Ordinance No. 3109

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

CFN-961 Growth Management Act
Passed – 5/18/1993
Wetlands Management

Repealed entirely by Ord. 3746
ORDINANCE NO. 3109

AN ORDINANCE of the City of Kent, Washington, adding a new chapter to the Kent City Code, Chapter 11.05, entitled "Wetlands Management" relating to preservation and management of wetlands within the City of Kent.

WHEREAS, wetlands and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations; and

WHEREAS, in their natural state, wetlands provide many valuable social and ecological services, including controlling flooding and stormwater runoff by storing or regulating natural flows; protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation; providing areas for groundwater recharge; preventing shoreline erosion by stabilizing the substrate; providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists; providing open space and visual relief from intense development in urbanized area; providing recreation opportunities; and serving as areas for scientific study and natural resource education; and
WHEREAS, development in wetlands may result in: increased soil erosion and sedimentation of downstream water bodies, including navigable channels; increased shoreline erosion; degraded water quality due to increased turbidity and loss of pollutant removal processes; elimination or degradation of wildlife and fisheries habitat; loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the streamflow regimen; loss of stormwater retention capacity and slow-release detention resulting in flooding, degraded water quality, and changes in the streamflow regimen of watersheds; loss of groundwater recharge areas; and

WHEREAS, buffer areas surrounding wetlands are essential to maintenance and protection of wetland functions and values, and protect wetlands from degradation by stabilizing soil and preventing erosion; filtering suspended solids, nutrients and harmful or toxic substances; moderating impacts of stormwater runoff; moderating system microclimate; protecting wetland wildlife habitat from adverse impacts; maintaining and enhancing habitat diversity and/or integrity; supporting and protecting wetlands plant and animal species and biotic communities; and reducing disturbances to wetland resources caused by intrusion of humans and domestic animals; and

WHEREAS, The loss of the social and ecological services provided by wetlands results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure; and
WHEREAS, a considerable acreage of these important natural resources has been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas, and remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts;

WHEREAS, the City Council of the City of Kent hereby finds that as a result of all of the above, it is necessary to ensure protection of wetland areas in the City by regulating activities in wetlands and in sites adjacent to wetlands that may adversely affect wetland functions and values, to encourage restoration and enhancement of already-degraded wetland systems and to encourage creation of new wetland areas; and

WHEREAS, the City Council hereby finds that in order to accomplish this directive, the City shall amend the Kent City Code to require site planning through a regulatory system administered by the Public Works Department, in order to avoid or minimize damage to wetlands wherever possible; to require that activities not dependent upon a wetland location be located at upland sites; and to achieve no net loss of wetland area by requiring restoration of degraded former wetlands or the creation of new wetlands from upland sites to offset unavoidable losses;

WHEREAS, the City wishes to protect the rights of individual property owners by ensuring that City wetland regulations do not arbitrarily or unfairly deprive them of use of their land and that the burdens of these regulations are not borne disproportionately by one group of citizens;
WHEREAS, the City wishes to provide for review process that is timely, fair and predictable and that integrates review of wetland issues with the substantive review of development permit applications;

WHEREAS, the City wishes to reduce sprawl and take best advantage of existing City infrastructure by encouraging infill development, both in upland areas and areas where wetland impacts can be mitigated by replacement or enhancement;

WHEREAS, the City wishes to use creative zoning techniques and other mechanisms to avoid the loss of development rights in property and thereby minimize the adverse fiscal effect on the City of a loss of jobs and tax base, and encourage the production of affordable housing for all economic segments of the population;

WHEREAS, the City wishes to protect the environment, including wetlands, in order to enhance the quality of life for City residents; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT HEREBY ORDAINS AS FOLLOWS:

SECTION 1. There shall be a new chapter added to Title 11 of the Kent City Code, Chapter 11.05, which shall read as follows:
CHAPTER 11.05
WETLANDS MANAGEMENT

11.05.010. Short Title, Authority and Purpose

A. This chapter shall be known and may be cited as the "Kent Wetlands Management Code."

B. This chapter is enacted pursuant to the City's police powers, the Growth Management Act as codified in Chapter 36.70A of the Revised Code of Washington (RCW), the State Environmental Policy Act (SEPA) in Chapter 42.21C RCW.

C. The purpose of this chapter is to:

1. Protect the public health, safety and welfare by preserving, protecting and restoring wetlands through the regulation of development and other activities within them and wetland buffers so that nuisances or threats to safety are not created, and natural wetland functions and values are not degraded by:

   a. impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies or velocities on other lands;

   b. increasing water pollution through location of domestic waste disposal systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;

   c. increasing erosion;

   d. decreasing breeding, nesting and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
e. interfering with the exchange of nutrients needed by fish and other forms of wildlife;
f. adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies;
g. significantly altering wetland hydrology and thereby causing either short-or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
h. destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
i. interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography and other passive uses; or
j. destroying or damaging aesthetic and property values, including significant public viewsheds.

2. Protect, to the greatest extent practicable, the public against losses from unnecessary maintenance and replacement of public facilities and expenses for public emergency rescue and relief operations; and

3. Alert appraisers, assessors, owners and potential buyers or lessees of property to the development limitations of wetlands.

D. The provisions of this chapter shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.
**11.05.020. Definitions**

For the purposes of this chapter, the following definitions shall apply:

A. "Activity." See "Regulated Activity" and "Allowed Activity" as defined in this section.

B. "Adjacent wetland" means those wetlands bordering, contiguous or neighboring a river, stream or lake.

C. "Applicant" means a person who files an application for development and who is either the owner of the land on which that proposed Regulated Activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed Regulated Activity, or the authorized agent of such a person.

D. "Best management practices" means conservation practices or systems of practices and management measures that:
   1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and
   2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

E. "City" means the City of Kent, Washington.

F. "Compensation project" means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.

G. "Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:
   1. Restoration. Actions performed to reestablish wetland functional characteristics and processes
which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.

2. Creation. Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

3. Enhancement. Actions performed to improve the condition of existing wetlands so that the functions they provide are of a higher quality.

H. "Dedication" means conveyance of land to the City or other not-for-profit entity by deed or other instrument of conveyance.

I. "Department" means the Public Works Department of the City of Kent, unless otherwise noted.

J. "Developable area" means land outside of wetlands, wetland buffers or any other restricted area on a particular piece of property.

K. "Development" means any construction or expansion of a building, structure or use; or changes in the use of land that require a development permit from the City or would otherwise alter or adversely affect a wetland or wetland buffer.

L. "Director" means the Director of the Kent Public Works Department or his/her authorized designee, unless otherwise noted.

M. "Emergent wetland" means a wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

N. "Enhancement." See "Compensatory Mitigation."

O. "Erosion" means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water, soil and/or ice.
P. "Essential habitat" means habitat necessary for the survival of federally listed threatened, endangered and sensitive species and state listed priority species.

Q. "Exotic" means any species of plants or animals that are foreign to the planning area.

R. "Existing and ongoing agriculture" includes those activities conducted on lands defined as "Farm and Agricultural Land" in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than eight years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

S. "Extraordinary hardship" means that the strict application of the provisions of this chapter and/or rules adopted to implement this chapter would prevent all reasonable economic use of the property.

U. "Forested wetland" means a wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

V. "Functions," "beneficial functions," or "functions and values" means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

W. "Grading" means excavation or fill or any combination thereof, including the establishment of a grade following the demolition of a structure.

X. "Growing season" means the average frost-free period of the year in Kent as recorded in National Oceanic and Atmospheric Administration Frost/Freeze Data from Climatology of the U.S. No. 20, supplement No. 1, or in equivalent U.S. government agency records. Growing season, for the purposes of these regulations, may be considered to be the period from March 1 through October 31 of any calendar year.

Y. "Hydric Soil" means soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Federal Manual.

Z. "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Federal Manual.
AA. "In-kind compensation" means to replace wetlands with substitute wetlands that have characteristics which closely approximate those destroyed or degraded by a Regulated Activity.

BB. "Isolated wetlands" means those wetlands which:
   1. Are outside of and not contiguous to any lake, river, or stream; and
   2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

CC. "Maintenance," see definition of "Repair and Maintenance."

DD. "Mitigation" includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation, in the following order of preference is:
   1. Avoiding the impact altogether by not taking a certain action or parts of an action;
   2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
   3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
   4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
   5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
   6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

Mitigation may include a combination of the above measures.
EE. "Mitigation Banking" is the collective offsite creation, restoration or enhancement of uplands, or in some instances, existing wetlands, to compensate for unavoidable adverse impacts due to private development, public works projects, and other construction activities. Banking differs from most offsite compensatory mitigation projects in that mitigation banking is a program created by agencies or organizations to provide a relatively large mitigation site which will be used to compensate for many (usually unrelated) development projects; more traditional compensatory mitigation measures are typically individual projects which may give little consideration to regional wetlands management.

FF. "Native Vegetation" means plant species which are indigenous to the planning area.

GG. "Offsite compensation" means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

HH. "On-site compensation" means to replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

II. "Out-of-kind compensation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

JJ. "Owner" means any person having title to, a substantial beneficial interest in, or control of a building or property, including but not limited to a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

KK. "Person" means a natural person, his/her heirs, executors, administrators or assignees, or a firm, partnership or
corporation and its or their successors and assignees, or a governmental entity.

LL. "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties of wetlands, or such discharge of any liquid, gaseous, solid, radioactive or other substance into wetlands as will or is likely to cause a nuisance or render such wetlands harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife, fish, native vegetation or other aquatic life.

MM. "Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to wetlands. It may involve using an alternative site in the general region that is available to the applicant and may feasibly be used to accomplish the project.

NN. "Priority habitats" are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

OO. "Priority species" are those species identified by the Washington State Department of Wildlife as a Priority Species.

PP. "Repair or maintenance" means an activity that restores the character, scope, size, and design of a serviceable
area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional wetlands are not included in this definition.

QQ. "Restoration." See "Compensatory Mitigation."

RR. "Scrub-shrub wetland" means a wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

SS. "Sensitive Area Tract" means a separate tract that is created to protect the sensitive area and its buffer, and whose ownership is assured as provided in Section 11.05.140 of this Chapter.

TT. "Serviceable" means presently useable.

UU. "Site" means any lot or parcel of land or contiguous combination thereof, where activities are proposed, performed or permitted.

VV. "Subject property" means the site where an activity requiring a permit or approval under this chapter will occur.

WW. "Unavoidable and necessary impacts" are impacts to wetlands that remain after an applicant has demonstrated that no practicable alternative exists for the proposed project.

XX. "Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

YY. "Wetlands," means all those areas in the City of Kent that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions during
the growing season. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. The applicant shall bear the burden of proving that the site was not previously a wetland. Wetlands include artificial wetlands intentionally created from nonwetland areas for the purpose of mitigating conversion of wetlands. For identifying and delineating a wetland, the City of Kent shall rely on the methodology contained in the Federal Manual as defined above.

ZZ. "Wetlands of Outstanding Significance," means wetlands designated as Unique and Fragile pursuant to Section 15.08.260 of the Kent Zoning Code, and mapped on the City's Hazard Area Development Limitations Map, except for the Kent Sewage Lagoon.

AAA. "Wetland buffer" or "wetland buffer zone" is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a wetland.

BBB. "Wetland classes," "classes of wetlands" or "wetland types" means the wetland classes or subclasses of the wetlands taxonomic classification system described in the U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS-79/31 (Cowardin et al., 1979).

CCC. "Wetland edge" means the boundary of a wetland as delineated based on the definitions in this chapter and the procedures specified in Section 11.05.040 herein.
11.05.030. General Provisions.

A. Applicability. The requirements of this chapter apply to all activities and development occurring in a wetland or wetland buffer as defined in Section 11.05.020 herein. Property located in a wetland or wetland buffer as defined in this chapter is subject to both its zoning classification regulations and to the additional requirements imposed under this chapter. In any case where there are irreconcilable differences between the provisions of the underlying zone and this chapter, the provisions of this chapter shall apply.

B. Protection of General Public. It is expressly the purpose of this chapter to protect the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this chapter.

C. Compliance by Owners. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of the property or land within its scope, and no provision of, nor any term used in this chapter is intended to impose any duty whatsoever upon the City, its officers, officials or employees.

D. Right of Entry. Upon presentation of the proper credentials, the Director or the Director's duly authorized representative may, with the consent of the owner or occupier of land, or pursuant to a lawfully issued warrant, enter at reasonable times, any land subject to such consent or warrant, to perform the duties imposed by this chapter.

E. Liability. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis
for liability on the part of the City, or its officers, officials, employees or agents for any injury or damage resulting from the failure of any owner of property or land to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice order, certificate, permission or approval authorized or issued in connection with the implementation or enforcement of this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, officials, employees or agents.

F. Enforcement Authority; Administrative Procedures.  
1. Enforcement. The Director is hereby designated the City Official to exercise the powers granted by this chapter.

2. Administrative Procedures. Within 30 days from the adoption of this chapter, the Director shall initiate administrative procedures necessary to carry out the requirements of this chapter.

11.05.040. Lands to Which this Chapter Applies  
A. Geographic Scope. The boundaries within which this chapter shall be effective are coextensive with the corporate City limits, and shall include all unincorporated areas annexed to the City on and after the effective date of this chapter.

B. Determination of Wetland Boundary by Delineation. The exact location of the wetland boundary shall be determined through the performance of a field investigation applying the wetland definition provided in Section 11.05.020 by professionals using the Federal Manual.
An applicant may request the Department to perform the delineation, provided the applicant pays the Department for all necessary expenses associated with performing the delineation. The Department shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation.

Where the applicant has provided a delineation of the wetland boundary, the Department shall verify the accuracy of, and may render adjustments to, the boundary delineation. The decision of the Department may only be appealed pursuant to Section 11.05.210.

C. Pre-application Delineation. Property owners or their agents may obtain a non-binding opinion regarding a wetland delineation prior to submittal of any development permit application.

D. Time Limits for Delineation. A wetland delineation which has been confirmed by the Department pursuant to SEPA review shall be binding upon the City and the applicant for one year from the date of issuance of the threshold determination. If a complete application for a building permit or subdivision involving the same wetland is filed within one year of the issuance of the threshold determination, the delineation shall be binding upon the City and the applicant while the permit or subdivision application is active.

11.05.050. Wetlands Rating System

A. The following rating system is hereby adopted for the purpose of determining the size of wetland buffers and otherwise reviewing permits under this chapter. For the purposes of this Section, the U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United
States, FWS/OBS-79-31 (Cowardin et al., 1979) contains the descriptions of wetland classes and subclasses.

1. **Category 1 Wetlands.** Wetlands which meet any of the following criteria:
   a. The documented presence of species proposed or listed by the federal or state government as endangered, threatened, or other species identified by the state Department of Natural Resources through its Natural Heritage data or by the state Department of Wildlife as a Priority Species, or the presence of critical or outstanding actual habitat for those species;
   b. Wetlands equal to or greater than two acres in size having 40% to 60% permanent open water in dispersed patches with two or more classes of vegetation;
   c. Wetlands equal to or greater than ten acres in size and having three or more wetland classes, one of which is open water; or
   d. The presence of bogs or fens.
   e. Wetlands which have been designated Unique and Fragile under the Kent Zoning Code, Section 15.08.260 and mapped on the City’s Official Hazard Area Development Limitations Map.

2. **Category 2 Wetlands.** Wetlands which meet any of the following criteria, and which are not Category 1 wetlands:
   a. Wetlands greater than one acre in size;
   b. Wetlands equal to or less than one acre in size and having three or more wetland classes;
   c. Wetlands equal to or less than one acre that have a forested wetland class;
   d. The documented presence of heron rookeries or raptor nesting sites.
3. **Category 3 Wetlands.** Wetlands that are equal to or less than one acre in size and that have two or fewer wetland classes, and which are not Category 1 or Category 2 wetlands.

C. In order to obtain a permit to conduct regulated activities in a wetland of outstanding significance, an applicant must demonstrate to the satisfaction of the Director that application of the standards contained in this chapter would deny all reasonable economic use of the property.

**11.05.060. Regulated Activities**

A. No regulated activity, other than repairs and maintenance of their property by owner or occupant of 10,000 square feet or less of isolated Category 2 or Category 3 wetlands, shall be undertaken in a wetland or wetland buffer without first obtaining approval from the Director pursuant to Section 11.05.100. Regulated activities are any of the following activities which occur in a wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;

2. The dumping, discharging, or filling with any material;

3. The draining, flooding, or disturbing of the water level or water table;

4. The driving of pilings;

5. The placing of obstructions;

6. The construction, reconstruction, demolition, or expansion of any structure;

7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional
burning, or planting of vegetation that would alter the character of a wetland, provided that these activities are not part of a forest practice exclusively governed under chapter 76.09 RCW and its rules; or

8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants; or


B. Where a regulated activity is proposed which would be partly within and partly without the wetland or wetland buffer, approval shall be required for the entire regulated activity. The standards of this chapter shall apply only to that part of the regulated activity which occurs within the wetland or wetland buffer unless the underlying zoning requires that the entire regulated activity comply with all or part of this chapter.

C. The Kent Lagoons shall be subject to this chapter with the exception of those activities allowed by Resolution No. 922, adopted by the Kent City Council in March 1981.

11.07.070. Allowed Activities.

A. The following activities shall be allowed within a wetland or wetland buffer without prior approval from the Director to the extent that they are not prohibited by other local, state (forest practices and conversions shall be governed by Chapter 76.09 RCW and rules promulgated thereunder) or federal law and provided that they are conducted using best management practices. This exemption does not apply where such activities
result in the conversion of a wetland or wetland buffer to a use to which it was not previously subjected.

1. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
2. Outdoor recreational activities, including fishing, bird watching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;
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, or alteration of the wetland by changing existing topography, water conditions or water sources;
4. Existing and ongoing agricultural activities;
5. The repair and maintenance (but not construction) of drainage ditches;
6. Educational activities, scientific research, and use of nature trails;
7. The placement of navigation aids and boundary markers;
8. The placement of boat mooring buoys;
9. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored;

B. Notice required. The following activities and uses are allowed within wetlands and wetland buffers provided that written notice at least ten days prior to the commencement of such work has been given to the Director with such exemptions as noted in Section 11.05.060.A and provided that wetland impacts are minimized and that disturbed areas are immediately restored:
1. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas, such as public and private infrastructure improvements, utility facilities and utility systems. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and

2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions.

11.05.080. Emergency Activities; Temporary Emergency Approval

A. Criteria for Granting a Temporary Emergency Approval. Notwithstanding the provisions of this chapter or any other laws to the contrary, the Director may issue a temporary emergency wetlands approval if:

1. The Director determines that an imminent threat to public health, safety or the environment will occur if an emergency approval is not granted; and

2. The threat or loss may occur before approval can be issued or modified under the procedures otherwise required by this chapter.

B. Conditions of Emergency Approval. Any emergency approval granted shall:

1. Incorporate to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency activities;

2. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety (90) days; and
3. Require the restoration of any wetland altered as a result of the emergency activity within the ninety-day period. If restoration is not completed within ninety days, approval must be obtained in accordance with this chapter.

C. Emergency Utility Repairs. Emergency repairs to utilities that require immediate attention and which would endanger the public if a temporary emergency permit were required shall be allowed for a period not exceeding 72 hours.

11.05.090. Prohibited Activities.
Activities not specifically described by this chapter as Allowed or Regulated, and which do not constitute Emergency Activities under Section 11.05.080 or Non-conforming Activities under Section 11.05.180 are prohibited. In order to conduct an otherwise prohibited activity in a wetland or wetland buffer, the applicant must satisfy the requirements for a special exception, as described in Section 11.05.170.

11.05.100. General Requirements and Procedures.
A. Inconsistent Development Prohibited. No activity or development shall be undertaken and no use shall be established in a wetland or a wetland buffer unless the Director has determined that it is consistent with the provisions of this chapter.

B. Standards. A regulated activity in a wetland or wetland buffer shall only be approved if the proposed regulated activity, as conditioned, is consistent with the provisions of this chapter, all other applicable laws and:

1. The proposed regulated activity avoids adverse impacts to wetlands and wetland buffers; or the applicant has demonstrated that any adverse impacts of the regulated
activity are both unavoidable and necessary, as described in Section 11.05.120, and affirmative and appropriate measures are proposed as conditions which will minimize and compensate for unavoidable impacts; and

2. The proposed regulated activity results in no net loss of wetland area; or

3. Refusal to approve the activity would deny the applicant all reasonable economic use of the subject property.

C. Procedures.

1. The burden of proving that an allowed or regulated activity meets the applicable standards of this chapter shall be on the applicant.

2. The applicant may be required to submit information or data, in addition to that routinely required with development applications, sufficient to enable the Director to evaluate the proposed Activity or to prepare any necessary environmental documents.

3. In addition to other requirements provided in this chapter, the Director may attach to a development permit any conditions necessary to ensure compliance with this chapter and all other applicable laws.

4. Nothing in this section shall be construed to limit the Director's authority and/or that of the Responsible Official to condition or deny a project pursuant to the State Environmental Policy Act.

5. The Department shall, to the extent practicable and feasible, consolidate the processing of wetlands-related aspects of other City regulatory programs which affect activities in wetlands, such as subdivision, clearing and grading, floodplain, hazard area regulations, etc., with the
Wetland Approval process established herein so as to provide a timely and coordinated permit process.

6. Where an activity regulated under this chapter also requires a Section 404 permit from the federal Army Corps of Engineers, the Department shall, to the extent practicable and feasible, coordinate the City's approval process with the federal approval process to avoid duplication, while ensuring that all standards in this chapter are met.

D. Application Requirements.

Application for approval of activities in wetlands shall be in accordance with the administrative procedures to be established by the Director under Subsection 11.05.030(F)(2).

11.05.110. Wetland Buffers and Building Setback Lines

A. Standard Buffer Zone Widths.

Wetland buffer zones shall be required for all regulated activities adjacent to wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 11.05.040. The width of the wetland buffer zone shall be determined according to the rating assigned to the wetland in accordance with Section 11.05.050.

B. Enhanced Wetland Buffers.

Enhanced wetland buffers may be used to satisfy landscaping requirements where the City determines that the buffer as enhanced by the applicant will provide greater protection of wetland functions, and as determined by the Planning Director, will serve the same function as landscaping
that would otherwise be required pursuant to Chapter 15.07 of the Kent City Code. Approved landscaping vegetation must meet wetland buffer vegetation requirements.

1. For Category 1 wetlands, the minimum buffer zone shall be 100 feet.
2. For Category 2 wetlands, the standard buffer zone shall be 50 feet.
3. For Category 3 wetlands, the standard buffer zone shall be 25 feet.

C. Building Setback Lines.
A minimum building setback line of 15 feet shall be required from the edge of a wetland buffer.

D. Increased Wetland Buffer Zone Width.
The City may require increased buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must demonstrate that:

1. A larger buffer is necessary to maintain a viable population of existing species; or
2. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees;
3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
4. The adjacent land has minimal vegetative cover or slopes greater than 15 percent.

E. Standard Buffer Width Averaging.

Standard wetland buffer zones may be modified by averaging buffer widths. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:

1. Averaging will provide the necessary biological, chemical and physical support necessary to protect the wetland in question, taking into account the type, intensity, scale and landscape location of the proposed land use;

2. The wetland contains variations in sensitivity due to existing physical characteristics which justify the averaging;

3. The proposal minimizes disturbances caused by land uses in areas adjacent to any buffers which are reduced.

4. Width averaging will not adversely impact the wetland functional values;

5. The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than 50% of the standard buffer or be less than 25 feet.

F. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

G. Permitted Uses in a Wetland Buffer Zone.

Regulated activities shall not be allowed in a buffer zone except for the following:
1. Activities and maintenance having minimal adverse impacts on buffers and no adverse impacts on wetlands. These may include but are not limited to low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing.


3. Biofiltration swales, if sited and designed so that the buffer zone as a whole provides the necessary biological, chemical and physical support necessary to protect the wetland in question, taking into account the type, location, intensity, scale and landscape location of the proposed land use.

11.05.120. Avoiding Wetland Impacts

A. Regulated activities shall not be authorized in a wetland except where it can be demonstrated that the impact is both unavoidable and necessary as described below, or that all reasonable economic uses are denied.

B. Except for wetlands described in subsection 12.05.120(C) and 12.05.120(D) below, the following provisions shall apply:

1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences. Stormwater management facilities will be considered in wetlands subject to review under the wetlands and stormwater management
guidelines referenced in Section 11.05.110(G)(2), and all other applicable provisions in this chapter, except that under no circumstances will such facilities be permitted in wetlands of outstanding significance.

2. Where nonwater-dependent activities are proposed, the applicant must demonstrate that:
   a. The basic project purpose not reasonably be accomplished using an alternative site in the general region that is available to the applicant and may feasibly be used to accomplish the project.
   b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a wetland or its buffer will not accomplish the basic purpose of the project; and
   c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

C. 1. With respect to isolated Category 3 wetlands, and isolated Category 2 wetlands which are not Category 3 wetlands only because they exceed one acre in size, the following applies: Regulated activities which result in the filling of no more than 10,000 square feet of a wetland may be permitted if mitigation is provided consistent with the standards of Section 11.05.160.

2. In computing the total allowable wetland fill area under this subsection, the Director shall include any areas that have been filled since January 1, 1991. For example, if 5,000 square feet of a wetland were filled in February, 1991,
future applicants would only be allowed a maximum of 5,000 additional square feet under this subsection. Any proposed fill over 10,000 square feet must demonstrate unavoidable and necessary impacts as described in Subsection 11.05.120(D) above.

D. Fills of wetlands described in subsection 11.05.120.C, which are less than or equal to 2000 square feet and which are necessary as part of the development of a single family residence, may be mitigated for with fees in lieu of mitigation, provided the fees are directed toward an existing mitigation bank which is owned and operated by the City.

11.05.130. Limited Density Transfer
For residential development proposals on lands containing wetland buffers, the Planning Department shall determine allowable dwelling units based on the formula below. The maximum number of dwelling units (DU) for a lot or parcel which contains wetland buffers shall be equal to: \((\text{ACRES IN BUFFER}) \times (\text{DU/ACRE}) \times (\text{DENSITY CREDIT})\)

<table>
<thead>
<tr>
<th>Percentage of site in buffers</th>
<th>Density Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-20%</td>
<td>100%</td>
</tr>
<tr>
<td>21-40%</td>
<td>80%</td>
</tr>
<tr>
<td>41-60%</td>
<td>60%</td>
</tr>
<tr>
<td>61-80%</td>
<td>40%</td>
</tr>
<tr>
<td>81-100%</td>
<td>20%</td>
</tr>
</tbody>
</table>

11.05.140. Sensitive Area Tracts
A. Condition of Approval. As a condition of approval pursuant to this Chapter, the Director shall require creation of a separate sensitive area tract containing the areas determined
to be wetland and/or wetland buffer. Sensitive area tracts are separate tracts containing wetlands and wetland buffers with perpetual deed restrictions requiring that the tract remain undeveloped. Sensitive area tracts are an integral part of the lot in which they are created, are not intended for sale, lease or transfer, and shall be included in the area of the parent lot for purposes of subdivision method and minimum lot size.

B. Protection of Sensitive Area Tracts. The Director shall require that the sensitive area tract created pursuant to subsection 11.05.140.A above be protected by one of the following methods:

1. The applicant shall dedicate to the City or other public or non-profit entity specified by the Director, an easement for the protection of native vegetation within a wetland and/or its buffer; or

2. The applicant shall record against the property, a permanent and irrevocable deed restriction on all lots containing a sensitive area tract or tracts created as a condition of approval. Such deed restriction(s) shall be approved by the Director and the City Attorney and prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the City and any other agency with jurisdiction over such activity.

11.05.150. Notice on Title
The owner of any property with field verified presence of wetlands or wetland buffers for which a wetland permit application is submitted shall, as a condition of permit issuance, record a notice of the existence of such wetland or
wetland buffer against the property with the King County Department of Records and Elections. The notice shall be approved by the Director and the City Attorney for compliance with this provision. The titleholder will have the right to challenge this notice and to have it deleted if the wetland designation no longer applies.

11.05.160. Compensating for Wetland Impacts.

A. **Condition of Approval.** As a condition of any approval allowing alteration of wetlands and/or wetland buffers, or as an enforcement action pursuant to Section 11.05.200, the Director shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan that provides for land acquisition, construction, maintenance and monitoring of replacement wetlands that recreate as nearly as practicable the original wetlands in terms of acreage, function, geographic location and setting.

B. **Goal.** The overall goal of any compensatory mitigation project shall be to replace the same type of wetland lost, with all associated functions and values. No net loss of wetland acreage shall be required. Compensation shall be completed prior to wetland destruction, where practicable.

C. **Performance Standards.** Compensatory mitigation shall follow a mitigation plan which includes the components listed in 11.05.160(E), and which is approved by the Director. All mitigation plans shall meet the following minimum performance standards:

1. Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland
compensatory projects may be permitted only when the Director finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created or enhanced wetland will be as persistent as the wetland it replaces. Additionally, applicants shall:

a. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the mitigation project;

b. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and

c. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.

D. Restoration and Creation of Wetlands and Wetland Buffers.

1. Any person who alters wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses. Any created or restored wetlands shall be protected by the provisions of this chapter.

2. Acreage replacement and enhancement ratio. Wetland alterations shall be replaced or enhanced using the formulas below. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered. These ratios do not apply to remedial actions resulting from illegal alterations.

a. Compensation for alteration of Category 1 wetlands shall be accomplished as follows:
1. By creation of new wetlands at a ratio of 3:1; or

2. By creation of new wetlands at a ratio of 1:1 and by enhancement of existing wetlands at a ratio of 3:1, or

3. By a combination of creation of new wetlands and enhancement of existing wetlands within the range of the ratios set out in subsections 1 and 2 above, so long as a minimum 1:1 creation ratio is met (for example, creation of new wetlands at a 1.5:1 ratio along with enhancement of existing wetlands at a ratio of 2.5:1 may be acceptable).

b. Compensation for alteration of Category 2 and 3 wetlands shall be accomplished as follows:

1. By creation of new wetlands at a ratio of 1.5:1; or

2. By creation of new wetlands at a ratio of 1:1 and by enhancement of existing wetlands at a ratio of 1:1; or

3. By a combination of creation of new wetlands and enhancement of existing wetlands within the range of ratios set out in subsections 1 and 2 above, so long as a minimum 1:1 creation ratio is met (for example, creation of new wetlands at a ratio of 1.5:1 along with enhancement of existing wetlands at a ratio of 0.5:1 may be acceptable.)

4. Decreased Replacement Ratio. The Director may decrease the required replacement ratio where the applicant provides the mitigation prior to altering the wetland, and a minimum acreage replacement ratio of 1:1 is provided. In such a case, the mitigation must be in place, monitored for 3 growing seasons and be deemed a success prior to allowing any alterations.
5. **Wetlands Enhancement.**
   a. Any applicant proposing to alter wetlands may propose to enhance existing Category 3 wetlands, and Category 2 wetlands which are described in Section 11.05.120.C in order to compensate for wetland losses.
   b. A wetlands enhancement compensation project shall be considered provided that enhancement for one function and value will not degrade another function or value. Acreage replacement ratios shall be required as described in Subsection 11.05.160.D above.
   c. Category 1 wetlands shall not be enhanced.

6. **Wetland Type.** In-kind compensation shall be provided except that, out-of-kind compensation may be accepted where:
   a. The wetland system is already significantly degraded and out-of-kind-replacement will result in a wetland with greater functional value;
   b. Technical problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impracticable; or
   c. Out-of-kind replacement will best meet identified regional goals (eg., replacement of historically diminished wetland types).

7. **Location.** On-site compensation shall be provided except where the applicant can demonstrate that:
   a. The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the onsite loss; and
b. On-site compensation is not scientifically feasible due to problems with hydrology, soils, or other factors; or
c. Compensation is not practical due to potentially adverse impacts from surrounding land uses; or
d. Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values; or
e. Established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site.

8. Off-site compensation shall occur within the same watershed as the wetland loss occurred, unless the applicant can demonstrate extraordinary hardship.

9. In selecting compensation sites for creation or enhancement to satisfy the requirements of Section 11.05.160, applicants shall pursue siting in the following order of preference:

a. Upland sites which were formerly wetlands and significantly degraded wetlands. Such wetlands are typically (1) isolated; (2) have only one wetland class, and (3) one dominant plant species or a predominance of exotic species;
b. Idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation; and
c. Other disturbed upland.

10. Timing. Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, immediately after activities that will temporarily
disturb wetlands, and prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.

11. Cooperative restoration, Creation or Enhancement Projects (Mitigation Banks). The City encourages, and may facilitate and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants. Any mitigation banking must be consistent with all requirements of this chapter.

E. Components of Mitigation Plans. All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals approved by the Director. The applicant or violator must receive written approval of the mitigation plan by the Director prior to commencement of any wetland restoration, creation or enhancement activity. The mitigation plan shall contain at least the following components:

1. Baseline Information. A written assessment and accompanying maps of the impacted wetland including, at a minimum, wetland delineation; existing wetland acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; and topographic elevations. If the compensation site is different from the impacted wetland site, baseline information should also include existing acreage; relationship within watershed and to existing waterbodies; existing and proposed adjacent site conditions; buffers; and ownership.
2. **Environmental Goals and Objectives.** A written report shall be provided identifying goals and objectives and describing: site selection criteria; compensation goals; target evaluation species and resource functions; dates for beginning and completion; and a complete description of the functions and values sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland, or if out-of-kind, the type of wetland to be emulated. The report shall also include an analysis of the likelihood of success of the compensation project at duplicating the original wetland, and the long-term viability of the project, based on the experiences of comparable projects, if any.

3. **Performance Standards.** Specific measurable criteria shall be provided for evaluating whether the goals and objectives of the project are being achieved, and for determining when and if remedial action or contingency measures should be implemented. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

4. **Detailed Construction Plans.** Written specifications and descriptions of compensation techniques shall be provided, as specified by the Director.

5. **Monitoring Program.** A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided.

6. **Contingency Plan.** Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.
7. **Permit Conditions.** Any compensation project prepared pursuant to this section and approved by the Director shall become part of the application for the permit.

8. **Performance Bonds and Demonstration of Competence.** A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, bonds ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted in the amount of one hundred twenty (125) percent of the expected cost of compensation, plus a factor to be determined to allow for inflation during the time the project is being monitored, and an administration fee to reimburse the City for the projected costs to be incurred by the City during the course of the monitoring program which shall not exceed ten (10) percent.

9. **Consultation with Other Agencies.** Applicants are encouraged to consult with federal, state, local agencies and tribes having expertise or interest in a compensatory mitigation proposal.

11.05.170. **Reasonable Use - Exceptions to Standards**

A. If an applicant for a development proposal demonstrates to the satisfaction of the Director that application of the standards of this chapter would deny all reasonable economic use of the property, development as conditioned shall be
allowed if the applicant also demonstrates all of the following to the satisfaction of the Director:

1. That the proposed development is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to Section 11.05.120;

2. That no reasonable use with less impact on the wetland and its buffer is possible;

3. That there is no feasible on-site alternative to the proposed development, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;

4. That the proposed development will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;

5. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;

6. That the proposed development will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats;

7. That the proposed development will not cause significant degradation of groundwater or surface-water quality;

8. That the proposed development complies with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
9. That any and all alterations to wetlands and
wetland buffers will be mitigated as provided in Section
11.05.160.

10. That there will be no damage to nearby public
or private property and no threat to the health or safety of
people on or off the property; and

11. That the inability to derive reasonable
economic use of the property is not the result of actions by the
applicant, or the present or prior owner of the property, in
segregating or dividing the property and creating the
undevelopable condition after the effective date of this chapter.

B. Prior to granting any special exception under this
section, the Director shall make written findings on each of the
items listed in this subsection. As part of any special
exception under this section, the applicant shall be required to
take deliberate measures to minimize wetland impacts.

11.05.180. Non-conforming Wetland Activities

A non-conforming wetland activity (including uses and
structures) is one which was lawful when begun, but which
activity is not in conformity with the provisions of this
chapter. A non-conforming activity or use may be continued
without the necessity of conformance to the provisions of this
chapter only so long as the activity or use is not:

1. expanded, changed, enlarged or altered in any way
after the effective date of the provisions of this chapter, such
as to increase the extent of its nonconformity;

2. discontinued for twelve continuous months after
the effective date of the provisions of this chapter, except in
cases of discontinuance for normal agricultural practices; or
3. damaged or destroyed by fire, flood, explosion, wind, earthquake, war, riot or other natural disaster, and where the cost of restoration exceeds fifty percent of the fair market value of the activity at the time of damage.

11.05.190. Commencement of Regulated Activities or Development
No construction authorized by this chapter shall begin or be authorized until all necessary permits for construction have been obtained and all review and appeal proceedings have been terminated.

11.05.200. Enforcement
Procedures for investigation and notice of violation, compliance and the imposition of civil penalties for the violation of any requirements of this chapter shall be as specified in Chapter 15.10 of the Kent City Code, Enforcement of the Zoning Code.

11.05.210. Appeals.
   A. The following final decisions of the Director may be appealed to the Hearing Examiner, as set forth in Chapter 2.32 of the Kent City Code:
      1. Conditioning or denial of a development permit on the basis of the provisions of this Chapter; or
      2. Denial of a special exception under Section 11.05.170.
      3. The Director's delineation decision as set forth in Section 11.05.040.
   B. The Hearing Examiner shall give substantial weight to any final discretionary decision of the Director rendered pursuant to this chapter.
C. The decision of the hearing examiner shall be final unless an appeal is filed pursuant to Section 2.32.150 of the Kent City Code within fourteen (14) days from the date the final decision is rendered.

SECTION 2. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, section or portion of this ordinance or the application thereof to any person or circumstances, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY
PASSED the 18th day of May, 1993.
APPROVED the 19th day of May, 1993.
PUBLISHED the 21st day of May, 1993.
I hereby certify that this is a true copy of Ordinance No. 3109, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK