

**CITY OF MONROE
ORDINANCE NO. 022/2017**

AN ORDINANCE OF THE CITY OF MONROE,
WASHINGTON, UPDATING CRITICAL AREAS
REGULATIONS BY AMENDING SECTIONS 20.05.020, 030,
050, 060, 070, AND 080 OF THE MONROE MUNICIPAL
CODE TITLE 20 RELATED TO WETLAND DELINEATION,
EVALUATION, PROTECTION, AND MITIGATION; OTHER
MINOR AMENDMENTS TO PROVIDE CLARIFICATION
AND CORRECT ERRORS; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE
DATE

WHEREAS, pursuant to RCW 36.70A.130(1)(a), the City is required to periodically review and, if needed, revise its development regulations, including its critical areas regulations, to ensure its regulations comply with the goals and requirements of the Growth Management Act; and

WHEREAS, Chapter 20.05 of the Monroe Municipal Code (MMC) contains the City's development regulations pertaining to the protection of critical areas; and

WHEREAS, the proposed amendments are supported by best available science and the Department of Ecology's guidance found in publication #10-06-002, titled "Wetlands and CAO Updates: Guidance for Small Cities;" and

WHEREAS, the environmental impacts of the amendments to MMC Chapter 20.05, Critical Areas, resulted in the issuance of a Determination of Non-Significance (DNS) on August 23, 2016, with no appeals filed; and

WHEREAS, on August 22, September 12, and November 14, 2016, the Monroe Planning Commission held study sessions to discuss the proposed amendments to MMC Chapter 20.05, Critical Areas; and

WHEREAS, the City issued a Notice of Public Hearing on January 3, 2017, which was at least fifteen days prior to the date of the public hearing pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 21.20.040(B) requires that amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20) require Planning Commission review and recommendation; and

WHEREAS, the Monroe Planning Commission held a duly noticed public hearing on January 23, 2017, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the January 23, 2017, public hearing, the Planning Commission voted unanimously to recommend approval of the proposed amendment; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on October 3, 2017, and second reading on March 6, 2018, to discuss the proposed critical areas regulations amendments at duly noticed public meetings; and

WHEREAS, pursuant to RCW 36.70A.106, the City has provided the Washington State Department of Commerce with a 60-day notice of intent to adopt the amendments to its development regulations; and

WHEREAS, the City Council has considered the entire public record, the Best Available Science, and the Planning Commission's recommendation, modifying the recommendation as needed; and

WHEREAS, the City Council has determined that the proposed amendments are necessary to ensure compliance with the goals and requirements of the Growth Management Act (RCW 36.70A);

WHEREAS, the City Council has determined that the proposed amendments are in accord with the Comprehensive Plan.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE DO ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council hereby adopts the above recitals, the content of Agenda Bill Nos. 17-148 and AB18-065, and the adopted Planning Commission Findings and Recommendation, attached hereto as Exhibit A, as legislative findings in support of this ordinance.

Section 2. Amendment of MMC 20.05.020. Monroe Municipal Code (MMC) Section 20.05.020, Environment – Critical Areas – Purpose, is hereby amended as follows:

20.05.020 Purpose.

The purpose of this chapter is to:

- A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- B. Preserve and protect critical areas as identified by the Washington State Growth Management Act by regulating development within and adjacent to them;
- C. Mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;

D. Prevent adverse cumulative impacts to wetlands, streams, shoreline environments, and fish and wildlife habitat;

E. Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soils subsidence or steep slope failure; [AND]

F. Implement the goals, policies, guidelines and requirements of the city of Monroe comprehensive plan and the Washington State Growth Management Act[-]; and

G. Establish review procedures for development proposals in and adjacent to wetlands.

Section 3. Adoption of MMC 20.05.025. Monroe Municipal Code (MMC) Section 20.05.025, Environment – Critical Areas – Applicability of other regulations, is hereby adopted as follows:

20.05.025 Applicability of other regulations.

Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

Section 4. Amendment of MMC 20.05.030. Monroe Municipal Code (MMC) Section 20.05.030, Environment – Critical Areas - Definitions, is hereby amended to provide for changes to the definitions of “wetland edge” and “wetland rating system” as follows:

Wetland Edge. Delineation of the wetland edge shall be based on the [~~WASHINGTON STATE WETLAND IDENTIFICATION AND DELINEATION MANUAL, DEPARTMENT OF ECOLOGY, 1997, AND PUBLICATION 96-94~~]approved federal wetland delineation manual and applicable regional supplements or as revised.

Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington, Department of Ecology, [~~1997, PUBLICATION 3-74~~]2014 Update, Publication #14-06-029 or as revised. **The following wetlands categories are borrowed from the above-referenced Wetlands Rating System; provided, that in the event of an irreconcilable conflict between the following definitions of wetland categories and the definitions set forth in the Wetlands Rating System, the definition set forth in the Wetlands Rating System shall control to the extent of such conflict.**

~~[1. CATEGORY I. CATEGORY I WETLANDS ARE THOSE THAT MEET THE FOLLOWING CRITERIA:~~

- ~~A. DOCUMENTED HABITAT FOR FEDERAL OR STATE LISTED ENDANGERED OR THREATENED FISH, ANIMAL OR PLANT SPECIES; OR~~
- ~~B. HIGH QUALITY NATIVE WETLAND COMMUNITIES, INCLUDING DOCUMENTED CATEGORY I OR II QUALITY NATURAL HERITAGE WETLAND SITES AND SITES WHICH QUALIFY AS CATEGORY I OR II QUALITY NATURAL HERITAGE WETLANDS; OR~~
- ~~C. HIGH QUALITY, REGIONALLY RARE WETLAND COMMUNITIES WITH IRREPLACEABLE ECOLOGICAL FUNCTIONS, INCLUDING SPHAGNUM BOGS AND FENS, ESTUARINE WETLANDS, OR MATURE FORESTED SWAMPS; OR~~
- ~~D. WETLANDS OF EXCEPTIONAL LOCAL SIGNIFICANCE.~~
- ~~2. CATEGORY II. CATEGORY II WETLANDS ARE THOSE NOT DEFINED AS CATEGORY I WETLANDS AND THAT MEET THE FOLLOWING CRITERIA:~~
 - ~~A. DOCUMENTED HABITATS FOR STATE LISTED SENSITIVE PLANT, FISH, OR ANIMAL SPECIES; OR~~
 - ~~B. WETLANDS THAT CONTAIN PLANT, FISH, OR ANIMAL SPECIES LISTED AS A PRIORITY SPECIES BY THE STATE DEPARTMENT OF FISH AND WILDLIFE; OR~~
 - ~~C. WETLAND TYPES WITH SIGNIFICANT FUNCTIONS THAT MAY NOT BE ADEQUATELY REPLICATED THROUGH CREATION OR RESTORATION; OR~~
 - ~~D. WETLANDS POSSESSING SIGNIFICANT HABITAT VALUE BASED ON A SCORE OF TWENTY TWO OR MORE POINTS IN THE HABITAT RATING SYSTEM; OR~~
 - ~~E. DOCUMENTED WETLANDS OF LOCAL SIGNIFICANCE.~~
- ~~3. CATEGORY III. CATEGORY III WETLANDS ARE THOSE THAT DO NOT SATISFY CATEGORY I, II, OR IV CRITERIA, AND WITH A HABITAT RATING OF TWENTY ONE POINTS OR LESS.~~
- ~~4. CATEGORY IV. CATEGORY IV WETLANDS ARE THOSE THAT MEET THE FOLLOWING CRITERIA:~~
 - ~~A. HYDROLOGICALLY ISOLATED WETLANDS THAT ARE LESS THAN OR EQUAL TO ONE ACRE IN SIZE, HAVE ONLY ONE WETLAND CLASS, AND ARE DOMINATED (GREATER THAN EIGHTY PERCENT AREAL COVER) BY A SINGLE NON-NATIVE PLANT SPECIES (MONOTYPIC VEGETATION); OR~~
 - ~~B. HYDROLOGICALLY ISOLATED WETLANDS THAT ARE LESS THAN TWO ACRES IN SIZE, AND HAVE ONLY ONE WETLAND CLASS AND GREATER THAN NINETY PERCENT AREAL COVER OF NONNATIVE PLANT SPECIES.]~~

1. Category I. Category I wetlands are:

- a. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;**
- b. Bogs;**
- c. Mature and old-growth forested wetlands larger than 1 acre; or**
- d. Wetlands that perform many functions well (scoring 23 points or more).**

These wetlands represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, and provide a high level of functions.

2. Category II. Category II wetlands have a moderately high level of functions (scoring between 20 and 22 points).

3. Category III. Category III wetlands have a moderate level of functions (scoring between 16 and 19 points) and can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Section 5. Amendment of MMC 20.05.050. Monroe Municipal Code (MMC) Section 20.05.050, Environment – Critical Areas – Applicability, exemptions, and exception, is hereby amended as follows:

20.05.050 Applicability, exemptions, ~~[AND]~~exceptions, and allowed uses.

A. Applicability.

1. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns or leases land within the city of Monroe. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purpose and requirements of this chapter.

2. The city of Monroe shall not approve any development proposal 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 assuring compliance with the requirements of this chapter.

- a. Development proposals include proposals that require any of the following:
- b. Building permit;
- c. Grading permit;

- d. Shoreline substantial development permit;
- e. Shoreline conditional use permit;
- f. Shoreline variance;
- g. Right-of-way disturbance permit;
- h. Conditional use permit;
- i. Variance permit;
- j. Special use permit;
- k. Planned residential development;
- l. Subdivision;
- m. Short subdivision;
- n. Binding site plan;
- o. Accessory dwelling unit;

or any subsequently adopted permits or required approvals not expressly exempted from these regulations.

3. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

B. Exemptions. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are consistent with the provisions of other local, state, and federal laws and requirements:

1. Development and activities occurring in all isolated Category IV wetlands less than 4,000 square feet that:

- a. Are not associated with riparian areas or their buffers;**
- b. Are not associated with shorelines of the state or their associated buffers;**
- c. Are not part of a wetland mosaic;**
- d. Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western**

Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology); and

e. Do not contain a Priority Habitat or a Priority Area¹ for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

Development and activities occurring in wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

3[4]. Emergency activities that threaten public health, safety, welfare, or 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.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the approved critical area report and mitigation plan.

4[2]. Single-family residential building permits are exempt from the requirements of this chapter when the development proposal involves:

a. Structural modifications of addition to or replacement of an existing residential structure or construction of a new residential structure where construction and associated disturbance is clearly equal to or greater than two hundred ten feet from the nearest critical area; or

b. Structural modification of, addition to, or replacement of an existing residential structure lawfully established prior to the effective date of the ordinance codified in this title that does not meet the building setback or critical area buffer requirements may be approved only if the modification, addition, replacement or related activity **is located away from the critical area and** does not increase the existing footprint within the critical area buffer or building setback by more than one thousand square feet.

5[3]. Utilities.

a. Operation, maintenance or repair of existing structures, infrastructure improvements, existing utilities, public or private roads, dikes, levees, or drainage systems, including routine vegetation management activities when performed in accordance with approved best management practices, if the activity does not increase risk to life or property as a result of the proposed operation, maintenance or repair.

b. 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 storm water, subject to the following:

- i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
- ii. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

c. Minor Utility Projects. Utility projects which have minor or short-term impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the functions and values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water runoff. Such allowed minor utility projects shall meet the following criteria:

- i. There is no practical alternative to the proposed activity with less impacts on critical areas and all attempts have been made to first avoid impacts, minimize impacts, and lastly mitigate unavoidable impacts;
- iii. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility;
- iv. The activity involves disturbance of an area less than seventy-five square feet;
- v. The activity will not reduce the existing functions and values of the affected critical areas; and
- v. Unavoidable impacts will be mitigated pursuant to an approved mitigation plan.

6[4]. Activities and uses that do not require construction permits, in continuous existence since at least November 27, 1990, with no expansion of these activities within the critical area or associated buffer. For the purpose of this subsection, "continuous existence" includes cyclical operations normally associated with horticulture and agricultural activities.

C. Exceptions. The proponent of the activity shall submit a written request for exception from the director that describes the proposed activity and exception that applies. Depending on the exemption requested, the director (for administrative decisions) or hearing examiner (for reasonable use exceptions) shall review the exception requested to verify that it complies with this chapter and approve or deny the exception.[-ALL

~~DECISIONS MADE BY EITHER THE HEARING EXAMINER OR DIRECTOR SHALL BE PUBLISHED IN THE OFFICIAL PAPER. IF THE EXCEPTION IS APPROVED, IT SHALL BE PLACED ON FILE WITH THE COMMUNITY DEVELOPMENT DEPARTMENT.]~~

1. Public Agency or Utility **Exception**. If the application if this chapter would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing pursuant to MMC 21.50.030, [~~HEARING EXAMINER REVIEW AND RECOMMENDATION,~~]the hearing examiner may approve the exception if the hearing examiner finds that:

a. There is no other feasible alternative to the proposed development with less impact on the critical areas, based on the demonstration by the applicant of the following factors:

i. The applicant has considered all possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and

ii. The applicant has considered all available alignments within the range of potential alignments that meet the project purpose and for which operating rights are available.

b. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical areas buffers. Any decision by the hearing examiner is final unless appealed.

2. Reasonable Use Exception. If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of this chapter and the public interest; provided, that the hearing examiner, after a public hearing, finds to the extent consistent with the constitutional rights of the applicant:

a. This chapter would otherwise deny all reasonable use of the property;

b. There is no other reasonable use consistent with the underlying zoning of the property that has less impact on the critical area and/or associated buffer;

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;

d. Any alteration is the minimal necessary to allow for reasonable use of the property;

e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor; and

f. The applicant may only apply for a reasonable use exception under this subsection if the applicant has also applied for a variance pursuant to Chapter 18.96 MMC.

3. Innovative Development Design. An applicant may request approval of an innovative design that addresses buffer treatment in a manner that deviates from the standards for wetland, stream, fish and wildlife habitat conservation area buffers contained in this chapter under the following circumstances:

a. Where the applicant is proposing to redevelop a previously developed site on which existing lawfully established structures or impervious surface encroach into the buffers otherwise required by this chapter for wetlands, streams, or fish and wildlife habitat conservation areas, the director may reduce the required buffer to the boundary or boundaries of the lawfully established existing structures or impervious surface on the project property provided that the director finds that:

i. Within the reduced buffer area, the applicant will use innovative design to improve the condition of the buffer consistent with the standards for the applicable critical area(s) set forth in this chapter;

ii. In addition, the applicant will provide compensatory mitigation (on-site, off-site, or through mitigation banks) that provides functions and values equivalent to those that would have been provided had the project conformed to the standard buffer set forth in this chapter; and

iii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.

b. The applicant shall prepare a critical areas study consistent with MMC 20.05.060 demonstrating the innovative development design complies with the standards in this subsection. All applicants for innovative designs are encouraged to consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies that address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this section.

c. Where an applicant proposes to reduce the standard wetland, stream, fish and wildlife habitat conservation area buffers set forth in this chapter using innovative development design under this section, the other provisions of this chapter, including provisions regarding buffer reductions or modifications, shall not apply.

D. Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report,

except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

1. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.

2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

4. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

5. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

6. Educational and scientific research activities.

7. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

8. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if ALL of the following criteria are met:

a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-4 points; and

b. There will be “no net loss” of functions and values of the wetland; and

c. The wetland does not contain a breeding population of any native amphibian species; and

d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan; and

e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and

f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and

g. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.

9. Sites Subject to Development Agreement. Any proposed fill or alteration of a wetland on a site subject to a development agreement may be approved through a conditional use permit. In addition to the conditional use criteria in Chapter 18.96 MMC, the hearing examiner shall consider the following criteria:

a. Mitigation is provided that locates and/or restores a compensatory wetland area on the same site, and the compensatory wetland area provides a higher level of wetland function than existed prior to the fill or alteration; and

b. Mitigation establishes buffers with dense, native vegetation to protect the wetland functions and values; and

c. Assessment is provided demonstrating hydrology will support the created or reestablished wetland; and

d. Alterations adhere to applicable city, state, and federal requirements and permitting including, but not limited to, US Army Corps of Engineers and the Department of Ecology.

e. A ten year monitoring period is established in accordance with MMC 19.12.070, to ensure mitigation meets the design performance standards established in the approved mitigation plan.

Section 6. Amendment of MMC 20.05.060(D). Monroe Municipal Code (MMC) Section 20.05.060(D), Environment – Critical Areas – Critical areas studies – Additional Wetland Report Requirements, Subsection 1(a), is hereby amended as follows:

1. On the map:

a. The edge of the wetland as flagged and surveyed in the field using the ~~[WASHINGTON STATE WETLAND IDENTIFICATION AND DELINEATION MANUAL]~~ **approved federal wetland delineation manual and applicable regional supplements**, as required by RCW 36.70A.~~[157]~~**175**;

Section 7. Amendment of MMC 20.05.070. Monroe Municipal Code (MMC) Section 20.05.070(I), Environment – Critical Areas – Protection and mitigation measures - Limited Density Transfer – Density Credit of Critical Areas, Subsection (1), is hereby amended as follows:

I. Limited Density Transfer – Density Credit of Critical Areas.

1. An owner of property containing a critical area may be permitted to transfer the density attributed to the critical area to another, not containing a critical area(s) **or its buffer** portion of the same site or property, subject to the limitations of this section.

Section 8. Amendment of MMC 20.05.080. Monroe Municipal Code (MMC) Section 20.05.070(I), Environment – Critical Areas – Wetland development standards, is hereby amended as follows:

A. General Standards. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided by this chapter. The following activities may only be permitted in a wetland or wetland buffer if the applicant can demonstrate that the activity will ~~[NOT DEGRADE]~~ **result in no net loss of** the functions and values of the wetland and other critical areas.

1. Category I Wetlands. Activities and uses shall be prohibited from Category I wetlands, except as provided in the public agency and utility exception, reasonable use exception, and variance sections of this chapter.

2. Category II and III Wetlands. The following standards shall apply to Category II and III wetlands:

a. Water-dependent activities **as provided for under the city's Shoreline Master Program** may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland and other critical areas.

b. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

i. The basic project purpose cannot reasonably be accommodated on another site in the general region and successfully avoid, or result in less adverse impacts on, a wetland or its buffer;

ii. There are no feasible alternative designs of the project as proposed that would avoid, or result in less of an adverse impact on, a wetlands or its buffer, such as a reduction in the size, scope, configuration, or density of the project.

3. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical areas report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objective.

4. Property Access. Any wetland may be altered with the least possible impact and to the minimum extent necessary to gain access to developable property when no other alternative access exists. Alteration proposals shall be subject to city review and shall require compensation pursuant to a mitigation plan (see MMC 20.05.050[~~—~~, APPLICABILITY, EXEMPTIONS, AND EXCEPTIONS]).

5. Storm Water Management. Storm water management facilities are not allowed in wetlands. Storm water management facilities, limited to storm water dispersion outfall and bioswales, may be allowed within the outer twenty-five percent of the buffer of Category III and IV wetlands only; provided, that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions and values of the wetland.

6. Trails. Public and private trails may be allowed within all buffers where it can be demonstrated in a critical areas report that the wetland and wetland buffer functions and values will not be degraded by trail construction or use. Trail planning, construction, and maintenance shall adhere to the following criteria:

a. Trail alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width except as needed to access viewing platforms. Trails may be placed on existing levees or railroad grades within these limits;

b. Trails shall be constructed of pervious materials. The trail surface shall meet all other requirements, including water quality standards set forth in the stormwater manual adopted in MMC15.01.025;

c. Trail alignment shall avoid trees in excess of six inches in diameter of any tree trunk at a height of four and one-half feet above the ground on the upslope side of the tree. **Unavoidable impacts to trees shall be mitigated at a three to one replacement ratio;**

d. Trail construction and maintenance shall follow the U.S. Forest Service Trails Management Handbook (FSH 2309.18, June 1987) and Standard Specifications for Construction of Trails (EM-7720-102, June 1984 or as revised);

e. Access trails to viewing platforms within the wetland may be provided. Trail access and platforms shall be aligned and constructed to minimize disturbance to valuable functions of the wetland or its buffer and still provide enjoyment of the resource;

f. Buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

g. Equestrian trails shall provide measures to assure that runoff from the trail does not directly discharge to the wetland.

7. Utilities. Public and private utility corridors may be allowed within wetland buffers for Category II, III, and IV wetlands when no lesser impacting alternative alignment is feasible, and wetland and wetland buffer functions and values will not be degraded. Utilities, whenever possible, shall be constructed in existing, improved roads, drivable surface or shoulder, subject to compliance with road and maintenance BMPs, or within an existing utility corridor. Otherwise, corridor alignment, construction, restoration and maintenance shall adhere to the following criteria:

a. Corridor alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width, except when crossing a Category IV wetland and its buffer;

b. Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of the wetland and the buffer;

c. Corridors shall be fully revegetated with appropriate native vegetation upon completion of construction; and

d. Utilities requiring maintenance roads shall be prohibited in wetland buffers unless the following criteria are met:

i. There are no lesser impacting alternatives;

ii. Any required maintenance roads shall be no greater than fifteen feet wide. Roads shall closely approximate the location of the utility to minimize disturbances; and

iii. The maintenance road shall be constructed of pervious materials and designed to maintain and protect the hydrologic functions of the wetland and its buffer.

B. Best Available Science. Any approval of alterations of impacts to a wetland or its buffer shall be supported by the best available science.

C. Native Growth Protection Easement/Critical Area Tract. As part of the implementation of approved development applications and alterations, wetlands and their buffers that remain undeveloped pursuant to the critical areas regulations, in accordance with MMC 20.05.070, Protection and mitigation measures, shall be designated as native growth protection easements (NGPE). Any wetland and its associated buffer created as compensation for approved alterations shall also be designated as an NGPE.

When the subject development is a formal subdivision, short subdivision (short plat), or planned residential development (PRD), wetlands and their buffers shall be placed in a critical areas tract instead of an NGPE, as described in MMC 20.05.070, Protection and mitigation measures.

~~D. [MINIMUM BUFFERS. THE FOLLOWING BUFFERS ARE MINIMUM REQUIREMENTS. ALL BUFFERS ARE MEASURED FROM THE WETLAND'S EDGE AS SURVEYED IN THE FIELD:~~

- ~~1. CATEGORY I WETLANDS SHALL HAVE A TWO HUNDRED FOOT (200') UNDISTURBED BUFFER.~~
- ~~2. CATEGORY II WETLANDS SHALL HAVE A ONE HUNDRED AND FIFTY FOOT (150') UNDISTURBED BUFFER.~~
- ~~3. CATEGORY III WETLANDS SHALL HAVE A SEVENTY-FIVE FOOT (100') UNDISTURBED BUFFER.~~
- ~~4. CATEGORY IV WETLANDS SHALL HAVE A FIFTY FOOT (50') UNDISTURBED BUFFER.~~
- ~~5. ANY WETLAND CREATED AS COMPENSATION FOR APPROVED WETLAND ALTERATION SHALL HAVE THE MINIMUM BUFFER REQUIRED FOR THE NEW CLASSIFICATION OF THE CREATED WETLAND.~~
- ~~6. UNINVENTORIED WETLANDS SHALL BE ASSIGNED A RATING BASED ON THE WETLAND REPORT AND FIELD VERIFICATION, AND THE APPROPRIATE BUFFER SHALL APPLY.]~~

Buffer requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

Wetland buffers shall not include areas that are functionally and effectively disconnected from the wetland by a paved road or other substantially developed surface. This includes parking lots, walkways, and lawns that are of sufficient width and characteristic use such that buffer functions are not provided.

1. For wetlands that score five points or more for habitat function, the buffers in Table 20.05.080.1 can be used if both of the following criteria are met:

a. A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>)

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

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 20.05.080.1 may be used with the required measures in Table 20.05.080.2 alone.

b. The measures in Table 20.05.080.2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score three to four habitat points, only the measures in Table 20.05.080.2 are required for the use of Table 20.05.080.1

3. If an applicant chooses not to apply the mitigation measures in Table 20.05.080.2, or is unable to provide a protected corridor where available, then Table 20.05.080.3 must be used.

4. The buffer widths in Tables 20.05.080.1 and 20.05.080.3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 20.05.080.1 Wetland Buffer Requirements for Western Washington if Table 20.05.080.2 is Implemented and Corridor Provided

<u>Wetland Category</u>	<u>Buffer width (in feet) based on habitat score</u>			
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I: Bogs and Wetlands of High Conservation Value</u>		<u>190</u>		<u>225</u>
<u>Category I: Forested</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>

<u>Category II: Based on score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category III (all)</u>	<u>60</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category IV (all)</u>	<u>40</u>			

Table 20.05.080.2 Required measures to minimize impacts to wetlands
(Measures are required if applicable to a specific proposal)

<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u>
<u>Noise</u>	<ul style="list-style-type: none"> • <u>Locate activity that generates noise away from wetland</u> • <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> • <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
<u>Toxic runoff</u>	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150 ft of wetland</u> • <u>Apply integrated pest management</u>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized flow from lawns that directly enters the buffer</u> • <u>Use Low Impact Development techniques (for more information refer to Chapter 15.01 MMC)</u>
<u>Change in water regime</u>	<ul style="list-style-type: none"> • <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> • <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>

**Table 20.05.080.3 Wetland Buffer Requirements for Western Washington
if Table 20.05.080.2 is NOT Implemented or Corridor NOT provided**

<u>Wetland Category</u>	<u>Buffer width (in feet) based on habitat score</u>			
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category I: Bogs and Wetlands of High Conservation Value</u>	<u>250</u>			<u>300</u>
<u>Category I: Forested</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category II: Based on score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category III (all)</u>	<u>80</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category IV (all)</u>	<u>50</u>			

E. Additional Buffers. The city may require increased buffer sizes as necessary to protect wetlands when either the wetland is particularly sensitive to disturbance or the development poses unusual impacts. Examples of circumstances that may require buffers beyond minimum requirements include, but are not limited to:

1. Unclassified uses;
2. The wetland is in a critical drainage basin;
3. The wetland is a critical fish habitat for spawning or rearing as determined by the Washington Department of Fish and Wildlife;
4. The wetland serves an important groundwater recharge area as determined by a groundwater management plan;
5. The wetland acts as habitat for endangered, threatened, rare, sensitive, or monitor species;
6. The land adjacent to the wetland and its associated buffer and included in the development proposal is classified as an erosion hazard area; or
7. A trail or utility corridor in excess of ten percent of the buffer width is proposed for inclusion in the buffer.

~~[F. BUFFER REDUCTION. THE CITY MAY REDUCE UP TO TWENTY-FIVE PERCENT OF THE WETLAND BUFFER REQUIREMENT ONLY IF SUFFICIENT INFORMATION IS AVAILABLE SHOWING:~~

- ~~1. THE APPLICANT HAS DEMONSTRATED THAT MITIGATION SEQUENCING EFFORTS HAVE BEEN APPROPRIATELY UTILIZED: AVOID, MINIMIZE, AND LASTLY MITIGATE;~~
- ~~2. THE PROPOSED BUFFER REDUCTION SHALL BE ACCOMPANIED BY A MITIGATION PLAN THAT INCLUDES ENHANCEMENT OF THE REDUCED BUFFER AREA;~~
- ~~3. THE REDUCTION WILL NOT ADVERSELY AFFECT WATER QUALITY;~~
- ~~4. THE REDUCTION WILL NOT DESTROY, DAMAGE, OR DISRUPT A SIGNIFICANT HABITAT AREA; AND~~
- ~~5. THE REDUCTION IS NECESSARY FOR REASONABLE DEVELOPMENT OF THE SUBJECT PROPERTY.]~~

[G]E. Buffer Averaging. The city will consider the allowance of wetland buffer averaging only when the buffer area width after averaging will not adversely impact the critical area and/or buffer functions and values. At a minimum, any proposed buffer averaging must also meet the following criteria:

1. The buffer area after averaging is no less than that which would be contained within the standard buffer; and
2. The buffer width shall not be reduced by more than twenty-five percent at any one point as a result of the buffer averaging.

[H]G. Additional Wetland Mitigation Requirements. No net loss of wetland functions and values shall occur as a result of the overall project. If a wetland alteration is allowed, then the associated impacts will be considered unavoidable and the following mitigation measures to minimize and reduce wetland impacts shall be required, in addition to the requirements in MMC 20.05.070, Protection and mitigation measures.

1. Restoration/rehabilitation is required when a wetland (or stream) or its buffers has been altered on the site in violation of city regulations prior to development approval and as a consequence its functions and values have been degraded. Restoration is also required when the alteration occurs in violation of city regulations during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.
2. Restoration/rehabilitation is required when a wetland (or stream) or its buffers will be temporarily altered during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.
3. Compensation. The overall aim of compensation is no net loss of wetland and/or buffer functions on a development site. Compensation includes replacement or enhancement of wetlands and/or buffer (stream) depending on the scope of the approved alteration and what is needed to maintain or improve wetland and/or buffer functions. Compensation for approved wetland and/or buffer alterations shall meet the following minimum performance standards and shall occur pursuant to an approved mitigation plan.

4. a. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the state Department of Ecology [GUIDELINES FOR DEVELOPING FRESHWATER WETLAND MITIGATION PLANS AND PROPOSALS, 1994] Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a & b, 2006), as revised.

b. Preference of Mitigation Actions. Mitigation actions that require compensation shall occur in the following order of preference:

- i. Restoring wetlands on upland sites that were formerly wetlands.
- ii. Creating wetlands on disturbed upland sites such as those with vegetation cover consisting primarily of exotic introduced species.
- iii. Enhancing significantly degraded wetlands only after a minimum one-to-one replacement ratio has been met.

c. On-Site and In-Kind. Unless otherwise approved, all wetland impacts shall be compensated for through restoration or creation of replacement wetlands that are in-kind, on-site, and of similar or better wetland category. Mitigation shall be timed prior to or concurrent with the approved alteration and shall have a high probability of success. The following ratios shall apply to wetland restoration and creation for mitigation:

~~II. CATEGORY I ON A SIX TO ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~II. CATEGORY II ON A THREE TO ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~III. CATEGORY III ON A TWO TO ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~IV. CATEGORY IV ON A ONE AND ONE HALF TO ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.]~~

Wetland Mitigation Replacement Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>
<u>I (Bog and Wetlands of High Conservation Value)</u>	<u>Not considered possible</u>	<u>Case by case</u>	<u>Case by case</u>
<u>I (Mature Forested)</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>

<u>I (Based on functions)</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>

d. Off-Site and In-Kind. The city may consider and approve off-site compensation where the applicant can demonstrate that equivalent or greater biological and hydrological functions and values will be achieved. The compensation may include restoration, creation, or enhancement of wetland or streams so long as the project is within the same subdrainage basin. The compensation formulas required in subsection (H)(4)(c) of this section shall apply for off-site compensation as well.

e. Increased Replacement Ratios. The director may increase the ratios under the following circumstances:

- i. Uncertainty exists as to the probable success of the proposed restoration or creation due to an unproven methodology or proponent; or
- ii. A significant period will elapse between impact and replication of wetland functions; or
- iii. The impact was unauthorized.

f. Decreased Replacement Ratios. The city may decrease the ratios required in subsection (H)(4)(c) of this section when all the following criteria are met:

- i. A minimum replacement ratio of one to one will be maintained;
- ii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high rate of success;
- iii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; and
- iv. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

g. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance "Wetland Mitigation in Washington State Parts I and II" (Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the director may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of

Western Washington: Final Report,” (Ecology Publication #10-06-011, Olympia, WA, March 2012), or as revised.

h. Wetland Enhancement as Mitigation.

i. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands only after a one-to-one minimum acreage replacement ratio has been satisfied. Applicants proposing to enhance wetlands must produce a critical areas report that identifies how enhancement will increase the functions and values of the degraded wetland and how this increase will adequately mitigate for the loss of wetland function at the impact site.

ii. At a minimum, enhancement acreage shall be ~~[DOUBLE]~~**four times** the acreage required for creation acreage under subsection (H)(4)(c) of this section. The ratios shall be greater than ~~[DOUBLE]~~**four times** the required acreage when the enhancement proposal would result in minimal gain in the performance of wetland functions currently provided in the wetland.

iii. Mitigation Plans for Alterations to Wetlands and Wetland Buffers. Mitigation plans shall be consistent with the state Department of Ecology [~~GUIDELINES FOR DEVELOPING FRESHWATER WETLAND MITIGATION PLAN AND PROPOSALS, 1994~~]**Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a & b, 2006)**, or as revised. At a minimum, the following components shall be included in a complete mitigation plan:

(A) Baseline Information. Provide existing conditions information for both the impacted critical area and the proposed mitigation site as described in MMC 20.05.060(C), General Critical Area Report Requirements and 20.05.060(D), Additional Wetland Report Requirements.

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

(1) 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 completing site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area; and

(2) A review of the best available science supporting the proposed mitigation.

(C) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the

mitigation project have been successfully attained and whether or not the requirements of this chapter have been met. They may include water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.

(D) Detailed Construction Plan. These are the written specifications and descriptions of mitigation techniques. This plan should include the proposed construction sequencing, grading and excavation details, erosion and sedimentation control features, a native planting plan, and detailed site diagrams and any other drawings appropriate to show construction techniques or anticipated final outcome.

(E) Monitoring and/or Evaluation Program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for **a minimum of five years, ten years when establishing woody vegetation**, or a period necessary to establish that performance standards have been met.

(F) Contingency Plan. This section identifies potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates projected performance standards have not been met.

i. Wetland Mitigation Banks. An alternative to on-site permittee-responsible mitigation involves use of wetland mitigation banks.

i. 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 state rules (Chapter 173-700 WAC);

(B) The city 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 certified bank instrument.

ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

iii. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument.

Section 9. Transmittal to the Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

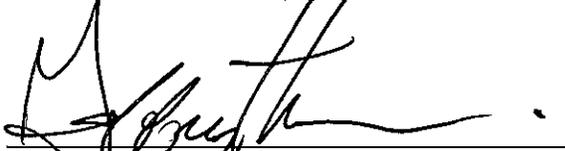
Section 10. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 11. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 6th day of March, 2018.

First Reading: October 3, 2017
Final Reading: March 6, 2018
Published: March 9, 2018
Effective: March 14, 2018

CITY OF MONROE, WASHINGTON:



Geoffrey Thomas, Mayor

(SEAL)

ATTEST:



Elizabeth M. Adkisson, MMC, City Clerk

APPROVED AS TO FORM:



J. Zachary Lell, City Attorney



**City of Monroe
Findings of Fact and Conclusions of Law
Staff Report and Recommendation**

A. GENERAL APPLICATION INFORMATION

File Number(s):	CA2016-03 (associated with SEPA2016-12)
Project Summary:	Proposed amendments to update the Critical Areas regulations in Chapter 20.05 of the Monroe Municipal Code (MMC) related to wetland delineation, evaluation, protection, and mitigation.
Applicant:	City of Monroe
Location:	The code amendments do not apply to a specific property or properties but rather to the entire city limits of the City of Monroe. The City of Monroe is approximately 14 miles east of the City of Everett on US Route 2 and 22 miles north of the City of Seattle on State Route 522.
Public Hearing Date:	Monday, July 24, 2017 at 7:00 PM, continued to August 14, 2017. Monroe City Hall Council Chambers 806 West Main Street Monroe, WA 98272
Staff Contact:	Ben Swanson, Community Development Director City of Monroe 806 West Main Street Monroe, WA 98272 (360) 863-4544 bswanson@monroewa.gov

B. BACKGROUND AND DESCRIPTION OF PROPOSAL

Planning Commission held a public hearing on July 24, 2017, which was continued to August 14, 2017, where they recommended amending Chapter 20.05 – Critical Areas of the Monroe Municipal Code (MMC) to comply with best available science and guidance documents from the Washington State Department of Ecology (DOE).

The amendments to Chapter 20.05 MMC proposes to modify existing critical areas regulations, specifically focusing on revising the wetland provisions in MMC 20.05 (Attachment 1). The amendments incorporate best available science and guidance from the DOE to modify code sections specific to wetlands and wetland mitigation. Staff worked with DOE to increase wetland protections within the City and to ensure that the proposed

regulations are supported by Best Available Science (BAS). Review comments on a draft of the proposed ordinance were sent to the City from the DOE on November 30, 2015. Changes were made to the draft ordinance, as directed by the DOE, which include incorporating the DOE recommended wetland buffers and eliminating the wetland buffer reduction allowance. In a June 22, 2017 email from Doug Gresham at DOE, he confirmed the proposed changes to Chapter 20.05 MMC now comply with BAS.

C. REVIEW PROCESS

1. Overview

MMC section 21.20.040(B) requires that the Planning Commission shall review and make recommendations on the following applications and subjects:

Amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20).

As the City of Monroe's Critical Areas provisions are included in MMC Chapter 20.05, which is part of Title 20, "Environment," a Planning Commission public hearing and recommendation to the City Council is required. Planning Commission briefings on the proposed code amendments were held on August 22, 2016, September 12, 2016, November 14, 2016 and July 10, 2017. Due to substantial changes to the draft language after the public hearing on January 23, 2017, a new public hearing is required. The required public hearing in front of the Planning Commission was held on July 24, 2017, where the hearing was continued to August 14, 2017.

Following the close of the public hearing, the Planning Commission will forward a recommendation to the City Council. The City Council will hold a first reading to consider the Commission's recommendation no earlier than August 14, 2017. Subsequent to completion of the second reading of the ordinance in front of the Council, the Council may elect to either accept or reject the Planning's Commission's recommendation. The Council's decision is the City's final action on the proposed code amendments. The decision may be appealed to the Growth Management Hearings Board.

2. Public Notification and Comments

- a. The proposed amendments were transmitted to the Washington State Department of Commerce for state agency review in accordance with RCW 36.70A.106 on August 18, 2016. Expedited review (30 days rather than 60 days) was requested. On September 6, 2016, the Department of Commerce denied expedited review of the proposed amendments, as the DOE indicated that they would be commenting on the proposal. Since the expedited review was denied, the proposal was subject to a standard 60 day review by the state. The state review deadline was October 18, 2016.

DOE submitted comments stating the proposed wetland buffers and the allowance for wetland buffer reductions was not consistent with best available science. City staff working with DOE and addressed the best available science by incorporating the DOE recommended wetland buffers and eliminating the wetland buffer reduction allowance. City staff did not address the DOE stream

classification comment as this is not a best available science issue. After review of the attached ordinance (Attachment 1), DOE notified the City in a June 22, 2017, email (Attachment 3), that all comments from the September 6, 2016, letter (Attachment 2) were satisfied.

- b. Notice of Public Hearing was provided in accordance with MMC 21.40.020, and published in the Everett Herald on July 11, 2017. No public comments received as of the date this staff report was drafted.

3. State Environmental Policy Act (SEPA) Review

A SEPA Determination of Non-Significance (DNS) was issued on the proposed code amendments on August 23, 2016. The public comment period for the DNS ended at 5:00 PM on September 7, 2016, with a subsequent appeal deadline of 5:00 PM on September 14, 2016. A comment letter from the DOE regarding the issuance of a DNS was received by the City on September 6, 2016. No additional comments were received. As stated in section C.2 of this document, after review of the attached ordinance (Attachment 1), DOE notified the City that all comments from the September 6, 2016, letter (Attachment 2) were satisfied (Attachment 3).

4. Public Hearing

The public hearing on this matter was held in front of the Planning Commission on July 24, 2017, at 7:00 PM, and continued to August 14, 2017, in the City of Monroe Council Chambers. Public hearings shall be conducted according to MMC 21.50.060 and generally observe the following sequence of events:

- a. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- b. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- c. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion. The chair/hearing examiner shall have discretion as to what constitutes germane testimony.
- d. Rebuttal, response, or clarifying statements by the staff and the applicant.
- e. The evidentiary portion of the public hearing shall be closed thereafter and the hearing body shall deliberate on the matter before it.

At the hearing, Tom Ederer of Eastside Masonry Products testified he supported the amendments to Chapter 20.05 MMC, including the deletion of proposed MMC 20.05.050(C)(3)(b). The proposed changes would allow additional flexibility for developers when dealing with critical area buffers.

D. FINDINGS OF FACT

There are no specific criteria listed in the Monroe Municipal Code (MMC) for review of a zoning code amendment. However, MMC 21.50.040 stipulates:

...the Planning Commission shall not recommend approval of a proposed comprehensive plan or development regulation amendment unless the following findings and conclusions are made:

- 1. The proposal is consistent with the comprehensive plan and meets the requirements and intent of this code.*
- 2. The proposal is beneficial to the public health, safety and welfare and is in the public interest.*

The following **Findings of Fact** have been made about the proposed code amendments:

1. Monroe Municipal Code (MMC) Chapter 20.05 contains the City's environmental regulations pertaining to the protection of critical areas.
2. Pursuant to RCW 36.70A.130(1)(a), the City is required to periodically review and, if needed, revise its environmental regulations to ensure its regulations comply with the goals and requirements of the Growth Management Act, including the incorporation of best available science in critical areas regulations.
3. As the City of Monroe's Critical Areas provisions are included in MMC Title 20, "Environment," a Planning Commission public hearing and recommendation to the City Council is required. MMC section 21.20.040(B) requires that the Planning Commission shall review and make recommendations on the following:

Amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20).

4. On August 18, 2016, the proposed amendments were transmitted to the State of Washington Department of Commerce for state agency review in accordance with RCW 36.70A.106.
5. Planning Commission briefings to discuss the proposed code amendments were held on August 22, 2016, September 12, 2016, November 14, 2016 and July 10, 2017.
6. Notice of Public Hearing was provided in accordance with MMC 21.40.020, and published in the Everett Herald on July 11, 2017. No public comments were received.
7. A State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) was issued on the proposed Critical Areas code amendments on August 23, 2016. One comment letter from the DOE was received by the City on September 6, 2016. After addressing these comments, DOE sent a subsequent email, dated June 22, 2017, stating the proposed amendments complies with BAS.

8. The proposed code amendments do not modify the intent of the existing regulations, and therefore, meet the requirements and intent of the MMC. Goal 2 of the City's Comprehensive Plan instructs the City to "Manage Monroe's environment and natural resources, supporting the health, safety, welfare, recreational needs and economic well-being of current and future generations." This is further supported by policies P.012 and P.037. The proposed code amendments will increase the protections incumbent upon wetlands within the City, and therefore, is consistent with the goals and policies comprehensive plan.
9. As stated previously, the proposed amendments make the critical areas regulations concerning wetlands more stringent, which offers a greater measure of protection to critical areas. The proposal is beneficial to the public health, safety and welfare and is in the public interest.

E. CONCLUSIONS OF LAW

Based on the above Findings of Fact, the following **Conclusions of Law** have been made:

1. The City of Monroe is subject to the environmental regulations pertaining to the protection of critical areas found in Chapter 20.05 MMC.
2. the City is complying with RCW 36.70A.130(1)(a) by periodically reviewing and revising its environmental regulations to ensure its regulations comply with the goals and requirements of the Growth Management Act, including the incorporation of best available science in critical areas regulations.
3. MMC section 21.20.040(B) requires that the Planning Commission shall review and make recommendations on the following:

Amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20).

The proposed amendments are to Section 20.05 of the environmental code, and are, therefore, subject to review by the Planning Commission. Planning Commission briefings on the proposed code amendments were held on August 22, 2016, September 12, 2016, November 14, 2016, and July 10, 2017. The Planning Commission held a public hearing on July 24, 2017 and continued to August 14, 2017, to consider the amendments and draft a recommendation to City Council.

4. The proposed amendments were transmitted to the State of Washington Department of Commerce for state agency review on August 18, 2016, in accordance with RCW 36.70A.106.
5. Planning Commission briefings to discuss the proposed code amendments were held on August 22, 2016, September 12, 2016, November 14, 2016, and July 10, 2017.
6. Notice of Public Hearing was provided on July 11, 2017, in accordance with MMC

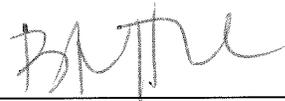
21.40.020.

7. SEPA review was conducted on the proposal and a Determination of Nonsignificance (DNS) was issued on August 23, 2016 under WAC 197-11-340(2). No appeals of the SEPA determination were filed.
8. The proposal is consistent with the comprehensive plan and meets the requirements and intent of this code.
9. The proposal is beneficial to the public health, safety and welfare and is in the public interest.
10. The Washington State Department of Ecology found that the proposed amendment Chapter 20.05 MMC complies with best available science.

G. STAFF RECOMMENDATION

Move that the Planning Commission **ADOPT** the Findings of Fact and Conclusions of Law contained in Attachment 5 to the Planning Commission agenda bill, **AUTHORIZE** the Planning Commission Chair to sign the Findings on behalf of the Commission, and recommend that the Monroe City Council **APPROVE** the proposed amendments to Chapter 20.05 of the Monroe Municipal Code.

Dated this 14th day of August, 2017.



**Bridgette Tuttle, Planning Commission Chair
City of Monroe**

CITY OF MONROE
ORDINANCE NO. ~~0XX~~/2017

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, UPDATING CRITICAL AREAS REGULATIONS BY AMENDING SECTIONS 20.05.020, 20.05.030, 20.05.050, 20.05.060, 20.05.070, AND 20.05.080 OF THE MONROE MUNICIPAL CODE TITLE 20 RELATED TO WETLAND DELINEATION, EVALUATION, PROTECTION, AND MITIGATION; OTHER MINOR AMENDMENTS TO PROVIDE CLARIFICATION AND CORRECT ERRORS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, pursuant to RCW 36.70A.130(1)(a), the City is required to periodically review and, if needed, revise its development regulations, including its critical areas regulations, to ensure its regulations comply with the goals and requirements of the Growth Management Act; and

WHEREAS, Chapter 20.05 of the Monroe Municipal Code (MMC) contains the City's development regulations pertaining to the protection of critical areas; and

WHEREAS, the proposed amendments are supported by best available science and the Department of Ecology's guidance found in publication #10-06-002, titled "Wetlands and CAO Updates: Guidance for Small Cities"; and

WHEREAS, the environmental impacts of the amendments to MMC Chapter 20.05, Critical Areas, resulted in the issuance of a Determination of Non-Significance (DNS) on August 23, 2016, with no appeals filed; and

WHEREAS, on August 22, 2016, September 12, 2016, and November 14, 2016, the Planning Commission held study sessions to discuss the proposed amendments to MMC Chapter 20.05, Critical Areas; and

WHEREAS, the City issued a Notice of Public Hearing on January 3, 2017, which was at least 15 days prior to the date of the public hearing pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 21.20.040(B) requires that amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20) require Planning Commission review and recommendation; and

WHEREAS, the City of Monroe Planning Commission held a duly noticed public hearing on January 23, 2017, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the January 23, 2017 public hearing, the Planning Commission voted ~~unanimously to recommend approval of the proposed amendment~~; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on , 2017 and second reading on , 2017 to discuss the proposed critical areas regulations amendments at duly noticed public meetings; and

WHEREAS, pursuant to RCW 36.70A.106, the City has provided the Washington State Department of Commerce with a 60-day notice of intent to adopt the amendments to its development regulations; and

WHEREAS, the City Council has considered the entire public record, the Best Available Science, and the Planning Commission's recommendation, modifying the recommendation as needed; and

WHEREAS, the City Council has determined that the proposed amendments are necessary to ensure compliance with the goals and requirements of the Growth Management Act (RCW 36.70A);

WHEREAS, the City Council has determined that the proposed amendments are in accord with the Comprehensive Plan; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE DO ORDAIN AS FOLLOWS:

Section 1. Amendment of MMC 20.05.020, Purpose. Section 20.05.020 of the Monroe Municipal Code is hereby amended as follows:

20.05.020 Purpose.

- A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- B. Preserve and protect critical areas as identified by the Washington State Growth Management Act by regulating development within and adjacent to them;
- C. Mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;
- D. Prevent adverse cumulative impacts to wetlands, streams, shoreline environments, and fish and wildlife habitat;
- E. Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soils subsidence or steep slope failure;
- F. Implement the goals, policies, guidelines and requirements of the city of Monroe comprehensive plan and the Washington State Growth Management Act. (Ord. 019/2003);
- G. Establish review procedures for development proposals in and adjacent to wetlands.**

Section 2. Amendment of MMC 20.05.025, Adoption of new section of MMC 20.05.025. Chapter 20.05. MMC is hereby amended by the addition of a new section 20.05.025 to provide in its entirety as follows:

MMC 20.05.025 Applicability of other regulations.

Compliance with the provisions of the Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for

example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

Section 3. Amendment of MMC 20.05.030, Definitions. The definitions for “wetland edge” and “wetland rating system” set forth in Section 20.05.030 of the Monroe Municipal Code are hereby amended as follows:

20.05.030 Definitions.

Wetland Edge. Delineation of the wetland edge shall be based on the ~~[WASHINGTON STATE WETLAND IDENTIFICATION AND DELINEATION MANUAL, DEPARTMENT OF ECOLOGY, 1997, AND PUBLICATION 96-94]~~ approved federal wetland delineation manual and applicable regional supplements or as revised.

Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington, Department of Ecology, ~~[1997, PUBLICATION 3-74]~~ 2014 Update, Publication #14-06-029 or as revised. The following wetlands categories are borrowed from the above-referenced Wetlands Rating System; provided, that in the event of an irreconcilable conflict between the following definitions of wetland categories and the definitions set forth in the Wetlands Rating System, the definition set forth in the Wetlands Rating System shall control to the extent of such conflict.

~~1. CATEGORY I. CATEGORY I WETLANDS ARE THOSE THAT MEET THE FOLLOWING CRITERIA:~~

~~A. DOCUMENTED HABITAT FOR FEDERAL OR STATE LISTED ENDANGERED OR THREATENED FISH, ANIMAL OR PLANT SPECIES; OR~~

~~B. HIGH QUALITY NATIVE WETLAND COMMUNITIES, INCLUDING DOCUMENTED CATEGORY I OR II QUALITY NATURAL HERITAGE WETLAND SITES AND SITES WHICH QUALIFY AS CATEGORY I OR II QUALITY NATURAL HERITAGE WETLANDS; OR~~

~~C. HIGH QUALITY, REGIONALLY RARE WETLAND COMMUNITIES WITH IRREPLACEABLE ECOLOGICAL FUNCTIONS, INCLUDING SPHAGNUM BOGS AND FENS, ESTUARINE WETLANDS, OR MATURE FORESTED SWAMPS; OR~~

~~D. WETLANDS OF EXCEPTIONAL LOCAL SIGNIFICANCE.~~

~~2. CATEGORY II. CATEGORY II WETLANDS ARE THOSE NOT DEFINED AS CATEGORY I WETLANDS AND THAT MEET THE FOLLOWING CRITERIA:~~

~~A. DOCUMENTED HABITATS FOR STATE LISTED SENSITIVE PLANT, FISH, OR ANIMAL SPECIES; OR~~

~~B. WETLANDS THAT CONTAIN PLANT, FISH, OR ANIMAL SPECIES LISTED AS A PRIORITY SPECIES BY THE STATE DEPARTMENT OF FISH AND WILDLIFE; OR~~

~~C. WETLAND TYPES WITH SIGNIFICANT FUNCTIONS THAT MAY NOT BE ADEQUATELY REPLICATED THROUGH CREATION OR RESTORATION; OR~~

~~D. WETLANDS POSSESSING SIGNIFICANT HABITAT VALUE BASED ON A SCORE OF TWENTY-TWO OR MORE POINTS IN THE HABITAT RATING SYSTEM; OR~~

~~E. DOCUMENTED WETLANDS OF LOCAL SIGNIFICANCE.~~

~~3. CATEGORY III. CATEGORY III WETLANDS ARE THOSE THAT DO NOT SATISFY CATEGORY I, II, OR IV CRITERIA, AND WITH A HABITAT RATING OF TWENTY-ONE POINTS OR LESS.~~

~~4. CATEGORY IV. CATEGORY IV WETLANDS ARE THOSE THAT MEET THE FOLLOWING CRITERIA:~~

~~A. HYDROLOGICALLY ISOLATED WETLANDS THAT ARE LESS THAN OR EQUAL TO ONE ACRE IN SIZE, HAVE ONLY ONE WETLAND CLASS, AND ARE DOMINATED (GREATER THAN EIGHTY PERCENT AREAL COVER) BY A SINGLE NON-NATIVE PLANT SPECIES (MONOTYPIC VEGETATION); OR~~

~~B. HYDROLOGICALLY ISOLATED WETLANDS THAT ARE LESS THAN TWO ACRES IN SIZE, AND HAVE ONLY ONE WETLAND CLASS AND GREATER THAN NINETY PERCENT AREAL COVER OF NONNATIVE PLANT SPECIES. (ORD. 004/2006 § 4; ORD. 019/2003)]~~

1. Category I. Category I wetlands are:

a. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;

b. Bogs;

c. Mature and old-growth forested wetlands larger than 1 acre; or

d. Wetlands that perform many functions well (scoring 23 points or more).

These wetlands represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, and provide a high level of functions.

2. Category II. Category II wetlands have a moderately high level of functions (scoring between 20 and 22 points).

3. Category III. Category III wetlands have a moderate level of functions (scoring between 16 and 19 points) and can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Section 4. Amendment of MMC 20.05.050, Applicability, exemptions, and exceptions. Section 20.05.050 of the Monroe Municipal Code is hereby amended as follows:

20.05.050 Applicability, exemptions, [AND]exceptions **and allowed uses.**

A. Applicability.

1. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns or leases land within the city of Monroe. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purpose and requirements of this chapter.

2. The city of Monroe shall not approve any development proposal 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 assuring compliance with the requirements of this chapter.

- a. Development proposals include proposals that require any of the following:
- b. Building permit;
- c. Grading permit;
- d. Shoreline substantial development permit;
- e. Shoreline conditional use permit;
- f. Shoreline variance;
- g. Right-of-way disturbance permit;
- h. Conditional use permit;
- i. Variance permit;
- j. Special use permit;
- k. Planned residential development;
- l. Subdivision;
- m. Short subdivision;

- n. Binding site plan;
- o. Accessory dwelling unit;

or any subsequently adopted permits or required approvals not expressly exempted from these regulations.

3. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

B. Exemptions. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are consistent with the provisions of other local, state, and federal laws and requirements:

1. Development and activities occurring in all isolated Category IV wetlands less than 4,000 square feet that:

a. Are not associated with riparian areas or their buffers;

b. Are not associated with shorelines of the state or their associated buffers;

c. Are not part of a wetland mosaic;

d. Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology); and

e. Do not contain a Priority Habitat or a Priority Area1 for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

2. Development and activates occurring in wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

3. Emergency activities that threaten public health, safety, welfare, or 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.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the approved critical area report and mitigation plan.

4. Single-family residential building permits are exempt from the requirements of this chapter when the development proposal involves:

a. Structural modifications of addition to or replacement of an existing residential structure or construction of a new residential structure where construction and associated disturbance is clearly equal to or greater than two hundred ten feet from the nearest critical area; or

b. Structural modification of, addition to, or replacement of an existing residential structure lawfully established prior to the effective date of the ordinance codified in this title that does not meet the building setback or critical area buffer requirements may be approved only if the modification, addition, replacement or related activity **is located away from the critical area and** does not increase the existing footprint within the critical area buffer or building setback by more than one thousand square feet.

5. Utilities.

a. Operation, maintenance or repair of existing structures, infrastructure improvements, existing utilities, public or private roads, dikes, levees, or drainage systems, including routine vegetation management activities when performed in accordance with approved best management practices, if the activity does not increase risk to life or property as a result of the proposed operation, maintenance or repair.

b. 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 storm water, subject to the following:

i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and

ii. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

c. Minor Utility Projects. Utility projects which have minor or short-term impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the functions and values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water runoff. Such allowed minor utility projects shall meet the following criteria:

i. There is no practical alternative to the proposed activity with less impacts on critical areas and all attempts have been made to first avoid impacts, minimize impacts, and lastly mitigate unavoidable impacts;

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

- iii. The activity involves disturbance of an area less than seventy-five square feet;
- iv. The activity will not reduce the existing functions and values of the affected critical areas; and
- v. Unavoidable impacts will be mitigated pursuant to an approved mitigation plan.

6. Activities and uses that do not require construction permits, in continuous existence since at least November 27, 1990, with no expansion of these activities within the critical area or associated buffer. For the purpose of this subsection, "continuous existence" includes cyclical operations normally associated with horticulture and agricultural activities.

C. Exceptions. The proponent of the activity shall submit a written request for exception from the director that describes the proposed activity and exception that applies. Depending on the exemption requested, the director (for administrative decisions) or hearing examiner (for reasonable use exceptions) shall review the exception requested to verify that it complies with this chapter and approve or deny the exception. ~~[ALL DECISIONS MADE BY EITHER THE HEARING EXAMINER OR DIRECTOR SHALL BE PUBLISHED IN THE OFFICIAL PAPER. IF THE EXCEPTION IS APPROVED, IT SHALL BE PLACED ON FILE WITH THE COMMUNITY DEVELOPMENT DEPARTMENT.]~~

1. Public Agency or Utility **Exception**. If the application if this chapter would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing pursuant to MMC 21.50.030, ~~[HEARING EXAMINER REVIEW AND RECOMMENDATION,]~~ the hearing examiner may approve the exception if the hearing examiner finds that:

- a. There is no other feasible alternative to the proposed development with less impact on the critical areas, based on the demonstration by the applicant of the following factors:
 - i. The applicant has considered all possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and
 - ii. The applicant has considered all available alignments within the range of potential alignments that meet the project purpose and for which operating rights are available.
- b. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical areas buffers. Any decision by the hearing examiner is final unless appealed.

2. Reasonable Use Exception. If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of this chapter and the public interest; provided, that the hearing examiner, after a public hearing, finds to the extent consistent with the constitutional rights of the applicant:

- a. This chapter would otherwise deny all reasonable use of the property;
- b. There is no other reasonable use consistent with the underlying zoning of the property that has less impact on the critical area and/or associated buffer;

- c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;
- d. Any alteration is the minimal necessary to allow for reasonable use of the property;
- e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor; and
- f. The applicant may only apply for a reasonable use exception under this subsection if the applicant has also applied for a variance pursuant to Chapter 18.96 MMC. (Ord. 019/2003)

3. Innovative Development Design. An applicant may request approval of an innovative design that addresses buffer treatment in a manner that deviates from the standards for wetland, stream, fish and wildlife habitat conservation area buffers contained in MMC Chapter 20.05 under the following circumstances:

a. Where the applicant is proposing to redevelop a previously developed site on which existing lawfully established structures or impervious surface encroach into the buffers otherwise required by MMC Chapter 20.05 for wetlands, streams, or fish and wildlife habitat conservation areas, the Director may reduce the required buffer to the boundary or boundaries of the lawfully established existing structures or impervious surface on the project property provided that the Director finds that:

i. Within the reduced buffer area, the applicant will use innovative design to improve the condition of the buffer consistent with the standards for the applicable critical area(s) set forth in this Chapter 20.05 MMC;

ii. In addition, the applicant will provide compensatory mitigation (on-site, off-site, or through mitigation banks) that provides functions and values equivalent to those that would have been provided had the project conformed to the standard buffer set forth in MMC Ch. 20.05; and

iii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.

b. Where the applicant is proposing to develop a site that does not include existing structures or impervious surface that encroach into buffers required by MMC Chapter 20.05 for wetlands, streams, or fish and wildlife habitat conservation areas, the Director may approve a reduction in the required buffer provided that the Director finds that:

i. The proposed innovative design will provide functions and values that meet or exceed the functions and values of the critical area(s) that would be obtained by applying the standard prescriptive measures contained in this chapter; and

ii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.

b. The applicant shall prepare a critical areas study consistent with MMC 20.05.060 demonstrating the innovative development design complies with the standards in this subsection. All applicants for innovative designs are encouraged to consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies that address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this section.

c. Where an applicant proposes to reduce the standard wetland, stream, fish and wildlife habitat conservation area buffers set forth in MCC Chapter 20.05 using innovative development design under this section, the other provisions of MCC Chapter 20.05, including provisions regarding buffer reductions or modifications, shall not apply.

D. Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

1. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.

2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

4. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

5. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

6. Educational and scientific research activities.

7. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

8. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if ALL of the following criteria are met:

a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-4 points, and

b. There will be “no net loss” of functions and values of the wetland, and

c. The wetland does not contain a breeding population of any native amphibian species, and

d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan, and

e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and

f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and

g. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.

9. Sites Subject to Development Agreement. Any proposed fill or alteration of a wetland on a site subject to a development agreement may be approved through a conditional use permit. In addition to the conditional use criteria in Chapter 18.96 MMC, the hearing examiner shall consider the following criteria:

a. Mitigation is provided that locates and/or restores a compensatory wetland area on the same site, and the compensatory wetland area provides a higher level of wetland function than existed prior to the fill or alteration; and

b. Mitigation establishes buffers with dense, native vegetation to protect the wetland functions and values; and

c. Assessment is provided demonstrating hydrology will support the created or reestablished wetland; and

d. Alterations adhere to applicable city, state, and federal requirements and permitting including, but not limited to, US Army Corps of Engineers and the Department of Ecology.

e. A 10 year monitoring period is established in accordance with MMC 19.12.070, to ensure mitigation meets the design performance standards established in the approved mitigation plan.

Section 5. Amendment of MMC 20.05.060, Critical areas studies. Section 20.05.060(D) of the Monroe Municipal Code is hereby amended as follows:

D. Additional Wetland Report Requirements. In addition, for wetlands, reports shall include the following:

1. On the map:

a. The edge of the wetland as flagged and surveyed in the field using the ~~[WASHINGTON STATE WETLAND IDENTIFICATION AND DELINEATION MANUAL]~~ **approved federal wetland delineation manual and applicable regional supplements**, as required by RCW 36.70A. ~~[457]~~ **175**;

b. The edge of the one-hundred-year floodplain, if appropriate;

c. The location of any existing or proposed utility easements, rights-of-way, and trail corridors;

d. The location of any proposed wetland area(s) to be created through mitigation measures; and

e. The location of any proposed wetland alteration or fill.

2. In the report:

a. Description of the wetland by classification and general condition of wetland;

b. Description of vegetation species and community types present in the wetland and surrounding buffer;

c. Description of soil types within the wetland and the surrounding buffer using the USDA Soil Conservation Service soil classification system;

d. Description of hydrologic regime and findings;

e. Description of habitat features present and determination of actual use of the wetland by any endangered, threatened, rare, sensitive, or unique species of plants or wildlife as listed by the federal government or state of Washington;

f. Description of existing wetland and buffer functions and values;

- g. Description of any proposed alteration to the wetland or its buffer including, but not limited to, filling, dredging, modification for storm water detention, clearing, grading, restoring, enhancing, grazing or other physical activities that change the existing vegetation, hydrology, soils or habitat;
- h. If applicable, description of potential impacts to wetland functions and values and description of any proposed mitigation measures; and
- i. Description of local, state, and federal regulations and permit requirements.

Section 6. Amendment of MMC 20.05.070, Protection and mitigation measures.

Section 20.05.070(l) of the Monroe Municipal Code is hereby amended as follows:

I. Limited Density Transfer – Density Credit of Critical Areas.

- 1. An owner of property containing a critical area may be permitted to transfer the density attributed to the critical area to another, not containing a critical area(s) **or its buffer** portion of the same site or property, subject to the limitations of this section.
- 2. Up to one hundred percent of the density that could be achieved on the critical area and buffer portion of the site can be transferred to a portion of the site not containing a critical area, subject to:
 - a. The density limitation of the underlying zoning classification;
 - b. The minimum lot size of the underlying zoning classification may be reduced by thirty percent (or as revised by the planned residential development standards, but not both) in order to accommodate the transfer in densities;
 - c. All other applicable standards established in Chapter 18.10 MMC including but not limited to zoning lot area, lot coverage, and setback requirements shall be met; and
 - d. The area to which density is transferred shall not be constrained by other critical areas regulation. (Ord. 026/2011 § 2 (Exh. 1); Ord. 019/2003)

Section 7. Amendment of MMC 20.05.080, Wetland development standards.

Section 20.05.080 of the Monroe Municipal Code is hereby amended as follows:

20.05.080 Wetland development standards.

A. General Standards. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided by this chapter. The following activities may only be permitted in a wetland or wetland buffer if the applicant can demonstrate that the activity will ~~[NOT DEGRADE]~~ **in no net loss of** the functions and values of the wetland and other critical areas.

- 1. Category I Wetlands. Activities and uses shall be prohibited from Category I wetlands, except as provided in the public agency and utility exception, reasonable use exception, and variance sections of this chapter.

2. Category II and III Wetlands. The following standards shall apply to Category II and III wetlands:

a. Water-dependent activities **as provided for under the City's Shoreline Master Program** may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland and other critical areas.

b. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

i. The basic project purpose cannot reasonably be accommodated on another site in the general region and successfully avoid, or result in less adverse impacts on, a wetland or its buffer;

ii. There are no feasible alternative designs of the project as proposed that would avoid, or result in less of an adverse impact on, a wetlands or its buffer, such as a reduction in the size, scope, configuration, or density of the project.

3. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical areas report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objective.

4. Property Access. Any wetland may be altered with the least possible impact and to the minimum extent necessary to gain access to developable property when no other alternative access exists. Alteration proposals shall be subject to city review and shall require compensation pursuant to a mitigation plan (see MMC 20.05.050 [~~APPLICABILITY, EXEMPTIONS, AND EXCEPTIONS~~]).

5. Storm Water Management. Storm water management facilities are not allowed in wetlands. Storm water management facilities, limited to storm water dispersion outfall and bioswales, may be allowed within the outer twenty-five percent of the buffer of Category III and IV wetlands only; provided, that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions and values of the wetland.

6. Trails. Public and private trails may be allowed within all buffers where it can be demonstrated in a critical areas report that the wetland and wetland buffer functions and values will not be degraded by trail construction or use. Trail planning, construction, and maintenance shall adhere to the following criteria:

a. Trail alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width except as needed to access viewing platforms. Trails may be placed on existing levees or railroad grades within these limits;

b. Trails shall be constructed of pervious materials. The trail surface shall meet all other requirements, including water quality standards set forth in the Washington State

Department of Ecology Storm Water Management Manual for Western Washington, [AUGUST 2001] 2012 or as revised;

c. Trail alignment shall avoid trees in excess of six inches in diameter of any tree trunk at a height of four and one-half feet above the ground on the upslope side of the tree. **Unavoidable impacts to trees shall be mitigated at a 3:1 replacement ratio;**

d. Trail construction and maintenance shall follow the U.S. Forest Service Trails Management Handbook (FSH 2309.18, June 1987) and Standard Specifications for Construction of Trails (EM-7720-102, June 1984 or as revised);

e. Access trails to viewing platforms within the wetland may be provided. Trail access and platforms shall be aligned and constructed to minimize disturbance to valuable functions of the wetland or its buffer and still provide enjoyment of the resource;

f. Buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

g. Equestrian trails shall provide measures to assure that runoff from the trail does not directly discharge to the wetland.

7. Utilities. Public and private utility corridors may be allowed within wetland buffers for Category II, III, and IV wetlands when no lesser impacting alternative alignment is feasible, and wetland and wetland buffer functions and values will not be degraded. Utilities, whenever possible, shall be constructed in existing, improved roads, drivable surface or shoulder, subject to compliance with road and maintenance BMPs, or within an existing utility corridor. Otherwise, corridor alignment, construction, restoration and maintenance shall adhere to the following criteria:

a. Corridor alignment shall follow a path beyond a distance from the wetland edge equal to seventy-five percent of the buffer width, except when crossing a Category IV wetland and its buffer;

b. Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of the wetland and the buffer;

c. Corridors shall be fully revegetated with appropriate native vegetation upon completion of construction; and

d. Utilities requiring maintenance roads shall be prohibited in wetland buffers unless the following criteria are met:

i. There are no lesser impacting alternatives;

ii. Any required maintenance roads shall be no greater than fifteen feet wide. Roads shall closely approximate the location of the utility to minimize disturbances; and

iii. The maintenance road shall be constructed of pervious materials and designed to maintain and protect the hydrologic functions of the wetland and its buffer.

B. Best Available Science. Any approval of alterations of impacts to a wetland or its buffer shall be supported by the best available science.

C. Native Growth Protection Easement/Critical Area Tract. As part of the implementation of approved development applications and alterations, wetlands and their buffers that remain undeveloped pursuant to the critical areas regulations, in accordance with MMC 20.05.070, Protection and mitigation measures, shall be designated as native growth protection easements (NGPE). Any wetland and its associated buffer created as compensation for approved alterations shall also be designated as an NGPE.

When the subject development is a formal subdivision, short subdivision (short plat), or planned residential development (PRD), wetlands and their buffers shall be placed in a critical areas tract instead of an NGPE, as described in MMC 20.05.070, Protection and mitigation measures.

D. Buffer requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

Wetland buffers shall not include areas that are functionally and effectively disconnected from the wetland by a paved road or other substantially developed surface. This includes parking lots, walkways, and lawns that are of sufficient width and characteristic use such that buffer functions are not provided.

1. For wetlands that score 5 points or more for habitat function, the buffers in Table 20.05.080.1 can be used if both of the following criteria are met:

a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>

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

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 20.05.080.1 may be used with the required measures in Table 20.05.080.2 alone.

b. The measures in Table 20.05.080.2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score 3-4 habitat points, only the measures in Table 20.05.080.2 are required for the use of Table 20.05.080.1

3. If an applicant chooses not to apply the mitigation measures in Table 20.05.080.2, or is unable to provide a protected corridor where available, then Table 20.05.080.3 must be used.

4. The buffer widths in Table 20.05.080.1 and 20.05.080.3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 20.05.080.1 Wetland Buffer Requirements for Western Washington if Table 20.05.080.2 is Implemented and Corridor Provided

<u>Wetland Category</u>	Buffer width (in feet) based on habitat score			
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I: Bogs and Wetlands of High Conservation Value</u>	<u>190</u>			<u>225</u>
<u>Category I: Forested</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category II: Based on score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category III (all)</u>	<u>60</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category IV (all)</u>	<u>40</u>			

Table 20.05.080.2 Required measures to minimize impacts to wetlands (Measures are required if applicable to a specific proposal)

<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u>
<u>Noise</u>	<ul style="list-style-type: none"> • <u>Locate activity that generates noise away from wetland</u> • <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> • <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
<u>Toxic runoff</u>	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150 ft of wetland</u> • <u>Apply integrated pest management</u>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized flow from lawns that directly enters the buffer</u> • <u>Use Low Impact Development techniques (for more information refer to Chapter 15.01 MMC)</u>
<u>Change in water regime</u>	<ul style="list-style-type: none"> • <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> • <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>

**Table 20.05.080.3 Wetland Buffer Requirements for Western Washington
if Table 20.05.080.2 is NOT Implemented or Corridor NOT provided**

<u>Wetland Category</u>	<u>Buffer width (in feet) based on habitat score</u>			
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category I: Bogs and Wetlands of High Conservation Value</u>		<u>250</u>		<u>300</u>
<u>Category I:</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>

<u>Forested</u>				
<u>Category II: Based on score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category III (all)</u>	<u>80</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category IV (all)</u>	<u>50</u>			

~~[MINIMUM BUFFERS. THE FOLLOWING BUFFERS ARE MINIMUM REQUIREMENTS. ALL BUFFERS ARE MEASURED FROM THE WETLAND'S EDGE AS SURVEYED IN THE FIELD:~~

- ~~1. CATEGORY I WETLANDS SHALL HAVE A TWO HUNDRED FOOT (200') UNDISTURBED BUFFER.~~
- ~~2. CATEGORY II WETLANDS SHALL HAVE A ONE HUNDRED AND FIFTY FOOT (150') UNDISTURBED BUFFER.~~
- ~~3. CATEGORY III WETLANDS SHALL HAVE A SEVENTY FIVE FOOT (100') UNDISTURBED BUFFER.~~
- ~~4. CATEGORY IV WETLANDS SHALL HAVE A FIFTY FOOT (50') UNDISTURBED BUFFER.~~
- ~~5. ANY WETLAND CREATED AS COMPENSATION FOR APPROVED WETLAND ALTERATION SHALL HAVE THE MINIMUM BUFFER REQUIRED FOR THE NEW CLASSIFICATION OF THE CREATED WETLAND.~~
- ~~6. UNINVENTORIED WETLANDS SHALL BE ASSIGNED A RATING BASED ON THE WETLAND REPORT AND FIELD VERIFICATION, AND THE APPROPRIATE BUFFER SHALL APPLY.]~~

E. Additional Buffers. The city may require increased buffer sizes as necessary to protect wetlands when either the wetland is particularly sensitive to disturbance or the development poses unusual impacts. Examples of circumstances that may require buffers beyond minimum requirements include, but are not limited to:

1. Unclassified uses;
2. The wetland is in a critical drainage basin;
3. The wetland is a critical fish habitat for spawning or rearing as determined by the Washington Department of Fish and Wildlife;
4. The wetland serves an important groundwater recharge area as determined by a groundwater management plan;

5. The wetland acts as habitat for endangered, threatened, rare, sensitive, or monitor species;
6. The land adjacent to the wetland and its associated buffer and included in the development proposal is classified as an erosion hazard area; or
7. A trail or utility corridor in excess of ten percent of the buffer width is proposed for inclusion in the buffer.

~~{F. BUFFER REDUCTION. THE CITY MAY REDUCE UP TO TWENTY-FIVE PERCENT OF THE WETLAND BUFFER REQUIREMENT ONLY IF SUFFICIENT INFORMATION IS AVAILABLE SHOWING:~~

- ~~1. THE APPLICANT HAS DEMONSTRATED THAT MITIGATION SEQUENCING EFFORTS HAVE BEEN APPROPRIATELY UTILIZED: AVOID, MINIMIZE, AND LASTLY MITIGATE;~~
- ~~2. THE PROPOSED BUFFER REDUCTION SHALL BE ACCOMPANIED BY A MITIGATION PLAN THAT INCLUDES ENHANCEMENT OF THE REDUCED BUFFER AREA;~~
- ~~3. THE REDUCTION WILL NOT ADVERSELY AFFECT WATER QUALITY;~~
- ~~4. THE REDUCTION WILL NOT DESTROY, DAMAGE, OR DISRUPT A SIGNIFICANT HABITAT AREA; AND~~
- ~~5. THE REDUCTION IS NECESSARY FOR REASONABLE DEVELOPMENT OF THE SUBJECT PROPERTY.}~~

F. Buffer Averaging. The city will consider the allowance of wetland buffer averaging only when the buffer area width after averaging will not adversely impact the critical area and/or buffer functions and values. At a minimum, any proposed buffer averaging must also meet the following criteria:

1. The buffer area after averaging is no less than that which would be contained within the standard buffer; and
2. The buffer width shall not be reduced by more than twenty-five percent at any one point as a result of the buffer averaging.

G. Additional Wetland Mitigation Requirements. No net loss of wetland functions and values shall occur as a result of the overall project. If a wetland alteration is allowed, then the associated impacts will be considered unavoidable and the following mitigation measures to minimize and reduce wetland impacts shall be required, in addition to the requirements in MMC 20.05.070, Protection and mitigation measures.

1. Restoration/rehabilitation is required when a wetland (or stream) or its buffers has been altered on the site in violation of city regulations prior to development approval and as a consequence its functions and values have been degraded. Restoration is also required when the alteration occurs in violation of city regulations during the construction of an approved

development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

2. Restoration/rehabilitation is required when a wetland (or stream) or its buffers will be temporarily altered during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

3. Compensation. The overall aim of compensation is no net loss of wetland and/or buffer functions on a development site. Compensation includes replacement or enhancement of wetlands and/or buffer (stream) depending on the scope of the approved alteration and what is needed to maintain or improve wetland and/or buffer functions. Compensation for approved wetland and/or buffer alterations shall meet the following minimum performance standards and shall occur pursuant to an approved mitigation plan.

4. a. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the state Department of Ecology [~~GUIDELINES FOR DEVELOPING FRESHWATER WETLAND MITIGATION PLANS AND PROPOSALS, 1994~~] **Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a & b, 2006)**, as revised.

b. Preference of Mitigation Actions. Mitigation actions that require compensation shall occur in the following order of preference:

i. Restoring wetlands on upland sites that were formerly wetlands.

ii. Creating wetlands on disturbed upland sites such as those with vegetation cover consisting primarily of exotic introduced species.

iii. Enhancing significantly degraded wetlands only after a minimum one-to-one replacement ratio has been met.

c. On-Site and In-Kind. Unless otherwise approved, all wetland impacts shall be compensated for through restoration or creation of replacement wetlands that are in-kind, on-site, and of similar or better wetland category. Mitigation shall be timed prior to or concurrent with the approved alteration and shall have a high probability of success. The following ratios shall apply to wetland restoration and creation for mitigation:

~~II. CATEGORY I ON A SIX-TO-ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~II. CATEGORY II ON A THREE-TO-ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~III. CATEGORY III ON A TWO-TO-ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.~~

~~IV. CATEGORY IV ON A ONE-AND-ONE-HALF-TO-ONE AREA BASIS WITH EQUAL OR GREATER FUNCTIONS AND VALUES.]~~

Wetland Mitigation Replacement Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>
<u>I (Bog and Wetlands of High Conservation Value)</u>	<u>Not considered possible</u>	<u>Case by case</u>	<u>Case by case</u>
<u>I (Mature Forested)</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>
<u>I (Based on functions)</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>

d. Off-Site and In-Kind. The city may consider and approve off-site compensation where the applicant can demonstrate that equivalent or greater biological and hydrological functions and values will be achieved. The compensation may include restoration, creation, or enhancement of wetland or streams so long as the project is within the same subdrainage basin. The compensation formulas required in subsection (H)(4)(c) of this section shall apply for off-site compensation as well.

e. Increased Replacement Ratios. The director may increase the ratios under the following circumstances:

- i. Uncertainty exists as to the probable success of the proposed restoration or creation due to an unproven methodology or proponent; or
- ii. A significant period will elapse between impact and replication of wetland functions; or
- iii. The impact was unauthorized.

f. Decreased Replacement Ratios. The city may decrease the ratios required in subsection (H)(4)(c) of this section when all the following criteria are met:

- i. A minimum replacement ratio of one to one will be maintained;
- ii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high rate of success;

- iii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; and
- iv. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

g. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance “Wetland Mitigation in Washington State Parts I and II” (Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the director may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report,” (Ecology Publication #10-06-011, Olympia, WA, March 2012), or as revised).

h. Wetland Enhancement as Mitigation.

i. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands only after a one-to-one minimum acreage replacement ratio has been satisfied. Applicants proposing to enhance wetlands must produce a critical areas report that identifies how enhancement will increase the functions and values of the degraded wetland and how this increase will adequately mitigate for the loss of wetland function at the impact site.

ii. At a minimum, enhancement acreage shall be [~~DOUBLE~~] **four times** the acreage required for creation acreage under subsection (H)(4)(c) of this section. The ratios shall be greater than [~~DOUBLE~~] **four times** the required acreage when the enhancement proposal would result in minimal gain in the performance of wetland functions currently provided in the wetland.

iii. Mitigation Plans for Alterations to Wetlands and Wetland Buffers. Mitigation plans shall be consistent with the state Department of Ecology [~~GUIDELINES FOR DEVELOPING FRESHWATER WETLAND MITIGATION PLAN AND PROPOSALS, 1994~~] **Wetland Mitigation in Washington State, Parts 1 and 2 (Publications #06-06-011a & b, 2006)**, or as revised. At a minimum, the following components shall be included in a complete mitigation plan:

(A) Baseline Information. Provide existing conditions information for both the impacted critical area and the proposed mitigation site as described in MMC 20.05.060(C), General Critical Area Report Requirements and 20.05.060(D), Additional Wetland Report Requirements.

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

(1) 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 completing

site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area; and

(2) A review of the best available science supporting the proposed mitigation.

(C) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met. They may include water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.

(D) Detailed Construction Plan. These are the written specifications and descriptions of mitigation techniques. This plan should include the proposed construction sequencing, grading and excavation details, erosion and sedimentation control features, a native planting plan, and detailed site diagrams and any other drawings appropriate to show construction techniques or anticipated final outcome.

(E) Monitoring and/or Evaluation Program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a minimum of five years, ten years when establishing woody vegetation or a period necessary to establish that performance standards have been met.

(F) Contingency Plan. This section identifies potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates projected performance standards have not been met.

i. Wetland Mitigation Banks. An alternative to on-site permittee-responsible mitigation involves use of wetland mitigation banks.

i. 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 state rules (Chapter 173-700 WAC);

(B) The City 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 certified bank instrument.

ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

iii. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument.

Section 8. Transmittal to the Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

Section 9. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 10. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this _____ day of _____, 2017.

First Reading:
Final Reading/Adoption:
Published:
Effective:

CITY OF MONROE, WASHINGTON:

Geoffrey Thomas, Mayor

(SEAL)

ATTEST:

APPROVED AS TO FORM:

Elizabeth M. Smoot, MMC, City Clerk

J. Zachary Lell, City Attorney



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

September 6, 2016

Shana Restall, Senior Planner
City of Monroe Community Development Department
806 West Main Street
Monroe, WA 98272

RE: Proposed Amendments to Monroe Municipal Code (Chapter 20.05–Critical Areas)
File No.: SEPA2016-12

Dear Ms. Restall:

Thank you for providing the Washington Department of Ecology (Ecology) with an opportunity to comment on proposed amendments to the City of Monroe Municipal Code Chapter 20.05 (Critical Areas). This includes amendments to specific sections of the code (Chapter 20.05.030, 20.05.050, 20.05.060, 20.05.070, and 20.05.080) that mainly pertain to wetlands. The project submittal provided to Ecology included a determination of non-significance and SEPA environmental checklist. We respectfully ask you to consider the following comments during your deliberations and that you enter these comments into the record.

Ecology previously submitted comments on the critical areas ordinance on October 27, 2015, and there have been numerous exchanges by phone and email in the last year regarding this update. In general, these amendments to City of Monroe municipal code are consistent with best available science (BAS) and current Ecology guidance, such as *Wetland Guidance for CAO Updates: Western Washington Version* (Publication No. 16-06-001). This includes updating literature citations to reflect recent publications and adding new sections that clarify current policy guidance.

However, Ecology believes there are still several sections of the critical areas ordinance that will not adequately protect wetland functions in the City. I have summarized our comments in Table 1 below, which specifies which section of the municipal code we are referring to.

If you have any questions or would like to discuss my comments, please give me a call at (425) 649-7199 or send an email to Doug.Gresham@ecy.wa.gov.

Shana Restall
September 6, 2016
Page 2

Sincerely,

A handwritten signature in cursive script that reads "Doug Gresham". The signature is written in black ink and is positioned above the typed name and title.

Doug Gresham, PWS
Wetland Specialist
Shorelands and Environmental Assistance Program

DG:awp

Cc: Paul Anderson, Donna Bunten, Department of Ecology
Lynn Kohn, Department of Commerce

Table 1. Summary of Ecology Comments on City of Monroe Municipal Code Chapter 20.05.

Page	Code Citation	General Topic	Comment
10	20.05.030	Definition of Water Typing System	We recommend adopting the water typing system in WAC 222-16-030 (Type S, Type F, etc.) rather than the current numeric typing system. This will provide consistency between the state system and neighboring jurisdictions.
21	20.05.080.D	Minimum Buffers	The minimum buffer widths required for Category I through III wetlands are not consistent with BAS and the <i>Wetland Guidance for CAO Updates: Western Washington Version</i> . We recommend basing the buffer width on the habitat scores from the wetland rating system. Tables XX.1 and XX.3 in our guidance recommend buffer widths that is based on best available science.
22	20.05.080.F	Buffer Reduction	Allowing a 25% reduction in the wetland buffer width is not consistent with BAS and the <i>Wetland Guidance for CAO Updates: Western Washington Version</i> . This is a high risk approach to wetland protection that we do not recommend.

Leigh Anne Barr

From: Ben Swanson
Sent: Tuesday, July 11, 2017 3:50 PM
To: 'Gresham, Doug (ECY)'
Cc: Bunten, Donna (ECY)
Subject: RE: Monroe - Draft CAO ord

Doug,

It looks great. I will add under proposed MMC 20.05.080(D) - Buffer requirements

D. Buffer requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. Wetland buffers shall not include areas that are functionally and effectively disconnected from the wetland by a paved road or other substantially developed surface. This includes parking lots, walkways, and lawns that are of sufficient width and characteristic use such that buffer functions are not provided.

Thank you for the input,
Ben

Ben Swanson | Community Development Director
City of Monroe
806 West Main Street | Monroe, WA 98272
Phone: (360) 863-4544
bswanson@monroewa.gov | <http://www.monroewa.gov>

From: Gresham, Doug (ECY) [mailto:DGRE461@ECY.WA.GOV]
Sent: Tuesday, July 11, 2017 12:55 PM
To: Ben Swanson <BSwanson@monroewa.gov>
Cc: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Ben,
See what you think of my rewording of this.

Wetland buffers shall not include areas that are functionally and effectively disconnected from the wetland by a paved road or other substantially developed surface. This includes parking lots, walkways, and lawns that are of sufficient width and characteristic use such that buffer functions are not provided.

Doug Gresham, Wetland Specialist
Washington State Department of Ecology
3190 - 160th Ave. SE
Bellevue, WA 98008
Phone: (425) 649-7199
Email: Doug.Gresham@ecy.wa.gov

From: Ben Swanson [<mailto:BSwanson@monroewa.gov>]
Sent: Tuesday, July 11, 2017 9:09 AM
To: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Doug,

Here is my attempt to address wetland buffers and established uses such as neighborhoods/roads. Please let me know if you have any suggestions.

Wetland buffers shall not include areas that are functionally and effectively disconnected from the wetland by a road or other substantially developed surface, such as a parking lot, of sufficient width and with use characteristics such that buffer functions are not provided. Additionally, wetland buffers shall not include existing functionally degraded areas such as lawns, yards and other actively landscaped nonnative environments.

Thanks,
Ben

Ben Swanson | Community Development Director
City of Monroe
806 West Main Street | Monroe, WA 98272
Phone: (360) 863-4544
bswanson@monroewa.gov | <http://www.monroewa.gov>

From: Gresham, Doug (ECY) [<mailto:DGRE461@ECY.WA.GOV>]
Sent: Thursday, June 22, 2017 3:53 PM
To: Ben Swanson <BSwanson@monroewa.gov>
Cc: Buntzen, Donna (ECY) <DBUN461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Ben,
Thanks for making these edits and now I understand why you didn't change the water typing system. Looks good to me. Good luck.

Doug Gresham, Wetland Specialist
Washington State Department of Ecology
3190 - 160th Ave. SE
Bellevue, WA 98008
Phone: (425) 649-7199
Email: Doug.Gresham@ecy.wa.gov

From: Ben Swanson [<mailto:BSwanson@monroewa.gov>]
Sent: Thursday, June 22, 2017 3:00 PM
To: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Cc: Buntzen, Donna (ECY) <DBUN461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Doug,

I appreciate the fast response. In the attached I made the recommended edits, except water typing. I do agree with your recommendation, but amending the water typing definitions would trigger changes in other code sections not included in the original scope of work. Changing the scope would result in addition notice/public process. At this point we mostly concerned with our GMA compliance issues. The City will address the dated water typing definition during our 2018 SMP update or during the 2017/2018 code amendments.

Thanks,
Ben

Ben Swanson | Community Development Director
City of Monroe
806 West Main Street | Monroe, WA 98272
Phone: (360) 863-4544
bswanson@monroewa.gov | <http://www.monroewa.gov>

From: Gresham, Doug (ECY) [<mailto:DGRE461@ECY.WA.GOV>]
Sent: Thursday, June 22, 2017 1:17 PM
To: Ben Swanson <BSwanson@monroewa.gov>
Cc: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Ben,
Thanks for making most of our recommended changes to the wetland section of the CAO. I found a few more minor edits so I inserted comments.

One item that wasn't changed from our previous review involves definitions of the Water Typing System. We had recommended using the current system versus an outdated interim system. Is there a reason this wasn't changed? Let me know if you have any questions.

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From: Ben Swanson [<mailto:BSwanson@monroewa.gov>]
Sent: Wednesday, June 21, 2017 11:37 AM
To: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Subject: RE: Monroe - Draft CAO ord

Thanks Doug. See my response below.

Ben Swanson | Community Development Director
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806 West Main Street | Monroe, WA 98272
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From: Gresham, Doug (ECY) [<mailto:DGRE461@ECY.WA.GOV>]
Sent: Wednesday, June 21, 2017 11:03 AM
To: Ben Swanson <BSwanson@monroewa.gov>
Subject: RE: Monroe - Draft CAO ord

Ben,
Thanks for providing your revised CAO. I will review this and send something back soon. I would like to clarify a few things.

1. How long ago did you notify the Dept. of Commerce within the 60-day period?
The City notified DOC on 8/18/2016.
2. I assume this CAO has been reviewed by the Planning Commission but not the City Council, so it is still in draft form, correct?
It is in draft form. The CAO was send back to Planning Commission for additional review by the City Council.
3. Can I edit this using tracked changes so you see what my edits are?
Yes, please use tracked changes.

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From: Ben Swanson [<mailto:BSwanson@monroewa.gov>]
Sent: Tuesday, June 20, 2017 10:53 AM
To: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Subject: Monroe - Draft CAO ord

Doug,

Based on your past comments and our communication, I have revised the draft CAO for your review. I noted the revised text, since your last review, with a comment/date.

Thanks,
Ben

Ben Swanson | Community Development Director
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