



STAFF REPORT

DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: City Council

FROM: Erika Shook, AICP Community Development Director

DATE: For the July 13, 2015 City Council Meeting

SUBJECT: Critical Areas Regulations Amendment, EMC 19.02.020, EMC 19.02.030, EMC 19.02.060, EMC 19.02.190, EMC 19.02.230, EMC 19.02.260, Appendix A – Wetland Rating System and Appendix D -Definitions.

I. PROPOSED LEGISLATION:

Proposed Ordinance No. 2572 includes section modifications to the text of EMC 19.02.020, 19.02.030, 19.02.060, 19.02.190, 19.02.230, 19.02.260, Appendix A and Appendix D, located within the Critical Areas Regulations chapter. These amendments will bring Enumclaw's Critical Areas Regulations into compliance with the FEMA National Flood Insurance Program (NFIP) and will also update the City's Critical Areas Ordinance (CAO) as necessary to satisfy the periodic update requirements of the Growth Management Act.

II. BACKGROUND INFORMATION:

Chapter 19.02 Critical Areas Regulations, Ordinance No. 2293, was adopted on November 28, 2005 and has not been updated or amended since that time. The amendment at the time adopted a new chapter that included both the floodplain requirements and the critical area requirements.

On September 19, 2013 the Federal Emergency Management Agency conducted a Community Assistance Visit related to the City's participation in the National Flood Insurance Program (NFIP). As part of this visit, FEMA found that the City's ordinances do not meet the minimum standards under the NFIP, and require amendment to bring them into compliance with the NFIP. Compliance with NFIP requirements is necessary in order to maintain flood insurance premiums within the City at current rates. Currently there are 12 flood insurance policies within Enumclaw municipal limits. If Enumclaw remains out of compliance with FEMA's standards, the rates for these policies will increase.

In July 2014, the City amended the critical area ordinance to reference the correct versions of the Flood Insurance Rate Maps (FIRM) via Ordinance No. 2544, which was the most critical compliance issue.

In January 2015, the City received guidance from the Washington State Department of Ecology regarding the required update of Critical Area Ordinances due June 30, 2015. Since the NFIP floodplain requirements are within the Critical Areas Ordinance, it makes sense for the City to address both the FEMA NFIP compliance issues and the critical areas update requirement with one code amendment.

III. DESCRIPTION OF PROPOSED CHANGES:

This language needs to be adopted in order to be compliant with the minimum requirements established for participation in the National Flood Insurance Program (NFIP) and to update the Critical Areas Ordinance consistent with the requirements of the Growth Management Act and other state and federal laws.

EMC 19.02.020 (Applicability, Regulated Activities, and Exempt Activities) Proposed amendments to this section clarify that a permit is required for development within areas of special flood hazard (100 year floodplain) and that development within the Area of Special Flood Hazard area is not an exempt activity. The amendment also addresses requirements for emergency repair and construction, ensuring that a permit is obtained for emergency work, even if after the fact. The City has no obligation to ensure that applicable state, regional or federal permits have been obtained, thus a statement that project proponents are still be responsible for regional, state or federal permits is added to make it clear that the responsibility for obtaining these permits rests with the project proponent.

EMC 19.02.030 (Exceptions) This section of code is amended disallow the use of exceptions for development within areas of special flood hazard. The NFIP does not allow exceptions from the flood development standards. Further, there is a requirement that subdivisions with partially completed infrastructure cannot adversely impact critical area habitat or endangered species.

EMC 19.02.060 (Frequently Flooded Areas) The code is amended in this section to bring the review process for flood development permits into compliance with the NFIP requirements, specifically the requirement to obtain elevation certificates, maintain all flood permit records, interpretation of Flood Insurance Rate Map (FIRM) boundaries, requirement for a habitat assessment. The Habitat assessment is a requirement for compliance with the NFIP and the Endangered Species Act.

EMC 19.02.190 (Critical Area Development Standards) All references to Special Flood Hazard Areas are changed to Areas of Special Flood Hazard to be consistent with the NFIP definition. The section addressing the procedure that administrator must use when flood data is not available has been revised, a new subsection is added to regulate recreational vehicles, and the Floodway section is revised, all necessary to comply with NFIP requirements.

EMC 19.02.230 (Mitigation Sequencing) is amended to reference the watershed approach to mitigation siting, the credit-debit method of compensation and the associated Washington Department of Ecology reference publications. The credit-debit method is a tool developed for calculating when a proposed wetland mitigation project adequately replaces the functions and values lost when wetlands are impacted. The tool is designed to provide guidance for both regulators and applicants during two stages of the mitigation process: 1) estimating the functions and values lost when a wetland is altered, and 2) estimating the gain in functions and values that result from the mitigation.

EMC 19.02.260 (Alternative Mitigation Strategies) is amended to bring the In-Lieu Fee and Wetland Banking mitigation alternatives into compliance with the most recent state and federal laws related to these programs. The changes to this language will also allow the City to participate via an interlocal agreement in King County’s In-Lieu Fee Program, if it so chooses. References to applicable state and federal laws are included. The Fee-in-lieu mitigation in section C has been deleted as it is addressed in section A, and the section is no longer consistent with state and federal requirements.

Appendix A (Wetland rating criteria) is amended to be consistent with the most current Washington State Wetland Rating System for Western Washington, specifically the description of the wetland categories and the rating system are updated to match the descriptions and ratings in the publication. The scale of the scoring system for rating wetlands has changed, and this is reflected in the amendments.

Tables for converting category scores

2004	Western WA	2014
≥ 70	Category I	23-27
51-69	Category II	20-22
30-50	Category III	16-19
<30	Category IV	9-15

Appendix D (Definitions) are amended to be consistent with the definitions required by the National Flood Insurance Program.

IV. PUBLIC REVIEW PROCESS

The City published notice of the Planning Commission public hearing on May 13, 2015. Notice of the proposed amendments was sent to the Washington State Department of Commerce and the Department of Ecology on May 14, 2015. A SEPA determination and City Council public hearing will be required prior to adoption.

V. RECOMMENDATION:

The Community Development Department recommends approval of the proposed code amendments.