ORDINANCE 259

AN ORDINANCE amending the Chapter 15.15 Regulations for Critical Areas, Sections 15.15.200 Wetlands Identification and Delineation, 15.15.210 Wetlands initial project review, 15.15.220 Wetlands site assessment requirements, and 15.15.240 Wetland Mitigation Standards, to update the Wetland standards to meet current state standards.

WHEREAS, updating the Wetland standards of the Critical Areas code is a requirement of the State of Washington as a component of the mandatory update under the Growth Management Act, and

WHEREAS, a duly advertised public hearing was conducted before the Lyman Town Council to consider the proposed amendments, and

WHEREAS, the Town Council has considered the record, and a decision has been made to update the wetland provisions of the Critical Areas Code LZC Chapter 15.15; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LYMAN DO ORDAIN AS FOLLOWS:

Section 1. Section 15.15.200 of the Lyman Code is hereby revised and reenacted, the amended section to read as follows:

15.15.200 Wetlands designations Identification and Delineation.

Wetlands shall be identified and designated through a site visit and/or a site assessment utilizing the definitions, methods and standards set forth in the Washington State Wetland Identification and Delineation Manual, Department of Ecology Publication # 96-94.

~~A. Identification and Delineation. Identification of wetlands and delineation of their boundaries~~ pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the town meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter. Wetland delineations are valid for five years; after such date the town shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, effective January 2015) or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

Category II. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. 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.

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.

C. Buffer Requirements**.** The standard buffer widths in Table 15.15.200-1 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.

1. The standard buffer widths 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.

2. Measurement of Wetland Buffers**.** All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved

wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

Table 15.15.200-1. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses.

Category of Wetland	Land Use with Low Impact *	Land Use with Moderate Impact *	Land Use with High Impact*
IV	25 ft	40 ft	50 ft
III	75 ft	110 ft	150 ft
II	150 ft	225 ft	300 ft
I	150 ft	225 ft	300 ft
* See Table 15-15.200-2 below for types of land uses that can result in low, moderate, and high impacts to wetlands.			

Table 15.15.200-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations *
High	• Commercial • Urban • Industrial • Institutional • Retail sales • Residential (more than 1 unit/acre) •Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High-intensity recreation (golf courses, ball fields, etc.) • Hobby farms
Moderate	• Residential (1 unit/acre or less) • Moderate-intensity open space (parks with biking, jogging, etc.) • Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and

	including access/maintenance road
Low	• Forestry (cutting of trees only) • Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor without a maintenance road and little or no vegetation management.

3. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the director when a larger buffer is necessary to protect wetland functions and values. 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 include but not be limited to the following criteria:

a. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

4. Buffer averaging to *improve wetland protection* may be permitted when **all** of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

5. Averaging to *allow reasonable use* of a parcel may be permitted when **all** of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.

c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever category is applicable.

D. Buffers on Mitigation Sites**.** All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

E. Buffer Maintenance**.** Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond (Section 15.15.240.I.2.a.viii).

F. Impacts to Buffers**.** Requirements for the compensation for impacts to buffers are outlined in Section 15.15.240.J of this Chapter.

G. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

H. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. 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 increase the footprint or use of the facility or right-of-way.

5. 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.

6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, 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 is disturbed.

7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. 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. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Stormwater management facilities**.** Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:

a. No other location is feasible; and

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

c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

9. Non-Conforming Uses**.** Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

I. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter, the Director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Director:

Protected Wetland Area
Do Not Disturb
Contact Town of Lyman
Regarding Uses, Restrictions, and Opportunities for Stewardship

b. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing

a. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

Section 2. Section 15.15.210 of the Lyman Municipal Code is hereby revised and reenacted, the amended section to read as follows:

15.15.210 Wetlands initial project review.

A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within ~~200~~ 300 feet of a proposed project or activity. A positive confirmation by the director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.

B. The director shall use the following map references to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Department of Interior; Fish and Wildlife Service;

2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington by the United States Department of Agriculture; Soil Conservation Service;

3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and

4. Wetlands previously identified through the methodology specified under BMC 15.15.200 for another project.

Section 3. Section 15.15.220 of the Lyman Municipal Code is hereby revised and reenacted, the amended section to read as follows:

15.15.220 Wetlands site assessment requirements.

If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within ~~200~~ 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within ~~200~~ 300 feet of the activity area, then no further study is required.

B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the applicant chooses to perform a delineation instead of a wetland reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified under code 15.15.200.

C. If the director determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

~~Wetlands Site Assessment. The site assessment shall be prepared by a qualified expert wetland professional consistent with this section and BMC 15.15.200. The site assessment shall include the following:~~

~~1. Site plan prepared in accordance with the requirements of this chapter indicating the presence of wetlands within 200 feet of the project or activity area. This site plan information may be prepared by the applicant with review by the qualified wetlands professional. If the applicant together with assistance from the director cannot obtain permission for access to properties within 200 feet of the activity area then an approximation of the extent of off-site wetlands within 200 feet of the area may be completed based on aerial interpretation and/or visual observation from nearby vantage points;~~

~~2. Wetland community description including Cowardian classification and wetland rating based upon Washington State Department of Ecology's Washington State Wetland Rating System (1993) or subsequent revisions;~~

~~3. Delineation report including a site map indicating wetland boundaries and the locations of all data points;~~

~~4. Values and functions assessments shall include but not be limited to discussion of water quality, fish and wildlife habitat, flood and stream flow attenuation, recreation and aesthetics;~~

~~5. Project description and impact assessment shall include a detailed narrative describing the project, its relationship to the wetland and its potential impact to the wetland; and~~

~~6. Any proposed mitigation plan shall include a discussion on how the project has been designed to avoid and minimize adverse impacts to wetlands and should follow the general mitigation plan requirements described in BMC 15.15.240 and Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, Department of Ecology, March 1994 or subsequent revisions, and shall be consistent with the Gages Slough Management Plan adopted as part of the comprehensive plan.~~

~~7. Approval of any activity that can adversely affect regulated wetlands shall conform to the requirements set forth in BMC 15.15.170(A). (Ord. 1495 § 2, 2002).~~

D. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:

   a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state,

and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

b. A statement specifying the accuracy of the report and all assumptions made and relied upon.

c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.

d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.

e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.

f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per *Wetland Ratings* (Section 15.15.200.B) of this Chapter; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.

h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to *Mitigation Sequencing* (Chapter 15.15.240) to avoid, minimize, and mitigate impacts to critical areas.

j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

Section 4. Section 15.15.240 of the Lyman Municipal Code is hereby revised and reenacted, the amended section to read as follows:

15.15.240 Wetland mitigation standards.

~~A. Mitigation Plan Requirements. Along with the other provisions of the other subsections below, the following items are required as part of a mitigation plan:~~

~~1. Description of project or activity and impact assessment shall include a detailed narrative describing the project or activity, its relationship to the wetland and its potential impact to the wetland.~~

~~2. Any proposed mitigation plan shall include a discussion on how the project or activity has been designed to avoid and minimize adverse impacts to wetlands and should follow the general mitigation plan requirements described in BMC 15.15.240 and Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, Department of Ecology, March 1994.~~

~~B. Standard Wetland Buffers Requirements. Buffers satisfy the first step in the mitigation sequence set forth in this section. They are necessary in order to avoid potential project generated~~

impacts. Buffers help maintain water quality and habitat diversity while stabilizing hydrology and minimizing direct human disturbance to wetlands. Buffer widths are based on wetland rating, the functions that the buffer is expected to perform, and the intensity of the proposed land use. The following standard buffers shall be required for regulated wetlands unless otherwise provided for in this section:

Category I	150
Category II	100
Category III	50
Category IV	25

1. Wetland buffers shall be measured horizontally in a landward direction from the wetland edge, as delineated in the field, pursuant to the requirements of BMC 15.15.220. Where lands adjacent to a wetland display a continuous slope of 25 percent or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area.

2. Except as otherwise specified, wetland buffers shall be retained in their natural condition.

3. Where buffer disturbance or alteration has or will occur in conjunction with regulated activities, revegetation with native vegetation shall be required and completed one month before the end of the growing season.

4. 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.

C. As described generally in subsection (A) of this section, if an applicant does not propose to alter the required buffer, then no additional wetland impact mitigation shall be required.

D. If an applicant proposes to decrease or alter a required buffer or alter a wetland pursuant to BMC 15.15.150, the applicant shall demonstrate why such buffer and/or wetland modification, together with such alternative mitigation proposed in the wetland area assessment is sufficient to adequately protect the wetland functions and values.

E. Performance Based Buffer Alternatives. Buffer widths may be increased, decreased or averaged in accordance with the following provisions. In implementing alternative buffer widths, the director shall provide 14 days for review and comment from appropriate federal, state and tribal natural resource agencies to ensure the use of best available science and relevant comments will be conditions of project approval. All comments shall be included in the public record along with the basis and rationale for requirement or approval of any such alternative buffer widths.

1. Buffer Width Increasing. Standard buffers may be increased upon a determination by the qualified wetland expert with confirmation from the Washington State Departments of Ecology and/or Fish and Wildlife that buffer

width averaging is not adequate to protect the functions and values of the wetland and increased buffer widths are necessary to:

a. Maintain viable populations of existing species listed by the federal or state government as endangered, threatened or sensitive; or

b. Maintain critical habitat for those species referenced in subsection (E)(1)(a) of this section;

c. Protect wetlands against severe erosion that standard erosion control measures will not effectively address;

d. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

2. Buffer Width Decreasing. Decreasing of standard buffer widths will be allowed pursuant to BMC 15.15.150.

F. Allowed Uses in Buffers. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided, that such activity shall not result in a decrease in wetland functional values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, and viewing platforms.

G. Establishment of Limits of Clearing. The location of the outer extent of the wetland buffer and the limits of the areas to be disturbed shall be marked in the field and be included as a condition of a development permit or approval. Such field markings may be field-approved by the director prior to the commencement of permitted activities. Markings shall be maintained throughout the duration of any construction activities.

H. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity.

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under BMC 15.15.220.

2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP 14 permitting crossing of wetlands as part of road construction.

I. Compensatory Mitigation.

1. General Provisions.

a. In selection compensation actions, applicants should consider the following order of preference:

i. Restoring wetlands on upland sites which were formerly wetlands;

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

iii. Enhancing significantly degraded wetlands;

iv. Preserving high-quality wetlands which are under imminent threat.

b. Compensatory mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The applicant shall provide for long-term preservation of the compensation area.

c. Compensatory mitigation shall follow an approved compensatory mitigation plan pursuant to BMC 15.15.230 and reflect the restoration/creation ratios specified in subsection (I)(2) of this section.

d. Enhancement of existing wetlands may be considered for compensation as further described in subsection (I)(2) of this section.

e. Compensation shall be completed prior to, or concurrently with, wetland loss, or, in the case of an enforcement action, prior to further development of the site.

2. On-Site Compensation. As a condition of any development permit or approval which results in on-site loss or degradation of regulated wetlands and/or wetland buffers, the director shall require of the applicant compensatory mitigation to offset impacts resulting from the actions of the applicant. On-site compensation is generally preferred over off-site compensation.

Except under BMC 15.15.240(H), any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland losses. The following ratios in the table below apply to creation or restoration which is in-kind (i.e., the same type of wetland), on-site, and is accomplished prior to or concurrently with loss. The first number specifies the acreage of wetlands to be restored or created and the second specifies the acreage of wetlands lost:

Wetland On-Site Restoration/Creation Ratios.

Wetland Created	**Wetland Area Lost**
Category I	6:1
Category II	3:1
Category III	2:1
Category IV	1.5:1

These ratios apply to creation or restoration of a non-wetland area, which is on-site, the same category as the impacted wetland, timed prior to or concurrent with the alteration, and has a high probability of success.

These ratios may be increased under the following circumstances:

Uncertainty as to the probable success of the proposed restoration or creation;

Significant period of time between impact and replication of wetland functions;

Proposed mitigation will result in lower category wetland or reduced functions than the wetland being impacted; or

The impact was an unauthorized impact.

These ratios may be decreased under the following circumstances:

Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;

Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide significantly greater functions and values than the wetland being impacted; or

The proposed mitigation actions are conducted in advance of the impact and are shown to be successful.

Wetlands Enhancement

Any applicant proposing to impact wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands must produce a report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately compensate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

~~At a minimum, enhancement acreage shall be double the acreage required for creation or restoration and shall be higher where the enhancement proposal would result in minimal gains in the performance of wetland functions.~~

~~3. Off-Site Compensation. Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. Off-site compensation will be conducted in accordance with the restoration/creation ratios described in BMC 15.15.240(I)(2) and selecting compensation sites in BMC 15.15.240(I)(5). Off-site compensation shall occur within the same drainage basin of the same watershed where the wetland loss occurs. In such instances, the storm water storage function provided by Category IV Wetlands must be provided for within the design of the development project. Off-site compensation can be allowed only under one or more of the following circumstances:~~

> ~~a. On-site compensation is not feasible due to hydrology, soils, or other factors;~~
>
> ~~b. On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a federal, state or county public safety directive;~~
>
> ~~c. Potential functional values at the site of the proposed restoration are greater than the lost wetland functional values;~~
>
> ~~d. When the wetland to be altered is of a limited functional value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.~~

~~4. Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of subsection (I)(1) of this section and the mitigation sequence outlined in this section.~~

~~5. Selecting Compensation Sites—General Provisions.~~

> ~~a. Except in the case of cooperative compensation projects in selecting compensation sites, applicants shall pursue locations in the following order of preference:~~
>
> > ~~i. Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;~~
> >
> > ~~ii. Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.~~
>
> ~~b. Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.~~

~~J. Timing. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement occurs during the dry season and planting of vegetation shall be specifically timed to needs of the target species.~~

~~K. Alternative Compensation Projects. The director may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of alternative compensation projects allowed under the provisions of this section wherein one or more applicant(s), or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:~~

~~1. Creation of one or several larger wetlands may be preferable to many small wetlands;~~

~~2. The group demonstrates the organizational and fiscal capability to act cooperatively;~~

~~3. The group demonstrates that long-term management of the compensation area will be provided;~~

~~4. There is a clear potential for success of the proposed compensation at the identified compensation site;~~

~~5. Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined in BMC 15.15.240(I)(2). Exception: Where a compensatory mitigation plan including a five-year monitoring agreement is included as a condition of approval, such plan shall allow for 1:1 replacement ratios upon successful completion of the monitoring agreement;~~

~~6. Wetland mitigation banking programs consistent with the provisions outlined in the Department of Ecology's Publication # 92-12 (Wetland Mitigation Banking) and Publication # 94-29 (Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals) or subsequent revisions will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development.~~

A. Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.

2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reduce or eliminate the impact over time by preservation and maintenance operations.

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009).

2. Mitigation ratios shall be consistent with Subsection G of this Chapter.

3. Mitigation requirements may also be determined using the credit/debit tool described 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) consistent with subsection H of this Chapter.

C. Compensating for Lost or Affected Functions**.** Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the Town, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions**.** Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (re-establishment and rehabilitation) of wetlands:

a. The goal of re-establishment is returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

   a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

      i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

      ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

      iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

      iv. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:

   a. How the proposed enhancement will increase the wetland's/buffer's functions;

b. How this increase in function will adequately compensate for the impacts; and

c. How all other existing wetland functions at the mitigation site will be protected.

4. Preservation. Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided by re-establishment or creation. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

a. The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:

i. Category I or II wetland rating (using the wetland rating system for western Washington)

ii. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands)

iii. The presence of habitat for priority or locally important wildlife species.

iv. Priority sites in an adopted watershed plan.

b. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.

c. There is no net loss of habitat functions within the watershed or basin.

d. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.

e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, or land in public ownership.

f. The impact area is small (generally <½ acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

E. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of paragraphs 1-4 below apply. In that case, mitigation may be allowed off-site within the

subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capatown of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capatown, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat.

3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.

4. Off-site locations shall be in the same sub-drainage basin unless:

    a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the Town and strongly justify location of mitigation at another site; or

    b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;

    c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy

of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The Director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the town.

G. Wetland Mitigation Ratios[1]:

Category and Type of Wetland	**Creation or Re-establishment**	**Rehabilitation**	**Enhancement**
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

[1] Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1,* (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised). See also Paragraph D.4 for more information on using preservation as compensation.

H. 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).

I. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).

a. The written report must contain, at a minimum:

i. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

ii. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.

iii. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on *Wetland Ratings* (Section 15.15.200) of this Chapter.

iv. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. . Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?).

v. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.

vi. A description of the proposed mitigation construction activities and timing of activities.

vii. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed

monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).

viii. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.

ix. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

i. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.

ii. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be altered, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.

iii. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.

iv. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

v. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter.

vi. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.

vii. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.

J. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

K. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement or land in public ownership.

L. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

M. Wetland Mitigation Banks.

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

    a. The bank is certified under state rules;

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

    c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

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

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

N. In-Lieu Fee. To aid in the implementation of off-site mitigation, the Town may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.

6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

O. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

P. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity.

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under code 15.15.220.

2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP permitting crossing of wetlands as part of road construction.

Section 5. This Ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

INTRODUCED AND PASSED and approved at a regular meeting of the Town Council this _____day of _____, 2018

THE TOWN OF LYMAN

_____
Edward E Hills, Mayor

ATTEST:

_____
Debora Boyd, Clerk