Bridges, and Culverts. Construction of public roadway crossings, culverts and bridges less than or equal to 60 feet wide and private roads, bridges or culverts less than or equal to 20 feet long, are subject to the following standards:

(a) There is no other feasible alternative route with less impact on the critical area or buffer;

(b) Critical area crossings do not result in fill of greater than one-tenth of an acre of critical area; and

(c) Mitigation for impacts is according to an approved mitigation plan.

(d) The culvert will not alter the hydrology of any existing wetland.

(4) Utility Lines. New utility lines may be permitted to cross critical area and their buffers if they comply with the following standards:

(a) Critical areas and their buffers must be avoided to the maximum extent feasible;

(b) Mitigation for impacts is according to an approved mitigation plan;

(c) Installation under a critical area must be accomplished when feasible by boring beneath the critical area at a depth sufficient to prevent adverse hydrology impacts, or beneath the scour depth and hyporheic zone of the water body and channel migration zone, unless it is not feasible due to engineering constraints;

(d) When boring under the critical area is not feasible, the utilities must cross the critical area at an angle to minimize the potential impact (e.g., at an angle between 60 and 90 degrees to the centerline of the channel in a stream) and must avoid paralleling a stream or following a down-valley course near a channel;

(e) Critical area crossings do not result in fill of greater than one-tenth of an acre of wetland; and

(f) Crossings must be contained within the footprint of an existing street, driveway, or utility crossing where possible.

(5) Modification of Existing Structures. No existing structure may be modified to increase impervious surface in a critical area or buffer.

Note previous subsections (6) and (7) from earlier drafts have been moved to chapter 18.800.

18.802.060 Buffers.

(1) Buffers are required for all wetlands regulated by this chapter. The required buffer widths in this section are appropriate for buffers that are well-vegetated and have applied impact minimization measures from Table 18.802.060(3); where vegetation is lacking, buffers may need to be widened or re-vegetated to create the appropriate plant community.

(2) Required widths for wetland buffers are as shown in the following table.

(a) An increased buffer width may be required in the shaded area of the table per SMC 18.802.060(5).

(b) An additional building setback is also required per SMC 18.802.070.

Table 18.802.060-1 Wetland Buffers

	Buffer Width (in feet) based on habitat score		
Wetland Category	**3-5**	**6-7**	**8-9**
Category I: Based on Total Score	75	150	300
Category I: Bogs and Wetlands of High Conservation Value	190	190	300
Category I: Forested	75	150	300
Category I: Estuarine and Coastal Lagoons	150	150	150
Category II: Based on Total Score	75	150	300
Category III: All	60	150	300
Category IV: All	40	50	50

(3) The following impact minimization measures are required along with the buffers noted in Table 18.802.060-1:

Table 18.802.060-5 Wetland Impact Minimization Measures

Disturbance	Activities and Uses That May Cause Disturbance	Examples of Measures to Minimize Impacts
Lights	Parking lots, warehouses, manufacturing, high density residential	Direct lights away from wetland; use motion-activated lights; only use lighting where necessary for public safety and keep lights off when not needed; use lower-intensity LED lighting; dim light to the lowest acceptable intensity.
Noise	Manufacturing, high density residential	Place activity that generates noise away from wetland; construct a fence to reduce noise impacts on adjacent wetland and buffer; plant a strip of dense shrub vegetation adjacent to wetland buffer.
Toxic runoff	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping	Route all new untreated runoff away from wetland while ensuring wetland is not dewatered; establish covenants limiting use of pesticides within 150 feet of wetland; apply integrated pest management program.
Stormwater runoff/Change in water regime	Any impermeable surface, lawns, tilling	Infiltrate or treat, detain, and disperse runoff from impervious surfaces; retrofit stormwater detention and treatment for roads and existing adjacent development; prevent channelized or sheet flow from lawns that directly enters the buffer.

Pests and humans	Residential areas	Privacy fencing or landscaping with dense vegetation to delineate buffer edge and to discourage disturbance of wildlife by humans and pets; educational signage.
Dust	Tilled fields, roads	Best management practices for dust control.
Degraded buffer	Existing degraded buffer condition	Non-native plants to be removed and replaced with native vegetation per an approved planting plan; and restoration to be bonded and monitored per SMC 18.800.250.
		Other as further defined by DOE wetlands guidance documents.

(4) Measurement.

(a) The buffer must be measured horizontally in a landward direction from the wetland edge.

(b) Where lands adjacent to a wetland display a continuous slope of 25% or greater, the buffer must include all such sloping areas.

(5) Increased Buffers.

(a) Priority Habitat Areas. If a Category I or II wetland with habitat score greater than five points is located within 300 feet of a priority habitat area as defined by the Washington State Department of Fish and Wildlife, the buffers established by subsection (2) of this section must be increased by 50 feet unless the applicant provides a relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and all priority habitat areas located within 300 feet of the wetland. The corridor must be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent.

(b) Habitat for Endangered or Threatened Species, or Species of Local Importance. If the wetland contains documented habitat for endangered or threatened species, or species of local importance, the Director must establish the appropriate buffer based on a habitat assessment to ensure that the buffer provides adequate protection for the species.

(6) Averaging Buffer Widths. The width of a buffer may be averaged, thereby reducing the width of a portion of the buffer, and increasing the width of another portion, if the Director determines that all the following requirements are met:

(a) The ecological structure and function of the buffer after averaging is equivalent to or greater than the structure and function before averaging;

(b) The total area of the buffer after averaging is equivalent to or greater than the area of the buffer before averaging;

(c) The additional buffer is contiguous with the standard buffer;

(d) If the buffer averaging allows a structure or landscaped area to intrude into the original buffer, the resulting intrusion may extend no more than 15 feet into the original buffer area; and

(e) No part of the width of the resulting buffer is less than 65% of the required buffer.

(7) Category IV wetlands less than 4,000 square feet: Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of this code and they may be filled if the impacts are fully mitigated through the purchase of credits from a mitigation bank or an in-lieu fee program, if available. A critical areas report must be submitted verifying that the wetlands:

(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 (U.S. Army Corps of Engineers, 2010);

(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 (Ecology Publication #14-06-029 or as revised by Ecology);

(f) Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife;

(g) Do not contain state or federally listed species, or their critical habitat; and

(h) Do not contain species of local importance as identified by the city of Stanwood.

(8) Wetlands less than 1,000 square feet: Wetlands that meet the criteria listed in subsection 7 above are exempt from the buffer provisions contained in this Chapter.

(9) Functionally Disconnected Buffers. Buffers may exclude areas that are functionally and effectively disconnected from the wetland by an existing public or private road, or legally established development as determined by the Director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer.

(a) Significant developments include built public infrastructure such as roads, railroads, dikes, and private developments such as homes or commercial structures.

(b) Allowable buffer exclusion should be limited in scope to just the portion of the buffer affected and may not interrupt the entire buffer's functions.

(c) A critical area report may be required by the Director to analyze and document the buffer functionality.

18.802.070 Building setbacks.

Unless otherwise provided, buildings and other structures must be set back 15 feet from the edges of all wetland buffer boundaries. The following may be allowed in the building setback area:

(1) Landscaping;

(2) Uncovered decks;

(3) Building overhangs if such overhangs do not extend more than 18 inches into the setback area; and

(4) Impervious ground surfaces, such as driveways and patios; such improvements may be subject to water quality regulations as adopted in Chapter 17.140 SMC.

18.802.080 Critical area report requirements.

A critical area report is required for any development activity allowed under this chapter and SMC 18.802.100 within the critical area or its buffer. In addition to the general requirements of SMC 18.800.150, the following must be included in the critical area report:

(1) A map drawn to scale or survey showing the following information:

(a) the edge of the wetland based on the standards listed in WAC 173-22-035;

(b) the wetland characteristics and plant communities based on the U.S. Fish and Wildlife Service Classification of Wetlands and Deep Water Habitats in the U.S.;

(c) stream corridors including name (if named) and stream type based on the State Department of Natural Resources' Official Water Type Maps; and

(d) observed or reported wildlife that make use of the area including, but not limited to, nesting, breeding, and feeding areas;

(2) A description of the streams and wetlands within 225 feet of the subject property, including:

(a) buffers;

(b) drainage systems entering and leaving the site;

(c) a list of observed and documented plant and wildlife species;

(d) a description of the relative abundance of documented plant and wildlife species; and

(e) a description of the method used for flagging the wetland edge, stream corridor, and buffers;

(3) A description and illustration of proposed development activities allowed under this section and SMC 18.802.100 within the wetlands or buffers;

(4) A description of any previous disturbances to the wetlands or buffers;

(5) A summary of the methodology used to conduct the study, including documentation of any fieldwork performed on the site, field data sheets for delineations, rating system forms, and baseline hydrologic data;

(6) A description of the methodologies used to conduct the wetland delineations, wetland ratings and impact analyses, including references;

(7) A proposed classification of the wetlands based on SMC 18.802.050 and an explanation or rationale for the proposed rating;

(8) A mitigation plan that meets the requirements of SMC 18.802.090;

(9) A discussion of existing functions and values of the wetland(s) and buffers;

(10) A discussion of the changes to wetland and buffer functions and values resulting from the proposed development activity.

18.802.090 Mitigation plan requirements.

(1) If alteration of a wetland is unavoidable, all adverse impacts to the wetland must be mitigated in accordance with the mitigation plan component of an approved critical area report. When mitigation is required by this chapter, it must address restoration, rehabilitation, and compensation in accordance with SMC 18.800.160 and 18.800.170 and the following requirements:

(a) Wetland acreage must be replaced at the following ratios when proposed on site or off site within the same subdrainage basin (“Stillaguamish floodplain”):

Table 18.802.090-1 Replacement Ratios

Wetland Category	Re-Establishment of Creation	Rehabilitation	Preservation	Enhancement	Other
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consult with WA DNR	As Determined by the Dept. of Ecology
Category 1 – Forested	6:1	12:1	24:1	24:1	
Category 1 – Bogs	N/A	N/A	24:1	N/A	

Category 1 – Estuarine	3:1 (Re-establishment only)	6:1	12:1	Limited Circumstances (case by case)	or Corp of Engineers
Category I – All Others	4:1	8:1	16:1	16:1	
Category II - Estuarine	4:1 (Re-establishment only)	8:1	16:1	Limited Circumstances (case by case)	
Category II – All Others	3:1	6:1	12:1	12:1	
Category III	2:1	4:1	8:1	8:1	
Category IV	1.5:1	3:1	6:1	6:1	

(b) In kind, on-site mitigation that is sufficient to achieve equivalent or greater critical area and/or buffer biologic functions and values is preferred to ensure, to the greatest extent feasible, that the plan results in mitigation for direct impacts resulting from the alteration.

(c) Off-site mitigation may be used in those situations where adequate on-site mitigation is not feasible to achieve.

(2) The mitigation plan must:

(a) Include a baseline study that analyzes the existing functions and values of the wetlands and buffer, functions and values that may be lost, and the system's functions and values after mitigation;

(b) Specify how lost functions and values will be replaced;

(c) Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;

(d) Address the need for and, when appropriate, determine the width of the buffer adjacent to any altered wetland edge;

(e) In public projects, provide interpretative signage at the rate of one per every five acres or portion thereof, the contents and design of which must be approved by the Director prior to installation;

(f) Include a narrative monitoring plan and plan sheet with sufficient detail for the City to field verify mitigation success.

18.802.100 Wetland mitigation bank credit.

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

(a) The bank is certified under Chapter 173-700 WAC;

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

(c) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(2) Replacement ratios for projects using bank credits must be consistent with replacement ratios specified in the bank's certification.

(3) 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. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

Chapter 18.804 Critical Areas – Fish and Wildlife Habitat Conservation Areas

ℹ The existing SMC Chapter 17.130 has been moved to this new Chapter SMC 18.804. The definition for FWHCA's will be updated in the definitions section, consistent with RCW 36.70A.030(6). The following sections were updated based on Ecology guidance, including changing the stream typing to be consistent throughout the chapter. The stream buffers were also updated by adding a requirement for using SPTH for new development.

18.804.010 Applicability.

ℹ This draft replaces the purpose, objectives, and "relationship to general standards" sections in each critical area chapter, which were largely duplicative of each other, with this new applicability section that makes reference to the general critical areas chapter.

This chapter provides standards for the "Fish and Wildlife Habitat Conservation Area" type of critical area and is applied pursuant to the general critical area regulations and processes in SMC Chapter 18.800.

18.804.020 Designation.

(1) All areas within the City meeting one or more of the criteria in (2) are hereby designated Fish and Wildlife Habitat Conservation Areas and are subject to the provisions of this chapter.

(2) Fish and Wildlife Habitat Conservation Areas include:

(a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.

(i) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or are threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service may be consulted as necessary for current listing status.

(ii) State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species), and WAC 232-12-011 (state threatened and sensitive species). The Washington Department of Fish and Wildlife maintains the most current listing and may be consulted as necessary for current listing status.

(b) State Priority Habitats and the Habitats of State Priority Species. Priority habitats and species are priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status; sensitivity to habitat alteration; and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique

vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the Washington Department of Fish and Wildlife; maps and reports can be obtained by contacting the Washington Department of Fish and Wildlife's Priority Habitats and Species Program.

(c) Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the City Council, including those that possess unusual or unique habitat warranting protection. Any species identified by the City Council must be listed.

(d) Commercial and Recreational Shellfish Areas. These areas include all public and private tidelands or bedlands suitable for shellfish harvest, kelp, eelgrass beds and forage fish spawning areas, including shellfish protection districts established pursuant to Chapter 90.72 RCW.

(e) Naturally Occurring Ponds under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

(f) Waters of the State. In the city of Stanwood, waters of the state include lakes, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031.

(g) State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington Department of Natural Resources.

(h) Land essential for preserving connections between habitat blocks and open spaces.

18.804.030 Classification.

ℹ This section is based on existing SMC 17.130.050.

ℹ The classification of streams was updated based on the new water typing system in WAC 222-16-030. Language closely mirrors the WAC and was not updated for grammar or plain language. Some inconsistencies between code and WAC were inherited from existing code. Updated "department" in the definition to "Ecology."

(1) Streams are classified as described below, consistent with WAC 222-16-030:

(a) Type S Streams. All waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, including periodically inundated areas of their associated wetlands.

(b) Type F Streams. Segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water, as more fully described in WAC 222-16-030.

(c) Type Np Streams. All segments of natural waters within the average bankfull width of defined channels that are perennial non-fish habitat streams. Perennial streams are streams that do not dry any time during a year of normal rainfall. Type Np streams are not used by fish and do not have the potential to provide fish habitat. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 23), then Type Np Streams begin at a point along the channel where the contributing basin area is at least 52 acres.

(d) Type Ns Streams. All segments of natural waters within the average bankfull width of the defined channels that are not Type S, F, or Np Streams. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np streams. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np streams.

18.804.040 Mapping

The approximate location and extent of fish and wildlife habitat conservation areas are shown on the City's critical area maps contained in the comprehensive plan. These maps shall be used as a general guide only and actual type, extent and boundaries shall be determined by a qualified biologist.

(1) The City and Washington State DNR maintain hydro-watercourse maps which may be used as a guide to identification of stream types, but not as a definitive declaration of stream type. To establish the stream type for the purposes of this chapter, stream typing must generally include on-site reconnaissance by a qualified biologist.

(2) Critical habitat is the specific areas within the geographic area, occupied by the species at the time it was listed, that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that may need special management or protection. Washington State Department of Fish and Wildlife maintains a Priority Habitats and Species Website which contains on-line maps which can be used as a guide to identify potential development impacts on species.

18.804.050 Allowed activities.

In addition to the activities allowed in SMC 18.800.120, the following activities are allowed in FWHCAs and their buffers. In the event of a conflict between this section and SMC 18.800.120, this section controls.

ℹ The activities in SMC 18.802.050 for wetlands duplicated almost the entirety of this section, so we're incorporating that by reference.

(1) Any of the activities allowed in SMC 18.802.050.

(2) Streambank Stabilization.

(a) Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report. All actions must comply with the appropriate state and federal guidelines and obtain any required state and federal permits.

(b) Streambank stabilization to protect existing structures from channel migration is permitted in accordance with an approved critical area report. All actions must comply with the appropriate state and federal guidelines and obtain any required state and federal permits.

(c) Maintenance of existing streambank stabilization features is allowed subject to the following:

(i) Only hand equipment (no power tools) may be used within the stream and stream buffer;

(ii) No clearing of vegetation within the stream or stream buffer;

(iii) Maintenance actions must be restricted to May 1st through October 1st or as modified by appropriate state and federal timing restrictions; and

(iv) All actions must comply with the appropriate state and federal guidelines and obtain any required state and federal permits.

Note previous subsections (6) and (7) from earlier drafts have been moved to chapter 18.800.

18.804.060 Buffers.

This section is based on existing SMC 17.130.060.

Consistent with Department of Fish and Wildlife guidance and Best Available Science, this section proposes to abandon the table of buffer widths based on stream type and instead set buffer width based on site-potential tree height (SPTH) using the associated mapping tool to determine stream buffers for new development.

Buffers are required for all streams regulated by this chapter. Required minimum stream buffer widths are as stated in this section.

(1) New development must utilize the Washington Department of Fish and Wildlife (WDFW) site potential tree height (SPTH) mapping tool to determine appropriate stream buffers. The buffer must be equal to the height of the tallest 200-year-old site-potential tree ($SPTH_{200}$) or 100 feet, whichever is greater. Note an additional building setback as required by SMC 18.804.070 is also required.

(2) Buffers for state or federally designated endangered, threatened, and sensitive species per SMC 18.804.020(2) shall be established per an approved habitat management plan as described in SMC 18.804.090.

(3) Measurement.

(a) The buffer must be measured horizontally in a landward direction from the ordinary high-water mark.

(b) Where lands adjacent to a stream display a continuous slope of 25% or greater, the buffer must include all such sloping areas.

(4) Averaging Buffer Widths. The width of a buffer may be averaged, thereby reducing the width of a portion of the buffer, and increasing the width of another portion, if all the following requirements are met:

(a) Averaging does not impair or reduce the habitat, water quality purification and enhancement, stormwater detention, groundwater recharge, shoreline protection and erosion protection, and other functions of the stream or buffer;

(b) The total area of the buffer on the subject property is not less than the buffer which would be required if averaging were not allowed; and

(c) No part of the width of the buffer is less than 65% of the required width or 25 feet, whichever is greater.

(5) Buffer Width Reduction. Buffer widths may be reduced if the buffer is enhanced in accordance with the following requirements:

(a) Buffer width reduction and enhancement is targeted for buffer areas that have minimal functions and values due to existing physical characteristics;

(b) The applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functional value of the buffer when compared with the functional value of the standard buffer;

(c) The applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this section, as part of the critical area report described in SMC 18.804.080;

(d) The buffer width is not reduced below 75% of the standard buffer width, or 25 feet, whichever is greater, and the total buffer area reduction is not less than 75% of the total buffer area before reduction; and

(e) The functions and values of the stream protected by the buffer are not decreased.

(6) Functionally Disconnected Buffers. Buffers may exclude areas that are functionally and effectively disconnected from the stream by an existing public or private road, or legally established development as determined by the Director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer.

(a) Significant developments include built public infrastructure such as roads, railroads, dikes, and private developments such as homes or commercial structures.

(b) Allowable buffer exclusion should be limited in scope to just the portion of the buffer affected and shall not interrupt the entire buffer functions.

(c) A critical area report may be required by the Director to analyze and document the buffer functionality.

18.804.070 Building setbacks.

(1) Buildings and other structures must be set back 15 feet from the outer edges of stream buffers, except as provided in subsection (2).

(2) The following may be allowed in the building setback area:

(a) Landscaping;

(b) Uncovered decks;

(c) Building overhangs if such overhangs do not extend more than 18 inches into the setback area; and

(d) Impervious surfaces such as driveways and patios (subject to City stormwater regulations).

i New provisions addressing existing development and activities in buffers have been added.

18.804.080 Critical area report requirements.

If a critical area report is required, the Director may require any or all of the following as part of the critical area report, in addition to the general requirements of SMC 18.800.150:

(1) Stream and buffer impacts:

(a) Stream corridors, name (if named), and stream type based on the State Department of Natural Resources' Official Water Type Maps and SMC 18.804.050;

(b) Observed or reported wildlife that make use of the area including, but not limited to, nesting, breeding, and feeding areas;

(c) A description of the streams and wetlands within 150 feet of the subject property, including buffers, drainage systems entering and leaving the site, a list of observed and documented plant and wildlife species, a description of the relative abundance of documented plant and wildlife species, and a description of the method used for flagging the wetlands edge, stream corridor, and buffers;

(d) A description and illustration of proposed development activities within the stream or buffer;

(e) A description of any previous disturbances to the stream or buffer;

(f) A summary of the methodology used to conduct the study;

(g) A mitigation plan which meets the requirements of SMC 18.800.160 and 18.800.170;

(h) A stream relocation plan, if applicable;

(i) A discussion of existing functions and values of the stream and buffers; and

(j) A discussion of the changes to stream and buffer functions and values resulting from the proposed development activity.

(2) Wildlife Habitat:

(a) If a habitat assessment is required, it shall be integrated into the critical area study as described in subsection 1 above;

(b) A map drawn to scale or survey showing the location and description of the primary association area(s) of the species or natural habitats on the property;

(c) Physical and biological features that the species needs for life processes including:

(i) Space for individual and population growth for normal behavior;

(ii) Cover or shelter;

(iii) Food, water, air light minerals, or other nutritional or physiological requirements;

(iv) Site for breeding and rearing offspring, germination, or seed dispersal; and

(v) Habitats that protected from disturbances or are representative of the historical geographical and ecological disturbances of the species;

(d) If the habitat assessment identifies a fish and wildlife habitat conversation area is present or adjacent to a development, then a habitat management plan shall be prepared and integrated into the critical areas report.

18.804.090 Mitigation and management requirements

If the habitat assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conversation area, the applicant shall provide a habitat management and mitigation plan prepared by a qualified biologist for evaluation by the city, state and federal agencies.

(1) Habitat management and mitigation plan shall be based on the most currently available best available science to minimize impacts associated with development. The following shall be used as guidance documents when preparing the plan:

(a) Washington State Department of Fish and Wildlife Priority Habitats and Species (PHS) Program;

(b) Washington State Department of Fish and Wildlife Land Use Planning for Salmon, Steelhead, and Trout guidance paper;

(c) Governor's Salmon Recovery Office and Recreation and Conservation Office website for ecosystem connectively and riparian vegetation; and

(d) Statewide Strategy to Recovery Salmon: the Washington Way.

(2) The habitat management and mitigation plan shall contain:

(a) A description of how the proposal will avoid, minimize or mitigate impacts to fish or critical species and their habitats;

(b) A mitigation plan that specifies how functions and values lost as a result of the activity will be replaced;

(c) Specifications when and how mitigation will occur relative to construction;

(d) Performance standards for monitoring and maintenance of the mitigation area; and

(e) Calculation of performance and maintenance surety amounts.

Chapter 18.806 Critical Areas – Geologically Hazardous Areas

ℹ The existing SMC Chapter 17.115 Critical Areas – Geologically Hazardous Areas – Specific Standards has been moved to this new Chapter SMC 18.806. A definition for geologically hazardous areas will be added to the definitions section, consistent with RCW 36.70A.030(14) and WAC 365-190-120(1).

18.806.010 Applicability.

ℹ This draft replaces the purpose, objectives, and "relationship to general standards" sections in each critical area chapter, which were largely duplicative of each other, with this new applicability section that makes reference to the general critical areas chapter.

This chapter provides standards for the "Geologically Hazardous Area" type of critical area and is applied pursuant to the general critical area regulations and processes in SMC Chapter 18.800.

18.806.020 Designation.

ℹ The following definition is taken from the critical areas checklist and RCW 36.70A.030(14) and WAC 365-190-120(1). This definition also appears in the definitions chapter of Title 18.

(1) Geologically hazardous areas, as defined in RCW 36.70A.030 and WAC 365-190-120, include areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health and safety concerns. They pose a threat to the health and safety if incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards must be designated as a geologically hazardous area:

   (a) Erosion hazard;

   (b) Landslide hazard;

   (c) Seismic hazard; and

   (d) Other geological events including tsunamis, volcanic hazards, and differential settlement.

(2) Erosion Hazard Areas. Erosion hazard areas include, but are not limited to, those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. On the city's critical areas maps, these are shown as areas of moderate or steep slopes. Erosion hazard areas are also those areas impacted by shore land or stream bank erosion, or both.

(3) Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples include:

   (a) Areas of historic failures, such as those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than 15%; and

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage;

(c) Areas that have shown movement during the Holocene epoch (from 10,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(f) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(g) Any area with a slope of 40% or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

(4) Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type of thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(5) Tsunami Hazard Areas. Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as the result of excessive wave action derived from seismic or other geologic events.

ℹ The following sections were reworked based on the Critical Areas Checklist.

(6) Volcanic Hazard Areas. Areas susceptible to mud or debris flows from volcanic eruptions (Glacier Peak).

(7) Other Hazard Areas. Geologically hazardous areas also include areas determined by the city to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement, and hazards from mine workings (such as adits, gangways, tunnels, drifts, or air shafts).

18.806.030 Classification.

Geologic hazard areas are classified according to the following categories for each geologic hazard type.

Table 18.806.040-1 Geologic hazard types

Classification	Documentation and Data Sources
Known or suspected risk	Documentation or projection of the hazard by a qualified professional exists.
Risk unknown	Documentation or projection of the lack of hazard by a qualified professional exists, or data are not available to determine the presence or absence of a geologic hazard.

18.806.040 Mapping.

ℹ This section is based on existing SMC 19.70.420 Mapping.

(1) The approximate location and extent of geologically hazardous areas are shown on the adopted critical area maps (see the Natural Features Element of the Stanwood Comprehensive Plan). The adopted critical area maps include:

  (a) U.S. Geological Survey landslide, seismic, and volcanic hazard maps;

  (b) Department of Natural Resources Geological Survey's Geologic Information Portal, including seismic hazards and slope stability, as applicable;

  (c) National Oceanic and Atmospheric Administration tsunami hazard maps (pending); and

  (d) Locally adopted maps.

(2) These maps are to be used as a guide for city staff, project applicants and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

18.806.050 Allowed activities.

In addition to the activities allowed in SMC 18.800.120, the following activities are allowed in geologically hazardous areas and their setbacks. In the event of a conflict between this section and SMC 18.800.120, this section controls.

(1) In addition to the standards in SMC 18.800.120, trails proposed to be located in landslide or erosion hazard areas must be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

(2) Moderate and Severe Erosion Hazards and Landslide Hazards on Moderate and Steep Slopes. Except as otherwise provided for in this chapter and Chapter 18.800 SMC, only those activities approved and permitted consistent with an approved geotechnical report in accordance with this chapter are allowed in moderate or severe erosion hazard areas or in landslide hazard areas with moderate or steep (severe) slopes.

(3) The following activities are allowed within slight erosion, low landslide, all volcanic, and all seismic hazard areas without a geotechnical report:

  (a) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

  (b) Single-Family Infill Development. Construction of a single-family unit, additions, and accessory structures that do not impact streams, wetlands, or their buffers; and

  (c) Installation of fences.

(4) Critical facilities are not permitted on seismic faults or tsunami inundation areas. If such a prohibition is unreasonable, an allowance for critical facilities in tsunami areas can be made with the following specific conditions:

(a) Construction of new critical facilities is permissible if no feasible alternative site is available.

(b) Critical facilities must have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year flood).

(c) Floodproofing and sealing measures must be taken to ensure that toxic substances are not displaced by or released into flood waters.

(d) Access routes elevated to or above the level of the base flood elevation are provided to all critical facilities to the extent possible.

18.806.060 Setbacks and Other Performance Standards.

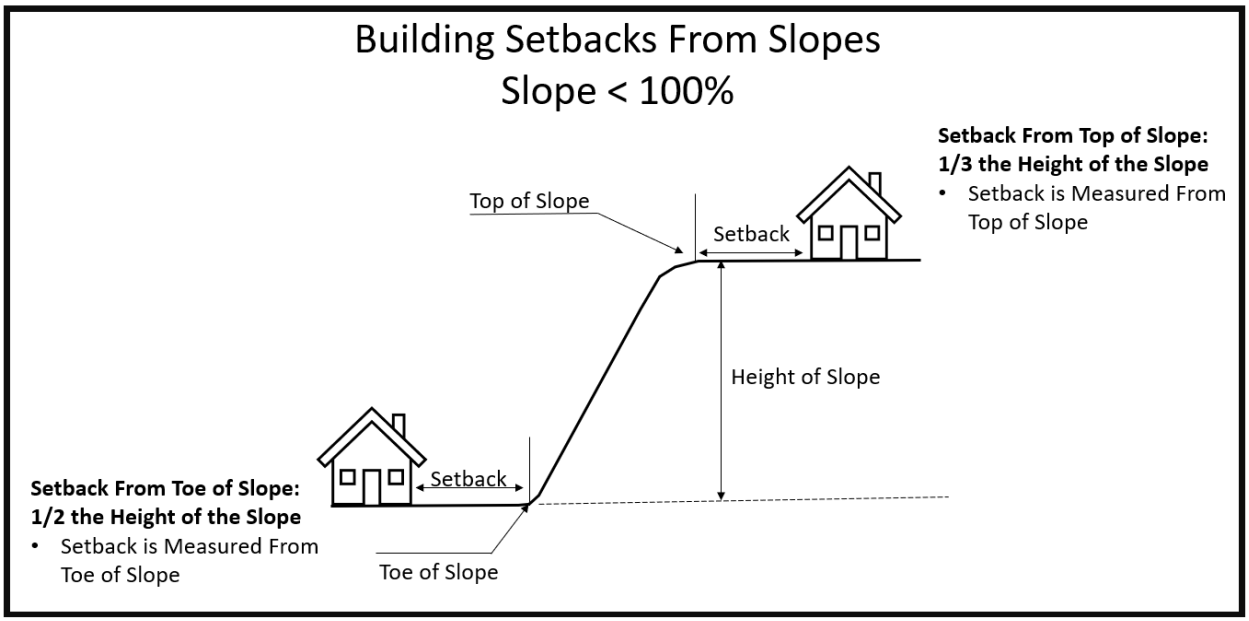
(1) Erosion and Landslide Hazard Areas. Activities on sites containing moderate or high erosion or landslide hazards must meet the following requirements:

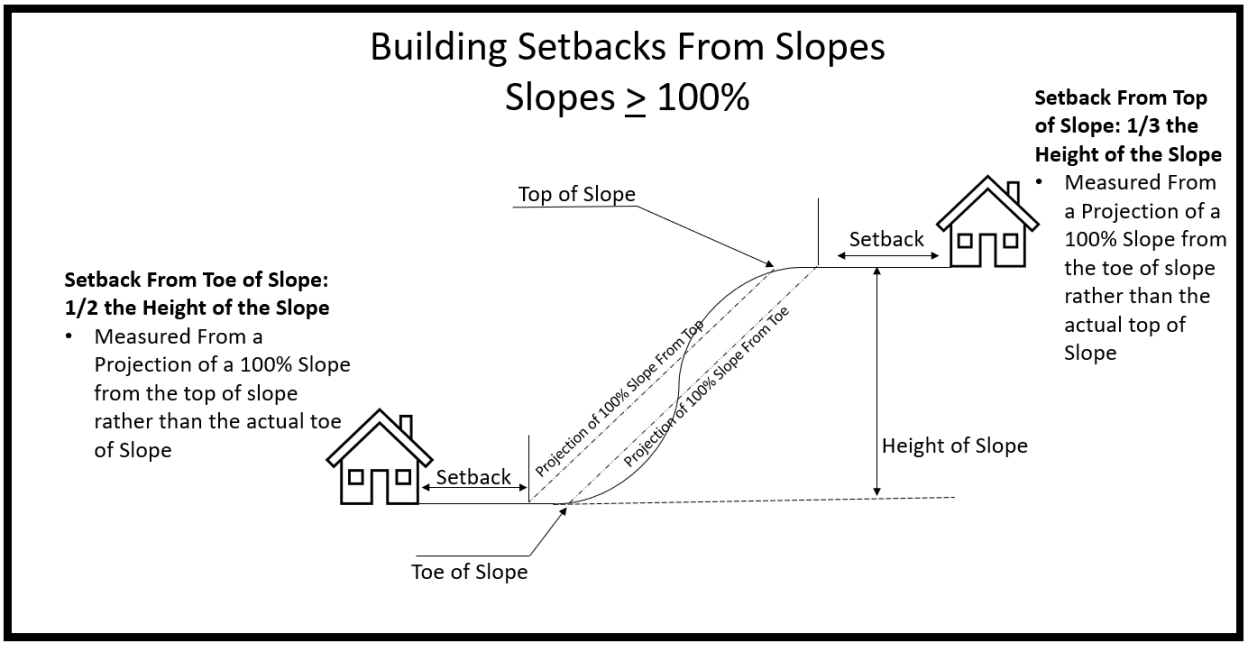
(a) Setback Required. A setback must be established from all edges of moderate or high erosion or landslide hazard areas. The size of the setback must be determined by the city to eliminate or minimize the risk of property damage, death or injury resulting from erosion and landslides caused in whole or part by the development, based upon review of and concurrence with a geotechnical report prepared by a qualified professional.

(i) Minimum Setback. At the base of a slope, the setback must be equal to one-half the height of the slope (as measured vertically from the toe to the top of the slope). For slopes less than 100%, the setback must be measured from the toe of the slope. For slopes greater than 100%, the setback must be measured from a projection of a 100% slope from the top of the slope rather than the actual toe of the slope. See Figure 18.806.080-1.

(ii) At the top of a slope, the setback must be equal to one-third the height of the slope. For slopes less than 100%, this setback must be measured from the top of the slope. For slopes greater than 100%, this setback must be measured from the projection of a 100% slope originating at the toe.

Figure 18.806.080-1 Setback widths for slopes





(iii) Setback Reduction. The setback may be reduced to a minimum of 25 feet if a qualified professional demonstrates to the city's satisfaction that the reduction adequately protects the proposed development, adjacent developments and uses and the subject critical area.

(iv) Increased Setback. The setback may be increased where the city determines a larger setback is necessary to prevent risk of damage to proposed and existing development.

(b) Alterations. Alterations of an erosion or landslide hazard area and/or setback may only occur for activities for which a geotechnical analysis is submitted and certifies that:

(i) The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

(ii) The development will not decrease slope stability on adjacent properties; and

(iii) Such alterations will not adversely impact other critical areas.

(c) Design Standards. Development within an erosion or landslide hazard area and/or setback must be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. The requirement for long-term slope stability excludes designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

(i) The proposed development may not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions must be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code;

(ii) Structures and improvements must be clustered to avoid geologically hazardous areas and other critical areas;

(iii) Structures and improvements must minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;

(iv) Structures and improvements must be located to preserve the most critical portion of the site and its natural landforms and vegetation;

(v) The proposed development may not result in greater risk or a need for increased setbacks on neighboring properties;

(vi) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes;

(vii) Development must be designed to minimize impervious lot coverage.

(d) Vegetation Must Be Retained. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area is prohibited. Yard and other uses are allowed in the setback if allowed by the approved geotechnical report.

(e) Seasonal Restriction. Clearing is allowed only from May 1st to October 1st of each year; the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the Department of Natural Resources.

(f) Utility Lines and Pipes. Utility lines and pipes are permitted in erosion and landslide hazard areas only if the applicant demonstrates that no other practical alternative is available. The line or pipe must be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance are allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

(g) Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area are prohibited except as follows:

(i) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas;

(ii) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or

(iii) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed setback demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

(h) Subdivisions. The division of land in erosion and landslide hazard areas and associated setbacks is subject to the following:

(i) Land that is located wholly within an erosion or landslide hazard area or its setback may not be subdivided. Land that is located partially within an erosion or landslide hazard area or its setback may be divided; if each resulting lot has sufficient buildable area outside of, and will not affect, the erosion or landslide hazard or its setback.

(ii) Access roads and utilities may be permitted within the erosion or landslide hazard area and associated setbacks if the city determines that no other feasible alternative exists.

(i) Prohibited Development. On-site sewage disposal systems, including drain fields, are prohibited within erosion and landslide hazard areas and related setbacks.

(2) Tsunami Hazard Areas (Unknown Hazard). Activities on sites containing areas susceptible to inundation due to tsunami hazards require an evacuation and emergency management plan. Uses in all tsunami hazard areas must adhere to the following standards, in addition to the other requirements of this chapter:

(a) All new construction must be located landward of the reach of mean high tide.

(b) All new construction and substantial improvements must be elevated on pilings and columns so that:

(i) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level; and

(ii) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values must each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(c) Design Must Be Certified. The structural design, specifications and plans for a proposed activity within a tsunami hazard area must be developed, reviewed, and certified by a registered professional engineer or architect that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the standards of this section.

(d) Space Below Lowest Floor Must Be Free of Obstruction. The space below the lowest floor of all new construction and substantial improvements must be either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall is required to have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or if required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse must result from water load less than that which would occur during the base flood; and

(ii) The elevated portion of the building and supporting foundation system is not subject to collapse, displacement, or other structural damage because of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination must each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(e) Use of Breakaway Walls Must Be Limited. If breakaway walls are utilized, such enclosed space must be used solely for parking of vehicles, building access, or storage, and may not be used for human habitation.

(f) Manufactured Homes. Manufactured homes to be placed or substantially improved in tsunami hazard areas must meet the requirements of this chapter.

(g) Recreational Vehicles. Recreational vehicles placed on sites within tsunami hazard areas must meet the requirements of this chapter.

(3) Seismic and Other Hazard Areas. Alterations of these geologically hazardous areas or associated setbacks may only occur for activities that:

(a) Do not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

(b) Do not adversely impact other critical areas;

(c) Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and

(d) Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

18.806.070 Geotechnical report requirements.

In addition to the general requirements of SMC 18.800.150, geotechnical reports for geologically hazardous areas must meet the requirements of this section.

(1) Erosion and Landslide Hazard Areas. A geotechnical report for an erosion hazard or landslide hazard area must include the following information at a minimum:

(a) Site Plan. The report must include a copy of the site plan for the proposal showing:

(i) The height of slope, slope gradient, and cross section of the project area;

(ii) The location of springs, seeps, or other surface expressions of groundwater on or within 200 feet of the project area or that have the potential to be affected by the proposal; and

(iii) The location and description of surface water runoff.

(b) Hazards Analysis. The hazards analysis must specifically include:

(i) A description of subsurface conditions based on data from site-specific explorations;

(ii) Descriptions of surface and groundwater conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;

(iii) An estimate of slope stability and the effect construction and placement of structures may have on the slope over the estimated life of the structure;

(iv) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event;

(v) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties;

(vi) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;

(vii) Recommendations for building siting limitations;

(viii) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion.

(c) Geotechnical Engineering Report. The technical information for a project within a landslide hazard area must include a geotechnical engineering report prepared by a licensed engineer in the State of Washington that presents engineering recommendations for the following:

(i) Parameters for design of site improvements including appropriate foundations and retaining structures. These must include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;

(ii) Recommendations for drainage and subdrainage improvements;

(iii) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

(iv) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate.

(d) Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan is required. The erosion and sediment control plan must be prepared in compliance with requirements set forth in the city's stormwater management regulations.

(e) Drainage Plan. The report must include a drainage plan for the collection, transport, treatment, discharge and/or recycling of water prepared in accordance with the city's surface water management plan. The drainage plan must consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area.

(f) Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas must include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan and/or other means for maintaining long-term soil stability.

(g) Monitoring Surface Waters. If the city determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the geotechnical report must include a plan to monitor the surface water discharge from the site. The monitoring plan must include a recommended schedule for submitting monitoring reports to the city.

(2) Seismic Hazard Areas. In addition to the basic report requirements, a geotechnical report for a seismic hazard area must also meet the following requirements:

(a) The site map must show all known and mapped faults that are within 200 feet of the project area or that have potential to be affected by the proposal.

(b) The hazards analysis must include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement).

(c) A geotechnical engineering report must evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits and their liquefaction potential. If it is determined that the site is subject to liquefaction, mitigation measures appropriate to the scale of the development must be recommended and implemented.

(3) Tsunami Hazard Areas. In addition to the basic report requirements, a geotechnical report for a tsunami hazard area must meet the following requirements:

(a) Site Plan. The site plan must show all areas within 200 feet of the project area that have the potential to be inundated by wave action derived from a seismic event;

(b) Hazards Analysis. The hazards analysis must include a complete discussion of the potential impacts of the tsunami hazard on the site; and

(c) Emergency Management Plan. The emergency management plan must include plans for emergency building exit routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.

(4) Volcanic and Other Geologically Hazardous Areas. In addition to the basic report requirements, the Director may require additional information to be included in the geotechnical report if determined to be necessary to review the proposed activity and the subject hazard. Additional information that may be required includes, but is not limited to:

(a) Site Plan. The site plan must show all hazard areas located within 200 feet of the project area or that have the potential to be affected by the proposal; and

(b) Hazards Analysis. The hazards analysis must include a complete discussion of the potential impacts of the hazard on the project area and of the proposal on the hazard.

Chapter 18.808 Critical Areas – Critical Aquifer Recharge Areas

ℹ The existing SMC Chapter 17.135 Critical Areas – Critical Aquifer Recharge Areas – Specific Standards has been moved to this new Chapter SMC 18.808.

18.808.010 Applicability.

ℹ This draft replaces the purpose, objectives, and "relationship to general standards" sections in each critical area chapter, which were largely duplicative of each other, with this new applicability section that makes reference to the general critical areas chapter.

This chapter provides standards for the "Critical Aquifer Recharge Area" type of critical area and is applied pursuant to the general critical area regulations and processes in SMC Chapter 18.800.

18.808.020 Designation.

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(3). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater. These areas include the following:

(1) Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of groundwater travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where groundwater time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

(2) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.

(3) Susceptible Groundwater Management Areas. Susceptible groundwater management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted groundwater management program developed pursuant to Chapter 173-100 WAC.

(4) Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.

(5) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the State Department of Ecology guidelines.

(6) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology.

18.808.040 Mapping.

(1) The approximate location and extent of critical aquifer recharge areas are shown on the adopted critical areas maps (see the Natural Features Element of the Stanwood Comprehensive Plan).

(2) These maps are to be used as a guide for the city, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

18.808.050 Allowed activities.

The following activities are permitted in a CARA without a critical areas report:

(1) Activities permitted under SMC 18.800.120.

(2) Residential uses connected to the city sewer.

(3) Commercial/industrial/institutional uses connected to the city sewer that do not utilize, produce, store, or otherwise discharge hazardous materials, as defined in WAC 173-303-090(8) or SMC 18.808.110.

(4) Utility lines.

18.808.060 Prohibited activities.

The following activities or uses are prohibited within all critical areas identified as CARAs:

(1) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;

(2) Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

(3) Mining.

  (a) Metals and hard rock mining; and

  (b) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;

(4) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

(5) Hard chrome plating operations;

(6) Chemical lagoons and pits;

(7) Hazardous material disposal sites;

(8) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances;

(9) New septic systems; and

(10) Other Prohibited Uses or Activities:

  (a) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

  (b) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and

  (c) Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer recharge areas associated with sole source aquifers.

18.808.070 Critical area report requirements.

(1) A critical area report is required for:

  (a) any proposed use that is not allowed under SMC 18.808.050;

  (b) any activity that is located within the one-year time of travel zone for any wellhead.

(2) In addition to the requirements of SMC 18.800.150, a hydrogeological assessment must be provided in a critical area report, and contain the following information:

(a) Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on-site or immediately adjacent to the site, and permeability of the unsaturated zone;

(b) Groundwater depth, flow direction, and gradient based on available information;

(c) Currently available data on wells and springs within 1,300 feet of the project area;

(d) Location of other critical areas, including surface waters, within 1,300 feet of the project area;

(e) Available historic water quality data for the area to be affected by the proposed activity;

(f) Best management practices proposed to be utilized, including any low impact development techniques;

(g) Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;

(h) Groundwater monitoring plan provisions;

(i) Discussion of the effects of the proposed project on the groundwater quality and quantity, including:

(i) Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features; and

(ii) Predictive evaluation of contaminant transport based on potential releases to groundwater; and

(j) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans must include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

18.808.080 Class I and Class I operations.

Certain nonresidential operations present a greater potential risk to water resources because of the volume and type of hazardous materials that are managed. These nonresidential operations are classified below and are subject to the stipulated actions defined in this section.

Table 18.808.090-1 Classifications

Class I Operations	
Definition	Operations that at any time within a one-year period will or do manage over 220 pounds in total of the following: A. Hazardous materials, including any mixtures thereof, that contain constituents referenced in the Code of Federal Regulations, 40 CFR 302.4 (referenced in Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)); or B. Hazardous materials, including any mixtures thereof, that contain constituents from the lists specified for Class II operations below.
Concentration Declassification	A Class I operation is no longer a classified operation if the Class I constituents (40 CFR 302.4) contained in a product or waste are individually present at less than 1% by weight for noncarcinogenic hazardous materials, and less than 0.1% by weight for known or suspected carcinogenic hazardous materials. (Operators should review the Safety Data Sheet for the hazardous materials to make this determination).

Consumer Quantity Declassification	A Class I operation is no longer a classified operation if both of the following conditions are met: A. The operation is focused on research, education, distribution or consumer-oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material.
Metal and Metal Alloy Declassification	Solid metals and solid metal alloys, including but not limited to roll stock, bar stock, sheet stock, and manufactured articles such as equipment, parts, building materials, and piping, that contain one or more metals listed in 40 CFR 302.4 or WAC 173-303-090(8) must be declassified; except, that where machining, forming, grinding, cutting, melting, or other activities produce residues such as shavings, grindings, swarf, fume, or other finely divided particulate forms of a listed metal or metal alloy that may present a threat to water resources, such residues shall not be declassified.
Class II Operations	
Definition	Operations that at any time within a one-year period will or do manage over 2,200 pounds in total of the following: A. Hazardous materials, including any mixtures thereof, that exhibit the characteristic of toxicity because they contain leachable constituents as defined in WAC 173-303-090(8) as amended; or B. Hazardous materials, including any mixtures thereof, that contain constituents that are referenced on the Halogenated Solvent List in SMC 18.808.110.
Site Cleanup Reclassification	A Class II operation must be reclassified as a Class I operation if the primary activity is site remediation or cleanup pursuant to an approved settlement agreement or a remedial action under Chapter 70.105B RCW.
Concentration Reclassification	A Class II operation must be reclassified as a Class I operation if the Class II constituents (from WAC 173-303-090(8)) are present in the hazardous materials being managed at concentrations of less than 5% by weight.
Transfer Warehouse Reclassification	A Class II operation must be reclassified as a Class I operation if the following conditions are met: A. The operation is a transfer warehouse where shipments of products, which may be hazardous materials but not dangerous wastes, are held in portable containers for transfer; and B. Containers of hazardous materials are not opened at the site under any circumstance; and Products containing Class II hazardous materials are managed in containers with individual capacities of no more than 400 gallons.
Consumer Quantity Declassification	A Class II operation is no longer a classified operation if both of the following conditions are met: A. The operation is focused on research, education, distribution, or consumer-oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material.

18.808.090 Required BMPs for Class I and Class II operations.

(1) Development Restrictions.

(a) No Class I or Class II operations are permitted within the one-year time of travel zone in a wellhead protection area.

(b) No Class II operations are permitted within the five-year time of travel zone in a wellhead protection area.

(2) Structural Best Management Practices. All new Class I and II operations must implement the provisions of this section prior to the date of issuance of the certificate of occupancy.

(a) Design and Construction. Operations must be designed, constructed, maintained, and operated to minimize the possibility of an unplanned release of hazardous materials to soil or water resources.

(b) Container/Tank Management. A container or tank holding a hazardous material must always be closed, except to add or remove materials. Hazardous materials must also be managed so that they do not damage the structural integrity of the operation or devices containing the material.

(c) Container/Tank Condition. All containers and tanks must be maintained in such a manner as to ensure effective operation and prevent the release of hazardous materials.

(d) Container/Tank Identification. The owner/operator is required to label all containers and tanks containing hazardous materials to identify the major risk(s) associated with the contents. This labeling must conform to applicable sections of the Uniform Fire Code, Occupational Safety and Health Standards, and/or the State of Washington's Dangerous Waste Regulations.

(e) Releases and Ancillary Equipment. Any leaking pipe, pump, or other ancillary equipment must be repaired or replaced promptly. All hazardous materials that have been released are to be contained and abated immediately. The City is to be notified of any release of hazardous materials in quantities greater than or equal to the reportable quantities referenced in 40 CFR 302.4 (also referenced in Section 103a of CERCLA), or releases of other hazardous materials that clearly impact water resources, as soon as possible but no later than 24 hours after the release. Ancillary equipment associated with hazardous materials must be supported and protected against physical damage and excessive stress.

(f) Compatibility. The owner/operator must use a container or tank made of or lined with materials which are compatible with the hazardous materials to be stored.

(g) Containment. Container and tank storage areas must have a containment system that can collect and holding spills and leaks. This containment must:

(i) Be constructed of an impervious surface with sealed joints;

(ii) Eliminate or minimize joints between concrete slabs and slab/foundation interfaces in the operation;

(iii) Provide pollution control measures to protect water resources, including run-off collection and discharge from active areas;

(iv) Be designed to provide secondary containment of 110% of the container's or tank's capacity; or in areas with multiple tanks, 110%of the largest tank or 10% of the aggregate tank volumes, whichever is larger. Secondary containment must be provided in all areas where hazardous materials are loaded/unloaded, transferred, accumulated, or stored; and

(v) Be compatible with the materials that are being handled.

(h) Loading Areas. Loading and unloading areas must be designed, constructed, operated, and maintained to:

(i) Contain spills and leaks that might occur during loading/unloading;

(ii) Prevent releases of hazardous materials to water resources;

(iii) Contain wash waters (if any) resulting from the cleaning of contaminated transport vehicles and load/unload equipment; and

(iv) Allow for removal as soon as possible any collected hazardous materials resulting from spills, leaks, and equipment cleaning.

(i) Closure. At closure of an operation, all remaining structures, containers, tanks, liners, and soil containing or contaminated with hazardous materials at concentrations above state and federal regulatory thresholds must be decontaminated and properly disposed of or managed.

(3) Spill and Emergency Response Plan (SERP).

(a) All new Class I and II operations must develop and implement a Spill and Emergency Response Plan (SERP) within 90 days of the date of issuance of the certificate of occupancy. Other operations may also be required to develop and implement a SERP if the city determines this action will help prevent releases of hazardous materials to water resources.

(b) The SERP must be maintained on-site and be made available to the city upon request.

(c) The SERP must be updated at least every five years or as needed to reflect significant changes in operation or practices.

(d) At a minimum, the SERP must include the following information:

(i) Spill Prevention.

(A) Drawings including the layout of the operation, a floor plan, direction of drainage, entrance and exit routes, and areas where hazardous materials are received, stored, transported, handled or used in operations.

(B) Listings of all hazardous materials on-site including types, volumes, locations and container types and sizes.

(C) Spill prevention related equipment including equipment which serves to detect releases of potential water resources contaminants.

(ii) Emergency Response.

(A) Chain of command and procedures for spill response.

(B) Phone list of response agencies including federal, state and city emergency contact numbers and environmental cleanup companies.

(C) Procedures for treating and disposing of spilled hazardous materials.

(iii) Certification. The SERP must include a certification signed by an authorized representative of the operation stating: “I certify that the information provided in this document is to the best of my knowledge true and complete, and the spill prevention equipment and emergency response measures described herein are as stated.” The signed certificate must include the authorized representative’s name (printed), title, and contact information.

(4) Operational Inspections.

(a) All new Class I and II operations must implement the provisions of this section upon issuance of certificate of occupancy. Other operations may also be required to implement these provisions if the city determines this action will help prevent releases of hazardous materials to water resources.

(b) Schedule. The owner/operator must develop a written schedule for inspecting all monitoring equipment, safety or emergency equipment, security devices, and any other equipment that helps prevent, detect, or respond to water resource-related hazards.

(c) Regular Inspections. The owner/operator must perform site inspections to identify malfunctions and deterioration of equipment or containers, operator errors, discharges, or any other condition that may cause or lead to the release of hazardous materials to water resources. The owner/operator must conduct these inspections often enough to identify problems in time to correct them before they impact water resources. Inspections must be completed in all areas where hazardous materials are managed, and a written record of those inspections made at least annually.

(d) Water Resource-Related Hazard Mitigation. The owner/operator must remedy any problems revealed by the inspection. Where a water resource-related hazard is imminent or has already occurred, remedial action must be taken immediately.

(5) Training Program.

(a) All new Class I and II operations must implement the provisions of this section upon issuance of certificate of occupancy. Other facilities also may be required to implement these provisions if the city determines this action will help prevent releases of hazardous materials to water resources.

(b) Operations must develop a training program or amend an existing program that informs employees at least once each year of any possible risks to water resources associated with on-site operations. The owner/operator must ensure that employees know or understand:

(i) The location of hazardous materials managed at the operation and the associated potential risks to water resources;

(ii) The location of safety data sheets (SDS) at the operation;

(iii) How employees can detect the presence or release of hazardous materials;

(iv) How employees can protect themselves through work practices, emergency procedures, and with personal protective equipment;

(v) How to locate and use the operation's spill and emergency response plan; and

(vi) How to prevent the pollution or contamination of water resources.

(6) Closure Plan.

(a) Each new Class II operation must prepare and submit to the city a closure plan within six months of the date of issuance of the certificate of occupancy. Class II operations must ensure that their facilities are closed in a manner that prevents the release of hazardous materials during closure, protects water resources, and prevents post-closure escape of hazardous materials to water.

(b) Plan Requirements. The closure plan must detail how the operation will, upon any closure anticipated to be longer than two years, remove and properly dispose of hazardous materials, and perform an investigation to confirm the presence or absence of hazardous materials in the soil and groundwater, if potential contamination is indicated. Specifically, the closure plan must include the following:

(i) A listing of the types and quantities of hazardous materials reasonably expected to be present on-site during the operating life of the operation.

(ii) A description of the plan for removal and disposal of hazardous materials.

(iii) A description of the plan to decontaminate containment systems and ancillary equipment.

(iv) An estimate of the cost to implement the closure plan, using the assumption that a third party will conduct removal and disposal activities.

(v) A certification signed by an authorized representative of the business/industry submitting the closure plan stating, "I certify that the information provided in this document is to the best of my knowledge accurate and the closure measures described herein will be implemented as stated." The signed certificate must include the authorized representative's name (printed), title, and contact information.

(c) Report Update. The owner/operator of an operation must update the closure plan every five years or recertify the current information and estimates. The closure plan must also be updated if operating procedures change in such a way that the volume/mass of hazardous material is increased by 25% or more.

(7) Engineering and Operating Report. If the city recognizes and demonstrates a need for additional information on an operation's practices, the city may require the operation to submit an engineering and operating

report to accommodate the city's review of operations and to prevent releases of hazardous materials to water resources. If required, the report must provide the following:

(a) The type of industry or business including the kind and quantity of finished products.

(b) A process flow diagram illustrating the process flow of water and materials in a normal operating day. This must include details on the operation's plumbing and piping and where specific chemicals are added to processes.

(c) A discussion of any discharges to the municipal sewer system.

(d) A discussion of any discharges through land applications, including seepage lagoons, irrigation, and subsurface disposal. As applicable, this discussion may also include the depth to groundwater and anticipated overall effects of the operations on the quality of water resources.

(e) Provisions for any plans for future expansion or intensification.

(f) A certification signed and dated by an authorized representative of the operation stating: "I certify that the information provided in this document is to the best of my knowledge true and complete." The signed certificate must include the authorized representative's name (printed), title, and contact information.

(8) Records and Reports.

(a) Operations must maintain records of required inspection, training, cleaning, and maintenance events. Where operations are otherwise required by the city or another agency to maintain such records, those records must satisfy this requirement. All operations are required to maintain these records on-site for at least three years and must make them available to the city upon request.

(b) Plans, reports, or other documentation concerning the management of hazardous materials must also be made available to the city upon request.

(c) Information provided to the city must be available to the public. Information not claimed as confidential at the time of submission must be made available to the public if requested.

18.808.100 Halogenated solvent list.

ℹ This section is existing SMC 17.135.110, and is referenced in the Class I/Class II Operations section above.

Table 18.808.110-1 Halogenated Solvent List

Solvent	Synonym(s)	CAS No.	Specific Density (g/cc)
Benzyl chloride	Chloromethylbenzene	100-44-7	1.100
Bis(2-chloroethyl)ether	Bis(-chloroethyl)ether	111-44-4	1.220
Bis(2-chloroisopropyl)ether	Bis(-chloroisopropyl)ether	108-60-1	1.103
Bromobenzene	Phenyl bromide	108-86-1	1.495
Bromochloromethane	Chlorobromomethane	74-97-5	1.934
Bromodichloromethane	Dichlorobromomethane	75-27-4	1.980
Bromoethane	Ethyl bromide	74-96-4	1.460
Bromoform	Tribromomethane	75-25-2	2.890
Carbon tetrachloride	Tetrachloromethane	56-23-5	1.594
Chlorobenzene	Benzene chloride	108-90-7	1.106
2-Chloroethyl vinyl ether	(2-Chlorethoxy)ethane	110-75-8	1.048

Solvent	Synonym(s)	CAS No.	Specific Density (g/cc)
Chloroform	Trichloromethane	67-66-3	1.483
1-Chloro-1-nitropropane	Chloronitropropane	600-25-9	1.209
2-Chlorophenol	o-Chlorophenol	95-57-8	1.263
4-Chlorophenyl phenyl ether	p-Chlorodiphenyl ether	7005-72-3	1.203
Chloropicrin	Trichloronitromethane	76-06-2	1.656
m-Chlorotoluene		108-41-8	1.072
o-Chlorotoluene	2-Chloro-1-methylbenzene	95-45-8	1.082
p-Chlorotoluene		106-43-4	1.066
Dibromochloromethane	Chlorodibromomethane	124-48-1	2.451
1,2-Dibromo-3-chloropropane	DPCP	96-12-8	2.050
Dibromodifluoromethane	Freon 12-B2	75-61-6	2.297
1,2-Dichlorobenzene	o-Dichlorobenzene	95-50-1	1.305
1,3-Dichlorobenzene	m-Dichlorobenzene	541-73-1	1.288
1,1-Dichloroethane	1,1-DCA	75-34-3	1.176
1,2-Dichloroethane	Ethylene dichloride, 1,2-DCA	107-06-2	1.235
1,1-Dichloroethene	Vinylidene chloride 1,1-DCE	75-35-4	1.218
trans-1,2-Dichloroethylene	trans-1.2-DCE	156-60-5	1.257
1,2-Dichloropropane	Propylene dichloride	78-87-5	1.560
cis-1,3-Dichloropropene	cis-1,3-Dichloropropylene	10061-01-5	1.224
trans-1,3-Dichloropropene	trans-1,3-Dichloropropylene	10061-02-0	1.182
Ethylene dibromide	1,2-Dibromoethane, EDB	106-93-4	2.179
Hexachlorobutadiene	HCBD	87-68-3	1.554
Hexachlorocyclopentadiene	HCCPD	77-47-4	1.702
Methylene chloride	Dichloromethane	75-09-2	1.327
Pentachloroethane	Ethane pentachloride	76-01-7	1.680
1,1,2,2-Tetrabromoethane	Acetylene tetrabromide	79-27-6	2.875
1,1,2,2-Tetrachloroethane	Acetylene tetrachloride	79-34-5	1.595
Tetrachloroethylene	Perchlororethylene, PCE	127-18-4	1.623
1,2,4-Tetrachlorobenzene	1,2,4-TCB	120-82-1	1.454
1,1,1-Trichloroethane	Methyl chloroform, 1,1,1-TCA	71-55-6	1.339
1,1,2-Trichloroethane	1,1,2-TCA	79-00-5	1.440
Trichloroethylene	TCE	79-01-6	1.464
1,1,2-Trichlorofluoromethane	Freon 11	75-69-4	1.487
1,2,3-Trichloropropane	Allyl trichloride	96-18-4	1.389
1,1,2-Trichlorotrifluoroethane	Freon 113	76-13-1	1.564

Chapter 18.810 Critical Areas – Frequently Flooded Areas

ℹ The existing SMC Chapter 17.120 is moved to this new Chapter SMC 18.810. This section was renamed from "Floodplain Management" to "Critical Areas – Frequently Flooded Areas"

18.810.010 Applicability.

ℹ This draft replaces the purpose, objectives, and "relationship to general standards" sections in each critical area chapter, which were largely duplicative of each other, with this new applicability section that makes reference to the general critical areas chapter.

(1) This chapter provides standards for the Frequently Flooded Area type of critical area and is applied pursuant to the general critical area regulations and processes in SMC Chapter 18.800.

(2) Because this chapter implements requirements for the City's participation in the National Flood Insurance Program, in the event of a conflict between this chapter and Chapter 18.800 SMC, this chapter controls.

18.810.020 Methods of reducing flood losses.

To accomplish its purpose, this chapter includes methods and provisions for:

(1) Restricting or prohibiting development that is dangerous to health, safety, and property due to water or erosion hazards, or which results in damaging increases in erosion or in the flood heights or velocities;

(2) Requiring that development vulnerable to floods be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging and other development which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers that unnaturally divert flood water or may increase flood hazards in other areas.

18.810.030 General provisions.

(1) Lands to Which These Standards Apply. These standards apply to all areas of special flood hazards within the jurisdiction of the city of Stanwood. All development within special flood hazard areas is subject to the regulations contained within this chapter and all other state or federal regulations. Special flood hazards may result from high river flow, alteration of river channels, tsunami, high tides combined with high winds, sea level rise associated with global warming, and increased runoff due to increased impervious surface area.

(2) Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study for Snohomish County, Washington and Incorporated Areas," dated June 19, 2020, and any revisions thereto, with accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, is adopted by reference and declared to be a part of this code. The flood insurance study is on file at City Hall.

(3) Penalties for Noncompliance. No structure or land may hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of these standards and other applicable regulations. Violation of the provisions of these standards by failure to comply with any of their requirements (including violations of conditions and safeguards established in connection with conditions) constitutes a misdemeanor. Any person who violates this chapter or fails to comply with any of its

requirements must upon conviction thereof be fined not more than $1,000 or imprisoned for not more than 90 days or both for each violation and in addition must pay all costs and expenses involved in the case. Nothing herein contained may prevent the city of Stanwood from taking such other lawful action as is necessary to prevent or remedy any violation.

(4) Abrogation and Greater Restrictions. These standards are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these standards and any other code, easement, covenant, or deed restriction conflict or overlay, whichever imposes the more stringent restrictions must prevail.

(5) Interpretation. In the interpretation and application of these standards, all provisions must be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under state statutes.

(6) Warning and Disclaimer of Liability. The degree of flood protection required by these standards is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by humanmade or natural causes. These standards do not imply that land outside the areas of special flood hazards, or uses permitted within such areas, will be free from flooding or flood damages. These standards may not create liability on the part of the city of Stanwood, any officer or employee thereof, or the Federal Insurance and Mitigation Administration for any flood damages that result from reliance on them, or any administrative decision lawfully made hereunder.

ℹ The definition for “substantial improvement” has been moved to this section and updated to allow for upgrades up to 50% of the building’s value every year, rather than every two years.

(7) For the purpose of this chapter, “substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure taking place during the last 12-month period, the cost of which equals or exceeds 50% of the market value of the structure before “the start of construction” of the improvement must comply with the requirements of SMC 18.810. This includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. Substantial improvement does not include either:

(a) Any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure”; provided, that the alteration will not preclude the structure’s continued designation as a “historic structure.”

18.810.040 Administration.

ℹ This section is based on SMC 17.120.030 Administration.

(1) Designation. The Director serves as the city’s floodplain administrator and is hereby appointed to administer, implement, and enforce these standards by granting or denying development permit applications in accordance with their provisions.

Several of the duties below were restructured and renumbered to make clear that they are responsibilities of the floodplain administrator/director.

(2) Duties. The duties of the Director include, but are not limited to:

(a) Review all development permits to determine that:

(i) The permit requirements of these standards have been satisfied;

(ii) All necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.

(iii) The site is reasonably safe from flooding;

(iv) Notify Federal Insurance Administrator if annexations occur in the special flood hazard area.

(b) Use of Other Base Flood Data. If base flood elevation data has not been provided in accordance with SMC 18.810.020(2), Basis for Establishing the Areas of Special Flood Hazard, the Director is required to obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source to administer SMC 18.810.080, Specific Standards.

(c) Obtain and maintain flood information.

(i) Where base flood elevation data is provided through the flood insurance study or otherwise required, these data must be obtained and a record made of the actual (as-built) elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures, and whether the structure contains a basement.

(ii) For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS or FIRM, or as otherwise required:

(A) Obtain and maintain the actual elevation (in relation to mean sea level) to which the structure was floodproofed.

(B) Maintain the floodproofing certifications required in subsection (7)(c) of this section.

(iii) Maintain for public inspection all records pertaining to the provisions of these standards.

(iv) Records of all variance actions; include justification for their issuance.

(v) Improvement and damage calculations.

(d) Whenever a watercourse is to be altered or relocated:

(i) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.

(ii) Ensure that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.

(e) Interpretation of FIRM Boundaries. Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards. (For example, where there appears to be a conflict between a mapped boundary and actual field conditions.) The person contesting the location of the boundary must be given a reasonable opportunity to appeal the interpretation. Such appeals must be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the NFIP.

(3) Changes to Special Flood Hazard Area.

(a) A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information

becomes available, a community, or project proponent, must notify FEMA of the changes by submitting technical or scientific data in accordance with this chapter. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements must be based upon current data.

(b) If a CLOMR application is made, then the project proponent must also supply the full CLOMR documentation package to the floodplain administrator to be attached to the floodplain development permit, including all required property owner notifications. Once a CLOMR has been approved, the project proponent must follow up with the LOMR application once the project is complete.

18.810.050 Permits and review required.

ℹ This is a new section that includes some content from the Administration section that didn't belong there.

(1) A project permit must be obtained before construction or development begins within any area of special flood hazard area. A permit is required for all structures, including manufactured homes, and for all development activities, including fill and other activities.

(2) Application for a project permit must be made consistent with SMC Title 18 Part 2 and must include all of the application requirements of the underlying permit and the following:

(a) plans drawn to scale showing:

(i) the nature, location, dimensions, and elevations of the area in question;

(ii) existing or proposed structures;

(iii) fill;

(iv) storage of materials;

(v) drainage facilities;

(b) elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate with Section B completed by the floodplain administrator;

(c) elevation in relation to mean sea level to which any nonresidential structure has been floodproofed;

(d) certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in SMC 18.810.050(2);

(e) description of the extent to which a watercourse may be altered or relocated because of the proposed development; and

(f) any other such information that may be reasonably required by the floodplain administrator to review the application.

18.810.060 Critical area report requirements.

In addition to the general requirements of SMC 18.800.150, critical area reports for frequently flooded areas must meet the requirements of this section.

(1) Area addressed in critical area report:

(a) The site area of the proposed activity;

(b) All areas of special flood hazard, as indicated on the flood insurance map(s) within 200 feet of the project area; and

(c) All other flood areas indicated on the flood insurance map(s) within 200 feet of the project area.

(2) Flood Hazard Assessment Required. A critical area report for a proposed activity within a frequently flooded area must contain a flood hazard assessment including the following site- and proposal-related information at a minimum:

(a) Site and Construction Plans. A copy of the site and construction plans for the development proposal showing:

(i) Floodplain (100-year flood elevation), 10- and 50-year flood elevations, floodway, other critical areas, buffers, and shoreline areas;

(ii) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain;

(iii) Clearing limits; and

(iv) Elevation of the lowest floor (including basement) of all structures, and the level to which any nonresidential structure has been floodproofed.

18.810.070 Provisions for flood hazard reduction.

In all areas of special flood hazard, the following standards are required to be met:

(1) Anchoring.

(a) All new construction and substantial improvements must be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.

(b) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

(2) Construction Materials and Methods.

(a) All new construction and substantial improvements must be constructed with materials and utility equipment resistant to flood damage.

(b) All new construction and substantial improvements must be constructed using methods and practices that minimize flood damage.

(c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities must be designed and/or otherwise elevated or located to prevent water from entering or accumulating within the components during conditions of flooding.

(d) All structures, utilities and other improvements must be located on the buildable portion of the site outside of the floodplain unless there is no buildable site area out of the floodplain. For sites with no buildable area out of the floodplain, structures must be placed on the highest land on the site, oriented parallel to flow rather than perpendicular, and sited as far from the watercourse and other critical areas as possible. If the city detects any evidence of active hyporheic exchange on a site, the development must be located to minimize disruption of such exchange.

(e) Fill and grading within the floodplain must only occur upon a determination from a qualified professional that the fill or grading will not block side channels, inhibit channel migration, increase flood hazards to others, or be placed within a channel migration zone, whether or not the city has delineated such zones as of the time of the application.

(3) Utilities.

(a) All new and replacement water supply systems must be designed to minimize or eliminate infiltration of flood waters into the system.

(b) New and replacement sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems in flood waters.

(c) On-site waste disposal systems must be located to avoid impairment to them or contamination from them during flooding.

ℹ The following line was added to increase protections of HVAC systems in the event of a flood.

(d) New and replacement HVAC systems must be located above the base flood elevation and elevated off the floor to minimize damage from flooding.

(4) Subdivision and Development Proposals.

(a) All development proposals, including subdivisions and manufactured home parks, must be consistent with the need to minimize flood damage.

(b) All development proposals, including subdivisions and manufactured home parks, must have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(c) All development proposals, including subdivisions and manufactured home parks, must have adequate drainage provided to reduce exposure to flood damage.

(d) Where base flood elevation data has not been provided or is not available from another authoritative source, it must be generated for development proposals, including subdivisions and manufactured home parks, greater than 50 lots or five acres (whichever is the lesser).

(5) Review of Building Permits. Where elevation data is not available either through the flood insurance study, or from another authoritative source, applications for building permits must be reviewed to ensure that proposed construction is reasonably safe from flooding. The test of reasonableness includes use of historic data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these areas may result in higher insurance rates.

(6) Storage of Materials and Equipment.

(a) The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.

(b) Storage of other materials or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

18.810.080 Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in SMC 18.810.020(2), Basis for Establishing the Areas of Special Flood Hazard, or SMC 18.810.030(2), Use of Other Base Flood Data, the following provisions are required:

(1) Residential Construction.

(a) New construction and substantial improvement of any residential structure must have the lowest floor elevated to the base flood elevation plus one foot. Mechanical equipment and utilities, including HVAC systems, must be waterproofed or elevated at least one foot above base flood elevation.

(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or if usable solely for parking, access or storage must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Other uses that are subject to flooding are prohibited. Designs must meet or exceed the following minimum criteria. Alternatively, a registered engineer or architect may design and certify engineering openings.

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding ;

(ii) The bottom of all openings shall be no higher than one-foot above grade;

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices so long as they permit the automatic entry and exit of flood waters; and

(iv) A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, must be designed to allow for the automatic entry and exit of flood waters.

(2) Nonresidential Construction.

(a) New construction and substantial improvement to any commercial, industrial, or other nonresidential structure must either have the lowest floor elevated to the level of the base flood elevation plus one foot, or, together with attendant utility and sanitary facilities, must:

(i) Be dry floodproofed so that below one foot above the base flood level, the structure is watertight, with walls substantially impermeable to the passage of water, or dry floodproofed to the elevation required by ASCE 24, whichever is greater;

(ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(iii) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Such certification must be provided to the Director as set forth in SMC 18.810.030(3)(b);

(iv) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (1)(b) of this section; and

(v) An applicant floodproofing nonresidential buildings must be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the base flood level will be rated as at the base flood level).

(3) Manufactured Homes.

(a) All manufactured homes to be placed or substantially improved on the following sites must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to the foundation system to resist flotation, collapse, and lateral movement:

(i) Outside of a manufactured home park or subdivision;

(ii) In a new manufactured home park or subdivision;

(iii) In an expansion to an existing manufactured home park or subdivision; or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood.

(b) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions must be elevated so that either:

(i) The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation; or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements, of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(4) Recreational Vehicles. Recreational vehicles to be placed on sites within zones A1 – A30 and AE on the community's FIRM are required to either:

(a) Be on site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(c) Must obtain a development permit and meet the requirements, including elevation and anchoring, for manufactured homes.

(5) Appurtenant Structures (Detached Garages and Small Storage Structures). Appurtenant structures used solely for parking of vehicles or limited storage may be constructed such that the floor is below the base flood elevation, provided the structure is designed and constructed in accordance with the following requirements:

(a) Use of the appurtenant structure must be limited to parking of vehicles or limited storage;

(b) The portions of the appurtenant structure located below the base flood elevation must be built using flood resistant materials;

(c) The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement;

(d) Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the BFE;

(e) The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with subsection (1)(b) of this section;

(f) The structure must have low damage potential;

(g) If the structure is converted to another use, it must be brought into full compliance with the standards governing such use;

(h) The structure may not be used for human habitation;

(i) Detached garages, storage structures, and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in subsection (1) of this section; and

(j) Upon completion of the structure, certification that the requirements of this section have been satisfied must be provided to the floodplain administrator for verification.

(6) Requirements for All Crawlspace Construction. All crawlspaces that have enclosed areas or floors below the base flood elevation must be:

(a) Designed and adequately anchored to resist flotation, collapse and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(b) Have openings that allow for the automatic entry and exit of flood waters. The bottom of the flood opening can be no more than one foot above the lowest adjacent exterior grade and meet the requirements in subsection (1)(b) of this section;

(c) Constructed with materials resistant to flood damage, including foundation walls, joists, insulation or other materials that will be below BFE;

(d) Located in areas where flood velocities do not exceed five feet per second;

(e) Any building utility systems, including HVAC systems, within the crawlspace must be elevated above the BFE or designed so that flood waters cannot enter or accumulate within the system components during flood conditions; and

(f) In addition to the above requirements, below-grade crawlspaces must be constructed so that:

(i) The interior grade of the crawlspace below the BFE is not more than two feet below the lowest adjacent exterior grade;

(ii) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, does not exceed four feet at any point;

(iii) An adequate drainage system to remove flood waters from the interior area of the crawlspace is installed.

18.810.090 Encroachments.

The cumulative effect of any proposed development, if combined with all other existing and anticipated development, may not increase the water surface elevation of the base flood more than one foot at any point.

18.810.100 Prohibited uses.

ℹ Since the term “critical facility” exists nowhere else in the municipal code, we’ve extracted it from the definitions chapter and placed it here.

(1) The following uses and activities are prohibited in frequently flooded areas:

(a) Critical facilities. Critical facilities are prohibited within frequently flooded areas to prevent damage to such facilities, to avoid costs that may be incurred by the public, and to maintain functionality of such facilities during flood events. If such a prohibition is unreasonable, an allowance for critical facilities in frequently flooded areas can be made with the following specific conditions:

(i) Construction of new critical facilities may be permissible within frequently flooded areas if no feasible alternative site is available.

(ii) Critical facilities constructed within frequently flooded areas must have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year flood).

(iii) Floodproofing and sealing measures must be taken to ensure that toxic substances are not displaced by or released into flood waters.

(iv) Access routes elevated to or above the level of the base flood elevation must be provided to all critical facilities to the extent possible.

(2) For the purpose of this section, “critical facility” means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, essential public facilities, schools, nursing homes, hospitals, fire and emergency response installations, and installations that produce, use or store hazardous materials or hazardous waste.

18.810.110 Variance procedure and appeal process.

(1) Variances from these regulations and appeals are heard as provided by Chapter 18.330 SMC, Variances.

(2) In reviewing such applications for variances, the city must consider all technical evaluations, all relevant factors, and criteria specified in other sections of these standards, including criteria in SMC 18.800.200, and:

  (a) The danger that materials may be swept onto other lands to the injury of others;

  (b) The danger to life and property due to flooding or erosion damage;

  (c) The susceptibility of the proposed facility and its contents to flood damage on the owner;

  (d) The importance of the services provided by the proposed facility to the community;

  (e) The necessity that the facility has a waterfront location, where applicable;

  (f) The availability of alternative locations for the proposed use that are not subject to the flooding or erosion damage;

  (g) The compatibility of the proposed use with existing and anticipated development;

  (h) The relationship of the proposed use to the city's Comprehensive Plan and floodplain management program for that area;

  (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

  (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

  (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.

18.810.120 Conditions for variances.

(1) Variances may only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances. Unavoidable impacts to floodplain functions and values must be mitigated in accordance with SMC 18.800.180(4), Mitigation Sequencing.

(2) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation does not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances must be issued upon:

  (a) A showing of good and sufficient cause;

  (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

  (c) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the BFE, provided the procedures of SMC 18.810.030, Administration, and SMC 18.810.040,

Provisions for flood hazard reduction, have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(5) Variances, as interpreted in the National Flood Insurance Program, are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure or its inhabitants' economical or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevation should be quite rare.

(6) Variances may be issued for nonresidential buildings in very limited circumstances to allow less floodproofing than watertight or dry floodproofing, where it can be determined that such action has low damage potential, complies with all other variance criteria, except subsection (1) of this section, and otherwise complies with SMC 18.810.040(1) through (3).

(7) Any applicant to whom a variance is granted must be given written notice that the structure may be permitted to be built with a lowest floor elevation below the base flood elevation and that:

(a) The issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to amounts as high as $25.00 for $100.00 of insurance coverage; and

(b) Such construction below the BFE increases risks to life and property.

(8) The floodplain administrator must maintain a record of all variance actions, including justification for their issuance.

Chapter 18.812 Cultural Resources

ℹ This is all new code, except for some parts from SMC 18.906.040 Preservation of Cultural Resources in the SMP. The new language was adapted from Ecology's model language from Appendix B to the Shoreline Master Program Handbook, Pierce County 18S.30.020, and La Center Municipal Code 18.360.

ℹ A definition of "cultural resources" is included in the proposed UDC procedures ordinance and encompasses cultural, historical, and archaeological resources.

18.812.010 Purpose.

The purposes of this chapter are to:

(1) Establish clear procedures and specific standards for preservation of cultural resources.

(2) Recognize that cultural resources may be found throughout the city and are valuable resources because they are limited and irreplaceable.

(3) Ensure coordination and consistency with the State Environmental Policy Act, the Shoreline Management Act, the Growth Management Act, and RCW Chapters 27.34, 27.44, 27.48, and 27.53.

18.812.020 Applicability.

This chapter applies to all areas within the City of Stanwood and all applications for a project permit.

18.812.030 Preservation of Cultural Resources.

ℹ This section is based on SMC 18.906.040, Preservation of Cultural Resources, in the SMP. References specific to the SMP were removed. Some text was moved to 18.812.030(2)(a) and 18.812.040(1) of this chapter.

(1) An owner of property containing identified or probable cultural resource sites is encouraged to coordinate well in advance of application for development to ensure that appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, affected tribes, and historic preservation groups have ample time to assess the site and identify the potential for cultural resources.

ℹ And some portion of this section is reorganized recommended language from DAHP and Ecology.

(2) When the Department receives an application for a project permit in an area of known cultural resources, the Director must send a copy of the Notice of Application (or equivalent notice) to appropriate agencies, such as the Washington Department of Archaeology and Historic Preservation and any affected tribal governments.

(3) The Director may condition approval of a project permit to comply with this chapter when:

(a) The project site contains known cultural resources, as identified by any of the following:

(i) Department of Archaeology and Historic Preservation (DAHP);

(ii) a tribal government;

(iii) National Register of Historic Places;

(iv) Washington Heritage Register;

(b) The property is listed by DAHP as eligible for listing in either the National Register of Historic Places or the Washington Heritage Register;

(c) The property is listed in a local register of historic places, if applicable;

(d) When the city determines that reliable and credible information indicates the probable existence of an archaeological resource or site;

(e) When a permit or approval is required for any ground-disturbing activities.

(4) The Director may condition approval of an application to:

(a) require consultation with the Washington Department of Archaeology and Historic Preservation and any affected tribal governments;

(b) require preservation or conservation of cultural resources as required by applicable federal, state, and local statutes;

(5) An application for development in an area known to be significant must provide for monitoring of any development activity for previously unidentified cultural resources.

18.812.040 Cultural Resource Site Assessment

ℹ Capitalized Cultural Resource Site Assessment to make it a term of art like CRMP.

(1) A Cultural Resource Site Assessment is required prior to approval of development on a property within 500 feet of a site known to contain or in an area identified as having the potential for the presence of cultural resources, when requested by an entity identified in 18.812.030(3)(a).

(2) Exception. A Cultural Resource Site Assessment is not required when a Cultural Resource Management Plan is prepared pursuant to SMC 18.812.050.

(3) A Cultural Resource Site Assessment must:

(a) Be performed by a professional archaeologist or historic preservation professional whose documentation and methodology should be replicable by another archeologist to reach a similar conclusion;

(b) Use best available technology and archaeological techniques;

(c) Be based on a thorough review of records, documentation, and other relevant literature;

(d) Describe any cultural resources that are discovered on the site, using any relevant maps, written descriptions, and photographs;

(e) Assess whether the proposed use would affect any cultural resources discovered;

(f) Be submitted to the city, DAHP, and to any interested or affected tribal governments.

18.812.050 Cultural Resource Management Plan

(1) A Cultural Resource Management Plan ("CRMP") must be prepared when a Cultural Resource Site Assessment identifies the presence of significant cultural resources.

ℹ The remainder of this section is recommended language from DAHP and Ecology.

(2) A CRMP must be prepared by a professional archaeologist or historic preservation professional.

(3) To prepare recommendations for a CRMP, the author must solicit comments from the Washington Department of Archaeology and Historic Preservation and any affected Tribal government. Any comments received must be incorporated into the conclusions and recommendations of the CRMP to the maximum extent practicable.

(4) A CRMP must contain at least the following elements:

(a) Purpose of the project; a site plan; the depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing and grading; an examination of project on-site design alternatives; an explanation of why the proposed activity requires location on or access through an historic or significant archaeological resource.

(b) A description of the cultural resources affected by the proposal;

(c) An evaluation of the cultural resource and an analysis of the potential adverse impacts as a result of the activity;

(d) An analysis of how these impacts have been avoided, or where avoidance is not possible, how these impacts have been or will be mitigated/minimized; and

(e) A recommendation of appropriate mitigation measures for the impacts to cultural resources, which may include but are not limited to the following:

(i) Recording the site with the Washington Department of Archaeology and Historic Preservation; listing the site in the National Register of Historic Places, Washington Heritage Register, or any locally developed historic registry;

(ii) Preservation in place;

(iii) Reinternment in the case of grave sites;

(iv) Covering an archaeological site with a nonstructural surface to discourage pilferage (i.e., maintained grass or pavement);

(v) Excavation and recovery of archaeological resources;

(vi) Inventorying prior to covering of archaeological resources with structures or development; and

(vii) Monitoring of construction excavation.

(f) The Director must use the recommendations and conclusions of the CRMP in determining the presence and extent of cultural resources and appropriate mitigation measures.

(g) The Director may reject or request revision of the conclusions reached in a CRMP when the Director can demonstrate that the assessment is inaccurate or does not fully address the cultural resource management concerns.

18.812.060 Inadvertent discovery.

(1) If archaeological, cultural, or historical sites or artifacts of potential significance, or human skeletal remains are discovered in the process of development:

(a) work on that portion of the site must be stopped immediately;

(b) the site must be secured;

(c) the discovery must be reported as soon as possible to the Director;

(d) the Director must notify the Washington State Department of Archaeology and Historic Preservation, affected tribes, and other appropriate agencies;

(e) the Director must require the applicant to immediately prepare a Cultural Resources Site Assessment to determine the significance of the discovery and the extent of damage to the resource.

(2) If a Cultural Resources Site Assessment is required per subsection (1):

(a) The Director must distribute the assessment to the Washington Department of Archaeology and Historic Preservation and affected tribes to determine the significance of the discovery.

(b) The Director must allow 15 days for review, or 30 days in the case of inadvertent discovery of human remains.

(c) At the conclusion of the review period:

(i) if the site has been determined not to be significant by the above listed agencies or governments, or if the above listed agencies or governments have failed to respond, such stopped work may resume;

(ii) if the site is determined to be significant, a Cultural Resources Management Plan must be prepared per SMC 18.812.050.

(3) Treatment of cultural artifacts or human skeletal remains must comply with RCW 27.44.055, 68.50.645, and 68.60.055.

EXHIBIT B
AMENDMENTS TO SMC 18.102, DEFINITIONS AND RULES OF INTERPRETATION

ℹ The following definitions are being added to Title 18, Unified Development Code.

Chapter 18.102 Definitions and Rules of Interpretation

18.102.070 “F” Definitions

“Fish and Wildlife Habitat Conservation Areas” means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

18.102.080 “G” Definitions

“Geologically Hazardous Areas” means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

18.102.090 “H” Definitions

“Habitat Assessment” means a site-specific evaluation to determine the location, extent and function of fish and wildlife habitat on a property. It involves identifying and analyzing physical, biological, and environmental factors to determine the habitat's ability to support specific species, biodiversity, and ecosystem processes.

“Habitat Management Plan” Means a mitigation plan that outlines specific actions and practices to conserve, restore, and enhance habitats to support targeted species, biodiversity, or ecosystem functions.

18.102.180 “Q” Definitions

“Qualified professional” means a person with experience and training in a field that is applicable to the work to be performed by this person. For critical areas qualified professional means:

(1) Wetlands or Fish and Wildlife Habitat: a person with a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and two years of relevant work experience.

(2) Geologically Hazardous Areas: a geotechnical engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and groundwater flow systems; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with experience analyzing geologic, hydrologic and groundwater flow systems, who has experience preparing reports for the relevant type of hazard.

(3) Critical Aquifer Recharge Areas: a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.

(4) Frequently Flooded Areas: a hydrologist or engineer and who is licensed in the state of Washington with experience in preparing flood hazard assessments.

CITY OF STANWOOD
Planning Commission Findings of Fact and Recommendation

10220-270TH Street NW
Stanwood, WA 98292

City of Stanwood, Washington

Critical Areas Code Amendment

Findings of Fact and Conclusions of Law

A. GENERAL INFORMATION

File Number(s):	24-0132 (Code Amendment)
Project Summary:	Critical Areas Code Amendment
Applicant:	City of Stanwood
Location:	Applies Throughout the City of Stanwood Jurisdictional Limits
Staff Contact:	Patricia Love, Community Development Director

B. BACKGROUND AND DESCRIPTION OF PROPOSAL

Washington's Growth Management Act (GMA) requires all cities and counties to designate and regulate "critical areas", which are defined as wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. The City has elected to add Cultural Resources as a protected critical area as it is required under Washington State Executive Order 05-05. The Executive Order requires agencies to integrate cultural resource reviews into their planning processes. This includes assessing the potential impacts of construction, development, or land use projects on archaeological sites, historic buildings, and other cultural assets.

The legislature set a staggered schedule for cities and counties throughout the state to update their plans. Jurisdictions within King, Pierce, Kitsap and Snohomish County are required to update their comprehensive plans by December 31, 2024 and critical area regulations by December 2025.

The City of Stanwood has initiated a code amendment to merge Title 16, Subdivisions, and Title 17, Zoning, into a single new title referred to as a Unified Development Code

(UDC). A UDC is a comprehensive set of regulations or standards that govern land use, zoning, and development within a single Municipal Code Title. As part of the Unified Development Code adoption process, the critical areas codes are being migrated from existing Title 17, Zoning, to new Title 18, Part 8 – Environmental.

The critical area code amendment includes the following environmental protections and has been organized into the UDC as follows and will be notated as Stanwood Municipal Code, Chapter 18.800-18.812.

Chapter	Provisions
SMC 18.800	General Provisions - Applies to All Critical Areas
SMC 18.802	Wetlands
SMC 18.804	Fish and Wildlife Habitat Conservation Areas
SMC 18.06	Geologically Hazardous Areas
SMC 18.808	Critical Aquifer Recharge Areas
SMC 18.810	Frequently Flooded Areas
SMC 18.812	Cultural Resources

C. CRITICAL AREA CODE AMENDMENT SUMMARY

The City of Stanwood's current critical areas codes were adopted in 2004 with various updates and amendments in the subsequent years. The 2025 critical area code amendments integrate recent state legislation and best available science developed by the Department of Ecology, Department of Fish and Wildlife and Department of Natural Resources. Updates to the Critical Area Regulations include:

- Reorganizing and renumbering the existing critical areas regulations to new chapters and aligning them with state guidance based on Best Available Science.
- Duplicative sections were streamlined, definitions updated, and provisions made more consistent with Best Available Science and state regulations.
- Wetland regulations (SMC 18.802) and stream buffers (SMC 18.804) have been revised to align with Washington State Department of Ecology guidance, including buffer updates based on site-potential tree height (SPTH).
- The geologically hazardous areas chapter (SMC 18.806) incorporates definitions consistent with RCW and WAC.
- Floodplain management is renamed "Frequently Flooded Areas" (SMC 18.810) with added protections for HVAC systems.
- New cultural resources provisions were added based on state recommendations.

A Critical Areas Summary paper has been prepared and presented to the Planning Commission summarizing the 2025 critical area code amendments. A full copy of that paper is included in the official public hearing record. The following highlights the objectives of the amendments by subject matter.

General Provisions:
The General Provisions Chapter serves as the foundational set of baseline regulations addressing critical areas. By including common requirements in one chapter, the aim is to streamline the overall code, ensuring that these provisions apply uniformly across each of the critical area sections without needing to be repeated.

Wetlands:
Wetlands are classified into four categories using the 2014 Washington State Wetland Rating System for Western Washington: Type 1 being the rarest and most difficult to replace to Type 4 having the lowest level of functions and values. Buffer widths have been updated to be consistent with the Department of Ecology's best available science for Western Washington using habitat score ranges.

Fish and Wildlife Habitat Conservation Areas:
Wildlife habitat is generally protected under the Endangered Species Act and the US Fish and Wildlife Services Ecological Services Program. The Washington State Department of Fish and Wildlife (WDFW) is part of the federal Ecological Services Program. The ordinance adopts regulations consistent with the WDFW to protect fish, wildlife, plants and their habitats:

- Stream protection is based on the Washington State DNR stream typing identification system: Shorelines, Fish Baring, Non-Fish Baring and Non-Fish Seasonal Streams.
- Critical habitat and species protection includes endangered, threatened, sensitive, priority, and those of local importance.
- Buffers are based on site potential tree height or based on a habitat management plan prepared by a qualified biologist.

Geologically Hazardous Areas:
Geologically hazardous areas include areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose a risk or threat to public health and safety. In Stanwood, the following types of hazards are designated as a geologically hazardous area:

- Erosion hazard;
- Landslide hazard;
- Seismic hazard; and
- Other geological events including tsunamis, volcanic hazards, and differential settlement.

Development in these areas requires the submittal of a geotechnical report and structures must be setback from the top and toe of a steep slope unless otherwise specified in the geotech report.

Aquifer Recharge Areas:
The City of Stanwood has two wellhead protection zones that are protected under the aquifer recharge regulations. The following uses are generally prohibited in Aquifer Recharge Areas: landfills, underground injection wells, mining, wood treatment facilities, hard chrome plating operations, chemical lagoons and pits, hazardous material disposal sites, storage/processing/disposal of radioactive substances, new septic systems and other activities that negatively impact ground water sources.

Frequently Flooded Areas:
The City of Stanwood is impacted by periodic flooding resulting from large storm events combined with high tides. Due to the topographic nature of the City, all of west Stanwood lies in the 100-year floodplain. The regulations are consistent with the 2020 FEMA (Federal Emergency Management Agency) model ordinance. In summary, the proposed ordinance includes the following floodplain requirements:

- Readopts the 2020 FIRM maps;
- Defines substantial development as work and costs incurred within a 12-month period; and
- Requires a floodplain permit that raises a building 1-foot above floodplain elevations or floodproofs the building.

Cultural Resources:
Protection of cultural resources is a new section added to the critical areas code. The Growth Management Act gives local governments the flexibility to expand their critical areas ordinances to include protections for cultural resources. By adding cultural resource protection to critical area codes, it requires an evaluation early in the permit review process and helps avoid costly redesigns or project delays if cultural resources are discovered later in a project. The draft code:

- Establishes clear procedures and specific standards for preservation of cultural resources;
- Requires submittal of a cultural resource report when a project is within 500 feet of a known historic site;
- A Cultural Resource Management Plan must be prepared when a Cultural Resource Site Assessment identifies the presence of significant cultural resources; and
- Requires an Inadvertent Discovery Plan if requested by DAHP or local Tribes or if discoveries are found during project construction.

D. CODE AMENDMENT CRITERIA (SMC 17.155.090(2))

The city may approve zoning code text amendments per the following criteria:

(a) The purpose and desired effect of the proposed zoning code(s) are consistent with the Stanwood Municipal Code;

Critical Area Codes and zoning codes serve distinct but interrelated purposes in land-use regulation, and their consistency is crucial for ensuring balanced development and environmental protection. By integrating Critical Area Codes into the review process, the city ensures that zoning permissions are not granted without addressing environmental considerations. Having both development laws that provide land use rights and critical areas codes that protect the environment allows the City to grow per the vision of the Comprehensive Plan while safeguarding critical environmental resources.

(b) There is a positive relationship to the public health, safety and welfare of the community; and

One of the fundamental premises of the Growth Management Act is to manage growth while protecting the public health, welfare and safety. Critical Area Codes balance the need to growth while protecting the environment. Critical areas perform key functions that enhance our environment and protect us from hazards. The beneficial functions and values that critical areas provide include but are not limited to:

- Water quality protection and enhancement;
- Fish and wildlife habitat and food chain support;
- Flood storage, conveyance, and attenuation (the slow release) of flood waters;
- Groundwater recharge and discharge;
- Drinking water quality and quantity;
- Erosion control; wave attenuation; and protection from natural hazards;
- Historical, archaeological, and aesthetic value; and
- Open space and recreation.

(c) The proposed amendment is consistent with the Stanwood Comprehensive Plan.

Stanwood's 2024-20244 Comprehensive Plan envisions a strong community that provides urban services while preserving its rural community heritage and unique natural environment. The Plan envisions a community with diverse commercial districts and a variety of housing types ranging from detached single family residential homes to mixed use commercial developments.

One of the primary goals of the Growth Management Act is to protect environmentally sensitive lands, including wetlands, wildlife habitats, and areas prone to natural hazards like flooding and landslides. The 2024 – 2044 Comprehensive Plan was built around these goals and contains two elements dedicated to protecting and enhancing the environment: Natural Features and Shorelines. These two elements contain 110 polices dedicated to protecting, preserving and enhancing the City's natural features.

The critical area regulations, as drafted, reflect the Growth Managements two primary environmental protection goals:

- Apply best available science from credible, peer reviewed scientific data; and
- Ensure no net loss of critical areas.

The following Natural Features Goal and associated policies directly relate to updating critical areas regulations.

Natural Features Goal #3: Protect, preserve, and enhance critical areas most sensitive to human activities by applying guidance derived from best available science.

Policy NFP 3.2: Protect the functions and values of Stanwood's critical aeras by maintaining and updating the Critical Areas Regulations consistent with the most recent best available science with the goal of achieving "properly functioning conditions" while maintaining Stanwood's unique character.

Policy NFP 3.3: Designation and classification of critical areas should be consistent with the most recent systems and protocols prepared by the appropriate state and federal agencies.

E. FINDINGS OF FACT

1. In 2022 the City of Stanwood began a process to comprehensively update its municipal code to conform to current law and practices, eliminate conflicts, improve clarity and overall function of the municipal code, and reflect current city and best practices.

2. The City Council has opted to comprehensively revise and consolidate its zoning, subdivision and development regulations in a new Unified Development Code to be housed in Title 18 of the Stanwood Municipal Code.

3. The critical area regulations are being deleted from Title 17, Zoning and readopted with changes in Title 18, Unified Development Code.

4. The Growth Management Act requires cities and counties update their comprehensive plans and regulations every ten years, including critical areas regulations.

5. The GMA defines critical areas as wetlands, fish and wildlife habitat conservation areas, geological hazard areas, aquifer recharge areas, and floodplains.

6. The City Council has opted to include cultural resources as a regulated critical area.

7. Cities in Snohomish County must review and update their critical areas by December 31, 2025.

8. Cities must include best available science in developing policies and development regulations to protect the function and values of critical areas.

9. Cities must also give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish.

10. Stanwood has comprehensively reviewed its critical areas regulations applying best available science practices provided by the Department of Fish and Wildlife, Department of Ecology, and Department of Natural Resources.

11. Wetland classification, protection, buffers and mitigation is based on the Washington State Wetland Rating System for Western Washington, publication number 23-06-009.

12. Salmon, fish protection and stream typing classification is based on the Department of Natural Resource typing system listed in WAC 222-16-030.

13. Endangered, threatened, sensitive, priority species habitat identification, protection, and mitigation must be based on a habitat assessment and management plan prepared by a qualified biologist applying best available science.

14. Geologic hazardous areas are defined following state law and the Department of Natural Resources guidelines; development is subject to a geotechnical report prepared by a geotechnical engineer or geologist.

15. The City's groundwater is protected from contamination by applying critical aquifer recharge regulations around the City's two wellhead protection zones consistent with the Washington Department of Health and Department of Ecology rules and guidelines.

16. While the downtown is located in the 100-year floodplain, new and remodeled buildings are subject to floodplain regulations consistent with the 2020 FEMA (Federal Emergency Management Agency) model ordinance and FIRM maps.

17. Cultural resource protection will now be a zoning requirement and no longer subject to limitations under the State Environmental Policy Act (SEPA).

18. The critical area amendments proposed implement the goals and policies of the Comprehensive Plan for protection and preservation of critical areas.

19. Pursuant to RCW 36.70A.106, the City submitted the proposed critical area code amendment for the 60-day review to the Washington State Department of Commerce on September 26, 2024. The 60-day review period was completed on November 25, 2024.

20. The code amendment was circulated for public review on October 22 through November 5, 2024.

21. The City received comments on the draft amendments from the Department of Ecology, Department of Natural Resources and Tulalip Tribes and their comments were incorporated into the code amendment.

22. A SEPA determination of non-significance for the draft ordinance was issued on October 22, 2024, and the comment / appeal period ended on November 5, 2024.

23. The Stanwood Advisory Group reviewed the draft ordinance at their October 16, 2024, meeting and provided comments which were integrated into the amendments.

24. The Stanwood Community Development Committee reviewed the draft ordinance at their November 7, 2024, meeting and provided comments which were integrated into the amendments.

25. The Stanwood Planning Commission held their first reading of the ordinance on October 14, 2024, held a public hearing on ordinance on January 13, 2025, and forwarded their findings of fact and conclusions recommending approval of the ordinance to the City Council.

26. All persons desiring to either provide written testimony or speak for or against the ordinance were given the opportunity to do so.

27. Staff prepared a report summarizing the proposed code amendment. This report is part of the public record and was presented to the Planning Commission at the public hearing on January 13, 2025, for their consideration.

F. CONCLUSIONS OF LAW

1. The City of Stanwood has authority under RCW Title 35A, to adopt plans and regulations related to development and operations within the City of Stanwood.

2. Stanwood Municipal Code requires that the Planning Commission review and make recommendations to the Stanwood City Council regarding code amendments to Title 17, Zoning.

3. On December 31,2024, the Planning Commission public hearing notice was printed in the Stanwood Camano News and notices were sent to the party of record list and agency distribution list as required by law.

4. SEPA review was conducted on the proposal and a Determination of Nonsignificance (DNS) was issued per City Code and under WAC 197-11-340(2). No appeals of the SEPA determination were filed.

5. The proposal is consistent with the 2024-2044 Comprehensive Plan Natural Features and Shoreline Elements, including Natural Features Goal Number 3 and 3.2 and 3.3.

6. The proposal is beneficial to the public health, safety and welfare by ensuring the City's critical area regulations are consistent with the Growth Management Act, are based on best available science and provides for no net loss of critical areas.

7. After considering staff comments and public testimony, the Stanwood Planning Commission determined the draft code amendment is consistent with the Comprehensive Plan and should be adopted.

G. STAFF RECOMMENDATION

I Move that the Planning Commission **ADOPT** the Findings of Fact and Conclusions of Law contained herein and **AUTHORIZE** the Planning Commission Chair to sign the Findings on behalf of the Commission and recommend that the Stanwood City Council **APPROVE** the proposed amendments to the Stanwood Municipal Code.

Dated this _____ day of _____ 2025.

_____
_____, Planning Commission Chair
City of Stanwood

Unified Development Code:
Housing and Flexibility

Washington State Department of Commerce

We strengthen communities

Guidance for Accessory Dwelling Units in Washington State

GROWTH MANAGEMENT SERVICES

v3.4

Acknowledgments

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Reviewers
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Disclaimer
This publication offers guidance for Washington local governments in implementing HB 1337 (laws of 2023) and encourages the creation of new accessory dwelling units (ADUs). It does not constitute legal advice, and is not a substitute for the legal advice of an attorney. Users of this publication should contact their own legal counsel regarding their legal rights or any other legal issue. Also, many of the examples are from current municipal codes which may not yet be consistent with the provisions of HB 1337.

Contact
For additional information on the GMA housing programs, please visit the GMS Planning for Housing Webpage or contact Anne Fritzel, Housing Programs Manager:
Anne.Fritzel@commerce.wa.gov or 360-259-5216

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Introduction

Allowing more accessory dwelling units (ADUs) encourages housing construction and increases the overall supply and variety of housing options, helping address the challenges posed statewide by insufficient housing.

HB 1337, passed in 2023, requires jurisdictions to allow two ADUs per lot within urban growth areas (UGAs) by six months after the next periodic update due date. The Washington State Department of Commerce (Commerce) presents this publication as an update to the agency's 1994 guidance to assist local governments in implementing this requirement. The objective is to provide information on the requirements, local policy choices, and examples of approaches for consideration by cities, towns, and counties, in accordance with the bill. This guidance is structured into the following sections:

- **Requirements** for cities and other urban areas.
- Recommendations for cities and other urban areas.
- Key considerations for counties (rural and resource lands).
- Other programmatic elements to consider.

This document provides detail on the state law and local policy choices. Please note that throughout this document quoted state laws are **bolded**.

Benefits of ADUs

Construction of new ADUs has many benefits, including to:

- Add to the diversity of housing options.
- Provide a housing type that blends in well with existing low density residential neighborhoods.
- Cater to our state's changing demographics, including more seniors and smaller household sizes.
- Provide housing that is typically more affordable than traditional detached single-family homes.
- Add housing units without expanding urban growth areas.
- Correct historic economic and racial exclusion by opening up single-family neighborhoods to more diverse housing and household types.
- Reduce climate impacts because ADUs tend to be smaller and use less energy than traditional single-family homes.
- Use existing infrastructure such as sewer, water and streets.

For these reasons, ADUs can be an effective and "gentle" way of helping to accommodate the state's growing population.

Definitions

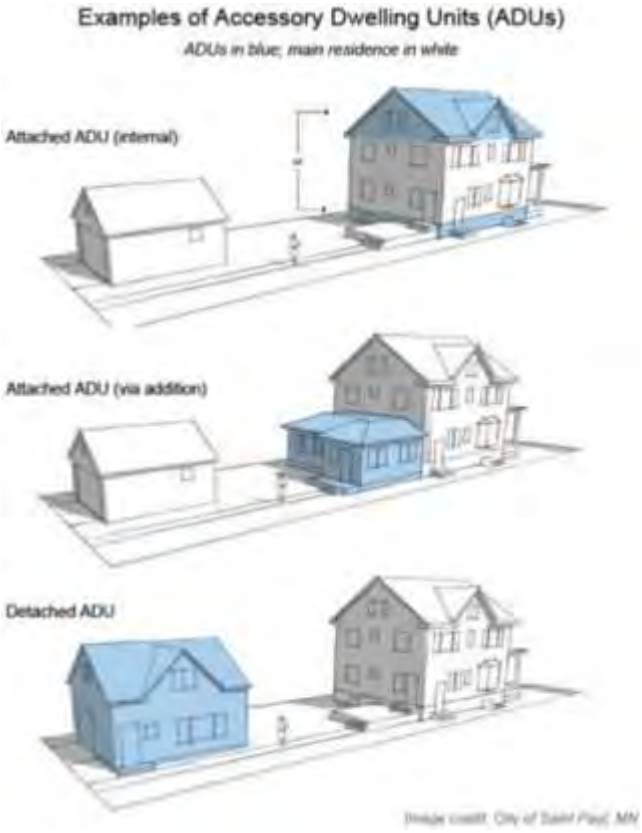
Local governments should review their development regulation definitions to ensure consistency with RCW 36.70A.696, as amended. This will help facilitate consistent implementation of these requirements and reduce the need for interpretation due to missing or outdated definitions.

Accessory Dwelling Unit (ADU)
A dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome or other housing unit.

Attached ADU
An ADU located within or attached to a single-family housing unit, duplex, triplex, townhome, or other housing unit.

Detached ADU
An ADU that consists partly or entirely of a building that is separate and detached from a single-family housing unit, duplex, triplex, townhome or other housing unit and is on the same property.

Dwelling Unit
A residential living unit that provides complete independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking and sanitation.



Basement attached ADU example, with attached ADU entrance on the side of the structure. Credit: Steve Butler.

Legal History of ADU Policy in Washington State

As required by the 1993 Washington Housing Policy Act, Commerce made recommendations to encourage development and placement of ADUs, published in 1994 as the Model ADU Ordinance Recommendations. The Act required cities of over 20,000 population and counties of over 125,000 population, planning under the Growth Management Act to incorporate the Commerce recommendations into their zoning and development regulations. To allow local flexibility, the recommendations were subject to local regulations, conditions, procedures, and limitations.

In 2019, the state Legislature found that Washington State had a housing affordability crisis and sought to promote and encourage the creation of ADUs. Commerce offered a grant program[1] to encourage cities to adopt regulations to increase housing supply, including to: (1) authorize ADUs in one or more zoning district in which they are currently prohibited; (2) remove minimum parking requirements; (3) remove owner occupancy requirements; (4) adopt new square footage requirements that are less restrictive than existing requirements; and (5) develop a local program that offers homeowners a combination of financing, design, permitting or construction support to build ADUs.[2]

In 2020, the legislature adopted restrictions on how much off-street parking local governments could require for ADUs near transit stops. As a result, cities that fully plan under the GMA could not require off-street parking for ADUs within a quarter mile of a major transit stop, with certain limited exceptions.[3]

In 2021, the legislature amended RCW 36.70A.070(2)[4] to require all cities and counties that fully plan under the GMA to "consider the role of accessory dwelling units in meeting housing needs." In addition, Section 7 of the bill stated that cities and counties “should consider” certain policies to encourage the construction of ADUs. Governor Jay Inslee vetoed this section because it did not specifically limit the policies to lands within urban

[1] This is codified in RCW 36.70A.600.
[2] RCW 36.70A.600(1)(n), (o), (p), (q) and (x), passed in 2019, and updated in 2020 to this current list of options.
[3] RCW 36.70A.698
[4] See HB 1220.

growth areas. The Governor's veto illustrates a fundamental point: While there is little doubt that local governments should encourage ADUs in cities and UGAs, very different considerations come into play with respect to county rural and resource lands.

In 2023, HB 1337 amended RCW 36.70A to add significant changes to local government roles for regulating ADUs. Within urban growth areas, cities and counties:

- Must allow two ADUs per residential lot. They may be attached, detached, or a combination of both, or may be conversions of existing structures.
- May not require the owner to occupy the property, and may not prohibit sale as independent units.
- May not charge more than 50% of impact fees charged for the principal unit.
- Must allow an ADU of at least 1,000 square feet and must adjust zoning to be consistent with the bill for things such as height, setbacks, and other regulations.
- Must set consistent parking requirements based on distance from transit and lot size.

If a city or county does not amend its rules to be consistent with the law, the statute will "**supersede, preempt and invalidate any conflicting local development regulations.**"[5]

Other new provisions in HB 1337

- Actions taken by a city or county to comply with new requirements are exempt from legal challenge under GMA or SEPA.[6]
- Cities and counties are not required to authorize the construction of an ADU where development is restricted under rules as a result of physical proximity to on-site sewage system infrastructure, critical areas, or other unsuitable physical characteristics of a property.[7]
- Cities and counties may restrict the use of ADUs for short term rentals.[8]
- Cities and counties may apply public health, safety, building code, and environmental permitting requirements to an ADU that would be applicable to the principal unit, including regulations to protect ground and surface waters from on-site wastewater.[9]
- ADUs are not required to be allowed on lots with critical areas, or around SeaTac airport.[10]
- Local governments are protected from civil liability if they issue a permit for an ADU on a lot with a covenant or deed restricting ADUs.[11]

[5] RCW 36.70A.680(1)(b), RCW 36.70A.697(2)
[6] RCW 36.70A.680(3)
[7] RCW 36.70A.680(4)
[8] RCW 36.70A.680(5)
[9] RCW 36.70A.680(5)
[10] RCW 36.70A.681(2) and (4)
[11] RCW 64.34.120(3)

Detached ADU/"Carriage House" in Portland. Credit: Radcliffe Dacannay, Radworld (Creative Commons).

Requirements for cities and urban growth areas

1. Allow two ADUs per lot

Allowing ADUs in residential neighborhoods creates additional housing options and gives homeowners greater flexibility by providing rental income or a place for they or their family members to age in place.

State law

Within urban growth areas, cities and counties must allow two ADUs on all lots in zoning districts that allow for single-family homes.[12] **The ADUs may be:**

- **Two attached ADUs such as unit in a basement, attic, or garage;**
- **One attached ADU and one detached ADU; or**
- **Two detached ADUs, which may be comprised of either one or two detached structures.**
- **A conversion of an existing structure, such as a detached garage.**[13]

When lots are small

Cities and counties must allow an ADU on any lot that meets the minimum lot size required for the principal unit.[14] Minimum lot sizes set the base lot size for development as part of a subdivision process. To support more ADU development, local governments should reduce or eliminate minimum lot size requirements for

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[12] RCW 36.70A.681(1)(c)
[13] RCW 36.70A.681(1)(j)
[14] RCW 36.70A.681(1)(e) states that an ADU must be allowed if the lot meets minimum size for the principal unit. RCW 36.70A.681(3) states that cities and counties may set a limit of two ADUs, on a residential lot of 2,000 square feet or less. However, if two ADUs are allowed on lots that meet the minimum lot size, 2,000 SF is not generally going to be a standard lot size and may not have space for even one ADU.

ADUs with existing development and allow ADUs on all lots. Where lots are smaller than the minimum allowed by the zone, cities may choose to rely on the capacity of the lot, sewer, septic, parking, and landscaping or other regulations to set the limits on one or two ADUs.

Examples

- Enumclaw Municipal Code Sec. 19.34.050: Allows ADUs on lots of any size.
- Kenmore Municipal Code Sec. 18.73.100: Does not require a minimum lot size for ADUs.
- Renton Municipal Code Sec. 4-2-110C: Permits ADUs on lots 3,000 square feet or less.

Restricted development locations

Cities and counties are not authorized to allow construction of ADUs in locations where development is restricted under other laws, rules, or ordinances due to physical proximity to on-site sewage system infrastructure, critical areas or other unsuitable physical characteristics of a property.[15] This includes critical areas protection standards, such as buffers and setbacks, as well as associated environmental permitting review and process requirements. In short, cities and counties should apply the same public health, safety, building code and environmental permitting requirements to an ADU that would be applicable to the principal unit, including regulations to protect ground and surface waters from on-site wastewater. The provisions of HB 1337 provide no authority to override local ordinances that address public health and safely.

Cities and counties may restrict ADU development:

- **Within areas designated as critical areas** (see below).
- In shoreline areas so designated under a shoreline master program (see below).
- **On lots in a watershed serving a reservoir for potable water if that watershed is or was listed, as of July 1, 2023, as impaired or threatened under Section 303(d) of the federal Clean Water Act (33 U.S.C. Sec. 1313(d)).**[16]
- **In zones with a density of one dwelling unit per acre or less that are in critical areas, designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas.**[17] Generally any zones with such low densities within UGAs are so designated to protect the critical area, so adding additional development in the form of an ADU is not consistent with this exception.
- **Within a mile radius of SeaTac airport**.[18]

For areas without sewer

- **Cities/counties may prohibit ADUs on properties not served by sewers.**
- Septic and related wastewater rules to protect water-quality located in local health codes and 246-272A and -272B WAC continue to apply to on-site systems for ADUs.
- The Department of Health expects attached ADUs to be more likely to be connected to the same septic system as the primary single family residence since they are easier to build compliant with Department of Health rules. The septic system needs to be designed to accommodate this additional wastewater flow.
- Detached ADUs could, depending on local rules, be served by a separate septic system. The requirements, including horizontal setback and maximum density requirements of the rule(s) would apply.

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[15] https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-planners-toolbox
[16] RCW 36.70A.681(4)
[17] RCW 36.70A.680(5)
[18] RCW 36.70A.681(2)

- In areas where sewers are likely to be built in the future, plan reviewers may want to take measures to accommodate the eventual conversion from septic systems to sewer.

Critical areas

Cities and counties shall limit ADU development as necessary to meet critical areas protection standards. All ADU development must be reviewed for consistency with critical area protection ordinance provisions, and shall only be allowed when consistent. Critical areas include:

- Wetlands, and fish and wildlife habitat conservation areas provide critical ecological functions. They are protected for their intrinsic values and no additional development is appropriate. Internal conversions of existing space to an ADU may be permissible, provided all other protections are observed.
- Floodplains and geologically hazardous areas are identified as hazard areas that may pose dangers to life safety and property. Most local jurisdictions allow some development in floodplains and geologically hazardous areas. However, the development must go through a detailed review process that provides analysis of the site-specific conditions and the proposed development, supported by reports from certified experts such as geologists and engineers.
- Critical aquifer recharge areas (CARAs), which are important to allow groundwater to recharge aquifers used for drinking water. In these areas, regulations generally protect against hazardous uses and ensure impervious surfaces do not restrict groundwater recharge. ADU development over CARAs may be allowed if it can be demonstrated they will not impact potable water.

While ADUs shall be allowed in residential neighborhoods within the UGA, in geohazard and wetland areas they must be designed and located to avoid critical area impacts consistent with the mitigation sequence,[19] which includes to:

- Avoid the impact altogether by not taking a certain action or parts of an action.
- Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
- Rectify the impact by repairing, rehabilitating or restoring the affected environment.
- Reduce or eliminate the impact over time through preservation and maintenance operations during the life of the action.
- Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
- Monitor the impact and taking appropriate corrective measures.

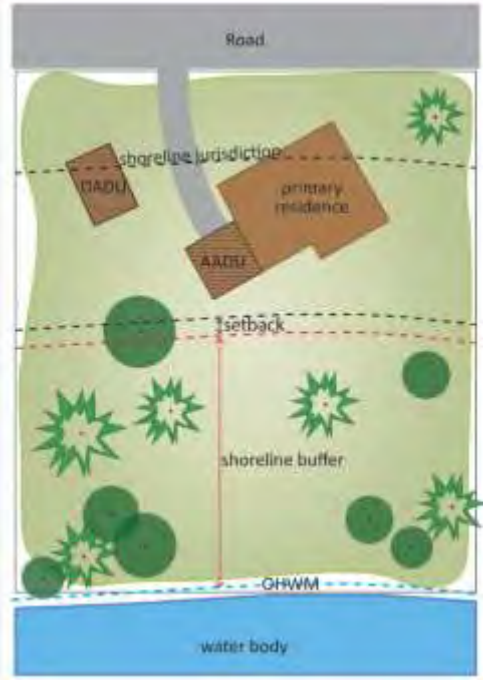
Reasonable use exceptions

Detached ADUs are not necessary for reasonable residential use within critical areas and should not be allowed within critical areas or their buffers under reasonable use exceptions. It may be possible to convert space within existing homes to create an ADU if no new exterior construction, expansion of the footprint or additional impervious surface is added.

[19] https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Avoidance-and-minimization

ADUs in shorelines under a shoreline master program

Shorelines and shorelands are governed under the city, town, or county's Shoreline Master Program (SMP). Although residential uses are allowed in many shoreline environment designations (SEDs), ADUs may not be appropriate in all SEDs. The ADU requirements outlined in HB 1337 are intended to apply within the UGA governed under the Growth Management Act and are not automatically applicable within the shoreline jurisdiction governed under the Shoreline Management Act (SMA). Local governments should plan for ADUs located within shoreline jurisdiction during a periodic review of their SMP[20]. Review and update of an SMP is required every ten years but can be initiated by a local government outside of the required schedule.



If allowed, ADUs within shoreline jurisdiction should be outside of buffers and setbacks. Credit: Ecology.

Chapter 90.58 RCW, Chapter 173-26 WAC, and Ecology approved local shoreline master programs restrict development under SMA goals, policies, purpose and intent. Within shoreline jurisdiction, zoning code provisions can be applied, but they must be reviewed in addition to the bulk, dimensional, performance, and use standards of the SMP, and all new development and uses, including ADUs, can only be authorized through the shoreline permitting system outlined in Chapter 173-27 WAC.

Each SMP contains residential use regulations and development standards which ensure that allowed uses and development remain compatible with the shoreline environment and SMP and allow no net loss of shoreline ecological function. If allowed under the SMP provisions, ADUs would still need to be located outside of all shoreline buffers and setbacks and would need to meet other SMP critical area, density, impervious surface, and vegetation conservation provisions.

ADUs are not necessary for reasonable residential use within shoreline jurisdictions and should not be included as project components in shoreline variance permit applications.

Local governments wanting to address ADUs under the authorities of their SMP should consult Washington State Department of Ecology guidance[21] and work closely with their Ecology shoreline planner.[22]

Examples

- Black Diamond Municipal Code Sec. 18.56.030 – Allows two ADUs in conjunction with the primary unit provided adequate provisions for water and sewer are met.
- Langley Municipal Code Sec. 18.08.095 – Allows one attached and one detached ADU on a lot with a single-family dwelling connected to sewer.
- Burien Municipal Code Sec. 19.17.070 – Permits a maximum of two ADUs (one attached and one detached) per detached house.

[20] The timetable for local governments to develop or amend master programs is required by RCW 90.58.080,
[21] https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Contacts

[22] https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-planners-toolbox

2. Do not require owner occupancy

Owner occupancy standards have typically required that a property owner live in either the primary residence or the ADU, however that may limit the ability of the owner to develop or rent and ADU.

State law

Within UGAs, cities and counties may not require the owner of a lot on which there is an ADU to reside in or occupy the ADU or another housing unit on the same lot.[23] RCW 36.70A.696(9) defines owner as any person who has at least 50% ownership in a property on which an ADU is located.

Local policy choice

When a unit is used as a short-term rental (STR), a local government may choose to require an owner to occupy either the primary or an accessory unit. (See the section on short-term rentals.)[24]

Examples

- Bremerton Accessory Dwelling Units
- Kirkland Accessory Dwelling Units
- Seattle Accessory Dwelling Units
- Vancouver Accessory Dwelling Units

3. Allow separate sale of ADUs

Because they are smaller and generally more affordable than most typical single-family homes, sales of ADUs as separate units can increase homeownership opportunities for first-time homebuyers and low-income households.

State law

- **A city or county may not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an accessory dwelling unit.**[25] Washington's Condominium Act, which provides for the creation of condominiums, does not preclude ADUs from being created as a part of a condominium development. Here, the unit is individually owned and the remainder of the property is under common ownership. Local governments wanting to regulate how ADUs are converted to a condominium form of ownership should work closely with their legal counsel in reviewing RCW 64.90.025 and other related laws.[26]

  Zero lot line subdivisions and lot splits are mentioned in Section 4(2) of HB 1337, however, there is currently no authorization for lot splits in Washington, creating true independent units for ADUs. SB 5258 amends RCW 58.17.060 to require all cities and towns to adopt procedures for unit lot subdivisions to allow division of a parent lot into separately owned unit lots, or owned in common by the owners of the lots. However, this is better used for developments such as townhouses.

Examples

- Seattle Annual ADU Report 2022 – Addresses ADUs sold as condominiums, highlights the benefits of ADUs as condominiums and the increase in ADUs as condominiums in Seattle since 2018.

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[23] RCW 36.70A.681(1)(b)
[24] RCW 36.70A.680(5)(a)
[25] RCW 36.70A.681(1)(k)
[26] See additional information on ADUs and condo's at ADUs and Condos: Separating Ownership | Accessory Dwellings

- City of Snohomish Unit Lot Subdivision - the city provides a handout with criteria and the process for unit lot subdivision.
- Bellevue unit lot subdivision Web page for townhouses.

4. Set off-street parking requirements consistent with HB 1337

Many lots in established areas aren't large enough to support both an ADU and off-street parking, effectively prohibiting ADU development. This means that ADUs are often limited to larger lots that can accommodate parking and other site features. Removing off-street parking requirements for ADUs can help to open up possibilities for placing ADUs, especially in urban areas with transportation options.

State law

Parking limits for ADUs are subject to the following:

- **Off street parking may not be required as a condition of permitting ADUs within one half mile of a major transit stop.**[27]-[28]
- **On lots smaller than 6,000 square feet, no more than one off-street parking space may be required per ADU before any zero lot line subdivisions or lot splits.**[29]
- **On lots greater than 6,000 square feet, no more than two off-street parking spaces per ADU may be required before any zero lot line subdivisions or lot splits.**

Local policy choice

While on-site parking cannot be required within a half mile of a major transit stop, a city may not want to require on-site parking in other types of walkable areas or where on-street parking is sufficient. Cities may also choose to reduce parking requirements from the maximum limits in statute. Because ADUs typically are for one or two people, no more than one parking space may be needed for any lot size, especially in areas with on-street parking.

A parking study

Cities may choose to require more parking if Commerce concurs with a locally-conducted empirical study prepared by a credentialed transportation or land use planning professional that clearly demonstrates that parking consistent with the law would be significantly less safe for pedestrians, bicyclists, or people in vehicles than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses.[30] Commerce is required to develop guidance on the contents of the study by the end of 2023.

Related to the issue of off-street parking requirements are garage conversions for ADUs. This type of ADU may be more affordable since the changes are primarily internal to an existing structure, and they're popular with retirees who want to age in place because they generally have "no-step entries." Because **HB 1337 requires cities to allow garage conversions**, and to reduce parking requirements, Commerce recommends that cities allow any replacement parking for the primary residence and ADU to be on driveways or on the street if

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[27] Under RCW 36.70A.681(2), off-street parking for ADUs is prohibited within 1/2 mile of a major transit stop.
[28] Major transit stop is defined in RCW 36.70A.696.
[29] This part of statute references zero lot line subdivisions, however, for the purposes of this guidance, this means the ADU is not subject to primary unit parking requirements, even if subdivided from the primary unit.
[30] RCW 36.70A.681(2).

possible. Low impact development pervious pavement options may be an offset tool to address additional parking, while also reducing overall site impervious surface area.

Examples

- Fircrest Municipal Code Sec. 22.58.012 – Doesn't require additional off-street parking for ADUs unless the planning director determines there is insufficient on-street parking to satisfy parking demand.
- Kenmore Municipal Code Sec. 18.73.100 – No additional off-street parking spaces are required for an ADU.
- Sumner Municipal Code Sec. 18.12.030 – ADUs created via garage conversion are not required to have off-street parking, as long as there is available on-street parking and the unit is located within half a mile of the Sumner transit station.
- Kirkland Municipal Code Sec. 115.07 – Doesn't require off-street parking for one ADU. On lots with more than one ADU, one space is required, with exceptions (available street parking within 600 feet or property is located within 1/2 mile of frequent transit).

Smith Gillman Cottage converted garage. Credit: CAST architecture.

5. Set maximum size limits at no less than 1,000 SF

Local governments typically enact maximum size limits for buildings to ensure there is enough space on a lot for site features like parking and green space. However, maximum size limits that are too restrictive pose design and use limitations. ADU size limits are typically smaller in urban infill areas than they are for larger greenfield sites. Some cities and other urban areas set a single maximum that is based on square footage, while others couple this standard with a percentage of the primary residence.

State law

ADU size limits must allow a gross floor areas of at least 1,000 square feet within UGAs.[31] New amendments to RCW 36.70A.969 define "gross floor area" as the interior habitable area of a dwelling unit including basements and attics but not including a garage or accessory structure.

[31] RCW 36.70A.681(1)(f)

Examples

- Chelan Municipal Code Sec. 17.20.20 – Limits ADUs in its single-family residential district to 1,200 square feet or no more than 50% of the total square footage of the primary residence, whichever is less. The planning director may approve an increased size to efficiently use all floor area if all other standards are met.
- Kenmore Municipal Code Ch. 18.73 – Attached ADUs are limited to 1,000 square feet unless the ADU is proposed for preexisting floor area on a single level of the primary unit. For detached ADUs, maximums are based on lot size.

6. Reduce setbacks for ADUs (especially rear setbacks)

State law

A city or county may not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for ADUs that are more restrictive than those for principal units.[32]

A city or county must allow detached ADUs to be sited at a lot line if the lot line abuts a public alley, unless the city or county routinely plows snow on the public alley.[33]

Setback requirements, which establish the minimum distance from front, side, or rear lot lines, create space between a building and adjacent uses. Some codes establish setbacks for ADUs that mirror those of the principal unit, thereby limiting space for ADUs, especially detached ADUs on small lots. Many urban communities have begun requiring separate, less restrictive setbacks specifically for ADUs. For example, some cities and other urban areas reduce or waive setbacks for detached ADUs alongside and rear lot lines, and alleys.

[32] RCW 36.70A.681(1)(h).
[33] RCW 36.70A.681(1)(i).

Detached ADU over a garage with relaxed rear setback. Credit: Steve Butler.

Examples

- Bellingham Municipal Code Sec. 20.01.036 – Exempts detached ADUs from side and rear yard setbacks when abutting an alley.
- LaCenter Municipal Code Ch. 18.247 – Allows detached ADUs at the rear yard lot line if adjacent to an alley.

Zoning codes should clearly describe ADU standards, which should be at most the same as those for the primary unit. When ADUs are added on a lot, they should fit on the lot, and be consistent with yard coverage limits and tree retention provisions. Stormwater low impact development features such as rain gardens and other bioretention options can be used to define setback areas for an ADU and principal lot, and should be features to support additional units, rather than be barriers. [34]

7. Limit use of design standards

Design standards often involve ensuring ADUs are compatible with the primary residence through features such as architectural style, window placement, roof form and pitch, and building materials. ADU design standards, however, can have the unanticipated impact of increasing project costs by lengthening the time needed for local ADU project review. ADUs can complement, but need not be exactly the same as the principal unit. Design standards must be clear and objective, should be no more prescriptive than those for single-family

[34] Commerce's guidebook: Incentivizing Low Impact Development (LID) Beyond Permit Requirements includes tools and outreach materials that local governments can utilize to encourage developers to go beyond existing stormwater requirements and help reduce site impervious areas.

homes, and may not result in a reduction in density, height, bulk, or scale below the requirements of the underlying zone.[35]

State law on design standards

A city or county may not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for ADUs that are more restrictive than those for principal units.[36]

Local governments should minimize the use of ADU design standards. In some cases, standards may be used to address privacy, for example making sure that the ADU's windows are located to preserve privacy between the ADU and neighboring properties or private open space.

HB 1293 (laws of 2023) adds to RCW 36.70A and amends RCW 36.70B to streamline local design review processes, requiring "clear and objective" standards that don't reduce development capacity otherwise allowed. Any design review process must be conducted concurrently, or otherwise be logically integrated, with the consolidated review and decision process for project permits set forth in RCW 36.70B.120(3). No design review process may include more than one public meeting. A county or city must comply with these requirements beginning six months after its next periodic update required under RCW 36.70A.130. The provisions do not apply to regulations specific to designated landmarks or historic districts established under a local preservation ordinance

Examples

- Ellensburg Municipal Code Sec. 15.540.040 – Does not require ADUs to match the appearance of the primary structure.
- Sedro Woolley Municipal Code Sec. 17.100.030 – Allows the planning director to approve interesting detached ADU designs that are dissimilar from the primary structure.
- Lacey Municipal Code Sec. 14.23.071 – Has minimal design criteria for attached and detached ADUs, though duplex-like designs are not allowed.

[35] RCW 36.70A.630(2). Design review guidelines must provide only clear and objective requirements, such that an applicant can ascertain whether a particular building design is permissible.
[36] RCW 36.70A.681(1)(h).

ADU in the Wedgewood neighborhood of Seattle. Credit: Pam MacRae, Sightline Institute. Used with permission.

8. Allow ADUs of at least 24 feet in height

State law

The city or county may not establish roof height limits on an ADU of less than 24 feet, unless the height limitation on the principal unit is less than 24 feet, in which case, a city or county may not impose roof height limitation ADUs is less than the height limit that applies to the principal unit.[37]

Cities and other urban areas typically set building height limits to address issues like views and privacy; however, they also limit design options and use land less efficiently. Some communities set one height limit for both the principal unit and ADUs, while others have a separate maximum for ADUs.

Examples

- Kenmore Municipal Code Sec. 18.73.100 – Allows ADUs up to 35 feet.

[37] RCW 36.70A.681(1)(g).

- Spokane Municipal Code Sec. 17C.300.130 – Has height limits that are more nuanced and relate to the proximity of an ADU to a property line.

Larger, taller detached ADU – 1130 SF. Credit: Eddie Bojorquez/Crest Backyard Homes.

9. Reduce impact fees

Impact fees

Impact fees are one-time charges assessed by a local government against a new development project to help pay for new or expanded public capital facilities that will directly address the increased demand for services created by that development. RCW 82.02.050 authorizes counties, cities, and towns planning under the Growth Management Act (GMA) to impose impact fees for:

- Public streets and roads;
- Publicly owned parks, open space, and recreation facilities;
- School facilities; and
- Fire protection facilities.

Because ADUs are generally smaller than standard single family homes, they typically have fewer people living in them, and likely cause fewer impacts.

State law

The city or county may not assess impact fees on the construction of accessory dwelling units that are greater than 50 percent of the impact fees that would be imposed on the principal unit.[38]

[38] RCW 36.70A.681(1)(a) and SB 5258 (section 10, laws of 2023) amends RCW 82.02.060 to require local governments to publish a schedule of impact fees which reflects the proportionate impact of new housing units. This includes multifamily and condo units, based on square footage, number of bedrooms or trips generated, to produce a proportionally lower impact fee for smaller housing units. Local governments must adopt this schedule within six months after the periodic update due date.

Local policy choice

Local governments may charge according to the size of the unit, fixture count, or location with the community, or completely waive fees, but in no case should the fees be more than 50% of what would be charged to the principal unit.

Examples

- Everett 2023 Impact Fees Schedule – Waives transportation and school impact fees for ADUs.
- Olympia Municipal Code Ch. 15.08 – Waives school impact fees and reduces transportation and park impact fees for ADUs.
- Renton 2019-2020 Fee Schedule (Section XII) – Provides impact fee reductions and waivers for ADUs.
- Lake Stevens Municipal Code Sec. 9.25.010 – Reduces utilities connection fees for ADUs based on ADU size.

Utility connection fees/system development charges

System development charges, or connection fees may be charged for area-wide improvements for water, sewer or stormwater. Like impact fees, communities may charge according to the unit's impact on the system. A fundamental feature of ADUs is that the ADU is "accessory to" a primary residential unit. As a result, the ADU will be smaller, typically have fewer people living in it, and have a reduced demand for municipal services.

Metering considerations when connecting to the sewer system

The Department of Health considers an ADU a separate dwelling unit if it is located outside and separate from the single family residence (detached). An ADU located within the single-family residence, such as a basement or attic unit, is generally not considered a separate connection to the sewer system for the purposes of metering. The total number of service connections is determined by counting each single-family home, each dwelling unit in a multi-family building, and each nonresidential building that the water system serves.

Local policy choice

There is no specific requirement to reduce charges for sewer, water and stormwater, as there is for impact fees, but a local government has the option of removing, reducing or waiving connection fees or system development charges to meet public purposes. Because of the dependent nature of ADUs, it is recommended that local governments allow shared meters, especially for attached units that are within the capacity of an existing meter. There may be limited cases in which separate meters are necessary because of site configuration or separate sale. They may choose to reduce system development charges to 50% as well because these charges are meant to fund area wide system development improvements, and an ADU generally has a smaller impact.

Examples

- King County has a detailed system capacity charge system with charges that vary based on the size and form of the housing unit, with addition discounts for affordable units. https://kingcounty.gov/en/dept/dnrp/waste-services/wastewater-treatment/sewer-system-services/capacity-charge/about
- Kirkland Accessory Dwelling Units – This webpage provides the following information:
    - ADUs are not subject to water capital facility charges if there are no changes to the water service/meter.
    - ADUs are not subject to sewer capital facility charges.
    - ADUs are not subject to the surface water capital facility charge if the primary residence is already connected to the public storm system.

- Olympia Municipal Code Ch. 13.04 and Ch. 13.08 – Provides the option of new connections or tie-ins when developing an ADU. There is no charge when the connection occurs on the lot. The Olympia Engineering and Design Standards Section 7B.080 addresses the issue of ADUs and side sewers.
- Sedro Woolley Municipal Code Sec. 17.100.030 – Utilities may be shared between an ADU and the primary dwelling. Sewer connection fees are collected at a reduced rate depending on the size of the ADU.

10. Other Fees and Exactions

State law

A city or county may not require public street improvements as a condition of permitting ADUs.[39]

State law requires that public street improvements must not be required as a condition of permitting ADUs, even if the development of the primary unit can trigger such improvements.

Another barrier might be the cost of permit fees. Local governments often attempt to recoup the actual cost of processing land use permits, but there is not a legal requirement that they do so. A city or county could choose, for policy reasons, to charge a lower amount for ADU applications as part of a strategy to encourage property owners to construct new ADUs on their properties. In addition, lowering fees makes sense if a city or county is taking other steps to streamline the ADU process, since those measures may also result in lower permit administration costs.

Examples

- Spokane Municipal Code Sec. 08.02.031 – Waived permit fees for ADUs on lots within half a mile of certain zoning districts. The waiver is set to expire at the end of 2024.
- Washougal Municipal Code Sec. 18.46.020 - Does not charge an application fee for detached ADU development.

[39] RCW 36.70A.681(1)(l). The GMA does not currently define "public street improvements", however "public facilities" is defined in RCW 36.70A.030 and "public improvements" in RCW 39.114.010; both include street and road construction including sidewalks, street and road lighting systems, storm and sanitary sewer systems, among other public improvements.

Recommendations for cities and other urban areas

The following recommendations are not required but are suggestions to encourage the development of ADUs. They are to apply only to cities, towns, and other urban areas, including unincorporated urban growth areas (UGAs) and limited areas of more intensive development (LAMIRDs). The purpose of applying these ADU recommendations to cities and other urban areas, and not to rural areas or resource lands is to support the GMA's goals of encouraging development in urban areas and reducing sprawl.

1. Allow prefabricated units

Prefabricated detached ADUs can provide a degree of cost savings, which may make them more affordable for property owners, especially in more remote areas that may not have access to the tradespeople needed to construct ADUs. Because materials and manufacturing are centralized at an off-site manufacturing facility, prefabricated units require less construction time than conventionally built structures and can be constructed year-round in a climate-controlled factory.

RCW 35A.21.312 allows for consumer choice in housing, requiring local government to allow the placement of factory-built homes in any location where site-built homes are permitted. The law was likely developed to apply to primary units, and not necessarily ADUs. However, cities and counties may adopt a set of additional standards, relating to permanent foundation, roof pitch, and design, although not all of those standards should be applied to ADUs.

Any prefabricated unit must meet state standards.[40] Local codes may refer to larger manufactured homes, and may not be related to small homes, such as park models, more suitable for an ADU.

Example

- Bremerton Municipal Code Sec. 20.46.010 – Allows for manufactured homes to be used as ADUs.

Prefab detached ADU: Nanny Flat, Elder Cottage. Credit: Eddie Bojorquez/Crest Backyard Homes.

[40] See the Washington Department of Labor & Industries page on Manufactured Home Permits & Inspections.

Tiny houses

Tiny houses, or tiny houses with wheels, as defined in RCW 35.21.686, are not generally allowed as ADUs because they may not meet the standards required for a permanent residential unit, such as a foundation, water supply and sewage disposal. However, some communities are starting to consider allowing tiny homes on wheels as temporary units, with appropriate connections and tie-downs.[41]

One exception in state law is that tiny homes on wheels and RVs may be used as permanent living quarters only when situated in manufactured/mobile home communities, but they are still subject to certain life/safety and utility hookup requirements per RCW 35.21.684. Tiny houses must be inspected and meet the standards of the Washington State Department of Labor and Industry.[42]

Prefab ADU travelling from factory to residential site / installed on-site. Credit: Roger Fitzsimons.

2. Streamline ADU permitting processes

A local permitting process should be designed to make it as easy as possible for an applicant to prepare and submit a development permit application, and for the permit review staff to review and quickly approve it. This approach should be particularly true for the types of development that a community is actively trying to encourage, such as ADUs.

Discretionary project permitting processes, such as those requiring conditional use permits, hearings examiner review, and public hearings add extra time and cost to getting a development project approved. These processes make sense for situations where a proposed project may be large or have a number of potential

[41] Port Townsend allows tiny homes on wheels. (THROWS) https://cityofpt.us/planning-community-development/page/new-july-1st-tiny-house-wheels-thows

[42] See the Washington Department of Labor & Industries page on Tiny Houses.

impacts on a neighborhood or community. For small, low-impact development projects that advance adopted public policy such as new ADUs, a discretionary permitting process creates an unnecessary barrier to ADU construction.

Local governments should allow ADUs "by-right," with project review and approval to be done administratively. Having an expedited or shorter review process for ADUs can also include preferential review of ADU proposals. Providing pre-approved ADU plans is another method for reducing the time needed to review an ADU proposal (see provide pre-approved ADU plans below). Streamlining can be additionally bolstered by checklists that clarify the ADU approval process (see below on providing user-friendly communication materials).

Examples

- Pasco Municipal Code Sec. 25.161.030 – ADU applications are approved administratively.
- Sequim Municipal Code Sec. 18.66.040 – Requires a single administrative permit for ADU development. The application must be processed by the community development director within 30 days of submittal (Sec. 20.01.080).

3. Offer incentives to encourage ADUs that are affordable to lower-income households

While ADUs are generally more affordable than a typical single-family home, most aren't affordable to households making less than 80% of the area median income (AMI). To address this issue, some local governments offer incentives for ADUs that are affordable for lower-income households (that is, less than 80% AMI) for a set number of years (such as 50 years). These types of incentives usually involve requiring affordability in exchange for providing a "bonus," like higher densities in the form of an additional ADU. Local governments can also support affordability for low-income residents by incorporating ADUs into their affordable housing funding programs and forming partnerships with community land trusts and other non-profit organizations.

Local policy choice

There are a number of ways that local governments can offer reductions for affordable housing, most require some kind of assurance that the unit will remain affordable over time.

- RCW 82.02.060(4) also authorizes local governments to offer impact fee reductions or waivers for affordable housing. An exemption for low-income housing granted under this section, however, must be conditioned upon requiring the developer to record a covenant that prohibits using the property for any purpose other than for low-income housing.
- RCW 36.70A.540 authorizes local governments to expand affordable housing incentive programs to include, among other things, fee waivers or exemptions provided the local government is committed to continuing affordability for at least 50 years.
- A local government may offer "tap-in charge" waivers for low-income persons (under RCW 35.92.380 or RCW 36.94.370).[43]

Examples

- CLTplusOne — A pilot program offered by Durham (NC) Community Land Trustees, which pairs a land trust home with ADUs on the same lot. Both the primary residence and rental unit are permanently affordable (see this Shelterforce article on Durham's Community Land Trust).

[43] For more information on this topic, see MRSC's Affordable Housing Techniques and Incentives - Reduction/Waiver of Fees.

- Seattle Municipal Code Sec. 23.44.041 – Allows a second ADU on a lot if one of three conditions are met: conversion within an existing structure, green building standards, or affordability for "income-eligible households" for a minimum of 50 years.

Key considerations for counties

GMA-planning counties must plan and provide regulatory frameworks for four land use categories in decreasing order of ADU intensity:

- Unincorporated UGAs.[44]
- LAMIRDs
- Rural lands
- Designated natural resource lands

1. Unincorporated UGAs and LAMIRDs

Unincorporated urban growth areas

In unincorporated UGAs, which are generally intended to have urban services and eventually become or annex into cities, the requirements in this guidance apply within 6 months of the next periodic update.[45]

LAMIRDs

Within Limited Areas of More Intensive Rural Development (LAMIRDs), the outer boundary may not change, but the LAMIRD may be filled in with new development, including ADUs.

2. Rural and natural resource lands

ADU regulations outside of urban growth areas require consideration of a different set of factors than ADU regulations in cities and urban growth areas. ADU provisions in rural and resource areas must be accompanied by measures to protect rural character, conserve resource lands, and limit density and sprawl.

One of the benefits of ADUs in urban areas is that under HB 1337, the ADUs can be sold separately and add to the supply of attainable housing for moderate on maybe lower income households. The same does not hold true in rural areas, where the ADU cannot be sold separately, and the private cost of transportation and public cost of transportation-related emissions reduces the public benefit of ADUs in rural areas.

When developing or amending regulations, counties should consider the potential for:

- Increased demand for emergency and other services.
- Increased traffic on county roads, which may be built to a lower standard.
- More housing and increased population in areas potentially prone to wildfires or other natural hazards.
- Impact on water supplies.
- Conflict with or decrease in land available for agriculture or other natural resource industries.

The Growth Management Hearings Boards (GMHBs) have considered challenges to ADU regulations in rural and resource designated areas in a handful of counties. Three hearings boards have issued decisions

[44] See Chapter 36.70A RCW.
[45] RCW 36.70A.680(1)

disfavoring local regulations allowing detached ADUs where they do not include specific criteria to curtail indiscriminate increased density.[46]

Rural lands

For areas designated as "rural," the regulations must be consistent with "rural character" as established in the rural element of the county's comprehensive plan.[47] RCW 36.70A.030(23) defines rural character as "[...] the patterns of land use and development established by a county in the rural element of its comprehensive plan." Importantly, what constitutes rural character in one county may be different than what constitutes rural character in another (RCW 36.70A.011). ADUs should not contribute to sprawl or cause residential uses to predominate over rural uses.[48]

Given the need to be consistent with and implement their rural, housing, and land use elements of their comprehensive plans (among others), it will be important for counties to "show their work" through the written record, including but not limited to whereas statements, findings of fact, staff reports, and public participation processes; and to articulate legal and policy justifications for their actions.

Designated natural resource lands

Counties must ensure ADU regulations are consistent with GMA requirements to preserve natural resource lands for resource production. In natural resource lands, the dominant use is to be the agricultural, forestry, or mineral use; residential development must be located to not interfere with the natural resource use, and preserve the majority of land for such use.[49] See RCW 36.70A.060.

Considerations and examples for rural and resource areas

Generally, regulations permitting attached ADUs raise fewer concerns than those permitting detached ADUs. While several counties allow detached ADUs in their rural land designations, most include restrictions related to standards such as:

- Size limit on a single ADU.
- Minimum lot size to conform to zoning or in some cases, double the minimum lot size.
- Proximity to and dependency on the primary residence (such as shared driveway, parking, yard, septic, well, utilities, etc.).
- Design standards for consistency with primary unit.
- Limitations on number of permits issued annually.

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[46] Loon Lake Property Owners, et al v. Stevens County, EWGMHB, Case No. 01-1-0002c, Compliance Order (May 30, 2008); Friends of San Juans, et al v. San Juan County, Case No. 3-2-0003c coordinated with Nelson, et al v. San Juan County, Case No. 06-2-0024c, FDO/Compliance Order, at 3 (Feb. 12, 2007).

[47] County comprehensive plans must include a rural element. A county's rural element must include policies that are consistent with rural character. RCW 36.70A.070(5)(b) provides, in relevant part: "[The rural element] shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural economic advancement, densities, and uses that are not characterized by urban growth and that are consistent with rural character."

[48] RCW 36.70A.020(2) and RCW 36.70A.110(1) and .070(5). Friends of San Juans, et al v. San Juan County, Case No. 3-2-0003c coordinated with Nelson, et al v. San Juan County, Case No. 06-2-0024c, FDO/Compliance Order, at 3 (Feb. 12, 2007) — Regulations allowing a detached ADU on substandard rural lots allowed residential use to predominate over rural uses and were therefore noncompliant; Loon Lake Property Owners, et al v. Stevens County, Case No. 01-1-0002C — Allowing an ADU on all parcels —including substandard lots — can considerably increase density within zone.

[49] Futerwise v. Snohomish County, Case 22-3-003, Final Decision and Order. The Board found that the county failed to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.177, and was inconsistent with multi-county and countywide planning policies, in violation of RCW 36.70A.210.

- Restrictions on title.

Careful with detached ADUs (attached ADUs preferred)
The hearings boards have held that freestanding residential ADUs should be treated as separate dwelling units for purposes of density calculations — although in some cases have found compliant county regulations that allow limited exceptions to detached ADUs triggering such density requirements.[50]

Attached ADUs are Preferred
Conversely, the boards have held that attached ADUs and ADUs converted from an existing structure in close association with the primary residence (such as a garage) do not count toward density in rural and resource areas.[51]

Examples

- Clark County: Accessory Dwelling Unit – Rural (Handout) (2022) – Allows only attached ADUs in rural and resources zones.
- Kitsap County: Accessory Dwelling Unit (Handout) (2022) – Requires detached ADUs to be sited within 150 feet of the principal dwelling outside of UGAs. Size limit, 50% of primary unit or 900 square feet, whichever is smaller. Owner occupancy requirements and design standards apply.
- San Juan County Code Sec. 18.40.240 – Limits the number of detached ADU permits outside "activity centers" and UGAs in any calendar year to no more than 12% of the total number of building permits for new principal residences issued for the previous calendar year. Further limited to one permit per property owner outside UGAs.
- Spokane County: Detached Accessory Dwelling Unit (Handout) – Detached ADUs in selected rural zones must be within 150 feet of principal dwelling and meet several other conditions, including that title notice will be placed on the property that the accessory dwelling may not be sold as a separate residence until such time as the accessory dwelling is located as the sole residence on a legally subdivided parcel.
- Walla Walla County Code Sec. 17.08.015 – Requires at least four of six "dependency requirements" be shared for a detached ADU (road access, septic system, water system, utility meters, yard, and parking areas).

Other programmatic elements to consider

The following "programmatic elements" are not recommendations but are instead meant to be additional options to be considered by cities, towns, and other urban areas, including unincorporated UGAs and LAMIRDS.

1. Address the use of ADUs as short-term rentals

Construction of ADUs presents an opportunity to increase a community's supply of relatively affordable long-term housing. When an ADU is used as a short-term rental (STR), defined as a housing unit being rented for fewer than 30 consecutive days, that housing unit functions as a lodging unit for visitors and not as a housing

[50] Friends of San Juans, et al v. San Juan County, Case No. 3-2-0003c coordinated with Nelson, et al v. San Juan County, Case No. 06-2¬0024c, FDO/Compliance Order, at 3 (Feb. 12, 2007).
[51] Yanisch v. Lewis County, Case No. 02-2-0007c, Order on Compliance Hearing (Mar. 12, 2004).

unit.[52] As a result, some local governments completely prohibit the use of ADUs as STRs, while others limit but don't completely prohibit that use.

The primary rationale for prohibiting or limiting ADUs being used as STRs is that renting an ADU as a long-term housing unit, defined as being rented for more than 30 consecutive days, will have the dual benefit of providing a positive income stream to a homeowner and adding a new residential unit to the local housing supply.

Some studies attempt to make the case that ADUs being used as STRs make up "only a small percentage" of the overall stock of STRs (8%-12%).[53] For example, data collected by the City of Seattle shows that 11% of the total short-term rental units were ADUs. It should be noted, however, that 11% still represents 418 units that are not contributing to that city's long-term housing supply.

Given the significant policy implications, local governments located in areas with high demand for short-term rentals, such as popular tourist destinations, should carefully consider the pros and cons of allowing ADUs to be used as short-term rentals.

State law

Cities and counties may restrict the use of ADUs for short term rentals.[54]

Examples

- Bellingham Municipal Code Sec. 20.10.037 – Does not allow STRs in detached ADUs in single-family zones but does allow them in detached ADUs in other zones, and in attached ADUs citywide.
- Poulsbo Municipal Code Sec. 18.70.070 – Does not allow ADUs to be used as STRs. Sequim Municipal Code Ch. 18.66 – Does not allow ADUs to be used as STRs.

2. Provide user-friendly communication materials

To assist applicants in navigating the ADU permitting process, local governments can provide user-friendly ADU webpages, informational handouts, guides, and checklists. These guidance documents can help by clearly articulating ADU requirements to property owners, homeowners, contractors, and developers. Clear materials inform those who are interested in building ADUs and encourage interest in ADU construction.

Examples

- Bremerton Guide to Establishing an ADU (2021) – Includes an overview of the city's ADU standards and links to permit requirements.
- Lake Stevens ADU Permit Checklist – Helps applicants understand the city's ADU provisions.
- Olympia ADUs & Accessory Structures Guide (2022) – Includes an overview of ADU regulations and standards, including design review requirements and guidelines.
- Seattle ADUniverse: The ABCs of ADUs – Includes a step-by-step guide to creating an ADU.
- Thurston County ADU Handout (2021) – Covers the main elements of the county's three-step ADU permitting process.

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[52] RCW 36.70A.696(9) defines short-term rental as "a lodging use, that is not a hotel or motel or bed and breakfast, in which a dwelling unit, or portion thereof, is offered or provided to a guest by a short-term rental operator for a fee for fewer than 30 consecutive nights."
[53] See, for instance, the Urban Land Institute's report Jumpstarting the Market for ADUs: Lessons Learned from Portland, Seattle, and Vancouver.
[54] HB 1337 Section 3(5)(a).

3. Provide information on landlord-tenant laws for prospective ADU owners and ADU tenants

For many homeowners renting an ADU on their property, this may be the first time they have served as a landlord. As a result, they may not be familiar with relevant local, state, and federal laws that apply to landlords (such as the Fair Housing Act). Conversely, renters also have certain rights and responsibilities under these laws that both landlords and tenants should know.

The Washington Residential Landlord-Tenant Act includes the state's key landlord-tenant laws.[55] Some local governments have created landlord-tenant regulations and programs with additional protections for renters, including rental registration and extra notice of rent increases and/or inspections. To inform both landlords and tenants about these requirements, local governments can develop user-friendly summaries of these resources and provide them to ADU applicants during the permit process.

Examples

- Bellingham: Landlords and Tenants – Includes information on the city's rental housing regulations, rental registration and safety inspection program, and more.
- Benton County: Renter's Resources – Includes information on fair housing and tenant rights in Washington.
- Burien: Renting in Burien – Includes information on the city's rental housing inspection program, notice of intent to sell, and eviction law in Washington.
- Olympia: Tenant Protections – Includes information on the city's rental housing ordinance, FAQs, and more.
- Tacoma: Landlord-Tenant Program – Includes information on the city's landlord-tenant program.

4. Provide information on ADU financing and funding programs

Lack of funding and financing options is often cited as one of the most prevalent challenges for ADU construction.[56] Lending institutions that finance ADU projects generally don't allow homeowners to borrow against a portion of the future value of an unbuilt ADU, further constraining the viability of projects. To support homeowners in financing their ADU projects, local governments can:

- Identify other funding and financing opportunities for ADUs and make these resources available at the permit center and online.
- Develop programs to facilitate access to ADU funding and financing opportunities.

RCW 84.36.400, authorizes counties to provide a three-year property tax exemption for improvements to a single-family dwelling, including the construction of an ADU, as long as it represents 30% or less of the value of the original structure. The program was initiated through Chapter 204, Laws of 2020 (2SSB 6231) and stipulates that dwelling units may be either attached to or within the single-family dwelling or a detached unit located on the same real property. In 2023, additional provisions were added in King County.[57]

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[55] More information on state and federal laws may be found on the Washington Office of the Attorney General's Landlord-Tenant page and the U.S. Department of Housing and Urban Development Tenant Rights, Laws and Protections: Washington page.
[56] See the UC Berkeley's Terner Center for Housing Innovation's article ADU's for All: Breaking Down Barriers to Racial and Economic Equity in ADU Construction (2022).
[57] SB 5045 offers extended property tax exemptions for ADUs in King County if the unit is affordable.

ADU owners may deduct, for income tax purposes, construction costs over time, annual property taxes, and shared monthly utility costs from rental proceeds, which may help encourage their development.

Examples

- Olympia OlyFed Bank: ADUs Financing – Provides six loan options for ADU construction. See this ADU Loan Options flyer and ADU Financing presentation for more information.
- Spokane Single-Family & Detached ADU Tax Exemption – The City of Spokane highlights the fact that Spokane County provides a tax exemption for ADUs for the three assessment years after the completion of the improvement, to the extent the improvement represents 30% or less of the value of the original structure.

5. Create a program to encourage legalization of unpermitted ADUs

A combination of strong demand for new housing and too many barriers have in some Washington communities resulted in unpermitted ADUs. Creating a program to allow legalization of unpermitted ADUs can help promote safe, legal structures and open them up to rental opportunities.

Local governments are encouraged to develop programs to promote the legalization of existing housing units, which should be done in a manner that ensures ADUs are safe to inhabit.

Examples

- Bellingham Municipal Code Sec. 20.10.036 – Allows ADUs existing prior to January 1, 1995, to become legally permitted, as long as ADU owners submit an application that is consistent with current ADU regulations and building codes.
- Ferndale Municipal Code Sec. 18.34.060 – Allows owners of ADUs established before June 20, 2017, to submit an application to the city to legally permit the existing unit pursuant to the city's ADU regulations.

6. Provide pre-approved ADU plans

After confirming their property is eligible for an ADU, homeowners begin the design process with an architect or designer. Depending on whether the unit is within an existing structure or free standing, the design process can add significant time and expense to a project. To streamline this step, some local governments offer detached ADU plan designs that have been pre-approved for compliance with building codes. ADU applications with pre-approved plans are typically approved in a shorter timeframe and with reduced permit fees since the designs have been vetted by staff. Even though the designs have been pre-approved all other code provisions, like site-specific standards, still apply.

Examples

- Olympia: Pre-Approved ADU Plans (Guide) (2021) – The cities of Olympia, Lacey, and Tumwater worked together to offer four plans that have been pre-approved for compliance with building codes.
- Leavenworth: ADU Plans – Offers four pre-approved designs. Each option includes two different styles – modern and traditional.
- Renton: Permit Ready ADU Program – Includes eight pre-approved, designed, and engineered model base plans, ranging in size from 415 to 1,000 square feet and varying in architectural style.
- Seattle: Pre-approved Detached ADUs Program – Offers 10 pre-approved plans for detached ADUs, including factory-assembled structures that have been approved by the Washington Department of Labor and Industries.

Cedar Cottage Seattle ADU Pre-Approved Plan (above and below). Credit: CAST architecture.

Appendix A: Additional examples and resources

1. Allow two ADUs per lot

- Bremerton Municipal Code Ch. 20.46 – Allows up to two ADUs per lot (see Sec. 20.46.010).
- Kirkland Municipal Code Sec. 115.07 – Allows up to two ADUs (either attached or detached).
- Fife Municipal Code Ch. 19.80 – Allows both one attached and one detached ADU on larger city lots. "For lots between 3,200 and 4,356 square feet, only attached ADUs are permitted. For lots larger than 4,356 square feet both attached and detached ADUs are permitted, provided the extra lot area required in the applicable zone is met."
- Lake Forest Park Municipal Code Ch. 18.50 – For lots exceeding one acre, one attached and one detached ADU are permitted (see Sec. 18.50.050).

2. Do not require owner occupancy

- Seattle Release of Owner Occupancy Covenant for ADUs Forms (Word document) – This form for recording with the King County Recorder's Office releases property from the covenant for owner occupancy entered into as a condition of applying for an ADU permit, as owner occupancy is no longer required by Seattle's Land Use Code per Ordinance No. 125854 (2019).

3. Do not require off-street parking for ADUs

- Bainbridge Island Municipal Code Ch. 18.09 – Allows garage conversions for ADUs.
- Bellevue Ordinance 6589 – Adopted in 2021 prohibiting requirements for off-street parking for ADUs within one-quarter mile of a major transit stop. For additional background information, see Bellevue's page on Reduced Minimum Residential Parking Standards.
- Bremerton Municipal Code Sec. 20.46.010 – One ADU is not required to provide an additional off-street parking space. The second ADU is required, however, to provide an off-street parking space in addition to that which is required for the principal unit.
- Spokane Municipal Code Sec. 17C.300.130 – No additional parking is required for studio and one-bedroom ADUs and ADUs within one-quarter mile of certain transit stops. Spokane allows garage conversion for ADUs.
- Olympia Municipal Code Sec. 18.38.100 – Doesn't require parking spaces for ADUs (see table 38.01, "Residential" section).
- Tacoma Municipal Code Sec. 13.06.080 – No off-street parking is required for ADUs.
- University Place Municipal Code Sec. 19.70.010 – No additional off-street parking is required for ADUs.
- Vancouver Municipal Code Ch. 20.810 – Doesn't require additional on-site parking in conjunction with the establishment of an ADU. The city allows conversion of an existing garage structure or other outbuilding to be converted to an ADU; however, off-street parking for the primary residence is required to be provided elsewhere on the site.
- Seattle Municipal Code Sec. 23.44.041 – Off-street parking is not required for ADUs, except that an existing required parking space may not be eliminated to accommodate an ADU unless it is replaced elsewhere on the lot.

4. Reduce barriers from setbacks and other ADU regulations

Reduce setbacks for ADUs (especially rear setbacks)

- Brier Municipal Code Sec. 17.24.010 – ADUs must conform to standard setback regulations, though the rear yard setback requirement is reduced to seven feet for ADUs.
- Kirkland Municipal Code Sec. 115.115 – Required setbacks are the same as the underlying zone. detached ADUs may be located within five feet of an alley. Detached ADUs without alley access may be located no closer than five feet from the rear property line as long as the portion of the detached ADU in the reduced setback is no taller than 15 feet.
- Sequim Municipal Code Sec. 18.66.050 – Exempts existing legally created on-site accessory structures – such as garages – that have been converted to ADUs from complying with setback standards.
- Tacoma Municipal Code Sec. 13.06.080 – No setbacks from alleys are required.

Reduce minimum lot sizes for ADUs (especially on small urban lots)

- La Conner Municipal Code Sec. 15.110.080 – ADUs are allowed on lots that are under 5,000 square feet.
- Medina Municipal Code Sec. 16.34.020 – ADUs are excluded from minimum lot area requirements.
- Tacoma Municipal Code Sec. 13.06.080 – ADUs are allowed on any legally established lot, regardless of lot size or width.

Increase height maximums for ADUs

- La Center Municipal Code Sec. 18.247.050 – ADUs are limited in height to 25 feet or the primary dwelling's height, whichever is lower.
- Mukilteo Municipal Code Sec. 17.30.060 – ADUs may be two stories high and must comply with maximum building heights for the underlying zoning district; Detached ADUs cannot be taller than the primary unit, except that there is a maximum height of one-story if the detached ADU is located above a garage or similar structure.
- Pacific Municipal Code Sec. 20.92.060 – ADUs may be up to 25 feet high.

5. Increase maximum size limits for ADUs appropriate to zone and context

- Black Diamond Municipal Code Sec. 18.56.030 – Detached ADUs are limited to 1,000 square feet.
- Bremerton Municipal Code Sec. 20.46.010 – Limits ADUs to 1,000 square feet or no more than 60% percent of the principal unit's total habitable floor area, whichever is greater. Attached ADUs in residences built prior to 2020 may receive director's approval to increase ADU floor area to equal that of the principal dwelling.
- Burien Municipal Code Sec. 19.17.070 – Internal or attached ADUs are limited to 1,000 square feet. The planning director may make exceptions to size limitations to allow for the better utilization of existing spaces.
- Leavenworth Municipal Code Sec. 18.36.035 – The total habitable floor area of any ADU is limited to 1,200 square feet.
- Kirkland Municipal Code Sec. 115.07 – ADUs are limited to 1,200 square feet.
- Roslyn Municipal Code Sec. 18.140.030 – ADUs are limited to 1,000 square feet.
- Yakima Municipal Code Sec. 15.09.045 – The ADU's floor area is limited to 1,000 square feet.

6. Limit use of design standards

- Bothell Municipal Code Sec. 12.14.135 – Attached ADU entrances are permitted on the front of the primary residence under certain conditions.
- Bremerton Municipal Code Sec. 20.46.010 – The city has developed a user-friendly ADU Guide (2021) that summarizes design regulations with visual examples.
- Fife Municipal Code Sec. 19.80.040 – Recommended approaches to promote privacy for adjacent properties are included in subsection 19.80.040(A)(6).

7. Remove, reduce or waive permit application fees, impact fees, system development charges, and other ADU-related fees

Utility connection fees/system development charges

- Chelan Municipal Code Sec. 13.33.020 – Offers utility rate reductions for ADUs.
- La Center Municipal Code Sec. 18.247.050 – ADUs may share sewer and water connections with the primary dwelling. System development charges are imposed at a reduced rate compared to a single-family home (Sec. 18.247.080).
- Yakima County Code Sec. 19.18.020 – The ADU and the primary dwelling unit will share a single sewer and water connection, unless the local sewer and/or water purveyor requires separate connections.

Impact fees

- Bellingham Permit Fees – This webpage offers information establishing that:
    - ADUs are assessed at half the multi-family rate for park impact fees.
    - For transportation impact fees, the person trip rate is less than duplexes and townhouses.
    - School impact fees are waived for ADUs.

- Bellingham Ordinance No. 2018-11-022 – Establishes impact fee reductions related to the city's 2018 ADU code update.
- Kirkland Accessory Dwelling Units – Exempts transportation, park, and school impact fees for ADUs in accordance with city code (KMC 27.04.050, KMC 27.06.050, KMC 27.08.050). These fees are assessed on the primary single-family residence only.
- Renton 2023-2024 Fee Schedule – Impact and permit fees are waived for ADUs. Stormwater system development charges are reduced by 50% for ADUs.
- Tukwila Fee Schedule – Exempts attached ADUs from impact fees (see Figure 16-1 "Fee Schedule").
- Everett 2023 Impact Fees Schedule – Waives traffic and school impact fees for ADUs.
- Olympia Municipal Code Ch. 15.08 – Waives school impact fees and reduces transportation and park impact fees for ADUs.
- Renton 2019-2020 Fee Schedule (Section XII) – Provides impact fee reductions and waivers for ADUs.

ADU permit application fees

- Port Angeles Temporary Building Permit Fee Waiver Form (2022) – A temporary building permit fee waiver is available for construction of housing reserved for families with 80% AMI or below through September 2028; ADUs are included as an acceptable dwelling type for this waiver.

8. Allow prefabricated ADUs

Code examples

- Richland Municipal Code Sec. 23.42.020 – Allows accessory apartment units that are manufactured off site.
- Langley Municipal Code Sec. 18.22.115(C) – While not addressing prefabricated housing, "tiny homes" are allowed to be used as ADUs, if they can meet the International Residential Code (IRC) and other specified local standards.

Other resources

- Olympia Manufactured Homes (Handout) (2017) – Manufactured homes are allowed to be used as ADUs, particularly to promote affordable housing.

Seattle ADUniverse:

- The ABCs of ADUs – Mentions factory-built ADUs in the Construction section.
- Pre-approved Detached ADUs – References factory-assembled structures in the L&I-approved detached ADUs section. The pre-approved plans include the Urban Cottage Prefab and WOOD Studio design.
- Seattle: Guide to Building a Backyard Cottage (2010) – See page 19.
- Seattle Tip Sheet 305: Factory-Assembled Structures for Residential and Commercial Use (2023) – Includes a comparison of the three types of factory-assembled structures, local requirements, and fees.
- Insider: A new collection of minimalist tiny homes from $37,500 is available in the US for the first time (2023) – Article about affordable tiny homes from Latvia-based firm, MyCabin.
- Congress for the New Urbanism: Novel idea - Modular house that's cute (2023) – Article describing a well-designed modular house that received an Urban Guild Award.
- HUD Office of Policy Development (PD&R): Factory-Built Accessory Dwelling Units for Affordable Housing Options (2020) – Highlights communities that support factory-built ADU designs.

9. Streamline ADU permitting processes

Code examples

- Olympia Municipal Code Sec. 18.72.080 – Approves ADUs administratively.

- Pacific Municipal Code Sec. 20.92.057 – Single, straightforward application requirements for ADU development.
- Sequim Municipal Code Sec. 18.66.040 – Approves ADUs administratively.
- Other resources
- Bellevue: ADU Registration – This webpage notes that ADU registration, a floor plan, and site sketch/site plan are the minimum necessary to proceed with the ADU application process.
- Camas: ADU Application Form – Two-page application form that includes applicable development standards and design guidelines.
- Lake Stevens: ADU Compliance Checklist – This checklist provides a detailed overview of the permitting process.
- MRSC: Streamlining Local Permit Review Procedures – This webpage provides examples of streamlined permit review processes.
- Seattle: Construction Permit – Addition or Alteration – This webpage provides that to add within an existing house, a construction addition/alteration permit is needed; to build a detached unit, a construction addition/alteration permit is needed.
- Vancouver Municipal Code Sec. 20.920.060(H) – Expedites permit review for infill development.

10. Offer incentives to encourage ADUs that are affordable to lower-income households

- Bellingham Housing Development: Guideline and Procedure Handbook (2019) – Housing Levy funds are available to support purchases of homes with ADUs.
- Block Project – Nonprofit with a mission to construct and find homeowners in Seattle willing to host an affordable ADU on their residential properties.
- Habitat for Humanity (Seattle-King & Kittitas Counties) - South Park Project – This award-winning Habitat for Humanity project, funded in part through Seattle Housing Levy funds, includes ADUs.
- Fannie Mae: HomeReady Accessory Unit Income and Boarder Income Flexibilities (2022) – Expands access to creditworthy low-income borrowers.

Community land trust (CLT) examples

- National League of Cities: How One Colorado Community Land Trust Is Preserving Homeownership and Affordability (2021) – Elevation Community Land Trust operates in partnership with a Denver Housing Authority initiative to support homeowners and prevent displacement. Their approach includes building ADUs to create more living space for family members or a new source of income.
- T.R.U.S.T. South LA (& four other California CLTs): Increasing Community Power and Health through Community Land Trusts (2020) – The Community Land Trust Association of West Marin, in collaboration with the Housing Authority of Marin County, offers zero-interest loans, permit fee waivers, and other benefits for homeowners to create ADUs for use as affordable rental units.
- Shelterforce: Affordable ADUs: How It's Being Done – Explores pilot programs and other strategies for financing ADUs for low- and moderate-income homeowners.

Appendix B. Relevant GMHB cases for counties

- Futerwise v. Snohomish County, Case 22-3-003, Final Decision and Order. The Board found that the county failed to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.177, and was inconsistent with multi-county and countywide planning policies, in violation of RCW 36.70A.210.

- Loon Lake Property Owners Association, et al v. Stevens County, Case No. 01-1-0002c, Compliance Order (May 30, 2008) – Allowing an ADU on all parcels—including substandard lots-- can considerably increase density in rural areas; regulations should contain specific criteria to curtail indiscriminate increased density.
- Friends of San Juans, et al v. San Juan County, Case No. 3-2-0003c coordinated with Nelson, et al v. San Juan County, Case No. 06-2-0024c, FDO/Compliance Order (Feb. 12, 2007) – Regulations allowing a detached ADU on substandard rural lots allowed residential use to predominate over rural uses and were therefore noncompliant.
- Kittitas County Conservation, et al v. Kittitas County, Case No. 07-1-0015, Final Decision Order (Mar. 21, 2008) – County ADU regulations must contain density provisions to preserve rural character—failure to do so would result in "urban-like" density in rural areas.
- Peninsula Neighborhood Association v. Pierce County, Case No. 95-3-0071, Final Decision and Order (Mar. 20, 1996) – Local governments are required to include ADU provisions in their development regulations, but those regulations must be consistent with the GMA requirement that local governments reduce sprawl in rural areas.
- Yanisch v. Lewis County, Case No. 02-2-0007c, Order on Compliance Hearing (Mar. 12, 2004) – County definition of "rural character" must comply with GMA; subdivision or sale of ADU to family member may not be approved if doing so creates lots of less than five acres.

Appendix C. Resources for programmatic elements

1. Address the use of ADUs as short-term rentals

- La Conner Municipal Code Sec. 15.110.080 – ADUs may not be used as short-term rentals.
- Langley Municipal Code Sec. 5.40.030 – A maximum of 50 ADUs can be used as short-term rentals in Langley.
- Marysville Municipal Code Sec. 22C.180.030 – ADUs aren't permitted as short-term rentals.
- Roslyn Municipal Code Sec. 18.140.030 – ADUs may be rented for a minimum of 60 days.
- Tukwila Municipal Code Sec. 18.50.220 – Doesn't allow ADUs to be rented for periods of less than 30 days.

2. Provide user-friendly communication materials

- Bellingham: Homeowner's Handbook to Building an ADU – This handbook, developed by the Whatcom Housing Alliance and the City of Bellingham, includes ADU basics and information on permitting, design, construction, and costs.
- Jefferson County: The ABCs and 123s of ADUs (2022) – This guide, developed by the Housing Solutions Network, includes information for homeowners considering ADU development, particularly for affordable housing.
- Lynnwood ADU Guide – One-page guide with an overview of the city's ADU requirements, including those related to size, design, and setbacks.
- Poulsbo Accessory Dwelling Units – This webpage includes ADU basics, benefits of an ADU, code requirements, permitting process, handouts, and flow charts.
- Redmond ADU (Handout) (2019) – This one-pager includes an overview of the city's ADU requirements and permit process.
- San Juan County Detached ADU Permit Application Checklist (2018) – One-page overview of all permit application requirements.
- Seattle: A Guide to Building a Backyard Cottage (2010)
- Spokane Accessory Dwelling Unit Current Allowances (2022) – Includes quick facts.

- Tacoma ADU Tip Sheet (2022) – Includes development standards, permit requirements, submittal and review process, and more.
- Tacoma Accessory Dwelling Units Design Guide (2022) – A handbook for building ADUs.

Toronto, Canada

- Changing Lanes - Laneway Suites in the City of Toronto – Provides requirements, reports, and other information for laneway suites (i.e., detached ADUs abutting a public laneway).
- Garden Suites – Offers rules and regulations, key considerations, and other information for garden suites (i.e., detached ADUs that do not about a laneway).
- YouTube - City of Toronto Garden Suites Draft Rules – Video discussing the city's draft rules for garden suites.
- Vancouver ADU Fact Sheet (2022) – Includes FAQs.

3. Provide information on landlord-tenant laws for prospective ADU owners and ADU tenants

- A Regional Coalition for Housing (ARCH): Renting Out An ADU – Information on finding tenants, rental agreements, landlord-tenant relationship, and more in East King County.
- Bellevue: Residential Rental Regulations – Contains general guidelines for ADU rental terms.
- Kenmore Ordinance No. 22-0545 (2022) – Adopts tenant protections increasing notice for rent increases, capping late fees, capping move in fees and deposits, and more. The ordinance notes that "dwelling unit" has the same meaning as the state's Residential Landlord-Tenant Act (RCW 59.18.030), which defines it as "...a structure of that part of a structure which is used as a home, residence, or sleeping place by one or two or more persons maintaining a common household..."
- Kirkland: Tenant Protections – Includes new tenant protections related to notice of rent increases, maximum security deposit, and enforcement.
- Redmond: Living in Redmond – Includes information on the city's new tenant protections.

4. Provide information on ADU financing and funding programs

- Fannie Mae: HomeReady Accessory Unit Income and Boarder Income Flexibilities (2022) – Expands access to creditworthy low-income borrowers.
- Freddie Mac: Accessory Dwelling Unit (ADU) FAQ – Includes common questions about Freddie Mac's ADU loan terms.
- UC Berkeley's Terner Center for Housing Innovation & USC's Lusk Center for Real Estate: ADU Construction Financing (2022) – Includes product examples and considerations.
- A Regional Coalition for Housing (ARCH): ADU Lending Assistance – Includes information about both private and public financial requirements and assistance.
- Local Investing Opportunities Network (LION) – Provides loans for ADU development in Jefferson County.

5. Provide information on ADU condominium conversions

- Bellevue ADU Reform Land Use Code Amendment (LUCA) – The city is updating its code to remove barriers for the construction of attached ADUs, including removing the prohibition on condominium conversion.

7. Create a program to encourage legalization of unpermitted ADUs

Code examples

- Burien Municipal Code Sec. 19.17.070 – ADUs without city approval may be legalized if the owner applies for the applicable permits.

- Enumclaw Municipal Code Sec. 19.34.240 – Allows ADUs that existed as of November 1, 2001, to be legally established with an application, inspection, and affidavit. Permit application fees were waived within the first year of the relevant ordinance being in effect.
- Kirkland Municipal Code Sec. 115.07 – An ADU inspection is required for issuance of an ADU permit if it was built without a final building permit.
- Langley Municipal Code Sec. 18.22.115 – An ADU that existed as of January 22, 2019, may be legally established and may continue to be used as an ADU with an application, inspection, and affidavit.
- Mukilteo Municipal Code Sec. 17.30.040 – ADUs built without proper permitting may become legal if the owners submit an application and fulfill parking and owner occupancy requirements, among others.
- Newcastle Municipal Code Sec. 18.31.050 – ADUs may become legal following an application and inspection process.
- Roslyn Municipal Code Sec. 18.140.030 – If an ADU was created without a building permit, the city requires a building inspection to determine if the structure is sound, will not pose a hazard to people or property, and complies with the ADU requirements and building code.

Other resources

- Casita Coalition: Legalizing an Unpermitted ADU (2022) – Provides guidelines for homeowners to legalize existing ADUs.
- Seattle: Construction Permit – Establishing Use – This webpage provides that to legalize an existing unit, a construction permit is needed to establish use; additionally, there could be a need to apply for electrical service changes or new services from Seattle City Light.

Seattle Department of Construction and Inspections

- Tip 217 - How to Legalize a Use Not Established by Permit (2022) – Includes the rationale for applying for a permit to establish a use and how to document a use for the record.
- Tip 606 - Illegal Dwelling Units (2022) – Defines illegal dwelling units and the process to legalize or remove them.

8. Provide pre-approved ADU plans

- Lacey Accessory Dwelling Units – Four pre-approved detached ADU plans are available.
- Raleigh, NC: ADU Fast Track Gallery – Provides ADU plans at a lower cost than typical design processes.

Appendix D: Other ADU information and resources

Definitions

- RCW 36.70A.696 – Provides statutory definitions.
- Seattle Office of Planning & Community Development: Encouraging Backyard Cottages – This webpage includes definitions for detached and attached ADUs.
- Vancouver Municipal Code Ch. 20.810 – See Sec. 20.810.020 for ADU definition.

Adopting ordinances

- Bremerton Ordinance No. 5410 (2020) – Amends section 20.46.010, in response to HB 1923 (2020).
- Bremerton Ordinance No. 5416 (2021) – Adopts amendments to the city's ADU regulations, including increasing minimum size, removing parking requirements, removing owner occupancy requirements, and changing design standards.
- Langley Ordinance No. 1051 (2019) – Amends several sections of the Langley Municipal Code, including section 18.22.155, to encourage housing options and increase housing affordability.

- Seattle Ordinance (2019) – Amends multiple sections of the Seattle Municipal Code to remove barriers for attached and detached ADUs and add a floor area ratio requirement in certain single-family zones.
- Spokane Ordinance No. C36225 (2022)– Amends multiple sections of the Spokane Municipal Code to increase flexibility for ADUs. Changes to the ADU regulations were a Washington State Department of Commerce grant deliverable.
- Tacoma Ordinance No. 28576 (2019) – Amends multiple sections of the Tacoma Municipal Code to allow detached ADUs in single-family zones, simplify regulatory requirements, reduce regulatory barriers, and increase flexibility in building design, size and location.
- See also the pre-amble to early versions of HB 1337, which provides a number of finding support ADU ordinances.

Code reform processes

- Bellevue ADU Code Reform – The city's land use code amendment will remove barriers and encourage the construction of attached ADUs.
- Everett ADU Amendments – Includes project documents for process to simplify ADU regulations.
- Policies in housing and comprehensive plans
- Burien Comprehensive Plan: Chapter 2 - Plan Policies (2022) – See the housing element (2.4) goals specifically focused on ADUs: Pol. HS 1.3, Pol. HS 1.10 and Pol. HS 1.11.
- Everett Housing Action Plan (2021) – ADUs are noted as a key strategy to increase housing variety. See section related to ADUs: "Increasing Housing Variety" Recommendation 1.1.
- Kent Housing Options Plan (2021) – See information related to ADUs in page 71 (Table 5.3) and pages 146148.
- Langley Comprehensive Plan (2018) – See land use (LU), housing (H), and utilities and capital facilities (UCF) goals and policies related to ADUs: LU-4.8, H-1.1, H-4.1, H-4.4, and UCF-1.3.
- Olympia Housing Action Plan (2021) – ADUs are a key implementation strategy for increasing the variety of housing choices (see Chapter 2: Strategy 4).
- Seattle 2035 Comprehensive Plan (2020) – See the policies related to ADUs: Land Use (LU) policy LU 7.5, Greenwood/Phinney Ridge (G/PR) housing policy G/PR-P11, Queen Anne (QA) policy QA-P13, Wallingford (W) housing policy W-P14, and Westwood Highland Park (W/HP) housing policy W/HP-P21.
- Spokane Comprehensive Plan - Housing Chapter (2017) – See H 1.19 (Senior Housing), H 1.20 (ADUs).

Regional and national reports and websites

- accessorydwellings.org – A one-stop source about ADUs, multigenerational homes, laneway houses, ADUs, granny flats, and in-law units.
- American Association of Retired Persons (AARP): All About Accessory Dwelling Units – Free publications, and more, about how ADUs expand housing options for people of all ages.
- American Planning Association (APA): Accessory Dwelling Units – Webpage with reports, briefing papers, articles, case studies, videos, and more.
- A Regional Coalition for Housing (ARCH): Accessory Dwelling Unit – A comprehensive, user-friendly website from an affordable housing partnership organization focused on serving East King County.
- MRSC: Accessory Dwelling Units – Webpage that provides a good summary about ADUs.
- Puget Sound Regional Council Housing Innovations Program: Accessory Dwelling Units (2020) – Guide that includes an overview of ADUs in the Puget Sound region, along with model policies and regulations.
- Shelterforce: ADUs - Laws and Uses, Do's and Don'ts – Summary of some key debates pertaining to ADU rentals.
- University of Toronto: "The Citizen Developer" video (YouTube) – Short video discussing the benefits of small-scale housing.

Co-Living Guidance

PUBLIC DRAFT

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Table of Contents

1.0 – Introduction

1.1 – Purpose and Legal Background

Guidance Purpose

This co-living guidance is intended to support planners, advisory bodies, elected officials, and interested parties in implementing code amendments related to RCW 36.70A.535 and to help the readers understand best zoning practices for co-living housing. The User Guide uses diagrams, references to public informational documents, and real-world examples to offer recommendations and best practices for the development of co-living housing. This User Guide will be updated periodically as necessitated by state law updates.

State Law

The Washington Legislature passed Engrossed 2nd Substitute House Bill 1998 ("E2SHB 1998", commonly referred to as "HB 1998") in 2024. The provisions of HB 1998 are codified in RCW 36.70A.535. Cities and counties planning under the Growth Management Act are required to adopt development regulations allowing co-living as a permitted use on any lot located within an urban growth area that allows at least six residential units, including on a lot zoned for mixed-use development. The bill provides standards for unit size, parking, density, fees, and other development regulations.

1.2 – Applicability to Jurisdictions

The requirements of co-living are applicable to all "fully planning" counties and the cities and towns within those counties. To know if your community is in a fully planning county, visit the Commerce interactive map. [1]

Statutory Compliance Deadlines

The requirements for co-living take effect December 31, 2025.[2] By this date, subject cities and counties must adopt or amend co-living housing standards by ordinance and incorporate co-living housing into their development regulations, zoning regulations, and other official controls or the requirements of RCW 36.70A.535 will supersede, preempt, and invalidate any conflicting local development regulations.

Any action taken by a city or county to comply with the requirements of the co-living housing law is not subject to legal challenge the Growth Management Act or the State Environmental Policy Act.[3]

[1] Department of Commerce. "The Growth Management Act status of Washington counties and cities." April 2017. https://deptofcommerce.app.box.com/s/z8ygn0ifeimybnlh4j6v8cl1wxkp1jfa
[2] RCW 36.70A.535(9)(a)
[3] RCW 36.70A.535(10)

1.3 – Co-Living Background

What is Co-Living?

State law defines co-living housing as:

> *"Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.*[4]

Co-living housing goes by many names. In addition to the congregate living facilities, single room occupancy (SROs), rooming house, boarding house, lodging house, and residential suites, noted in the statute, it may also be referred to as micro-units, dormitories, or some other term. For more on different types of co-living, see Overlapping Names and Use Types on page 12.

Co-Living Evolution

Twentieth Century Legacy

Co-living, under various names, has a long history in American cities and towns going back to pre-revolutionary times.[5, 6] By the early 1900's, in some major cities it represented as much as ten percent of the rental housing stock, providing a popular housing and lodging option for industrial workers, travelling salesmen, the elderly, young adults, and writers and artists.[7]

Left. The historic Wilson Hotel building, built 1890, is now managed by the Anacortes Housing Authority and functions as co-living housing with ground floor commercial businesses (source: MAKERS). Middle: The Upton Hotel in Spokane, built in 1910 and now known as the Grand Coulee Apartments, is listed on the National Register of Historic Places (Source: Will Maupin, CC BY-SA 4.0). Right. Milwaukee Hotel is one of several SROs still in operation in Seattle's Chinatown International District neighborhood. (Source: MAKERS)

Co-living establishments served people with a wide range of incomes and stages of life. Grander "hotels" offered centralized service perks like cleaning, meals, and laundry at the fraction of a cost of maintaining a larger home. More economical lodging houses, including those run by non-profit operators like the YMCA and Salvation Army, provided basic accommodations affordable to those who had fallen on hard times. With minimal private space available to them, co-living residents relied upon and patronized a rich variety of cafes,

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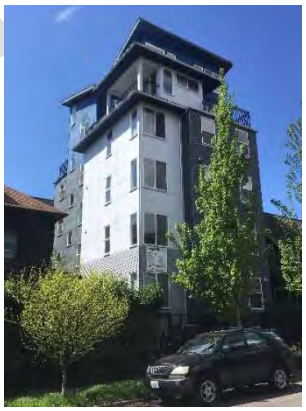
[4] RCW 36.70A.535(11)(a)
[5] "The Hotel Spirt", Slate. https://slate.com/business/2022/07/hotels-rental-market-housing-prices-shortage-solution.html
[6] "Microunits: A Tool to Promote Affordable Housing" in *Retooling Metropolis.* Armlovich, Alex. Manhattan Institute, 2016.
[7] "The Rich American Legacy of Shared Housing." Bloomberg, 2023. https://www.bloomberg.com/news/features/2023-05-02/a-visual-history-of-single-room-occupancy-sro-affordable-housing

restaurants, music halls, reading rooms, and night clubs, which was foundational to early and mid-20th century American urban culture.[8]

As Americans' economic opportunities, travel habits, and values shifted in the post-war period, co-living lost prominence and importance. Identifying safety problems and poverty associated with older co-living properties, urban reformers across the country enacted more stringent regulations that made it more expensive to operate and used zoning to prevent the creation of new co-living buildings.[9] Government led-efforts to demolish existing co-living buildings for "slum clearance", along with gradual decay of older buildings, reduced the number of remaining pre-WWII co-living buildings, now most commonly referred to as single-room occupancy hotels or "SROs". By the 1980's, most co-living housing stock in major cities was demolished or converted to other uses, while public housing and subsidized apartments were not built at a large enough scale to replace the gap in affordability left by co-living, contributing to rising urban homelessness. In response, new policies were passed to preserve existing SROs, even as creation of new co-living buildings remained illegal.

New Beginnings

Starting in the 2000's some developers in the Seattle area noted rising housing costs that created the need for new low-cost apartments in desirable neighborhoods. These developers explored flexibility in Seattle's zoning regulations for congregate housing, i.e. small sleeping units with shared kitchens. From 2009 to 2015 they built thousands of congregate housing "micro-units", targeted at young renters, recent arrivals, and students. This new housing option provided an affordable alternative as overall housing prices continued to spike, but also incited a strong backlash concerned about livability and neighborhood impacts. After code changes around 2015 tempered Seattle's micro housing boom developers continued to seek out opportunities in for new co-living in Redmond, Kirkland, commercial zones in Seattle (where congregate housing was still allowed), and other cities.[10] Developers have also explored conversions of older motels into micro-units in the Tri-Cities, Yakima, and Spokane since 2020.



Example of early 2010's congregate housing in Seattle. Source: MAKERS

The design of this new co-living housing has evolved considerably from twentieth century models, with contemporary architectural styles and amenities, as illustrated in the examples below.

Co-Living Examples

While some older pre-zoning co-living buildings survive, modern co-living buildings have been built in Washington cities in the past two decades, marketed as micro-studios, micro-units, congregate apartments, eco flats, residential suites, or with the brand name "aPODments". Examples showing the range of scale and form these buildings take are included below.

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[8] *New Homeless and Old*. Hoch, Charles, and Slayton, Robert A. Temple University Press, 1989.
[9] "Rooming Houses: History's Affordable Quarters." Sightline Institute, 2012. https://www.sightline.org/2012/11/14/rooming-houses-historys-affordable-quarters/
[10] "When is Seattle Going to Fix Micro-Housing?" Sightline Institute, 2021. https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-micro-housing/

The Kärsti
Seattle, 2020

52 co-living units + 334 sf commercial space
Co-living unit size range: 187-276 sf

Mixed-use income-restricted (MFTE) congregate apartments built in one of Seattle's mixed-use zones.

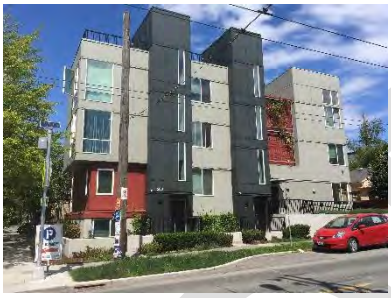
Photo courtesy of Neiman Taber Architects

Arete Apartments
Kirkland, 2015

228 co-living units, 52 dwelling units, and 7,200 sf commercial space
Co-living unit size range: 185-286 sf

Large mixed-use complex incorporating both co-living units and traditional one-, two-, and three-bedroom apartments.

Image courtesy of Natural and Build Environments, LLC



Ramiro's Place
Seattle, 2014

22 co-living units
Co-living unit size range: 131-175 sf

One of many micro-unit buildings built in Seattle between 2012-2015 prior to code changes that increased the minimum unit size.

Image source: MAKERS

Tudor Apartments
Remond, 2011

61 co-living units
Co-living unit size range: 222-301 sf

Micro-suite building designed to mimic appearance of townhouses.

Photo courtesy of Natural and Build Environments, LLC

Benefits of Co-Living Housing

As housing in Washington has become increasingly unaffordable, interest in co-living has grown. Co-living housing has many benefits, including:

- Providing market-rate, non-subsidized rental homes affordable to people in the workforce earning as low as 50 percent of area median income (older co-living units in Spokane area cost $350 per month, and in the Puget Sound suburbs some new co-living units are renting for $1,000 per month)
- Offering housing options for people who want a low-cost, private alternative to living with roommates
- Creating a living arrangement with shared community spaces that facilitate social connections
- Increasing affordable housing options in high opportunity neighborhoods with transportation options
- Reducing energy demand since units are small and new housing can reduce commutes and sprawl

Modern co-living buildings are high-quality and can feature desirable amenities. Stakeholders note that co-living is a great option for seniors looking to downsize their living arrangements and that co-living helps build communities and reduce loneliness for people of all ages. They are especially well-suited for urban infill on narrow lots because the rent per square foot tends to be higher than other multifamily building types.[11] Like any other development, co-living buildings must comply with all building, fire, and life safety codes.

For these and other reasons, co-living is an effective way to help accommodate housing needs for the state's growing population. For more information, see the Legislature's findings in the notes section of RCW 36.70A.535 under "Intent—Findings—2024 c 180."

1.4 – General Considerations for Co-Living Regulation

Messaging

While once common, it has been decades since co-living uses like SROs and boarding houses were widely permitted in most cities. Planners in jurisdictions implementing RCW 36.70A.535 may encounter members of the public and elected officials with questions about the legislative requirement to re-introduce and allow co-living as a permitted use in on lots that allow at least six multifamily residential units.

RCW 36.70A.535 provides the framework for regulating co-living, including where co-living must be a permitted use and limitations on jurisdictions regarding how certain development standards may be applied. Planners and public officials do have an important role to play in public communication and education about co-living and the residents who may live in co-living units, including why the State legislation was passed. In addition to the benefits of co-living identified above, planners and public officials should review the points below and consider incorporating them in public facing materials on co-living.

Framing Discussion of Co-Living

- Allowing co-living housing implements a State requirement and offers one more housing option to achieve the Statewide housing needs projection developed by Commerce for 1.1 million homes over the next 20 years.
- Co-living is a way for the private market to take pressure off publicly subsidized affordable housing. More than a third of Washington households are housing cost burdened, meaning they pay more than 30% of

[11] "The Macro View on Micro Units," Urban Land Institute, 2014.

their income in housing costs, and there isn't nearly enough income-restricted affordable housing to house everyone who would qualify for it.
- Recently built co-living housing in Kirkland and Redmond is popular with service sector workers, seniors, and young professionals.
- Different types of housing are better suited to people at different stages of life, and in different types of employment. A broad range of housing options can also help people adjust to abrupt changes in income or family status.
- Shared living spaces like common kitchens and dining areas encourage social interaction between residents.
- The building code places well-vetted minimum standards on habitable space.
- Co-living housing is environmentally friendly. Co-living housing is generally located near destinations, allowing residents to drive less. Small units with shared walls require less energy to heat and cool.

The following resources may be shared with members of the public and elected officials who want to learn more about co-living housing.

- FAQ: Co-living for Washington State, Sightline Institute, 2023
- America Redux Excerpt: The Rich American Legacy of Shared Housing, Bloomberg Citylab, 2023
- Cruel Musical Chairs (or Why Is Rent So High?), Sightline Institute, 2017
- Micro-apartments are back in Seattle after disappearing decades ago, Seattle Times, 2024
- Why some Seattle area seniors are choosing dorm-sized apartments, KUOW, 2024
- Additional videos and informational materials in English, Chinese, and Spanish are available at the Department of Commerce Housing Planning webpage.

Resources for public engagement strategies:

- STEP Messaging Guide, Department of Commerce, 2024. Note: while STEP is different from co-living, the strategies described may also be useful for communicating about co-living.
- "You Don't Have to Live Here" Why Housing Messages are Backfiring and 10 Things We Can Do About It, Frameworks Institute, 2016
- Building Support for Affordable Homeownership and Rental Choices, Center for Housing Policy, 2013
- How Does Affordable Housing Affect Surrounding Property Values? Housing Synthesis Research Project, 2008.
- Myths and Facts about Affordable & High Density Housing, California Planning Roundtable, 2002

Internal Staff Engagement

Co-living regulations touch on multiple departments within a jurisdiction. Staff in other departments whose work involves permitting and development review may be unaware or not well informed about the requirements of RCW 36.70A.535 and benefits of allowing co-living housing in multifamily zones.

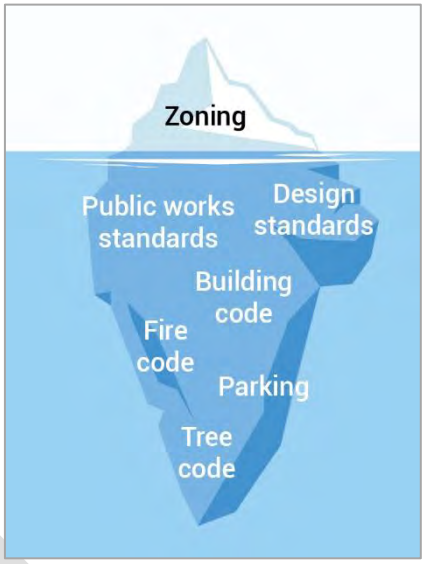
It is important to pro-actively communicate with other department staff about the jurisdiction's obligation to incorporate co-living into the multifamily permitting procedures. To help address potential issues, focused staff workshops and mock pre-application meetings can be highly valuable. For example, in anticipation of allowing middle housing (small multiunit buildings like duplexes and townhouses) in low-density residential zones the City of Shoreline held several mock pre-application meetings to daylight questions, confusion, and inconsistencies in permitting procedures. According to staff, the process helped identify the need for more specific standards related to fire access and utility fee rates, as we as several provisions outside of the zoning code that needed to be updated.

Some potential questions to review with staff and non-city service providers such as water districts and fire districts:

- Are all of those involved in the permit review process aware of the legal requirement to permit co-living buildings?
- What information is needed to review a co-living permit application?
- Are there existing regulations which conflict with co-living, RCW 36.70A.535?
- How does the code address converting dwelling unit-based standards (such as open space square feet per unit) when dealing with sleeping units?
- Do permit reviewers know if, or how much, parking or usable open space is required?
- Do permit reviewers know the impact fee rate per sleeping unit, and does this accurately reflect likely impacts?
- Can the Building Official provide a summary of minimum unit sizes for a sleeping unit?
- Do utility providers have the information they need to adequately forecast potential demand from co-living buildings?

2.0 – Development Regulations

This section provides recommendations and considerations for development regulation requirements included in RCW 36.70A.535.



Zoning is just the tip of the regulatory iceberd. Source: MAKERS

Effective implementation of RCW 36.70A.535 requires thoughtful amendments to development regulations. How those amendments are drafted will vary given that local jurisdictions have various code frameworks for how their zoning and other development regulations are organized and administered. For example, some jurisdictions rely on a comprehensive use table to regulate use, while others list allowed uses by zone. To regulate bulk, some jurisdictions use floor area ratio and others use lot coverage.

Cities and counties should review their development regulations for potential barriers. Facilitating co-living housing development is an important step in demonstrating how the Housing Element requirements are being met (RCW 36.70A.070(2)(d)). While RCW 36.70A.535(4) below establishes a guardrail, applying the statutory requirement literally may result in conflicts with existing multifamily residential regulations resulting in codes that prohibit co-living housing development and are preempted by the state law.

> *"(4) A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone." (RCW 36.70A.535(4))*

This guidance does not address every possible development situation that could apply to co-living housing. Allowing co-living housing as provided for in RCW 36.70A.535 is a step towards realizing its benefits. However, how co-living housing development standards are adopted, along with other considerations such as fee structures and infrastructure, can impact the outcomes of allowances. This guidance provides information for jurisdictions to assist in developing and adopting co-living housing development regulations that can effectively bring co-living housing to the market in a manner that complies with RCW 36.70A.535.

2.1 – Applicability and Permitting

Applicability to Lots and Zones

Per RCW 36.70A.535(1), "Cities and counties planning under this chapter must allow co-living housing as a permitted use on any lot located within an urban growth area that **allows at least six multifamily residential units,** including on a lot zoned for mixed-use development."

The term "multifamily" is not defined by the Growth Management Act, but the definition of "single-family zones" (RCW 36.70A.030(39)) refers to single-family detached housing and accessory dwelling units are defined by RCW 36.70A.696(1). For the purposes of co-living, Commerce interprets "multifamily residential units" to mean any type of housing which consists of six or more units on a lot. It does not include manufactured home parks or group housing, such as care housing (senior or people with disabilities), emergency housing, or emergency shelter housing.

Co-living housing must be a permitted use on any lot where any of the following is true:

- Six or more multifamily residential units are permitted on a lot under both the land use permissions and density or lot size standards. This includes lots where multifamily use is permitted to be mixed with non-residential uses.
- A lot is subject to the minimum residential density and transit proximity requirements of RCW 36.70A.635(1)(b)(ii). Refer to "Tier 1" cities information in the Commerce Middle Housing Model Ordinances User Guide.

Cities are not required to authorize co-living on lots zoned to allow the two-unit affordable housing density bonus under RCW 36.70A.635(1)(b)(iii).

Where there is ambiguity on whether co-living housing must be permitted on a lot or in a zone, Commerce recommends jurisdictions err on the side of permitting co-living housing to allow more housing options.

Permit Type and Public Notice

Co-living housing must be permitted in the same manner as multifamily housing, per RCW 36.70A.535(4). This means that if multifamily housing is permitted outright, co-living housing must be permitted outright. If multifamily housing requires a conditional use permit, co-living housing can be required to have a conditional use permit, though Commerce recommends that co-living housing be permitted outright. Note that RCW 36.70A.600(1)(v) also encourages local jurisdictions to update use matrices and allowable use tables to eliminate conditional use permits and administrative conditional use permits for all housing types, including multifamily housing, low-income housing, and senior housing.

Relatedly, RCW 36.70A.535(5) requires that co-living housing may only be subject to review, notice, and public meeting requirements as required for other types of residential uses in the same location, unless otherwise required by state law, including shoreline regulations under Chapter 90.58 RCW.

Overlapping Names and Use Types

Where appropriate, jurisdictions should consider consolidating related co-living uses in zones where they must be allowed under RCW 36.70A.535, for clarity of land uses, ease of administration, and demonstrating compliance with the law.

Some jurisdictions already define and/or regulate co-living uses by different names. Jurisdictions should review their codes for terms such as micro-units, congregate living facilities, single room occupancy (SRO), rooming house, boarding house, lodging house, residential suites, and dormitories. Regardless of the name, the concept is the same, and all such uses are subject to the requirements of RCW 36.70A.635. An exception is group living uses that fall under another state law framework with occupancy and/or zoning standards, such as assisted living facilities (Chapter 18.20 RCW), adult family homes (Chapter 70.128 RCW), or STEP housing (RCW 35.21.683 and RCW 36A.21.430).

Co-living is different than co-housing, which is a type of ownership model that features fully equipped dwelling units that share common spaces. Additionally, co-living is not the same as short-term rental.

Where Co-Living Allowance is Not Required

In some cases, jurisdictions may have defined uses which fit under the broader co-living definition, and which are allowed in areas where compliance with RCW 36.70A.535 is not required (i.e. zones where less than six multifamily residential units are allowed per lot). In these cases, jurisdictions should consider retaining more specific definitions when they provide a different type of housing option or housing in other zoning districts.

For example, a boarding house is often defined as the renting of rooms within an existing single-family residence, with or without the owner occupying the residence. It is sometimes a permitted use in residential zones. Because this type of co-living arrangement is located in areas where less than six multifamily residential units are permitted, communities should continue to define and allow boarding houses.

2.2 – Mix of Uses

RCW 36.70A.535(2)(c) prohibits jurisdictions from requiring co-living housing to "include other uses." There may be times when this conflicts with RCW 36.70A.535(4) which states that a "city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone."

This means that the co-living use cannot be singled out in a general zone-wide or citywide requirement to contain ground-floor commercial uses or other uses. However, under RCW 36.70A.535(4), location-specific requirements for ground-floor non-residential uses that apply to multifamily housing can apply to co-living housing.

As noted above, larger co-living buildings have historically included a mix of retail and service uses to serve the upstairs residents and surrounding neighborhood. For a private development, it can be advantageous to permit co-living buildings to be mixed-use.

2.3 – Density, Definitions, and Room Dimensions

Co-Living Use

Co-Living Definition

The co-living definition in RCW 36.70.535(11)(a) states: "co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building."

Because dwelling units can also be "independently rented and lockable and provide living and sleeping space", it will be helpful for jurisdictions to adopt clear standards to distinguish co-living sleeping units from multifamily dwelling units. Guidance is provided in the following sections.

Co-Living Density

RCW 36.70A.522(7) states: "A city or county may not treat a sleeping unit in co-living housing as more than one-quarter of a dwelling unit for purposes of calculating dwelling unit density."

For example: A city has a multifamily zone with a maximum density of 30 dwelling units per acre. A co-living housing development on a one-acre site must be permitted to build co-living housing with up to 120 sleeping units, as long as all other development regulations are met.

Where there is no density limit for multifamily housing, there is also no density limit for co-living housing.

Sleeping Units

Sleeping Unit Definition

"Sleeping unit" is defined under RCW 36.70A.535(11)(a) as "…independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building." This definition is descriptive of what is authorized by the state statute and should be used when developing local regulations. It does not preclude an option for sleeping units with bathrooms and/or kitchenettes (along with larger shared kitchens).

The RCW definition is slightly different than the International Building Code (IBC) definition: "A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units."[12]

There is no building code limit on how many sleeping units can share a kitchen and sanitation facilities (bathrooms). Relatedly, RCWs 35.21.682, 35A.21.314, and 36.01.227 prohibit non-code cities from limiting the number of unrelated persons occupying a household or dwelling unit.

A sleeping unit is essentially a standalone bedroom and does not have the full features of a dwelling unit. Unlike dwelling units, sleeping units are not required to have bathrooms or kitchens. In practice most new co-living developments do include private bathrooms and kitchenettes because they are popular with tenants and some building managers find shared bathrooms challenging to manage.

Note, sleeping units are different than "efficiency dwelling units" under the IBC, which are similar to studio apartments and are required to have a closet, full bathroom, cooking appliance, and refrigerator. As a type of dwelling unit, efficiency dwelling units have a minimum size of 190 square feet.

Sleeping unit interiors. Left. Courtesy of Natural and Built Environments, LLC. Right. Courtesy of Neiman Taber Architects.

[12] 2021 International Building Code, Section 202 Definitions.

Room Dimensional Standards

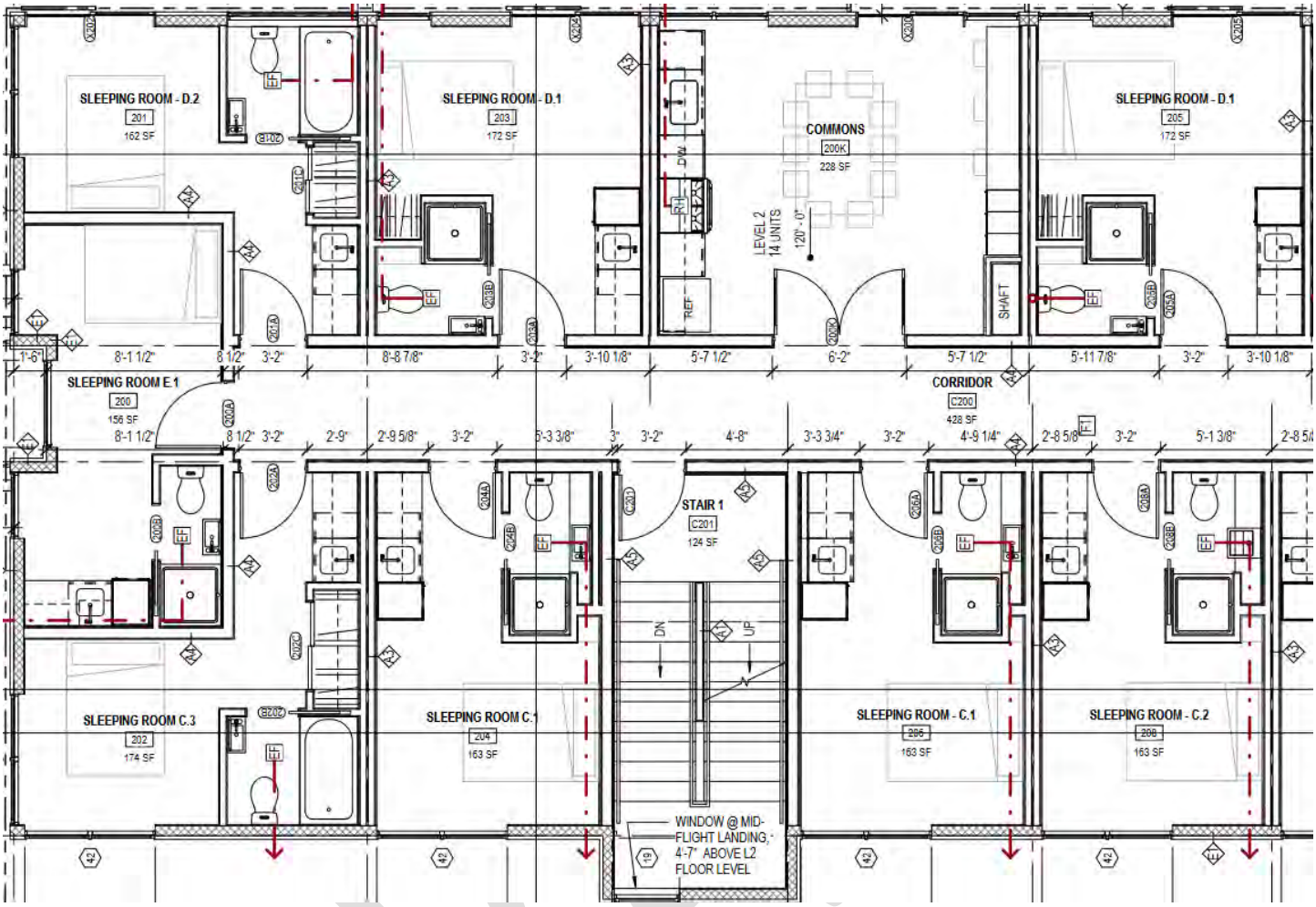
RCW 36.70A.622(2)(a) prohibits jurisdictions from requiring co-living housing to "Contain room dimensional standards larger than that required by the state building code, including dwelling unit size, sleeping unit size, room area, and habitable space."[13]

The 2024 IBC definitions and minimum dimensions are as follows:[14, 15]

- Habitable space means "A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces." Habitable spaces other than kitchens must not be less than seven feet in any plan dimension.
- Dwelling unit means "A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation." Dwelling units have a total minimum size of 190 square feet of habitable space and must have at least one room that is a minimum of 120 square feet. Kitchens are not required to be of a minimum floor area.
- Sleeping units are defined above. They have a minimum size of 70 square feet. For reference, this comfortably fits a twin-size bed.
- Bedrooms mean "Any room or space used or intended to be used for sleeping purposes in either a dwelling unit or a sleeping unit."[16] A bedroom has a minimum size of 70 square feet when intended for use by one occupant and 100 square feet when intended for use by two occupants, plus another 50 square feet per additional occupant.[17]

The building code has no maximum size for sleeping units, so units larger than 190 square feet can be considered a sleeping unit if it meets the definitions noted above. Cities and counties may adopt a maximum size for sleeping units. A maximum sleeping unit size of 300 square feet would reflect typical sleeping units sizes in in co-living buildings (see Co-Living Examples on page 6).

[13] As of this writing the state building code has the same minimum dimensions as the 2024 International Building Code. See Washington Administrative Code 51-50-1208, Section 1208-Interior space dimensions. https://app.leg.wa.gov/WAC/default.aspx?cite=51-50-1208.
[14] 2024 International Building Code, Section 202 Definitions.
[15] 2024 International Building Code, Section 1208 Interior Space Dimensions.
[16] 2021 International Property Maintenance Code, Section 202 General Definitions.
[17] 2021 International Property Maintenance Code, Section 404.4.1 Room area.



Excerpt of a floor plan from The Kärsti co-living housing development in Seattle, showing sleeping units with private sanitation facilities and kitchenettes and a common kitchen and dining room. Image courtesy of Neiman Taber Architects.

Sleeping Units vs. Dwelling Units

The density and parking bonuses provided by RCW 36.70A.535 apply to sleeping units, not small dwelling units such as studio apartments. The table below is an example of how a local jurisdiction can distinguish between sleeping units and dwelling units based on the unit size and the inclusion of certain features. Sanitation (bathroom) and kitchen facilities are not defined by the IBC and the definitions noted in the table are provided as examples. There must be at least one shared kitchen facility for sleeping units to be considered co-living housing, per RCW 36.70A.535(11)(a).

Example definitions:

- Sanitation facilities consist of at least a sink (not shared with kitchen), toilet, and shower and/or tub.
- Kitchen facilities are a room or space used for cooking or the preparation of food with all of the following: sink (not shared with sanitation facilities), 220-volt or natural gas stovetop with ventilation, refrigerator, and food preparation area. Portable or countertop appliances are not part of kitchen facilities.

In the Puget Sound area, many new co-living developments include private bathrooms and kitchenettes. A kitchenette does not meet the definition of a kitchen. It has limited cooking facilities such as a sink, small one- or two-burner electric stove, microwave, and mini-fridge.

Jurisdictions will need to review their zoning and building codes and may develop local interpretations, provided local interpretations and regulations are consistent with the requirements of RCW 36.70A.535 and the Washington State Building Code.

	Minimum size under state building code	Sanitation facilities (i.e. bathroom)	Kitchen facilities
Sleeping unit	70 square feet	In-unit bathroom optional.* Must have access to shared bathroom **if** in-unit bathroom is not provided.	In-unit kitchen optional* Must have access to shared kitchen.
Dwelling unit	190 square feet **	In-unit bathroom required.	In-unit kitchen required.

* Sleeping unit may not have both private sanitation and kitchen facilities.
** Cities and counties may adopt a larger minimum size for dwelling units.

Limits On Number of Units

A maximum cap on co-living sleeping units is invalid when there are no equivalent limits on the number of units permitted in a multifamily building in the same zone per RCW 36.70A.535(5). If jurisdictions choose to permit co-living beyond the locational requirements of RCW 36.70S.535(1), such as lower-intensity residential zones, a lower limit may be placed on the number of sleeping units.

Some jurisdictions currently place limits on the number of sleeping units in co-living buildings, whether under the name "co-living" or another name such as micro-units, congregate living facilities, single room occupancy (SRO), rooming house, boarding house, lodging house, residential suites, and dormitories. For example, one Washington jurisdiction defines "rooming house" as "a dwelling, with a central kitchen and with more than one but fewer than nine boarders, with no more than nine sleeping rooms." Multifamily uses in the same zones do not have an equivalent limit on the number of units (using the 4:1 ratio), so the rooming house definition needs to be amended or replaced.

Mix of Unit Sizes an Option, Not a Requirement

While developments may choose to contain both co-housing sleeping units and full-feature dwelling units in the same building, RCW 36.70A.535(2)(b) prohibits jurisdictions from requiring co-living housing to "Provide a mix of unit sizes or number of bedrooms."

Common Areas

Shared spaces are essential to the concept of co-living. These may include common kitchens, lounge/social rooms, fitness rooms and bathrooms. Of these, only common kitchens are required in order to meet the RCW definition of co-living.

Cities can place standards on the provision of common areas as long as these standards do not unduly burden co-living compared to typical multifamily development. For instance, a city may require one common area for each eight sleeping units, or ten square feet of common space for each 100 square feet of sleeping

unit. Likewise, such common areas could be counted towards minimum required open spaces for multifamily uses (as some codes allow indoor spaces to qualify for up to a percentage of total open space requirements).

Examples of common areas. Clockwise from upper left: lounge and common kitchen in the Kärsti, Seattle WA, courtesy of Neiman Taber Architects. Lounge and laundry room in the Yobi in Seatle, WA, courtesy of Neiman Taber Architects. Common kitchen and lounge in Plaza Apartments in Kirkland, WA, courtesy of Natural and Built Environments, LLC.

2.4– Off-Street Parking Standards

State Law

Basic Requirements

Off-street parking requirements for co-living housing are subject to the following standards:[18]

- A maximum of 0.25 off-street parking spaces per sleeping unit may be required.
- No off-street parking may be required within one-half mile walking distance of a major transit stop (see Major Transit Stop specifications below).

See Section 3.2 – Conversion Projects for parking requirements related to conversions.

[18] RCW 36.70A.535(3)

Exceptions

The above off-street parking requirements do not apply:

- If a city or county submits to the Department of Commerce an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location.[19]
- To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.[20]

Major Transit Stop

Off-street parking may not be required for co-living housing within one-half mile walking distance of a major transit stop. "Major transit stop" is one of the terms defined by RCW 36.70A.535(11)(b), as follows:

"Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;
(b) Commuter rail stops;
(c) Stops on rail or fixed guideway systems, including transitways;
(d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or
(e) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays.[21]

This definition is identical to that for accessory dwelling units, under RCW 36.70A.696(8). This term is slightly different than the general definition of major transit stops under RCW 36.70A.030(26). For more information on how to identify major transit stops and measure distance, see Appendix A.

Local Policy Choice

Eliminating Off-Street Parking Requirements

Jurisdictions may consider eliminating minimum off-street parking requirements entirely for co-living housing (and other residential land uses) to reduce the costs and physical complexity of building housing. Off-street parking requirements can affect sleeping unit count of a co-living housing project and be a deciding factor in whether a co-living housing project is or is not built.

Off-street parking takes up land area and can create both physical and economic feasibility barriers. Reducing parking requirements can prove extremely helpful in supporting diverse housing types at lower price points. This is particularly an opportunity where local transit service is strong, bike and pedestrian infrastructure is well-connected, and in residential areas in close proximity to jobs. Builders can continue to build parking at their discretion to meet market demand even without regulatory requirements for parking.

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[19] See the Department of Commerce Empirical Parking Study Guidance: https://www.commerce.wa.gov/growth-management/housing-planning/middle-housing/
[20] This only applies to Seattle-Tacoma International Airport. Enplanement data is provided by the Federal Aviation Administration: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger
[21] RCW 36.70A.535(11)(b)

The cost of providing surface parking can significantly increase the per-space construction cost of co-living housing depending on the type of parking, number of stalls required, drive aisle area, and turnaround space. Enclosed parking spaces can add even more costs to the construction cost of housing depending on the level of conditioning and finishing requirements.

In addition, off-street parking can create significant physical barriers to co-living housing development on infill sites, especially when space limitations require that parking be located in what would otherwise be buildable area for the structure. These physical limitations translate to economic impacts to development feasibility and financial yield that can cause co-living housing to be built at lower densities or not be feasible at all.

In summary:

- Parking is expensive. Parking space construction ranges from $5,000 - $6,000 a stall for surface parking, $20,000 - $25,000 a stall for above ground structured parking, and $30,000 - $50,000 a stall for underground parking. [22, 23, 24]
- High parking mandates negatively impact the financial feasibility of co-living housing development.
- High parking mandates are spatially difficult to fit on a lot and compete against both livable space and open space.
- Parking is a popular amenity, and developers will often choose to include off-street parking in co-living housing projects where feasible.

Bicycle Parking Requirements

Bicycle parking standards are not listed under RCW 36.70A.535. Co-living residents tend to produce fewer vehicle trips than the general population due to proximity to transit and services, and reduced car ownership.[25] Co-living residents may use bicycles for transportation more than the general population.

Guidance is provided by RCW 36.70A.535(4) which states, "A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone." The 1:4 ratio concept for co-living parking standards and density, noted elsewhere in this fact sheet, are informative for determining whether bicycle parking requirements are more restrictive or not.

For example:

- If a multifamily use is required to have one bicycle parking space per dwelling unit, a co-living use in the same zone cannot be required to have more than 0.25 bicycle parking spaces per sleeping unit.

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[22] "Puget Sound Missing Middle Housing Implementation, RE: Pro-Forma Assumptions." Cascadia Partners. 2023. https://deptofcommerce.app.box.com/s/rs8ac1h2u4dno7s1ibdn8lugql3vli3v

[23] "Transportation Cost and Benefit Analysis II – Parking Costs." Victoria Transport Policy Institute. 2022. https://www.vtpi.org/tca/tca0504.pdf

[24] "Planning Commission Staff Report." City of Lacey. August 17, 2021. https://laceywa.portal.civicclerk.com/event/636/files/agenda/781

[25] A transportation analysis of a mixed apartment and co-living housing project in downtown Kirkland with 290 total units estimated 64 peak hour vehicle trips based on industry standards. A post-occupancy analysis found the project had only 33 peak hour vehicle trips. The report concluded this resulted from site management of resident parking and the area's transportation options available to residents.

- If a multifamily dwelling use is required to provide two bicycle parking spaces for every one vehicle parking space, a co-living use in the same zone cannot be required to have more than 0.5 bicycle parking spaces per sleeping unit.

Either example may result in bicycle parking supply being lower than actual demand. Jurisdictions should encourage co-living developers to provide adequate bicycle parking, such as one bicycle parking space sleeping unit.

References

- City of Olympia Washington reduces parking minimums for all residential units Ordinance 7366 (2023)
- *A Business Case for Dropping Parking Minimums*, 2022, Planning Magazine
- Parking Reform Network

2.5– Other Standards

Bulk Standards

Co-living buildings can range from the size of a house up to up to full-sized apartment buildings.

RCW 36.70A.535(4) and (5) state:

> *"(4) A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone."*
>
> *(5) A city or county may only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW.*

Bulk, height, coverage, and other standards for co-living housing must be no more restrictive than standards for multifamily housing. Pictured: co-living and multifamily housing in downtown Redmond. Source: MAKERS

This means that co-living housing must be subject to equal or less restrictive zoning dimensional standards as for multifamily uses in the same zone. This includes, but is not limited to, the following types of standards: building height, setbacks, lot coverage, floor area ratio, lot area and lot dimension, impervious surface, open space, and landscaped area standards.

Jurisdictions should also review their codes for any supplemental use standards related to spacing, distribution, buffering, and other location restrictions for co-living housing. Under RCW 36.70A.535(4), such standards are not permitted if they create a greater restriction on the permitted location of co-living housing compared to multifamily uses in the same zone. For example, a requirement for co-living housing to not be on adjacent lots or a requirement for co-living housing to be separated by 500 feet is not allowed.

See Section 3.2 – Conversion Projects for bulk standards requirements related to conversions.

Design Standards

If a jurisdiction has adopted design standards, co-living housing would be subject to equal or less restrictive design standards as for multifamily uses, per RCW 36.70A.535(4).

Example of multifamily building with facade articulation. Source: MAKERS

Special consideration may be needed for interpreting or adjusting design standards based on the size of dwelling units, such as articulation standards or minimum balcony sizes, since sleeping units are smaller and not the same as dwelling units. For example, if a jurisdiction has a façade articulation standard that says, "the maximum façade width without articulation shall be no greater than the width of a unit", such jurisdiction could amend the standard to use a specific dimension instead. See Section 3.2 – Conversion Projects for design standards requirements for conversion projects.

Open Space Standards

Some jurisdictions require a minimum useable open space or amenity area per dwelling unit, often scaled to the size of dwelling unit or number of bedrooms in a dwelling unit (studio, one-bedroom, two-bedroom, etc.). When applied directly to sleeping units, which, according to stakeholders, typically accommodate a single resident, per-unit open space standards can reduce the feasibility of co-living housing development. RCW 36.70A.535 does not have specific provisions related to open space standards, but jurisdictions that apply open space standards to multifamily development have several options for updating open space standards to support co-living feasibility:

- Create a reduced open space requirement for sleeping units. For example, apply one-quarter or one-half the open space requirement for co-living that apply to studio apartments.
- Apply an alternate open space standard that does not rely on the size or quantity of units. For instance, require a certain amount of open space for each 1,000 square feet of residential net floor area, for multifamily and co-living.

If open space is required, jurisdictions should consider allowing indoor common areas to count as open space in addition to traditional outdoor space (courtyards, balconies, roof decks, etc.). By their nature, co-living buildings include a variety of shared indoor spaces and amenity areas, usually including shared kitchens and dining rooms at a minimum. Other examples include multi-purpose entertainment space, fitness center, movie theater, library, workshop, conference room, and similar amenities that promote shared use and a sense of community. To encourage a balance with outdoor spaces, some jurisdictions allow projects to count only a portion of indoor common area toward minimum open space square footage requirements.

3.0 – Additional Considerations

3.1 – Affordable Housing

By its nature with small units, market-rate co-living housing can provide an affordable housing option without needing to participate in formal affordability programs. Co-living is often the least expensive private market option available in urban markets and can help some people avoid economic displacement and homelessness. When adequately supplied, co-living housing reduces pressure on the limited amount of publicly-funded affordable housing by providing housing that is affordable to lower income residents who might otherwise wait years for subsidized housing.

That said, co-living housing must be eligible to participate in formal government programs and receive public funding. RCW 36.70A.535(6) states:

> *"(6) A city or county may not exclude co-living housing from participating in affordable housing incentive programs under RCW 36.70A.540."*

Where incentive programs are adopted, co-living housing developments can provide affordable housing in exchange for density and height bonuses, fee waivers, expedited permitting, and other benefits that are available to multifamily housing, when consistent with the incentive program requirements. Co-living housing may also be eligible for multifamily tax exemptions when meeting the requirements adopted under Chapter 84.14 RCW and for the use of HUD Housing Choice vouchers.[26]

Stakeholders report that even where co-living housing is permitted, some non-profit affordable housing providers do not include it in their portfolio because of operational complexities. There are more shared spaces to maintain and monitor in a co-living building than a traditional apartment building.

3.2 – Conversion Projects

Conversion of existing buildings to co-living may occur as a result of RCW 36.70A.535 and increased market interest in affordable housing options.

RCW 35.21.990 and RCW 35A.21.440 require cities (these RCW sections do not apply to counties) to provide regulatory flexibility for conversion projects that are in commercial and mixed-use zones. In summary, these laws state that cities may not:

- Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone.
- Impose parking requirements on the addition of dwelling units or living units added within an existing building.
- Impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone.
- Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone.

[26] https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Payment_Standards.pdf see section 2.4.

- Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building.
- Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city.

Cities may not require off-street parking for the addition of dwelling units or living units within an existing building. Counties should also consider not requiring off-street parking for the addition of dwelling units or living units within an existing building.

Left: Co-living may be well suited to office-to-residential conversions. Center: An older converted mansion with a mix of co-living units and dwelling units. Right: Developers have converted older motels into co-living in several eastern Washington cities. Source: MAKERS

Cities and counties should consider providing flexibility for both commercial-to-residential and residential-to-residential co-living conversion projects. Older office buildings and hotels may be particularly good candidates for conversion due to their floor configurations, with pre-existing shared restroom and kitchen facilities. Of course, project feasibility will be determined by property owners on a case-by-case basis with architectural and financial analysis.

Co-living conversions of existing residential buildings were relatively common in the past when zoning restrictions were more flexible. One common type of co-living conversion was older large houses converted in to small apartments with some shared kitchen or bathroom facilities. Zoning has made conversions of this type largely illegal in recent decades, so it is difficult to forecast how likely these will be following implementation of RCW 36.70A.535.

3.3 – Infrastructure Issues

Public works and infrastructure standards that create conditions on development are a "development regulation" subject to RCW 36.70A.535(4) which limits regulations to those no more restrictive than required for other types of multifamily uses. This is supported by the definition of "development regulations" under RCW 36.70A.030.

To comply with RCW 36.70A.535(4), public works and infrastructure development standards cannot be more restrictive for co-living housing than for multifamily residential uses. Because more than 90 percent of co-living residents are single-person households, co-living sleeping units have been shown to have substantially lower utilities needs than dwelling units.[27]

[27] Reported by a co-living developer and building owner during interviews conducted for this guidance.

Examples and further considerations are below.

Water and Sewer

Water and sewer utility purveyors (cities, special districts, and private purveyors) should have specific standards for co-living buildings, or sufficient flexibility in the application of multifamily standards to adequately serve co-living buildings without requiring construction of excess infrastructure.

Regarding sewer connections specifically, RCW 36.70A.535(8) states: "A city or county may not treat a sleeping unit in co-living housing as more than one-half of a dwelling unit for purposes of calculating fees for sewer connections, unless the city or county makes a finding, based on facts, that the connection fees should exceed the one-half threshold." If utility purveyors have several rates for different types of dwelling units, the rate applied for co-living should be one-half the rate for multifamily dwelling units, or the closest applicable category.

Reduced monthly rates for co-living units are another way to help reduce co-living housing costs. For reference, King County treats "microhousing" units as 0.35 of a residential customer equivalent (based on a detached single-family residence) for monthly sewer capacity charges.[28]

Cities, counties, and water utilities should consider a similar one-half to one-quarter metric for requirements related to water infrastructure connections and fees.

Impact Fees

RCW 36.70A.535 does not address impact fees. However, jurisdictions must adopt a fee schedule that complies with RCW 82.02.060(1), which states in part: "…The schedule shall reflect the proportionate impact of new housing units, including multifamily and condominium units, based on the square footage, number of bedrooms, or trips generated, in the housing unit in order to produce a proportionally lower impact fee for smaller housing units…". This requirement is required to be adopted six months after the jurisdiction's next periodic comprehensive plan update required under RCW 36.70A.130.

New guidance by Commerce on impact fees will be published separately.

Some co-living-specific considerations for setting fee rates:

- Co-living sleeping units are smaller than traditional multifamily units, and therefore should have lower or no impact fee, depending on the metric for calculating such fees.
- Co-living residents have been found to produce fewer vehicle trips than the general population due to proximity to transit and services and lower rates of car ownership.
- Given limited access to private open space, co-living residents may desire greater access to public parks, open space, and recreation facilities.
- Co-living residents tend to be single adults without children in school.

More information on impact fees is available from the Municipal Research and Services Center (MRSC).[29] Jurisdictions updating impact fees which may affect non-city service providers (e.g., school districts) should coordinate with those service providers on impact fee schedules and capital facilities plans.

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[28] "About the capacity charge." King County. https://kingcounty.gov/en/dept/dnrp/waste-services/wastewater-treatment/sewer-system-services/capacity-charge/about

[29] "Impact Fees." Municipal Research Service Center. https://mrsc.org/explore-topics/planning/land-use-administration/impact-fees

Electricity

Similar to water and sewer infrastructure, the electricity used per sleeping unit in co-living developments is typically much lower than for dwelling units. Electricity providers and permitting authorities should revise standards and fees accordingly to avoid requiring installation of excess infrastructure.

References

- King County Capacity Charge. Example of a utility fee which is graduated based on the size and type of residential dwelling.
- Department of Ecology municipal stormwater permits. Information on what types of stormwater requirements are in place for jurisdictions across the state.

3.4 – Design Considerations

There are a few differences and key considerations for co-living design that differentiate it from design for typical multifamily development.

Architectural Finishes

Because co-living sleeping units are compact, each unit can rent at a higher price per square foot than a typical apartment. As a result, developers report being able to include more durable and higher quality and finishes, such as stone countertops and better lighting, in units and in shared spaces. Essentially, co-living housing's limited space needs create the opportunity to exchange space for quality, and still be more affordable overall.

Common Space Design

With limited private space in each unit, the design of shared spaces, especially kitchens and eating areas takes on increased importance for resident quality of life. Shared space designs that include features such as sound absorbing acoustic panels and well-designed, adjustable lighting will help create spaces that are more comfortable and inviting for residents. Outdoor open spaces should be designed to provide a range of activities and spaces for both individuals and small groups to enjoy.

Ceiling installed acoustic panels in a common area. Photo courtesy of Schemata Workshop.

Sound Proofing

With limited private space and many neighbors, stakeholders also noted the importance of sound proofing shared walls and ceilings. Developers are encouraged to go beyond minimum sound proofing requirements in the building code. Jurisdictions may consider increasing sound proofing requirements, but such standards must apply equally to co-living and multifamily development.

3.5 – Short Term Rentals

Short term rental is a business model in which individual residences are rented out by the owner to customers using an online platform. Some cities restrict short-term rentals in order to support a greater share of the housing stock available for residences; this is especially common in smaller cities and towns with high levels of tourism. Jurisdictions seeking to increase the supply of housing for low- and very low-income households may consider prohibiting short-term rentals in co-living buildings.

3.6 – State Environmental Policy Act (SEPA)

Under RCW 36.70A.600(1), cities are also encouraged to amend local environmental regulations and take the following actions to increase residential building capacity:

- Adopt a subarea plan pursuant to RCW 43.21C.420
- Adopt a planned action pursuant to RCW 43.21C.440(1)(b)(ii)
- Adopt increases in categorical exemptions pursuant to RCW 43.21C.229 for residential or mixed-use development.
- Adopt maximum allowable exemption levels in WAC 197-11-800(1)

The adoption of ordinances, development regulations and amendments to such regulations, and other non-project actions taken by a city to implement any actions specified in RCW 36.70A.535(10), with the exception of adopting subarea plans, are not subject to administrative or judicial appeal under SEPA (RCW 43.21C).

3.7 – Comprehensive Plans

Integrating Co-Living in Housing Elements

Co-living housing allowed under RCW 36.70A.535 may meet housing needs for low-income households in the 30-50% and 50-80% Area Median Income (AMI) bands required under RCW 36.70A.070(2). Each local jurisdiction will need to verify this finding at the local level. This can be done through a housing needs assessment created for a comprehensive plan or a simple market analysis.[30] If no co-living examples are available in your region to verify the income level co-living may serve, Commerce recommends using co-living housing costs from the closest comparable jurisdiction and comparing that to local affordability levels (AMIs in the county in which the analysis is being performed).

Allowing for greater housing choices within areas that have historically excluded by race will also assist in meeting housing element goals to address past practices and policies that have contributed to racially disparate impacts and exclusion.[31]

While co-living housing is well suited to providing housing for small low-income households, local development standards that physically allow and encourage this housing type will be required to actually see units produced at income levels desired.

Land Use Elements and Land Capacity

For land capacity analysis, consider that assumed densities, justifications for assumed densities, and potential development outcomes for co-living housing will be different than those that have been observed for multifamily development and mixed-use development. In identifying assumed development rates for land capacity analysis, jurisdictions should incorporate information about local market conditions and real estate market dynamics. Therefore, although co-living housing may yield higher densities of housing units than other housing typologies, jurisdictions should document their assumptions and rationale for assumed densities and likely development of co-living.

Not all sites that are zoned for co-living housing will develop or redevelop as co-living housing. In addition to sites needing appropriate zoning for development, co-living housing also needs to be physically and

[30] See the Department of Commerce's Guidance for Updating Your Housing Element, specifically Steps 3.1 and 3.2 on pages 35-37.
[31] See the Department of Commerce's Guidance to Address Racially Disparate Impacts.

financially feasible, there needs to be builders who are familiar with building co-living housing, sites need to be for sale or have property owner interest in selling, market timing must be appropriate, and there must be sufficient demand for co-living housing in these locations. Commerce recommends looking at trends in development of co-living and co-housing in the community, interviewing developers about the likelihood for developing a co-living product, and evaluating demographics to determine how much demand there is for this housing type when determining assumptions for the amount of likely development of co-living for a land capacity analysis. For many communities, it will take a while to identify likely trends in this re-emerging housing typology, therefore assumptions of assumed co-living development should be small.

4.0 – Resources

Code Examples

- Seattle Council Bill 120822 – Seattle code updates to comply with RCW 36.70A.535, adopted October 2024.

Further Reading

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APPENDIX A - Parking Near Major Transit Stops

This section regards the parking pre-emption in RCW 36.70A.535(3)(a)(i) for co-living housing within one half-mile walking distance of major transit stops.

Types of Major Transit

This includes stops for at least the following types of transit systems:

- Light rail.
- Commuter rail.
- Amtrak.
- Streetcar.
- Monorail.
- Bus rapid transit.
- Trolley buses.
- Other transit funded or expanded under the provisions of chapter 81.104 RCW.
- Other transit operating at certain frequences at certain times.

Chapter 81.104 RCW

This chapter of the RCW is for high capacity transportation systems, which are defined in the chapter as "a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways."

Chapter 81.104 RCW currently only applies to Sound Transit, which operates high-capacity transportation systems in King, Pierce, and Snohomish counties including light rail, commuter rail, and intercity express buses. All of the transit stops for Sound Transit services, including intercity express buses, are a major transit stop.

Sound Transit is actively modifying its express bus system as light rail and bus rapid transit are built out. Changes to the express bus system undergo public outreach and require the approval of the Sound Transit Board of Directors. Occasionally, like other transit agencies, Sound Transit also administratively modifies express bus routes and stops via the regular service change process. City and county planners in King, Pierce, and Snohomish counties should stay updated on Sound Transit's express bus service changes to ensure continued compliance with RCW 36.70A.635.[32]

Fixed Guideway Systems

"Fixed guideway system" is not defined in the Growth Management Act (GMA) but is defined in the Washington Administrative Code (WAC). Under WAC 173-424-110 fixed guideway means "…a public transportation facility using and occupying a separate right of way for the exclusive use of public transportation using rail, **a fixed catenary system, trolley bus**, streetcar, or an aerial tramway." Federal law defines fixed guideway as "a public transportation facility that uses and occupies a separate right-of-way or rail line for the exclusive use of public transportation and other high occupancy vehicles, or uses a **fixed catenary system and a right of way usable by other forms of transportation**. This includes, but is not limited

[32] See the Sound Transit "service changes" webpage for the latest information, including an email contact and subscription for service changes. https://www.soundtransit.org/ride-with-us/changes-affect-my-ride/service-changes

to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and fixed-guideway facilities for buses (such as bus rapid transit) and other high occupancy vehicles."[33]

The trolley bus network operated by King County Metro is an example of a non-rail fixed guideway system.

Bus Rapid Transit (BRT)

Bus rapid transit is not defined in the GMA, the Revised Code of Washington (RCW), or the WAC.

The Puget Sound Regional Council Regional Transportation Plan, which applies to the central Puget Sound region (King, Pierce, Snohomish, and Kitsap counties) describes bus rapid transit as the following: "Bus rapid transit (BRT) routes in the region are distinguished from other forms of bus transit by a combination of features that include branded buses and stations, off-board fare payment, wider stop spacing than other local bus service, and other treatments such as transit signal priority and business access and transit (BAT) lanes."

For further reference, the Federal Transit Administration defines BRT as: "Fixed-route bus systems that operate at least 50 percent of the service on fixed guideway. These systems also have defined passenger stations, traffic signal priority or preemption, short headway bidirectional services for a substantial part of weekdays and weekend days; low-floor vehicles or level-platform boarding, and separate branding of the service. Agencies typically use off-board fare collection as well. This is often a lower-cost alternative to light rail."[34] This is consistent with a similar definition and BRT standards maintained by the Institute for Transportation & Development Policy.[35]

The following services operated by transit agencies in Washington are examples of BRT:

- King County RapidRide routes.
- Sound Transit Stride routes.
- Community Transit Swift routes.
- Spokane Transit Authority City Line.
- C-TRAN BRT routes.

Routes on High Occupancy Vehicle Lanes

High occupancy vehicle (HOV) lanes are located on limited-access freeways and designated by a diamond symbol on signs and pavement. They are limited to use by personal vehicles with two or more passengers and public or private buses. They are mostly located in the Puget Sound, including I-5, I-90, SR-520, and SR-16.[36] HOV lanes include other managed lanes such as high occupancy toll (HOT) lanes on I-405 and SR-167. HOV lanes do not include bus-only lanes.

A major transit stop includes those serving any bus route that has access to an HOV lane, even if the stop itself is not within or adjacent to an HOV lane or the route has access to an HOV lane for only a small portion

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[33] Code of Federal Regulations, Title 49, Subtitle B, Chapter VI, Part 611, Subpart A, § 611.105. https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-611/subpart-A/section-611.105

[34] "National Transit Database (NTD) Glossary." Federal Transit Administration. https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary. See also: https://www.transit.dot.gov/research-innovation/bus-rapid-transit

[35] "What is BRT?" Institute for Transportation & Development Policy. https://www.itdp.org/library/standards-and-guides/the-bus-rapid-transit-standard/what-is-brt/

[36] HOV System Map, Washington State Department of Transportation. https://wsdot.wa.gov/travel/roads-bridges/hov-lanes/hov-system-map

of its route. For example, most Sound Transit express buses travel on freeways with HOV lanes but most of their stops are located on local surface streets, and such stops are major transit stops.

For example, the following bus routes operate on freeways with HOV lanes, and their stops are major transit stops. This is not a complete list. Refer to transit agencies for more information on applicable routes.

- Sound Transit 510, 542, 545, 550, 554
- King County Metro 101, 150, 255, 271, 303
- Community Transit 201, 202, 434, 905
- Pierce Transit 100

Other Frequent Transit

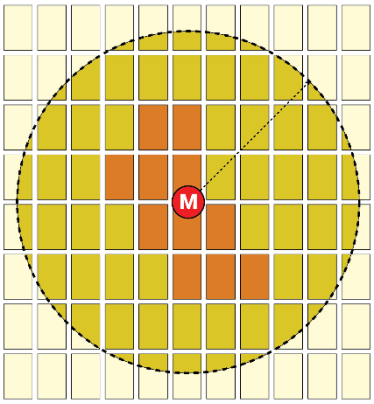
Major transit stops include "Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays." Jurisdictions should contact transit agencies to identify applicable routes and what times the agency considers to be "peak hours."[37]

Determining "actual" service frequency requires substantial resources to perform statistical analysis and field observations and is subject to different interpretations such as the duration of the study period, how to treat weekday holidays, and how to count stop dwell time. Commerce recommends jurisdictions and transit agencies refer to published schedules when identifying routes with the minimum 15-minute frequency.

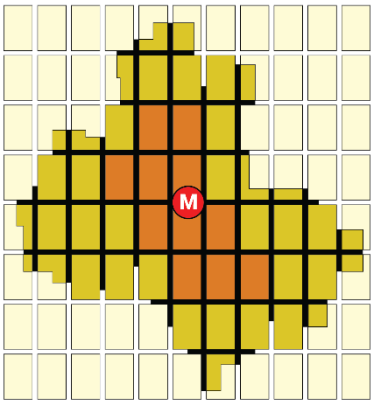
[37] A starting point for research is areas with Level 2 transit service identified by the Washington State Department of Transportation "Frequency Transit Service Study." https://wsdot.wa.gov/construction-planning/search-studies/frequent-transit-service-study

Measuring One-Half Mile Walking Distance

Jurisdictions can measure distances from major transit stops in at least two different ways. Each method comes with advantages and disadvantages. The chosen methodology should be identified in the code, perhaps within a definition of "walking distance", to ensure the methodology is consistently applied and measured over time. Inclusion of the walking distance area on the zoning map, would offer greater certainty to property owners and others as to which parcels are and are not included in the walking distance requirements of a major transit stop. A potential downside to this approach is the need to go through a procedural process to amend the zoning map should the walking distance need to be amended over time due to physical improvements that change the walking distance or routes.



Radius



Path-Finding

Conceptual illustration of different methods for measuring walking distance. Orange on the map represents a multifamily zone and yellow represents a middle housing zone. Source: MAKERS

For both methods it is important to consider whether to place a center point of the major transit stop or use the perimeter of the major transit stop. In general, separate radii should be drawn for each boarding and alighting point if they are separated by more than 100 feet, such as a north-bound and a south-bound bus stops that are located at opposite ends of a block. For large major transit stops, such as a rail station, the most straightforward approach is to locate center points in the middle of the station platforms. However, the optimal approach should always be determined using the best judgement of the jurisdiction.

Radius, with Adjustments

In this approach, a circle is centered on the major transit stop and the radius of the circle is the required distance. All applicable lots which are fully within the circle should be applicable. Lots which are partially within the circle should also be applicable in order to increase housing capacity near major transit stops, though a jurisdiction can also set other criteria such as at least 50 percent of a lot or a minimum amount of lot area is in the circle for the lot to be included.

This method has the advantage of being easy to execute. A consideration is where precisely the circle is centered for large major transit stops, such as a rail station; the approximate center of the stop or platforms is most straightforward and avoids potential complexities with using pedestrian entrances and property boundaries - however, this should be determined on a case-by-case basis using the best judgement of the jurisdiction.

This method has the disadvantage of not accounting for conditions that can constrain walkability and reduce the actual area that is in reasonable walking distance of the major transit stop, such as terrain, water bodies, missing pedestrian routes, or infrastructure barriers. This disadvantage could be overcome by first drawing the circle and then customizing and adjusting it to remove areas which are not reasonably in walking distance due to local conditions. Areas which are removed should have documentation explaining why they are exempt.

Path-Finding

In this approach, actual walking paths extending from a major transit stop for the required walking distance are mapped using a geospatial analysis of the local street network and other pedestrian routes such as off-street trails. All lots zoned predominantly for residential use which touch the walking paths are applicable.

This method has the advantage of more accurately capturing lots within actual walking distance of major transit stops.

This method has the disadvantage of requiring access to geospatial analysis software and the skills, funding, and time to employ it. This method also requires that the analysis be repeated from time-to-time to account for changes to pedestrian infrastructure. In some cases, these disadvantages could be overcome by hiring an outside consultant who specializes in geospatial analysis. Network analysis results created for this purpose should be displayed on zoning maps and made available for download on public geographic information system (GIS) databases, if possible.

Future Major Transit Stops

The definition of "Major transit stop" in RCW 36.70A.535 does not specify if or when to apply applicable requirements to most types of future major transit stops which are in planning or construction. Should a new major transit stop be planned in a jurisdiction with parking requirements related to transit, then Commerce recommends that the parking requirements of RCW 36.70A.535 apply to that new major transit stop but be implemented when the major transit stop is open for public use.

A jurisdiction may plan for transit-oriented development around future major transit stops. The extent and level of that planning may vary depending on the type of major transit stop. The opening of a light rail station may be preceded by years of station area planning to identify land use and zoning designations. Bus rapid transit facilities may involve a less elaborate and less detailed station area planning process.

Experience has shown that property acquisition and transit-oriented development may occur far in advance of the opening of a major transit stop, particularly for high-capacity transit such as light rail. Cities and counties should consider adopting higher densities (above those required by RCW 36.70A.535) near and around major transit stops to allow for a higher level of housing production, even in advance of the major transit stop opening.

For all major transit stops, implementation of parking requirement in RCW 36.70A.535 should be implemented as soon as the walking distance measurements can be accurately determined. Final design of the major transit stop should provide sufficient information to determine the one-half mile walking distance. At the very latest, it is recommended that implementation of off-street parking requirements should occur no later than the opening of the major transit stop for use by the public.

UNIT LOT SUBDIVISIONS FACT SHEET | PUBLIC DRAFT – NOVEMBER, 2024

Unit Lot Subdivisions

State Law Requirements

In 2023, state law changed to require that unit lot subdivisions be included in short plat regulations for all Washington cities, towns, and counties. RCW 58.17.060(3), established in 2023 by Engrossed Second Substitute Senate Bill (ESSSB) 5258 (Chapter 337, 2023 Laws), states:

> *"All cities, towns, and counties shall include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots. Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots."*

This fact sheet provides information and recommendations for jurisdictions to consider in adopting code that implements RCW 58.17.060(3). The Resources section at the end of this Fact Sheet provides links to several cities' adopted codes, a model code, and other references. Jurisdictions are encouraged to review different approaches and adapt what works best for their local context and implement their land use and housing policies.

Adoption Deadlines

All cities, towns, and counties in the state must adopt procedures for unit lot short subdivisions by their next periodic update of comprehensive plans and development regulations. See WAC 365-196-610 and Commerce's periodic update page for more information on deadlines.

Agency contact

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INFILL HOUSING MANAGER

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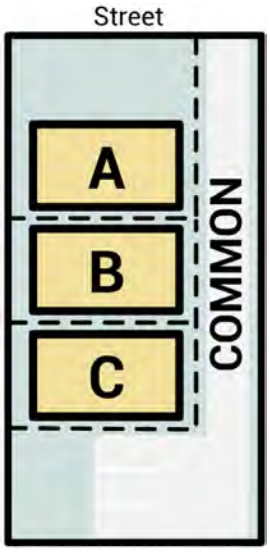
Phone: 360.890.5100

GROWTH MANAGEMENT SERVICES

About Unit Lot Subdivisions

A unit lot subdivision (ULS) creates new lots much like a typical subdivision, except a ULS allows flexible application of zoning dimensional standards. In a ULS, the development as a whole on the "parent lot" conforms to zoning dimensional standards while individual "unit lots" are not required to. Unit lots (also called child lots) are individual, sellable, legal lots of record with their own tax or parcel identification number.



Example unit lot subdivision with three unit lots and a tract held in common.

Options for Ownership

The bill creating RCW 58.17.060(3) includes an intent statement to "[increase] the supply and affordability of condominium units and townhouses as an option for homeownership." Unit lot subdivisions are one method for dividing multiple housing units on a parcel into individual unit lots for sale to individual owners, providing fee simple homeownership opportunities.

Standards

State law provides that ULS shall be included as a short plat process. This means a maximum of 4-9 unit lots may be developed, depending on how many lots the jurisdiction allows in a short plat. See the "Number of Unit Lots" section below for more information.

State law also provides that portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association. See the "Common Areas" section below for more information.

While state law does not provide any additional ULS guidance, a key benefit of the unit lot subdivision concept is the flexible application of zoning dimensional standards. See the "Dimensional Standards" section below for details.

Considerations for Development Regulations

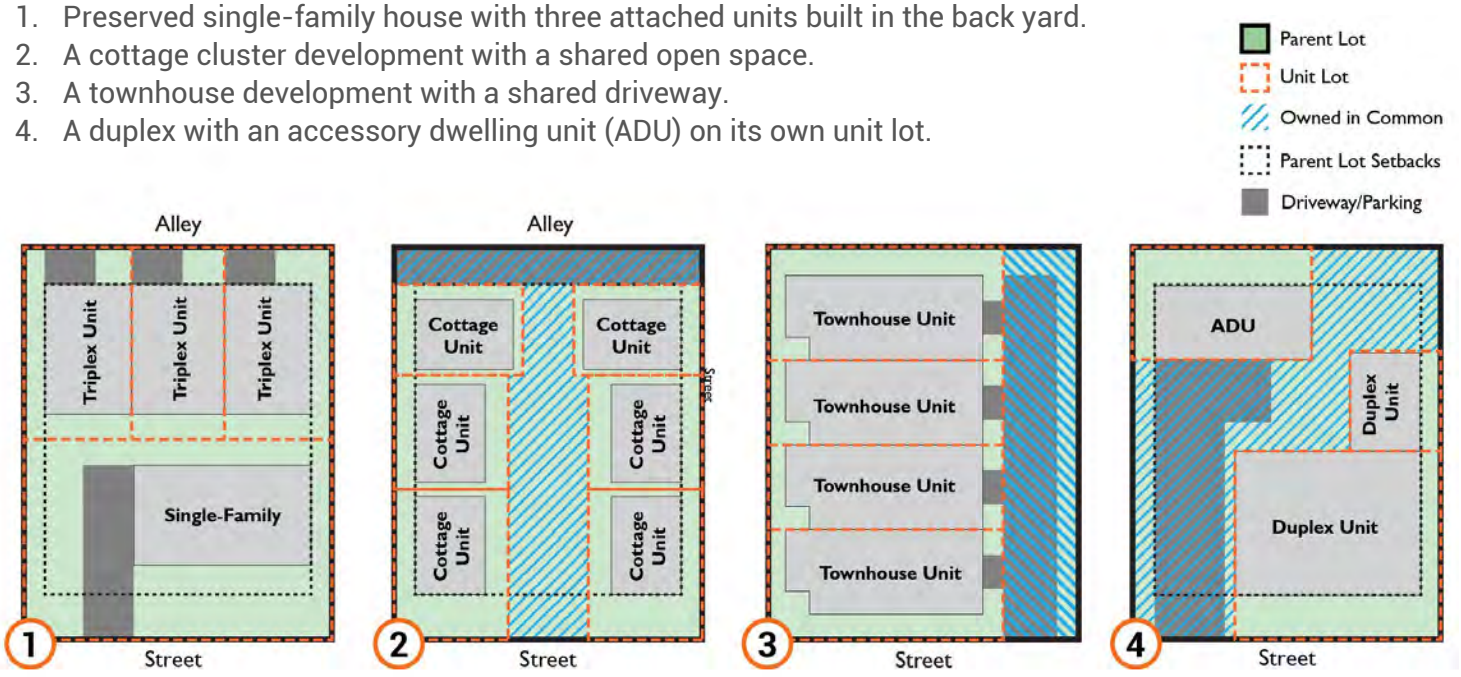
Housing Types

Unit lot subdivision can be used with any type of attached or detached housing.

Left to right: Townhouses in Spokane, cottage housing in Kirkland, and a fourplex built behind an existing single-family residence in Seattle

The examples illustrate how setbacks apply to a parent lot and unit lots.

1. Preserved single-family house with three attached units built in the back yard.
2. A cottage cluster development with a shared open space.
3. A townhouse development with a shared driveway.
4. A duplex with an accessory dwelling unit (ADU) on its own unit lot.



Considerations for ULS with specific housing types are discussed below.

Middle Housing

For jurisdictions required to allow middle housing under RCW 36.70A.635, and those seeking to promote middle housing, ULS can be a useful tool. Most types of middle housing require flexible application of zoning dimensional standards to be economically or physically feasible for development. ULS can offer this type of flexibility through the land division process. Townhomes and cottage housing can particularly benefit.

Commerce recommends making ULS available for all middle housing types including, but not limited to, townhomes, cottage housing, duplexes, triplexes, fourplexes, fiveplexes, and sixplexes.

Accessory Dwelling Units

Unit lot subdivisions may be used to create individual unit lots for accessory dwelling units, in attached or detached forms. Note that RCW 36.70A.681(1)(c) requires cities and counties to allow at least two accessory dwelling units (ADUs) on all "lots" that are located in all zoning districts within an urban growth area that allow for single-family homes. The reference to "lots" in RCW 36.70A.681(1)(c) means parent lots that meet the minimum lot size, and not unit lots, as RCW 36.70A.681(1)(e) states that the ADU provisions apply to lots that meet the minimum lot size required for a principal housing unit, and unit lots are typically smaller than the minimum lot size.

Detached Houses

Unit lot subdivisions can also be used for detached single-family residences. This could come in multiple forms to provide ownership opportunities, including:

- Preserving an existing home and adding infill housing (new middle housing and/or ADUs depending on zoning provisions of the jurisdiction) elsewhere on the parent lot.
- Developing a new detached home together with new middle housing and/or ADUs on the parent lot.
- Developing multiple detached houses on a parent lot, if allowed by a jurisdiction.

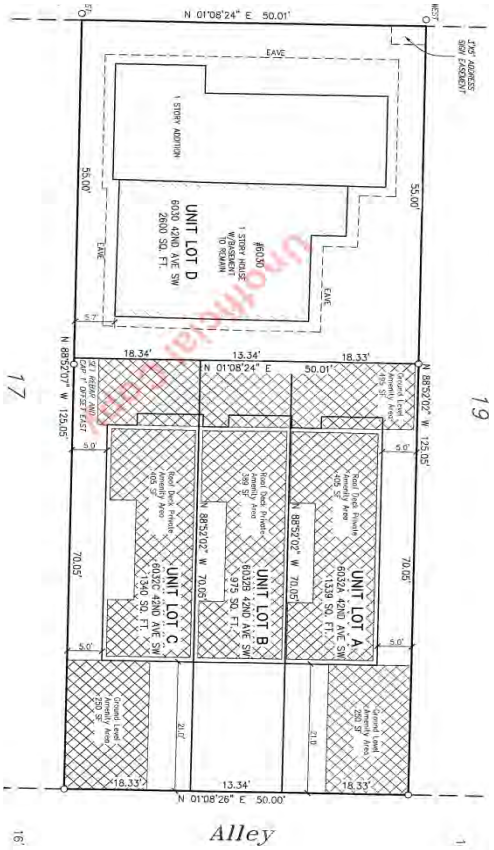
Dimensional Standards

A key benefit of a unit lot subdivision is the flexible application of zoning dimensional standards. In a unit lot subdivision, the development as a whole on the parent lot must comply with applicable dimensional standards. Individual unit lots are not subject to dimensional standards that apply to the parent lot, such as (if applicable):

- Lot area, depth, and width
- Setbacks (front, side, rear, etc.) and setback projections
- Floor area ratio (FAR)
- Lot coverage (or building coverage)
- Impervious surface coverage
- Landscaped area minimum
- Any other standard based on the size or dimensions of the lot or distance from lot lines

Other dimensional standards not related to the lot size and lot lines continue to apply to individual unit lots, such as maximum building height. Also, note that ULS is not intended to permit land uses or densities that are not otherwise allowed in the zone in which a unit lot subdivision is proposed.

Example: A cottage housing development utilizes ULS to accommodate ownership of individual cottage unit lots. The zone allows 60% impervious surface coverage. The development as a whole has 55% impervious coverage on the parent lot, but individual unit lots



Example unit lot subdivision short plat for three attached units permitted in the backyard of an existing house in Seattle, WA.

have impervious surface coverage of 80% or more. Owners of individual unit lots may increase their impervious surface coverage further (for example, by expanding a kitchen or creating a paved patio) as long as the development's entire impervious surface coverage does not exceed 60%. Jurisdictions should require that notes be added to the plat stating that subsequent additions or modifications to structure(s) shall not create a nonconformity of the parent lot.

While unit lots do not have minimum area or dimensions, some jurisdictions provide guardrails. The City of Everett requires unit lots be "large enough" to contain a dwelling unit and accessory improvements such as decks, fences, driveways and parking, and private yard areas. The City of Spokane allows a unit lot to be as small as the footprint of the building situated upon it, subject to the requirements of the building and fire code.

Common Areas

RCW 58.17.060(3) provides a standard for ownership and management of common areas: "Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots." Common area lots, parcels, or tracts are also legal lots of record. Management topics for common areas include how they are used by residents, procedures for maintenance and repairs, and responsibilities for utility bills and property taxes.

A common area in Cully Green, a courtyard apartment development in Portland, OR. Source: MAKERS.

Homeowners' Associations

Homeowners' associations (HOAs) organize decision-making around common areas with formal processes. The HOA may also provide guidance on new development or changes within the plat. They are most often associated with larger residential developments or projects with common maintenance needs. Typically, an HOA requires owners to pay monthly or yearly dues to cover upkeep and insurance costs. HOAs are regulated by RCW 64.38.

Common Ownership

State law requires that "owned in common" arrangements be permitted as an alternative to HOAs for managing common areas. This can include condominiums (RCW 64.34), common interest communities (RCW 64.90), associations of apartment owners (RCW 64.32), retirement communities, co-ops, and timeshares. It can also mean there is no formal organization of owners and that matters of common interest are managed informally, which can be a risky arrangement when one or more owners are resistant to make decisions or pay their share of common costs.

Agreements

Jurisdictions should require ULS to record agreements for the ownership and management of common areas. Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or an ownership association may be executed for the use and maintenance of common areas and features. These may cover topics such as:

- Garages, parking, and vehicle access areas
- Bike parking
- Common yards, courts, landscaping, and recreational elements
- Shared interior walls
- Exterior building facades and roofs
- Sheds and other accessory structures
- Solid waste collection areas
- Mailboxes
- Utility infrastructure and payments

Such easements, agreements, and CC&Rs should be recorded with the county auditor.

Off-Street Parking

Within the parent lot, jurisdictions should allow required off-street vehicle parking to be located in a common area or on a different unit lot than the lot with the associated dwelling unit. This arrangement can be formalized with an easement. This option allows greater design flexibility, especially for infill development on small lots where it may be impractical for every dwelling unit to have an adjacent private parking space or garage.

Administration

Number of Unit Lots

RCW 58.17.060(3) requires that unit lot subdivision regulations be adopted within "short plat" procedures. Under RCW 58.17.020 "short plat" is the map or representation of a short subdivision. A "short subdivision" is defined as:

> *"Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.*

Commerce recommends that cities and towns, as applicable, adopt a maximum of nine lots, tracts, or parcels to be regulated as unit lot short subdivisions. Note that "Tier 1" middle housing cities subject to RCW 36.70A.635(1)(b) should allow unit lot short subdivisions of at least six unit lots. See more information in Commerce's User Guide for Middle Housing Model Ordinances.

Commerce recommends that counties set a maximum of nine on the number of lots, tracts, or parcels to be regulated as unit lot short subdivisions in any urban growth area, provided the county is planning under RCW 36.70A.040 and has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW.

To allow ten or more unit lots, jurisdictions have the option to adopt unit lot subdivision within their standard "major" or "long" subdivision procedures. This could bring the same benefits of ULS to larger housing developments.

Utilities

Utility purveyors (cities, special districts, and private purveyors) should have flexible requirements for the design of water, sewer, electrical, and other connections to buildings in unit lot subdivisions. There are advantages and disadvantages to centralized and shared lateral connections and metering, and there may be different ownership arrangements, cost implications, and other reasons that require a variety of approaches. When developing ULS provisions utility purveyors should be consulted for best or preferred practices. These practices may vary if a ULS is proposed for a new development or an existing or older developed lot; regardless, it may be beneficial for ULS provisions to include an administrative option to deviate from the preferred practice. For example, a townhouse developer could have an option to choose between a private master meter maintained by a homeowner's association and having separate meters for each unit. A single-family dwelling with an accessory dwelling unit should have the flexibility to use the ULS provisions without changing the existing utilities.

Permit Application and Approval

Unit lot subdivisions are recommended to follow the same application, review, and approval procedures for a short subdivision or subdivision (depending on the number of lots). Using the same application, review and approval procedures can help make review times comparable to standard short subdivisions or subdivisions and encourage the creation of unit lot subdivisions. Jurisdictions using existing short subdivision or subdivision regulations as a template for ULS should adopt separate criteria for review, such as those provided at the end of this document, or carefully review existing regulations for barriers to ULS applicability to various applicable housing types such as middle housing.

Timing

Commerce recommends allowing a unit lot subdivision to take place for existing lots prior to development, during development, or after development is complete. This can provides flexible options for a range of residential properties. For example, the owner of an existing detached single-family residence could use a unit lot subdivision to sell their backyard to a developer who then builds an accessory dwelling unit or duplex on one unit lot, while the owner retains ownership of the existing residence on another unit lot. In another example, a townhouse development might first be developed as rental housing under single ownership, and later converted to ownership units with each townhouse unit sitting on its own unit lot.

Applications

Additional items to consider requiring for unit lot subdivision applications and with the final plat recording may include:

- Each unit lot is uniquely labeled on the plat (such as Unit Lot A, Unit Lot B, etc.). This numbering may be reflective of the local Postmaster's preference.
- The legal description, parcel number, and/or street address (existing and modified, if applicable) of the original parent lot is provided in addition to legal descriptions for the new unit lots.
- Easements for existing or new utility connections.
- Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or an ownership association for use and maintenance of common areas and features.

Finalizing and Recording

Unit lot subdivisions can follow the same approval procedures (including the same decision-maker) and recording procedures as subdivisions. Any access easements, joint use and maintenance agreements, and CC&Rs should be recorded with the county auditor. Notes on the face of the plat should be required to identify the development as a unit lot subdivision. Examples of required notes:

- *The title of the plat shall include the phrase "Unit Lot Subdivision"*
- *Approval of the development on each unit lot was granted by the review of the development, as a whole, on the parent lot.*
- *Subsequent platting actions and additions or modifications to structure(s) shall not create a nonconformity of the parent lot.*
- *Unit lots are not separate buildable lots independent of the overall development, and additional development of individual unit lots may be limited as a result of the application of development standards to the parent lot.*

Condominium Ownership

Unit lot subdivision is an alternative to condominium ownership. The primary differences between ULS and condominium creation are described in the following table:

	Unit Lot Subdivision	Condominium
Options for ownership of underlaying land	• Individual • Combination of individual and common interest	• Common interest
Options for management of common area(s)	• HOA • Other formal common agreement • No formal agreement (not recommended)	• HOA
Allows separate ownership of stacked unit(s)	No	Yes
Allows separate ownership of ADUs	Yes	Yes
Warranty	Not required	Four year-implied warranty of quality
Processing	Short Plat through jurisdiction	State process with notice to County Auditor May require jurisdiction process*
Typical Processing Steps	City/county platting process: • Application • Notice, if applicable • Preliminary approval • Final approval • Recording	• Check with local jurisdiction for any processing requirements • Housing code inspection • Repairs • Issuance of a Notice of Condominium Conversion • Public offering statement • Selling units to individual buyers • Filing a declaration with the local government

* Some jurisdictions require condominium conversions to be reviewed through a local process, such as a binding site plan. The application and review processes should be clearly defined in a jurisdiction's code.

A condominium and unit lot subdivision can also be combined in cases where a unit lot has stacked units and separate unit ownership is desired. Additionally, jurisdictions may "not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an Accessory Dwelling Units" (ADUs).[1]

[1] RCW 36.70A.681(1)(k)

Resources

Code Examples

The below list links to adopted unit lot subdivision standards from Washington cities. The list is ordered roughly from least complex codes to more complex codes.

- Shoreline Municipal Code 20.30.410(B)(4) (adopted 2020) – ULS may be used for "mixed single-family attached" development.
- Seattle Municipal Code 23.24.045 for short subdivision and 23.22.062 for subdivisions (adopted 2020) – ULS may be used for detached single-family residences, townhouses, rowhouses, and cottage housing.
- Spokane Municipal Code 17G.080.065 (adopted 2023) – ULS may be used in any development with two or more dwelling units (including accessory dwelling units) and where the parent lot is two acres or less. Accessory dwelling units have special standards for utilities and recording. The general recording requirements provide more plat note requirements than most jurisdictions.
- Snohomish County Code 30.41B.205 for short subdivision and 30.41A.205 for subdivision (adopted 2017) – ULS may be used for townhouses, mixed townhouses, and cottage housing. Two separate codes depending on the number of unit lots proposed.
- Wenatchee Municipal Code 11.32.080 (adopted 2023) – ULS may be used for duplexes, courtyard housing, townhouses, and cottage housing. There are clear references to short subdivisions and major subdivisions depending on the number of unit lots proposed. There are special requirements for final approval.
- Snohomish Municipal Code 14.215.125 (adopted 2024) – ULS may be used for detached single-family residences, accessory dwelling units, duplexes, townhouses, cottage housing, and manufactured home parks. There are specific requirements for minimum open space and utility connections.
- Everett Municipal Code 19.27 (adopted 2020) – ULS may be used for detached single-family residences, cottage housing, and townhouses. Provides special procedures for existing condominium buildings to subdivide into unit lots. Common areas may be owned in common or by a homeowner's association.

Informational Resources

Example of unit lot subdivision information provided by Washington cities:

- Tacoma – Unit Lot Subdivision Summary Sheet
- Snohomish – Unit Lot Subdivision Handout
- Seattle – Land Use / Master User Permit – Plat (see Tip 213A)
- Bellevue – Unit Lot Subdivision amendment information page

Examples of unit lot subdivision short plats for a variety of cities and housing types are available at this resource link.

Model Code

This model code is from Commerce's User Guide for Middle Housing Model Ordinances. It provides an example of basic provisions for unit lot subdivisions. Modifications of this model code will be needed depending on each jurisdiction's existing code organization, land division regulations, and desired approach to unit lot subdivisions.

X. *Unit lot subdivisions. A lot may be divided into separately owned unit lots and common areas, provided the following standards are met.*

1. *Process. Unit lot subdivisions shall follow the application, review, and approval procedures for a short subdivision or subdivision, depending on the number of lots.*
2. *Applicability. A lot to be developed with middle housing or multiple detached single-family residences, in which no dwelling units are stacked on another dwelling unit or other use, may be subdivided into individual unit lots as provided herein.*
3. *Development as a whole on the parent lot, rather than individual unit lots, shall comply with applicable design and development standards.*
4. *Subsequent platting actions and additions or modifications to structure(s) may not create or increase any nonconformity of the parent lot.*
5. *Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or the homeowners' association shall be executed for use and maintenance of common garage, parking, and vehicle access areas; bike parking; solid waste collection areas; underground utilities; common open space; shared interior walls; exterior building facades and roofs; and other similar features shall be recorded with the county auditor.*
6. *Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots.*
7. *Notes shall be placed on the face of the plat or short plat as recorded with the county auditor to state the following:*
    a. *The title of the plat shall include the phrase "Unit Lot Subdivision."*
    b. *Approval of the development on each unit lot was granted by the review of the development, as a whole, on the parent lot.*
8. *Effect of Preliminary Approval. Preliminary approval constitutes authorization for the applicant to develop the required facilities and improvements, upon review and approval of construction drawings by the public works department. All development shall be subject to any conditions imposed by the city on the preliminary approval.*
9. *Revision and Expiration. Unit lot subdivisions follow the revision and expiration procedures for a short subdivision.*
10. *Definitions.*
    a. *"Lot, parent" means a lot which is subdivided into unit lots through the unit lot subdivision process.*
    b. *"Lot, unit" means a lot created from a parent lot and approved through the unit lot subdivision process.*
    c. *"Unit lot subdivision" means the division of a parent lot into two or more unit lots within a development and approved through the unit lot subdivision process.*